

## *K. A. R. 118-3-1 to 118-3-16*

- Article 3—REVIEW OF PROJECTS AFFECTING HISTORIC PROPERTIES AND THEIR ENVIRONS

118-3-1. Definitions. For the purpose of Article 3, these terms shall have the following meanings.

(a) “Boundaries of a historic property” means the limits or extent of a geographic area included in the state or national registers of historic places.

(b) “Character-defining features” means those physical characteristics and elements and indicate the integrity, design, and materials of the listed historic property.

(c) “Demolition” means the partial or complete removal of a building or structure, the components of a building or structure, or the man-made components of the site on which the building or structure is located, including walks, driveways, retaining walls, and fences.

(d) “Environs” means the historic property’s associated surroundings and the elements or conditions that serve to characterize a specific place, neighborhood, district, or area, which takes into account all relevant factors, including the following:

- (1) The use of the area;
- (2) the significance of the historical property;
- (3) the scope of the project;
- (4) surrounding buildings, structure, and foliage; and
- (5) the topography of the surrounding area.

A project need not be adjacent to a historic property for it to be in the historic property’s environs.

(e) “Feasible and prudent alternative” means an alternative solution that can be reasonable accomplished and that is sensible or realistic. Factors that shall be considered when determining whether or not a feasible and prudent alternative exists include the following:

- (1) Technical issues;
- (2) design issues;
- (3) the project’s relationship to the community-wide plan, if any; and
- (4) economic issues.

(f) “Governmental entity” means the “state or any political subdivision of the state,” as that term is defined by K.S.A. 7-2714, and amendments thereto.

(g) “Ground-disturbing project” means a project that changes the existing grade, shape, or contour of a property, or involves drilling into or excavation of earth from a piece of property where there is the potential to disturb archeological remains.

(h) “Historic property” means any property included on “the national register of historic places” or “the register of historic Kansas places”

(i) “Program includes all possible planning” means that the written evidence and materials submitted by a governmental entity to the state historic preservation officer clearly identify all alternative solutions that have been investigated, compare the differences among the alternative solutions and their effects, and describe mitigation measures proposed by the project proponent that address an adverse effect determination of the state historic preservation officer.

(j) “Relevant factors” means pertinent information submitted by project proponents or project

opponents in written form, including evidence supporting their positions. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998, effective Oct. 23, 1998.)

118-3-2. Notice of projects directly undertaken by a governmental entity or supported by a governmental entity. (a) Projects undertaken directly by a governmental entity or projects undertaken by a person but supported by a governmental entity, for which notice shall be given when required by K.S.A. 75-2724(a), and amendments thereto, shall include any of the following:

(1) Exterior or interior projects involving the listed historic property, including any of the following:

(A) Construction of one or more structures;

(B) site improvements;

(C) repair work;

(D) alterations or additions to the listed historic property;

(E) partial or total demolition of any structure on the listed historic property; or

(F) ground-disturbing projects;

(2) projects carried out within the environs of a listed historic property, including the following:

(A) Construction or alteration of any existing structures;

(B) demolition or removal of structures;

(C) public improvements, including improvements to streets, curbs, sidewalks, parking areas, parks, and other public amenities;

(D) vacation of streets, alleys, or both; or

(E) ground-disturbing projects; or

(3) any other project that is determined by the state historic preservation officer to have the potential to encroach upon, damage, or destroy a listed historic property or its environs.

(b) Projects involving emergency repair work. Each governmental entity shall give notice of emergency work, including water or sewer line repair or protective work required immediately for structures damaged by fire, tornado, or other disaster, if the project would be covered by subsection (a) of this regulation. A review of the emergency repair work shall be expedited by the state historic preservation officer and shall be handled by telephone or FAX when possible. If, after reasonable but unsuccessful efforts to notify the state historic preservation officer, emergency repair work must be completed, the work shall be performed in a manner that minimizes the effect on the historic property or its environs. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-3. Notice of projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use to any person by a governmental entity.

(a) Projects for which a governmental entity issues a leave, permit, license, certificate, or other entitlement for use to any person for which notice shall be given when required by K.S.A. 75-2724(a), and amendments thereto, shall include the following:

(1) Projects directly or indirectly affecting any listed historic building, structure, object, district, or site, including any of the following:

(A) Exterior or interior projects involving the listed historical property, including any of the following:

- (i) Construction of one or more structures;
- (ii) site improvements;
- (iii) repair work;
- (iv) alterations or additions to the listed historic property, including signage;
- (v) partial or total demolition of any structure on the listed historic property; or
- (vi) ground-disturbing projects; or
- (B) rezoning;
- (C) special use or conditional use permits;
- (D) subdivision of property; or
- (E) vacation of streets or alleys; and
- (2) projects requiring permits that would affect the environs of a listed historic property, including any of the following:
  - (A) Rezoning;
  - (B) special use or conditional use permits;
  - (C) subdivision of property;
  - (D) vacation of streets or alleys; or
  - (E) exterior projects that affect any building, structure, object, or site in the environs of a historic property, including any of the following:
    - (i) Construction of one or more structures:
    - (ii) site improvements;
    - (iii) repair work;
    - (iv) alterations or additions to structures in the environs, including signage; or
    - (v) partial or total demolition of a structure.
  - (b) Exceptions. Notice shall not be required when the issued lease, permit, license, certificate, or other entitlement is for interior projects in the environs of a listed property. In addition, notice shall not be required for any exterior projects in the environs of a listed property for replacement or deteriorated existing materials with new, matching materials, known as replacement-in-kind. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-4. Content of notice to state historic preservation officer. Each governmental entity required to give notice to the state historic preservation officer under K.S.A. 75-2724, and amendments thereto, and K.A.R. 118-3-1 and K.A.R. 118-3-3, shall provide notice in accordance with this regulation before undertaking a project.

- (a) At a minimum, the following documentation shall be submitted with the initial notification for all projects:
  - (1) A written transmittal or letter that contains the following elements from the governmental entity:
    - (A) A request for the state historic preservation officer's comments on the proposed project in accordance with K.S.A. 75-2724, and amendments thereto; and
    - (B) an identification of the work to be done, the property address, its legal description, and the project contact person;
  - (2) complete architectural drawings as required by the governmental entity for issuance of a building permit, or sufficient documentation to clearly explain the proposed project, including floor plans, elevations, wall or building sections and detail drawings, as applicable. For additions

or new construction, the property owner shall also furnish a site plan showing all existing structures and the location of the proposed new construction. If no documentation is required by the city or county, the property owner shall supply to the state historic preservation officer sufficient documentation to clearly explain the proposed project.

(b) If a project is reviewed to assess its effects on one or more listed historic properties, the documentation shall include photographs accurately and fully depicting the site and setting of the historic structure, including the following perspectives:

- (1) A general overall view from the street;
- (2) the relevant exterior elevations;
- (3) detailed close-ups of the specific exterior or interior architectural features, including windows, doors, porches, and stairs; and
- (4) the interior views of rooms that will be affected by the proposed project.

(c) If a project is reviewed to assess its effects on the environs of one or more listed historic properties, the documentation shall include a vicinity map showing the proximity of the proposed project to the listed historic property, existing structures in the environs, and clear, sharp photographs that fully depict the project the listed property's environs, including the following:

- (1) Views from the proposed project to the historic property;
- (2) views from the historic property to the proposed project;
- (3) views that show the conditions and character of the environs; and
- (4) the relevant exterior elevations.

(d) The governmental entity shall provide in writing all revisions, amendments, or clarifications to previously submitted project documents.

(e) Any of these requirements to submit documentation may be waived by the state historic preservation officer if adequate and recent information is already in the state historic preservation officer's files to complete the review. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-5. Notice of revisions or modifications. After the state historic preservation officer has initiated an investigation of a project, the governmental entity providing notice shall keep the state historic preservation officer informed of any revisions or modifications to the project by forwarding any changes to the proposed project submitted by the project proponent within five working days of receiving them from the project proponent. The governmental entity shall forward the documentation described in K.A.R. 118-3-4 with this notice. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-6. Notice required before project may proceed. If the state historic preservation officer determines that a project will encroach upon, damage, or destroy a listed historic property or its environs and if the appropriate governmental entity subsequently makes the findings required under K.S.A. 75-2724, and amendments thereto, to permit a project to proceed, the governmental entity shall notify the state historic preservation officer of the determination by certified mail. The governmental entity shall not issue any permit or authorize the project to begin for five working days after it gives notice of its determination. This notice shall include the following:

- (a) A written transmittal or letter from the appropriate governmental entity informing the state historic preservation officer of the findings made by the governmental entity;
- (b) a written copy of the minutes of the meeting where the project was discussed; and
- (c) a copy of all relevant written information upon which the appropriate unit of government based its decision. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-7. Investigations without notice. If the state historic preservation officer initiates an investigation of a project that may encroach upon, damage, or destroy the environs of a historic property but for which no notice is required from a governmental entity, notice of the investigation shall be given by the state historic preservation officer to the governmental entity. The investigation shall then proceed as if it were a project for which the governmental entity is obligated to provide notice, and the governmental entity shall provide documentation to the state historic preservation officer. A determination shall be made accordingly by the state historic preservation officer. (Authorized by K.S.A. 7-2721(b); implementing K.S.A. 75-2724; effective T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-8. Standards and guidelines utilized by the state historic preservation officer. The following standards and guidelines shall be used by the state historic preservation officer when reviewing projects.

- (a) "The secretary of the interior's standards for the treatment of historic properties with guidelines for preserving, rehabilitating, restoring & reconstructing historic building," 1995 edition, is adopted by reference as a guide to determine whether or not proposed projects encroach upon, damage, or destroy listed historic properties.
- (b) The "treatment of archeological properties: a handbook," endorsed by the advisory council of historic preservation, Washington, D.C., on November 5, 1980, is adopted by reference as a guide for identifying and evaluating archeological sites using the criteria of eligibility for listing sites on the national register of historic places.
- (c) The Kansas state historical society's "standards and guidelines for evaluating the effect of projects on environs," 1998 edition, is adopted by reference as a guide to determine whether or not proposed projects encroach upon, damage, or destroy the environs of listed historic properties. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-9. Official response. An official response shall be provided by the state historic preservation officer within 30 days of receiving notice of a project. Official responses that may be issued by the state historic preservation officer may include any of the following.

- (a) The state historic preservation officer is initiating an investigation, and additional information is required.
- (b) The project does not encroach upon, damage, or destroy the listed historic property or its environs.
- (c) The project does encroach upon, damage, or destroy the listed historic property or its environs.
- (d) No investigation will be initiated, and the 30-day waiting period is waived. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective

Oct. 23, 1998.)

118-3-10. Initiating an investigation. “The state historic preservation officer is initiating an investigation, and additional information is required” response may be issued when any of these conditions is met.

(a) The state historic preservation officer has determined that insufficient information was included in

the submittal and additional information is necessary to complete the required review.

(b) The project is likely to encroach upon, damage, or destroy the listed historic property, and the state historic preservation officer desires to suggest alterations to the proposed project so that the proponent can revise the proposal to meet the standards and guidelines set out in K.A.R. 118-3-8.

(c) The state historic preservation officer desires to solicit the advice and recommendations of the historic sites board of review.

(d) The state historic preservation officer directs that a public hearing or hearings be held on a proposed project. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724, effective, T-118-5-1-98 May 1, 1998; effective Oct. 23, 1998.)

118-3-11. “Project does not encroach” response. A “project does not encroach upon, damage, or destroy the listed historic property or its environs” response shall be issued when the state historic preservation officer determines that the proposed project meets the standards and guidelines established in K.A.R. 118-3-8. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-12. “Project does encroach” response. (a) A “project does encroach upon, damage, or destroy the listed historic property or its environs” response shall be issued when the state historic preservation officer determines that the proposed project does not meet the standards and guidelines established in K.A.R. 118-3-8 and the project will encroach upon, damage, or destroy the listed historic property or its environs. The state historic preservation officer’s response letter shall state why the project will have an adverse effect, outline the standards and guidelines that are not met, and describe the responsibilities of the appropriate governing body under the state preservation statute.

(b)(1) A “project does encroach” response may also include “suggestions for approval.” If, in the state historic preservation officer’s opinion, the project could be revised in order to meet the standards and guidelines, suggested conditions for approval may be indicated in the response.

(2) If the project proponent incorporates the suggestions for approval in a revised proposal, the additional information shall be submitted to the state historic preservation officer and a new response shall be issued, the resolution of which shall depend on the adequacy of the revisions to the project. (Authorized by K.S.A. 75-2721(b); implementing K.S. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-13. Executive review of project. After a governmental entity notifies the state historic preservation officer that the governing body has complied with K.S.A. 75-2715, et seq., and amendments thereto, and has made the proper findings, the governing body’s decision shall be reviewed by the state historic preservation officer within five working days of receipt of notice.

The findings of the governing body shall be reviewed by the state historic preservation officer, and determination of whether or not further action is required shall be made by this individual. Acknowledgement that the state historic preservation officer received the governing body's findings shall be provided to the governing body. (Authorized by K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-14. Reconsideration of official response. In response to additional information, a new official response may be issued by the state historic preservation officer. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-15. Provisions for transfer of authority. An agreement authorizing any city, county, or state educational institution under the control and supervision of the board of regents to make recommendations or to perform any or all of the review responsibilities of the state historic preservation officer, within the jurisdiction of that city, county, or state educational institution, may be entered into by the state historic preservation officer.

(a) In order to transfer authority to a city or county, a determination shall be made by the state historic preservation officer that the city or county meets each of the following conditions.

- (1) It has enacted a comprehensive, local historic preservation ordinance.
- (2) It has established a qualified, local historic preservation board or commission.
- (3) It is actively engaged in a local historic preservation program.

(b) In order to transfer authority to a state educational institution under the control and supervision of the board of regents, a determination shall be made by the state historic preservation officer that the institution meets both the following conditions.

- (1) It has constituted a qualified, local historic preservation board or commission.
- (2) It is actively engaged in a campus historic preservation program. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-16. Transfer of authority agreement. (a) Each agreement between the state historic preservation officer and a city or county shall specify the following information:

- (1) The authority delegated;
- (2) the standards for project review;
- (3) the manner in which decisions are to be reported to the state historic preservation officer;
- (4) the conditions under which assistance from the state historic preservation officer can be required;
- (5) an appeal procedure and designation of the governing body with jurisdiction;
- (6) an amendment procedure;
- (7) the length of time the agreement is valid;
- (8) provisions for termination of the agreement; and
- (9) the state historic preservation officer's authority under K.S.A. 75-2724(e), and amendments thereto.

(b) Each agreement between the state historic preservation officer and a state educational institution under the control and supervision of the board of regents shall specify the following:

- (a) The authority delegated;

- (2) the standards for project review;
- (3) the manner in which decisions are to be reported to the state historic preservation officer;
- (4) the conditions under which assistance from the state historic preservation officer can be required;
- (5) an appeal procedure and designation of the governing body with jurisdiction;
- (6) an amendment procedure;
- (7) the length of time the agreement is valid; and
- (8) provisions for termination of the agreement. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

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