

950 CMR 71.00: PROTECTION OF PROPERTIES INCLUDED IN THE STATE REGISTER OF HISTORIC PLACES

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71.01: Introduction

950 CMR 71.00 are hereby issued pursuant to the authority of M.G.L. c. 9, §§ 26 through 27C as amended by St. 1988, c. 254.

71.02: Scope, Purpose and Participants

(1) Scope and Purpose. The purpose of M.G.L. c. 9, §§ 26 through 27C is to eliminate, minimize, or mitigate adverse effects to properties listed in the State Register of Historic Places. 950 CMR 71.00 establishes a standardized procedure to protect the public's interest in preserving historic and archaeological properties by directing state bodies to notify the MHC as early as possible in the planning process of any project either undertaken by the state body or prior to the state body's funding or licensing, in whole or in part, a private project. The MHC will determine whether the project will have any adverse effect, direct or indirect, on any property listed in the State Register of Historic Places. The MHC must make a determination of effect within 30 days of receipt of notification. If the MHC determines that a project will have an adverse effect on a State Register property, then the MHC, the state body, and the private project proponent will immediately consult to discuss ways to eliminate, minimize, or mitigate the adverse effects. The state body or the private project proponent undertaking the project must adopt all prudent and feasible means to eliminate, minimize, or mitigate adverse effects. 950 CMR 71.02 detail the process for compliance with M.G.L. c. 9, §§ 26 through 27C by establishing a forum for the resolution of disputes arising between proposed developments and historic properties; the emphasis of the process is on interested parties negotiating an agreement after a thorough and good faith examination of alternatives. State law does not give the MHC veto authority over proposed developments, but does direct state bodies to adopt all prudent and feasible means to avoid damaging historic properties. The MHC's role is to provide information, technical assistance, and a forum to assist project proponents in developing projects that consider historic values and preserve the Commonwealth's historic heritage.

(2) Participants

- (a) Consulting Parties. Consulting parties are the primary participants in the consultation process, whose responsibilities are defined by 950 CMR 71.02. Consulting parties have the principal responsibilities in the consultation process and are parties to any agreement resulting from the consultation process. Consulting parties may include:
1. Project proponent as defined in 950 CMR 71.03
 2. State body as defined in 950 CMR 71.03
 3. MHC as defined in 950 CMR 71.03

71.02: continued

(b) Local Historical Commissions and Local Historic District Commissions. Local historical commissions and local historic district commissions are encouraged to take an active role in the consultation process. Local historical and historic district commissions shall be invited to participate in the consultation process for any projects which might have an effect upon State Register properties located within the town or local historic district. The MHC may invite local historical and historic district commissions to become a party to certain agreements resulting from the consultation process.

(c) Interested Parties. Interested parties are those organizations and individuals that are concerned with the effects of a project on State Register properties and are encouraged to participate in consultation. Whenever the state body, project proponent and the MHC agree that active participation of an interested party will advance the objectives of the consultation process, they may invite that party to become a consulting party.

(d) The Public. The MHC values the views of the public and encourages public participation in the consultation process. Notice to the public under 950 CMR 71.00 should adequately inform the public of preservation issues in order to elicit informed public views on issues that can be considered and resolved, when possible, in the decision making process.

71.03: Definitions

As used in 950 CMR 71.00:

Area of Potential Impact means that geographical area within which direct and indirect effects generated by the project could reasonably be expected to occur and to cause a change in the historical, architectural, archaeological, or cultural qualities possessed by a State Register property.

Consulting Parties means the Massachusetts Historical Commission, the state body, and the project proponent participating in the consultation process.

Executive Director means the Director of the Massachusetts Historical Commission or a designee authorized to act for the Executive Director.

Interested Parties means any organization or individual who is concerned with the effects of a project on a State Register property.

Inventory means the Inventory of Historic and Archaeological Assets of the Commonwealth which is compiled and maintained by the MHC pursuant to M.G.L. c. 9, §§ 26 and 26A(1). The Inventory includes records of districts, buildings, sites, areas, structures, bridges, objects, specimens, burial grounds, streetscapes, parks, and landscapes located within the Commonwealth. The Inventory is maintained in computer files, paper files, maps, and ancillary reports which are located at the office of the MHC, and contains over 200,000 records. The Inventory of Archaeological Sites and Specimens maintained pursuant to M.G.L. c. 9, §§ 26A(1) is not a public record and is available for inspection at the discretion of the State Archaeologist. The Inventory of Historical Assets is public information and available for public access pursuant to M.G.L. c. 66.

Local Historical Commission means any commission of a city or town established under M.G.L. c. 40, §§ 8D or Special Act, to advise the city or town in historic preservation matters.

Local Historic District Commission means any commission of a city or town established under M.G.L. c. 40C or Special Act, to administer local historic districts or local landmarks.

71.03: continued

License means a permit, determination, order or other action, including the issuance of a lease, license, permit, certificate, variance, approval, or other entitlement for use, granted by a state body for a project to any private person, firm, corporation, trust, voluntary association, or other form of business organization, or any state or local governmental, or other entity which is not a state body; but shall not include a general entitlement to a person to carry on a trade or profession or to operate mechanical equipment which does not depend upon the location of such trade or operation.

MHC means the Massachusetts Historical Commission as defined in M.G.L. c. 9, §§ 26 or its staff designated to carry out its responsibilities.

Project means action, activity, program, construction, or land modification, including, but not limited to, a building or structure, either directly undertaken by a state body, or which if undertaken by a private project proponent, in whole or in part, seeks the provision of financial assistance by a state body, or, in whole or in part, requires the issuance of a license by a state body.

Project Notification Form means the form provided by the MHC that is completed by a state body or a private project proponent in order to notify the MHC of a project requiring review under M.G.L. c. 9, §§ 26 through 27C; included in 950 CMR 71.00 as Appendix A.

Project Proponent means a state body undertaking a project or a private person, firm, corporation, trust, voluntary association, or other form of business organization, or any state or local governmental, or other entity which is not a state body undertaking a project that seeks the provision of financial assistance by a state body, in whole or in part, or requires the issuance of a license by a state body, in whole or in part.

State Body means any agency, executive office, department, board, commission, bureau, division, or authority of the Commonwealth established to serve a public purpose.

State Register means the State Register of Historic Places. The State Register shall contain the following properties:

- (a) all districts, sites, buildings, or objects determined eligible for listing or listed in the National Register of Historic Places. These include properties listed in the National Register under provisions outlined in 36 C.F.R. Part 60 or properties determined eligible for listing in the National Register under provisions outlined in 36 C.F.R. Part 63;
- (b) all local historic districts established pursuant to M.G.L. c. 40C or special legislation;
- (c) all landmarks designated under local ordinances or by-laws;
- (d) all structures and sites subject to preservation easements approved or held by the MHC pursuant to M.G.L. c. 184, §§ 32;
- (e) all historical or archaeological landmarks certified pursuant to M.G.L. c. 9, §§ 27; and
- (f) all properties listed by the MHC pursuant to M.G.L. c. 9, §§ 26D.

State Register Property means a district, site, building, structure, or object included in the State Register.

71.04: Applicability and Coordination

(1) Projects Which Require Review. Prior to any state body undertaking a project, or any state body funding or licensing, in whole or in part, a private project, the state body must notify the MHC of the project. A private project proponent may provide notification, in which case a state body need not provide notice to the MHC of the project. A state body does not have to notify the MHC of a project which clearly does not have an area of potential impact due to the nature of the project. Nevertheless, a state body must notify the MHC if the nature and scope of a project is likely to impact a geographical area and cause a change in the historical, architectural, archaeological, or cultural qualities of a property, even if the

71.04: continued

project does not appear to affect any State Register properties. The MHC shall determine whether State Register properties exist within a project's area of potential impact. The MHC's review shall not be limited to the subject matter of the funding or licensing, but shall extend to the entire project. Any project for which the MHC receives notice on or after December 5, 1988 shall follow and be reviewed under 950 CMR 71.00 for compliance with M.G.L. c. 9, §§ 26 through 27C as amended by St. 1988, c. 254. Any project for which the MHC received notice prior to December 5, 1988 shall follow and be reviewed under M.G.L. c. 9, §§ 26 through 27C and regulations thereunder as then in effect.

(2) Coordination with Review under Section 106 of the National Historic Preservation Act of 1966, as Amended (16 U.S.C. 470). Section 106 of the National Historic Preservation Act of 1966 requires Federal agencies to take into account the effect of any federal undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places. Initiation of review under Section 106 of the National Historic Preservation Act of 1966 may be accomplished by submission to the MHC of the Project Notification Form or Environmental Notification Form required under 950 CMR 71.00. In the case of projects which require review under Section 106 of the National Historic Preservation Act, the documentation of no adverse effect, preliminary case reports, and other reports prepared for the Advisory Council for Historic Preservation may be submitted for review to the MHC under the provisions of M.G.L. c. 9, §§ 26 through 27C. Such reports shall be reviewed for adequacy under 950 CMR 71.00. Completed project review under the National Historic Preservation Act of 1966 shall ordinarily fulfill the requirements of compliance with M.G.L. c. 9, §§ 26 through 27C, unless otherwise determined by the MHC.

(3) Coordination with Review under the Massachusetts Environmental Policy Act. The Massachusetts Environmental Policy Act (MEPA), M.G.L. c. 30, §§ 61 through 62H, and regulations promulgated thereunder (301 CMR 11.00), require review and evaluation of projects in order to disclose environmental impacts and find all feasible alternatives to avoid damaging the environment, including historic properties. For projects which require review under MEPA and M.G.L. c. 9, §§ 26 through 27C, project proponents will find it most convenient to follow the procedures outlined in 950 CMR 71.00 at the time MEPA reports are filed. Project proponents should be aware that the categorical inclusions and review thresholds which govern compliance to MEPA do not apply to 950 CMR 71.00. Similarly, the subject matter limitations which constrain MEPA do not constrain review under M.G.L. c. 9, §§ 26 through 27C. Finally, consultation of the State Register does not fulfill the state body's responsibilities to identify and assess potential impacts to historic resources under MEPA.

(4) Designation of Principal State Body. If a project requires the approval of two or more state bodies, representatives from each state body shall meet with the MHC, and the MHC may designate a state body to act as the principal under 950 CMR 71.00. The principal state body shall take all actions necessary to comply with M.G.L. c. 9, §§ 26 through 27C. Furthermore, if the MHC has completed review of a project pursuant to a particular permit or funding approval from a state body, subsequent permit or funding requirements from other state bodies shall not trigger the MHC review process in regards to that particular project.

(5) Coordination with the Inventory of Historic and Archaeological Assets of the Commonwealth. The MHC's review under M.G.L. c. 9, §§ 26 through 27C applies only to properties listed in the State Register which were included in the Inventory on or within 30 days following the earliest submission of an application for building, demolition, special permit, a plan under the provisions of M.G.L. c. 41, § 810, 81P or 81S, or an application for a required state permit for the project. In other words, the MHC's review to determine whether a project will have an adverse effect on State Register properties is limited to a determination on State Register properties which were included in the Inventory on or within 30 days after the first submission of the above-referenced permits. For properties entered in the Inventory after December 5, 1988, the MHC maintains a log indicating the date on which a property was entered in the Inventory. To verify that the provisions of M.G.L. c. 9, §§ 26 through 27c do not apply to a particular property, a state body or private project proponent shall provide the MHC with documentation that, before the date of inclusion of the property in the Inventory, 30 days had expired after the earliest submission date for the above-referenced permits.

71.05: Criteria of Adverse Effect

Adverse effects on State Register properties may occur under conditions which include but are not limited to:

- (a) the destruction or alteration of all or part of a State Register property;
- (b) the isolation or alteration of a State Register property from its surrounding environment;
- (c) the introduction of visual, audible, or atmospheric elements that are out of character with, or alter the setting of the State Register property;
- (d) the neglect of a State Register property resulting in deterioration or destruction; or
- (e) the transfer or sale of a State Register property without adequate conditions or restrictions regarding preservation, maintenance, or use.

71.06: Authorization and Expansion of the State Register

The MHC shall establish and maintain the State Register of Historic Places. The MHC shall publish annually a complete listing of all properties included in the State Register. The MHC shall publish an update in the *Massachusetts Register* of properties that have been added to the State Register each week. The MHC shall maintain the most current and accurate list of properties included in the State Register, and shall make available cumulative updated lists of properties which have been added to the State Register after the date of publication of the last annual listing.

71.07: Review of Projects

(1) State Body Responsibilities. Prior to any state body undertaking a project, or any state body funding or licensing, in whole or in part, a private project, the state body must notify the MHC of the project, unless the project clearly does not have an area of potential impact due to its nature. Furthermore, the notice should be given to the MHC as early as possible in the planning process of a project, and must be given before a state body takes action or makes a decision which forecloses alternatives that could eliminate, minimize, or mitigate adverse effects, or limits the MHC's ability to comment or consult. A private project proponent may notify the MHC. A state body may direct all its grantees or licensees to provide the MHC with the required notice. In notifying the MHC, a state body or private project proponent may either complete an Environmental Notification Form as required under MEPA, or a Project Notification Form provided by the MHC. The notification form shall be completed with the most accurate and comprehensive information available. The form shall adequately document the information necessary for the MHC to make an informed and reasonable determination of the effect of a proposed project on State Register Properties.

(2) MHC Responsibilities. The MHC will issue a written determination of effect within 30 days of receipt of an adequately documented Project Notification Form or Environmental Notification Form.

(a) Identification of State Register Properties. Within 30 days of receipt of an adequately documented Project Notification Form or Environmental Notification Form, the MHC shall consult the State Register to determine whether State Register properties exist within a project's area of potential impact. If the MHC concludes that no State Register properties exist within a project's area of potential impact, the MHC will document this conclusion and so inform the state body or the private project proponent in writing.

(b) Determination of Adverse Effect. For each State Register property that is located within a project's area of potential impact, the MHC shall apply the Criteria of Adverse Effect to determine whether the project will have an adverse effect upon the historical, architectural, archaeological, or cultural characteristics of the property that qualified it for inclusion in the State Register. The MHC shall make such determination in writing, specifying the reasons for the adverse effect finding.

1. No Effect. The MHC may determine that a project will have no effect on the characteristics of a property that qualified it for inclusion in the State Register, and shall make such determination in writing. Upon receipt of the MHC's determination that a project will have no effect, the state body may proceed with the project, or in the case of a private project, may proceed with the funding or licensing of such project.

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2. Determination of No Adverse Effect. The MHC may determine the effects of a project on the historical, architectural, archaeological, or cultural characteristics of the property are not adverse, and shall make such determination in writing. Upon receipt of the MHC's determination that a project will have no adverse effect, the state body may proceed with the project, or in the case of a private project, may proceed with the funding or licensing of such project.
 3. Determination of Adverse Effect. The MHC may determine that the effects of a project on the historical, architectural, archaeological, or cultural characteristics of the property are adverse, and shall make such determination in writing, specifying the criteria of adverse effect that are met by the project. The MHC, the state body, and the project proponent shall immediately proceed with the consultation process.
- (c) Other Historical and Archaeological Assets. In reviewing a Project Notification Form or an Environmental Notification Form, the MHC shall consult the Inventory to determine whether properties not listed in the State Register exist within the project's area of potential impact. If the Inventory indicates that historic properties not listed in the State Register exist within the project's area of potential impact, the MHC will so notify the state body and the project proponent. To the extent feasible, the MHC will notify the state body and the project proponent whether such property will be listed in the State Register prior to the conclusion of the project review under 950 CMR 71.00. The MHC shall encourage the state body and the project proponent to eliminate, minimize, or mitigate adverse effects to properties included in the Inventory.
 - (d) Failure to Request the Comments of the MHC. Any person may advise the MHC of projects that threaten State Register properties and appear to involve a state body. The MHC may investigate these matters. If there is state body involvement, the state body shall fulfill its responsibilities under 950 CMR 71.00. The MHC will exercise its authority to comment to the state body even though written notification has not been received.
 - (e) Suspension of Action. Until the MHC issues its comments pursuant to 950 CMR 71.00, the state body and project proponent shall not undertake or sanction any action or make any irreversible commitment that could result in an adverse effect on a State Register property or would foreclose the consideration of modifications or alternatives to the proposed project that could eliminate, minimize, or mitigate such adverse effects.
 - (f) Failure of the MHC to Make a Determination. If the MHC fails to make a determination of adverse effect within 30 days of receipt of an adequately documented Project Notification Form or Environmental Notification Form, the state body may proceed with the project, or in the case of a private project, may proceed with the funding or licensing of such project.
 - (g) Project Changes. If after the MHC completes the review of a proposed project, the project substantially changes, the project proponent shall promptly notify the MHC and request a new MHC review and determination based upon the project changes. The MHC shall conduct the review process to determine whether the project changes will have any adverse effect on State Register properties. The MHC must make a determination of effect within 30 days of receipt of notification. If the MHC makes an adverse effect determination, the MHC, the state body, and the project proponent shall immediately proceed with the consultation process. A project's substantial change, requiring additional MHC review, shall consist of any changes which could reasonably be expected to cause an effect in the historical, architectural, archaeological, or cultural qualities of State Register properties.
- (3) Consultation Process. Upon determination of adverse effect, the MHC Division, the state body, and the project proponent shall consult to consider project alternatives that could eliminate, minimize, or mitigate adverse effects on State Register properties. Consultation with the MHC Division shall commence within 15 days of the determination of adverse effect except where the state body or the project proponent has requested and been granted an extension by the MHC Division. The MHC Division shall invite the appropriate local historical commission or local historic district commission to participate in consultation, and may invite such commission to be a consulting party to an agreement. The MHC Division, the state body, or the project proponent may invite interested parties to participate in consultation or to be a consulting party to an agreement. The views of the public are also encouraged. The consultation process shall be conducted in a timely manner, and all parties should act in good faith to minimize time delays. The consultation process may involve the following:

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- (a) On-Site Inspection. At the request of any of the consulting parties, the state body or project proponent shall allow on-site inspection.
- (b) Public Informational Meeting. At the request of any of the consulting parties or on its own initiative, the MHC may conduct a meeting open to the public, where representatives of national, state, or local units of government, representatives of local historical commissions, local historic district commissions, interested parties, and the public may receive information and express their views on the project, its effects on State Register properties, and alternative courses of action that could eliminate, minimize, or mitigate any adverse effect on such properties.
- (c) Consideration of Alternatives.
1. The consulting parties shall meet in order to discuss project alternatives which could eliminate, minimize, or mitigate the adverse effect. The state body or project proponent shall provide to the MHC all data and information necessary to identify and evaluate such alternatives.
 2. The MHC shall maintain a record, including a record of sources of information consulted, that documents all alternatives considered during the consultation process.
- (d) Avoidance or Satisfactory Mitigation of Adverse Effect. After a thorough review of the alternatives, the consulting parties may agree that there is a prudent and feasible alternative that eliminates, minimizes, or mitigates the adverse effects of the project. Upon such agreement, the MHC shall, with the assistance of any consulting party, prepare a Memorandum of Agreement describing such alternative and submit the Memorandum to the state body and the project proponent. If the state body and the project proponent sign the Memorandum agreeing that they will comply with the measures specified to eliminate, minimize, or mitigate the adverse effect, the Memorandum shall be signed by the Executive Director on behalf of the MHC and a copy shall be sent to the state body and the project proponent.
- (e) Acceptance of Adverse Effect. After a thorough review of the alternatives, the MHC may determine that there are no feasible or prudent alternatives to eliminate, minimize, or mitigate the adverse effects. Upon such decision, the MHC shall, with the assistance of any consulting party, prepare a Statement of Acceptance of the Adverse Effect, and submit such Statement to the state body and the project proponent.
- (4) Failure to Agree. After a thorough review of alternatives and consultation with the consulting parties, the project proponent, the state body, or the MHC may conclude that the parties fail to agree. The project proponent or state body may request the MHC, or the MHC may undertake to prepare a Memorandum of Agreement outlining the MHC's conclusion that a prudent and feasible alternative exists that would eliminate, minimize, or mitigate the adverse effects of the project. If the MHC concludes that the consulting parties have made reasonable and good faith efforts to complete the consultation process in a comprehensive manner, the MHC shall promptly prepare the requested Memorandum of Agreement and submit it for consideration to the state body and project proponent. Should the state body or project proponent fail to agree to comply with the specified alternative, it shall so notify the MHC. The proposed Memorandum of Agreement shall be placed on the agenda of a regular meeting of the MHC for consideration within 60 days of receipt of such notification. Consideration of the proposed Memorandum of Agreement may, with the concurrence of the MHC, be postponed at the request of the state body or project proponent. The state body shall not proceed with the project, or in the case of a private project, shall not proceed with the funding or licensing of the project, and the private project proponent shall not proceed with the project until the MHC issues its comments.
- (5) Massachusetts Historical Commission Meeting.
- (a) Consideration of the Proposed Memorandum of Agreement. In considering the proposed Memorandum of Agreement, the MHC shall review the following information:
1. The Project Notification Form or Environmental Notification Form;
 2. The Determination of Adverse Effect;
 3. The information listing the property in the State Register of Historic Places;
 4. Any additional information submitted by the state body or project proponent, including any counter Memorandum of Agreement; and

71.07: continued

5. Any information submitted by other consulting parties, by the Executive Director, or by the public.

All information must be submitted to the MHC, in writing, at least ten days prior to the meeting at which the proposed Memorandum of Agreement shall be reviewed, unless a shorter period of time is approved by the MHC.

(b) Statements to the MHC. At the scheduled MHC meeting, the state body and the project proponent shall discuss with the MHC alternatives to the project and means of eliminating, minimizing, or mitigating the adverse effects. Other consulting parties, interested public and private organizations, or individuals may make oral or written remarks to the MHC, provided that they notify the Executive Director at least two days in advance of the meeting, unless prior notification is waived by the MHC.

(c) Comments of the MHC. Within 20 days after the MHC meeting, the MHC shall submit to the state body and the project proponent either a finding of acceptance of adverse effect or a statement specifying prudent and feasible alternatives that exist to eliminate, minimize, or mitigate the adverse effects. If there is a consensus at the conclusion of the meeting, the state body and the project proponent may request that a Joint Memorandum of Prudent and Feasible Alternatives be prepared.

(d) Joint Memorandum. If a Joint Memorandum of Prudent and Feasible Alternatives is prepared, and the state body and project proponent sign such Memorandum agreeing to comply with the measures stipulated to eliminate, minimize, or mitigate the adverse effect, then the state body may proceed with the project, or in the case of a private project, may proceed with funding or licensing such project. The Joint Memorandum of Prudent and Feasible Alternatives shall be prepared by the MHC with the assistance of any consulting party in a timely manner.

(e) State Body Action in Response to MHC Comments. If either the state body or the project proponent fails to agree to comply with the MHC's Statement of Prudent and Feasible Alternatives or proposed Joint Memorandum of Prudent and Feasible Alternatives, then the state body or the project proponent shall prepare a detailed response explaining why such state body or project proponent refuses to adopt the MHC's finding. No state body shall proceed with the project or in the case of a private project, no state body shall fund or license such project, and no project proponent shall proceed with the project until ten days after the submission of such response to the MHC.

71.08: Public Participation

The MHC encourages maximum public participation in the review process under 950 CMR 71.00. The MHC and the state body should seek assistance from local historical commissions, local historic district commissions, interested parties, the public, units of state and local government, and public and private organizations in determining effect and developing alternatives to eliminate, minimize, or mitigate any adverse effect. The MHC should make readily available, to the extent allowed by law, documents, materials, and other information and data concerning the project and its effects to State Register properties. The MHC should make the public aware of informational meetings and the availability of other information related to the review of individual projects, such as a Determination of Adverse Effect, an Acceptance of Adverse Effect, a Memorandum of Agreement, a Joint Memorandum of Prudent and Feasible Alternatives, and a state body's response refusing to adopt the MHC's findings. Informing the public may include:

- (a) mailing notice to those who have requested information on an individual project;
- (b) placing notice in local newspapers or newsletters;
- (c) posting notices on- and off-site;
- (d) soliciting relevant information from the public;
- (e) holding or sponsoring public meetings;
- (f) publishing notice of decisions regarding review of individual projects in the *Massachusetts Register*; and
- (g) publishing notice of decisions or other actions under 950 CMR 71.00 in the *Environmental Monitor* published by the Executive Office of Environmental Affairs.

71.09: State Program Coordination

(1) Application. At the request of a state body, the MHC shall consider execution of a Programmatic Memorandum of Agreement to fulfill the state body's responsibilities under M.G.L. c. 9, §§ 26 through 27C for a particular program or class of projects that would otherwise require numerous individual project reviews. The Programmatic Memorandum of Agreement may specify categories of projects that shall be exempt from further review, categories of projects where review could be best accomplished on a program-wide rather than individual project basis, or coordinated process and schedule for review. Agencies which are legally required to hold adjudicatory proceedings, are particularly encouraged to request a Programmatic Memorandum of Agreement.

(2) Consultation Process. At the request of a state body, the state body and the MHC shall consult to develop a Programmatic Memorandum of Agreement. Upon agreement, the MHC shall, with the assistance of the state body, draft a Programmatic Memorandum of Agreement outlining the review procedures for programs conducted by the state body and listing the types of action exempt from review. The MHC shall submit a draft of the proposed Programmatic Memorandum of Agreement to the state body. If the state body signs the proposed Programmatic Memorandum agreeing that it will comply with the measures specified to eliminate, minimize, or mitigate adverse effects to State Register properties, then the proposed Programmatic Memorandum of Agreement shall be placed on the agenda of a MHC meeting to be held within 60 days of receipt of the signed Proposed Memorandum. The MHC shall notify the state body of the time and place of the MHC meeting.

(3) Consideration of the Proposed Programmatic Memorandum of Agreement. The MHC shall review the proposed Programmatic Memorandum of Agreement and consider any additional information submitted by the state body or by the public. Within ten days of the meeting, the MHC shall direct the Executive Director to either sign and execute the Programmatic Memorandum of Agreement on behalf of the MHC, or revise the Programmatic Memorandum of Agreement in accordance with the recommendations of the MHC and consult with the state body to develop a revised Programmatic Memorandum of Agreement.

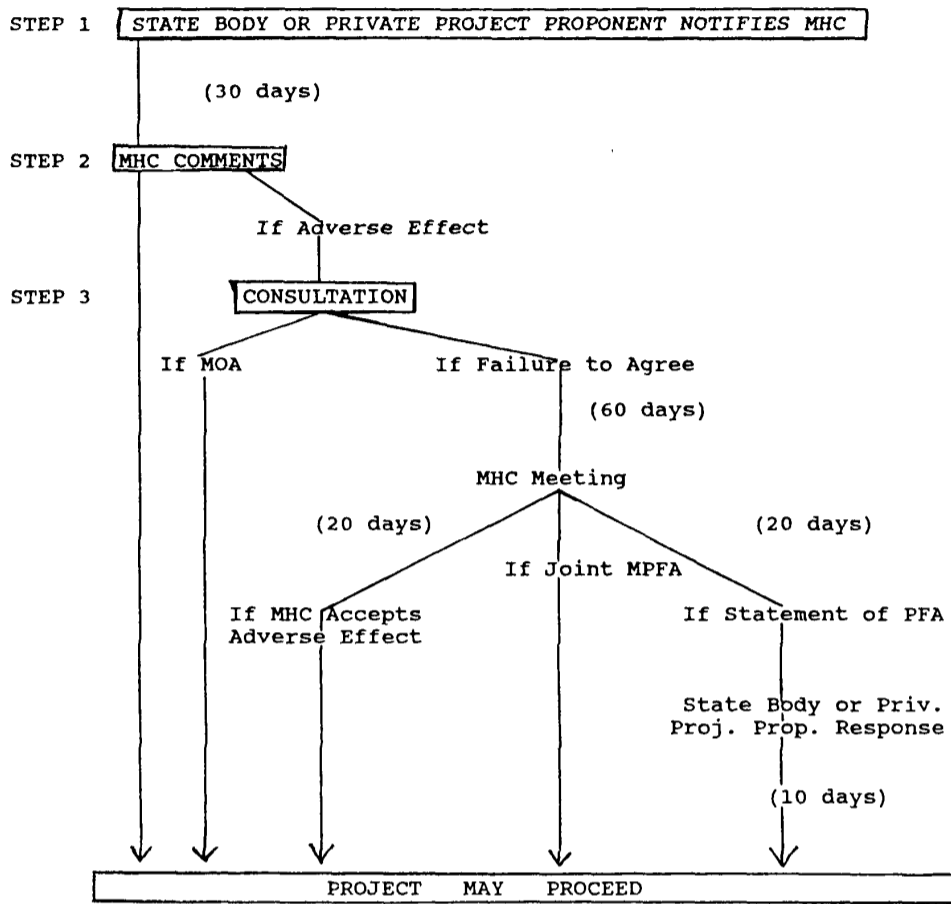
71.10: Emergency Actions

In the rare situation where immediate action by a state body is essential to avoid or eliminate an imminent threat to the public health or safety, or a serious and immediate threat to the environment, a project may commence without compliance with the MHC review process pursuant to M.G.L. c. 9, §§ 26 through 27C; provided that wherever practicable the state body must obtain the prior written approval of the MHC. In cases where written notice is not practicable, the state body must make a good faith effort to obtain the prior oral approval of the MHC by telephone, during normal business hours. In all cases, written notification will be required within ten days of the commencement of the project providing all available information concerning the scope and details of the project. Within 30 days of the initiation of a project triggered by an emergency situation, the state body or the project proponent shall commence full compliance with the provisions of 950 CMR 71.00. Any emergency action taken under 950 CMR 71.10 prior to notification to the MHC shall be the minimum action necessary to avoid or eliminate the imminent threat to the public health, safety, or the environment. Where the reasons for undertaking emergency measures no longer exist, any emergency action taken under 950 CMR 71.10 shall cease until the provisions of 950 CMR 71.00 have been complied with.

71.11: Failure to Inform the Massachusetts Historical Commission

Should a state body or a private project proponent fail to notify the MHC about a project, to provide the MHC with the information necessary to determine whether the project will adversely affect a State Register property, to identify and assess alternatives to the project, to meet with the MHC to discuss alternatives, or to respond in detail to the MHC's Statement of Prudent or Feasible Alternatives, or proposed Joint Memorandum of Prudent and Feasible Alternatives, then the state body shall not proceed with the project or in the case of a private project, shall not fund or license such project, until the MHC states that such failure has not frustrated the purpose of M.G.L. c. 9, §§ 26 through 27C.

71.12: State Register Review: Flow Chart



APPENDIX A

MASSACHUSETTS HISTORICAL COMMISSION
220 MORRISSEY BOULEVARD
BOSTON, MA 02125

PROJECT NOTIFICATION FORM

Project Name _____

Location/Address _____

City/Town _____

Project Proponent

Name _____

Address _____

City/Town/Zip/Telephone _____

Agency license or funding for the project (list all licenses, permits, approvals, grants or other entitlements being sought from state and federal agencies).

Agency Name Type of License or Funding (specify)

Project Description (narrative)

Does the project include demolition? If so, specify nature of demolition and describe the building(s) which are proposed for demolition.

Does the project include rehabilitation of any existing buildings? If so, specify nature of rehabilitation and describe the building(s) which are proposed for rehabilitation.

Does the project include new construction? If so, describe (attach plans and elevations if necessary).

APPENDIX A (continued)

To the best of your knowledge, are any historic or archaeological properties known to exist within the project's area of potential impact? If so, specify.

What is the total acreage of the project area?

Woodland _____ acres
Wetland _____ acres
Floodplain _____ acres
Open space _____ acres
Developed _____ acres

Productive Resources:
Agriculture _____ acres
Forestry _____ acres
Mining/Extraction _____ acres
Total Project Acreage _____ acres

What is the acreage of the proposed new construction? _____ acres

What is the present land use of the project area?

Please attach a copy of the section of the USGS quadrangle map which clearly marks the project location.

This Project Notification Form has been submitted to the MHC in compliance with 950 CMR 71.00.

Signature of Person submitting this form

Date

Name _____

Address _____

City/Town/Zip _____

Telephone _____

REGULATORY AUTHORITY

950 CMR 71.00: M.G.L. c. 9, §§ 26 through 27C as amended by St. 1988, c. 254.