



Many Voices Working for the Community

Oak Ridge Site Specific Advisory Board

March 12, 2009

Mr. Steve McCracken
Assistant Manager for Environmental Management
DOE-Oak Ridge Office
P.O. Box 2001, EM-90
Oak Ridge, TN 37831

Dear Mr. McCracken:

Recommendation 177: Recommendation on the National Historic Preservation Act Implementation at U.S. DOE-ORO and Section 106 Process Presentation of September 10, 2008, to the Oak Ridge Site Specific Advisory Board

At our March 11, 2009, meeting, the Oak Ridge Site Specific Advisory Board approved the enclosed recommendation.

We appreciate your consideration of this recommendation and look forward to receiving your response by June 11, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Dixon".

Steven Dixon, Chair

Enclosure

cc/enc: Dave Adler, DOE-ORO
Cate Brennan, DOE-HQ
Mike Farmer, Roane County Mayor
Pat Halsey, DOE-ORO
F.G. Gosling, DOE-HQ, Office of History and Heritage Resources
Connie Jones, EPA Region 4
Rex Lynch, Anderson County Mayor
James O'Connor, Oak Ridge City Manager
Melissa Nielson, DOE-HQ
John Owsley, TDEC
Katatra Vasquez, DOE-ORO



**Recommendation 177:
Recommendation on the National Historic Preservation
Act Implementation at U.S. DOE-Oak Ridge Office and
Section 106 Process Presentation of September 10, 2008,
to the Oak Ridge Site Specific Advisory Board**

Background

Historic preservation issues associated with preservation of the K-25 Building North Tower have recently garnered much attention in the local community. The Oak Ridge Site Specific Advisory Board (ORSSAB) requested a presentation from the Department of Energy-Oak Ridge Office (DOE-ORO) on implementation of the National Historic Preservation Act (NHPA). ORSSAB is interested in gaining a basic understanding of this statute and, where appropriate, providing recommendations regarding DOE implementation of the NHPA to cleanup of the Oak Ridge Reservation (ORR). This recommendation is based on concerns identified as a result of the September 10, 2008, presentation by the DOE-ORO Cultural Resources Management Coordinator Katatra Vasquez and a review of major program documents.

Discussion

NHPA, as amended in 2000, was established as a program for the preservation of historic properties throughout the nation. The term “historic preservation,” as defined by the NHPA, includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, education, and training regarding the foregoing activities, or any combination of these activities.

The September 10 presentation covered the following topics:

- Definitions of NHPA terms – historic property, undertaking, programmatic agreement, and memorandum of agreement
- Regulatory basis – date of enactment, date of last amendment, purpose of act
- Section 106 applicability
- Section 106 consultation process
- Responsibilities of the DOE-ORO Cultural Resources Management Coordinator
- Stakeholders for the Integrated Facility Disposition Program (IFDP) consultation
- Major Oak Ridge historic preservation program documents
- Historic preservation websites

Although several issues were identified as a result of the September 10, 2008, NHPA presentation, this recommendation focuses on the Section 106 consultation process of the NHPA applicable to the IFDP. The board will continue to study all significant issues associated with the September 10, 2008, NHPA presentation. Additional ORSSAB recommendations associated with the September 10, 2008, NHPA presentation may be issued after further evaluation and a majority vote of the board.

NHPA Issues Associated With IFDP

Section 106 of the NHPA in conjunction with the implementing regulations (36 Code of Federal Regulations [CFR] Part 800) defines the 106 process. This section is implemented at the state level by the State Historic Preservation Officer (SHPO) in association with the National Advisory Council on Historic Preservation. The Section 106 consultation process requires federal agencies to locate and identify historic properties potentially impacted by their undertakings, determine whether properties are eligible for inclusion in the National Register of Historic Places (National Register), assess adverse impacts to

eligible properties, and attempt to resolve any adverse impacts. The Section 106 consultation process seeks to accommodate historic preservation concerns with the needs of federal undertakings through consultation with agency officials and other parties with an interest in the effects of the undertakings on historic properties. The Section 106 consultation process should be initiated in the early stages of project planning. DOE is required by the Section 106 process to seek the input of other participants, which include the SHPO.

DOE approved the Mission Need Statement (CD-0) for the proposed IFDP on July 20, 2007. The DOE provided official notification to the Tennessee Historic Commission (and the Advisory Council on Historic Preservation) in an October of 2007 memorandum regarding the IFDP. The DOE invited the SHPO to participate in the early planning phases and enter into the consultation process for the project. DOE identified the ORSSAB, the Local Oversight Committee, City of Oak Ridge, and the Oak Ridge Heritage and Preservation Association as consulting parties and thereby recognized these groups as points for seeking public input and for notifying the public of proposed actions. The DOE determined that based on a review of the project in accordance with the major NHPA documents of the ORR that the IFDP is an undertaking as defined in 36 CFR 800.16(y) and would result in potential adverse effects to historic properties as applicable to the 36 CFR 800 Subpart B Section 106 process. The CD-0 provides a preliminary list of facilities that will be included within the IFDP scope, however, with few exceptions CD-0 does not identify or prioritize the historic significance of the IFDP facilities. The CD-0 identifies two facilities at Y-12 (9204-3, 9731) and no facilities at Oak Ridge National Laboratory that will be retained for historic purposes.

The DOE notification to the SHPO indicates that the IFDP will be conducted under the Comprehensive, Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA requires solicitation of public participation. The IFDP will evaluate and incorporate the requirements of the CERCLA and Section 106 into CERCLA documents prepared for the undertaking.

Section 110 of the NHPA requires federal agencies to provide leadership in preserving, restoring, and maintaining the historic and cultural environment of the nation. It also requires them to establish preservation programs commensurate with their missions and the effects of their authorized programs on historic properties. The Cultural Resources Management Program implements the requirements of Section 110 of the NHPA. The Cultural Resources Management Plan (CRMP) for the DOE ORR in Anderson and Roane Counties, DOE/ORO-2085, describes DOE-ORO implementation of Section 110 of the NHPA. The CRMP should be updated every five years. The CRMP was last updated in 2001. The October 2007 DOE memorandum to the SHPO indicates that the CRMP will not be updated until completion of the Section 106 process for the IFDP. Section 106 compliance should follow Section 110 compliance as most of the information needed for Section 106 compliance would be available. Because the CRMP is outdated additional information needed by DOE, SHPO, consulting parties, and the public will delay comment on the Section 106 process. The DOE should identify and obtain the additional information needed by the SHPO, consulting parties, and the public to comment on the Section 106 process. This reinforces the need to move forward with the Section 106 consultation process.

ORSSAB is concerned because DOE has failed to initiate or provide notification of planned consultation meetings after more than one year since initiating the Section 106 process. Ms. Vasquez at the September 10 meeting indicated that consultation will begin upon approval of the CD-1 of the IFDP, which establishes the baseline costs for the project. The approval of CD-0 established the undertaking and provides sufficient basis to initiate the process of gaining public input regarding a broad range of alternatives as well as developing a preliminary draft of the consultation process and identifying priorities for cultural preservation associated with the IFDP. Public input during the early planning stages of the IFDP is vital, as the CERCLA process is applicable to this undertaking.

Recommendation

The following recommendation is provided by ORSSAB:

- DOE should initiate consultation meetings with stakeholders immediately to allow early public input into the planning for IFDP. The process for consultation needs to be clearly defined and agreed to by stakeholders. DOE should initiate the process of gaining public input regarding a range of alternatives, developing the consultation process, and identifying priorities for cultural preservation associated with the IFDP.