

SDCL 1-19A-11.1 REVIEW AND COMPLIANCE PROCEDURES

Summary of SDCL 1-19A-11.1

SDCL 1-19A-11.1 requires the State, or any political subdivision of the State (cities, counties, etc.), to take into account historic properties that may be damaged, destroyed, or encroached upon by projects undertaken by these government entities. 11.1 requires that the State or local government entity notify the Office of History of projects that have the potential to damage, destroy, or encroach upon properties listed on the State Register of Historic Places and allow the Office of History the opportunity to investigate and comment on such projects.

Steps to Compliance

1. An application comes to the State or local government, or the State or local government proposes to undertake a project.
2. The State or local government determines whether the project has the potential to damage, destroy, or encroach upon historic property.
3. The State or local government sends notification of the project to the Office of History/State Historic Preservation Office (SHPO). Notification should include a basic project description and photographs of the property. (See Appendix D for sample notification.)
4. Upon receiving the notification, the SHPO has 30 days to initiate an investigation of the project and may request a Case Report. (See Appendix B for Standards for Case Report.)
 - a. If no Case Report is requested, skip to item #5.
 - b. If a Case Report is requested:
 - i. The Case Report is the responsibility of the State or local government, but the applicant may be requested to prepare it.
 - ii. Once complete, the Case Report is reviewed by the State or local government for preliminary approval of content and completeness.
 - iii. After the State or local government reviews the Case Report, all required entities, including the local Historic Preservation Commission, review and comment on the Case Report within 180 days.
 - iv. After allowing all required entities to review the Case Report, the State or local government forwards the Case Report and all entity comments to the SHPO for review.
5. The SHPO reviews the basic project information or the Case Report with comments from all entities, and submits final comments to the State or local government.
6. The State or local government takes the SHPO comments, other entities' comments, and Case Report into consideration, and makes the final determination regarding the project.
 - a. The State or local government can decide not to approve the project.

- b. The State or local government can decide to approve the project. If the SHPO determined through its review of the project that the project would damage, destroy, or encroach upon historic property, then the State or local government cannot undertake the project or approve the application until it has made a written determination, based upon the consideration of all relevant factors, that there are no feasible and prudent alternatives to the project and that all possible planning to minimize harm to the historic property has been included. Ten days' notice of the State or local government's determination must be given to the SHPO by certified mail prior to the approval of the project.

Projects subject to 11.1 review include, but are not limited to, the following:

- Building permits
- Demolition permits
- Rehabilitation projects

Appendix A: SDCL 1-19A-11.1

Appendix B: Standards for Case Report

Appendix C: Contact information for SHPO Review & Compliance staff

Appendix D: Sample Notification for 11.1 Project Review

Appendix A: SDCL 1-19A-11.1

1-19A-11.1. Preservation of historic property--Procedures. The state or any political subdivision of the state, or any instrumentality thereof, may not undertake any project which will encroach upon, damage or destroy any historic property included in the national register of historic places or the state register of historic places until the Office of History has been given notice and an opportunity to investigate and comment on the proposed project. The office may solicit the advice and recommendations of the board with respect to such project and may direct that a public hearing be held thereon. If the office determines that the proposed project will encroach upon, damage or destroy any historic property which is included in the national register of historic places or the state register of historic places or the environs of such property, the project may not proceed until:

(1) The Governor, in the case of a project of the state or an instrumentality thereof or the governing body of the political subdivision has made a written determination, based upon the consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to the historic property, resulting from such use; and

(2) Ten days' notice of the determination has been given, by certified mail, to the Office of History. A complete record of factors considered shall be included with such notice.

Any person aggrieved by the determination of the Governor or governing body may appeal the decision pursuant to the provisions of chapter 1-26.

The failure of the office to initiate an investigation of any proposed project within thirty days from the date of receipt of notice thereof is approval of the project.

Any project subject to a federal historic preservation review need not be reviewed pursuant to this section.

Source: SL 1987, ch 20.

Appendix B: Standards for Case Report

24:52:07:03. Standards for case report. If a state entity or a political subdivision of the state is required by law or rule to report possible threats to the historical integrity of a property on the state register, the threat must be reported by means of a case report that meets the requirements of this section.

Case reports must provide the Office of History with sufficient information for the office to make an independent review of effects on the historical integrity of historic properties and shall be the basis for informed comments to state entities and the public. Case reports shall thoroughly examine all relevant factors involved in a preservation question. They must contain the following:

- (1) A description of any impending project which may adversely affect historic property;
- (2) Photographs, maps, or drawings showing the existing project site, the extent of projects, and details of the proposed projects, which may include three-dimensional models or accurate computer-generated representations of proposed new construction. Models or representations must clearly show the visual impacts of new construction on surrounding neighborhood or landscapes;
- (3) The planning and approval schedule for projects which may adversely affect historic property;
- (4) A statement explaining how projects adversely affecting the historic property were brought to the attention of a state entity or political subdivision;
- (5) A description of potentially affected historic property with any relevant physical, economic, or situational information on the property;
- (6) A description of the potential effects of a proposed project on historic property and the basis for the determinations of effect;
- (7) A historic preservation plan or description and evaluation of all feasible and prudent alternatives which a state entity or political subdivision proposes in order to minimize adverse effects of a project on historic property and alternatives which the state entity or political subdivision has examined and rejected. The reasons for rejection must be included. This section of the case report must clearly substantiate that all possible efforts to minimize harm to the historic property have been undertaken. Alternatives to aspects of the project which may adversely affect the historic property must:
 - (a) Receive consideration based on factual reports, research, tried methods, and professional and lay preservation advice;
 - (b) Explore alternatives beyond the immediate project, taking into account broad community or regional issues in which the historic resources may play a contributing role;

(c) Take into account the impact of potential adverse effects on surrounding historic resources, community preservation plans, and long-range community opportunities;

(d) Be based on professional assessments of the value and basic structural condition of the affected property and estimates of a range of rehabilitation or mitigative options prepared by people experienced in historical preservation work; and

(e) Provide adequate periods of time for information to be prepared and for preservation options to be attempted;

(8) Documentation of consultation with the Office of History regarding the identification and evaluation of historic properties, assessment of effect, and any consideration of alternatives or mitigation measures;

(9) A description of the efforts of a state entity or political subdivision to obtain and consider the views of affected and interested parties;

(10) Documentation that a local historical preservation commission constituted under SDCL [1-19B](#) with jurisdiction in the city or county where the affected historic property is located was provided a specified period of time to examine plans for proposed projects. Official comments of the commission must be included. The Office of History shall specify periods of time not to exceed 180 days to be given local historical preservation commissions to examine plans and may specify such periods for each set of revised plans submitted for a project. The commission shall:

(a) Agree with the findings of the case report;

(b) Disagree with the findings of the case report; or

(c) Decline to comment on the findings of the case report;

(11) Copies of written views submitted by the public to the state entity or political subdivision concerning the potential adverse effects of projects on historic properties and alternatives to reduce or avoid those effects.

The Office of History may require an abbreviated case report if, in its opinion, less than a comprehensive review of a preservation issue is needed. The office shall determine the elements needed for an abbreviated case report case by case.

Source: 16 SDR 239, effective July 9, 1990; 21 SDR 50, effective September 21, 1994; 24 SDR 73, effective December 4, 1997.

General Authority: SDCL [1-19A-5](#), [1-19A-11](#), [1-19A-29](#).

Law Implemented: SDCL [1-19A-5](#), [1-19A-11.1](#).

Appendix C: Review & Compliance Staff of the State Historic Preservation Office

Jenna Carlson Dietmeier, Review & Compliance Coordinator/Archaeologist
(605) 773-8370 or Jenna.CarlsonDietmeier@state.sd.us

Heather Mulliner, Restoration Specialist/Architectural Historian
(605) 773-6005 or Heather.Mulliner@k12.sd.us

Appendix D: Sample Notification for 11.1 Project Review

When notifying the SHPO of a project for 11.1 project review, please include the following basic information. All review requests should be sent to the following address:

ATTN: Review & Compliance Coordinator
State Historic Preservation Office
900 Governors Drive
Pierre SD 57501

1. Name of State or Local Government entity requesting review
2. Contact person, address, phone number, and email
3. Project information:
 - a. Location of project
 - b. Listed on the State/National Register individually or as part of a historic district
 - c. Description of project
 - i. *Example:* The property owner has applied for a building permit to construct a one-story addition to the John Smith House. The addition will be located on the east side of the house and will be approximately 20' x 15'. The John Smith House is a one-and-a-half story bungalow with a modern, detached garage on the alley. The house has wood siding, wood windows, and an asphalt shingle roof. It is located near the center of town in a residential neighborhood. The addition will have an asphalt shingle roof, cement fiberboard siding, and aluminum clad wood windows in a style similar to the existing windows.
4. Photographs of the property, including at least an overall photograph of the main façade and other features that may be impacted

Upon receiving this basic information, the SHPO will have 30 days to review the information and initiate a project investigation by requesting a Case Report, if it is determined that additional information is needed. If an investigation is initiated and a Case Report is requested, the SHPO will notify the State or local government entity. The State or local government entity is responsible for compiling the Case Report, but can delegate the responsibility to the applicant. The State or local government entity should forward the completed Case Report to the SHPO with any comments for review.