




Preserving America's Heritage

May 4, 2017


Ms. Audra Hamernik
Executive Director
Illinois Housing Development Authority
111 E. Wacker Drive, Suite 1000
Chicago, Illinois 60601

Ref: *Proposed Pullman Artspace Development*
City of Chicago, Cook County, Illinois

Dear Ms. Hamernik:

On April 27, 2017, the Advisory Council on Historic Preservation (ACHP) received the Illinois Housing Development Authority's (IHDA) response to our April 6, 2017 inquiry. As you recall, the inquiry was prompted by a citizen group which has raised concerns regarding the applicability of Section 106 of the National Historic Preservation Act (NHPA) to the referenced project, and its compliance with our regulations, "Protection of Historic Properties" (36 CFR Part 800). Based upon the information received to date, we understand that this project will utilize Low-Income Housing Tax Credits (LIHTC), and **may utilize other federal funding sources, which could trigger compliance with Section 106.** Depending on future funding sources, IHDA may be the Responsible Entity (RE) pursuant to HUD's environmental regulations at 24 CFR Part 58, which includes compliance with Section 106. 

While we appreciate IHDA's prompt response to our inquiry, we would like to outline a number of concerns as well as additional questions for your consideration:

- A Section 106 review is required when the threshold for an undertaking [36 CFR Section 800.16(y)] is met. IHDA's statement that "all" applications must undergo a Section 106 review may subject applications to Section 106 unnecessarily.
- A Section 106 review is required to be completed prior to the approval of any expenditure of federal funds. Accordingly, if a Risk Share Mortgage is considered federal assistance and a Section 106 review is required, IHDA would have to complete this review before committing any funds to the project.
- The Section 106 process requires consultation with the State Historic Preservation Officer (SHPO). **However, the SHPO's responsibility is to review an agency's findings and to either concur or object. The SHPO does not approve a project, provide clearance or verify outreach efforts. These actions remain the responsibility of the agency.** 
- Has IHDA authorized its applicants to consult with the SHPO in accordance with 36 CFR Section 800.2(c)(4)? If so, can IHDA share with us a copy of its letter in this regard to the SHPO?

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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- Each step of the Section 106 process requires consultation with consulting parties [36 CFR Section 800.2(c)(5)] and the public [36 CFR Section 800.2(d)]. IHDA, as the RE, must ensure that its applicants are conducting this important step, as consultation is the cornerstone of the Section 106 process.
- At any time during the consultation process, any consulting party, including the SHPO, can request the ACHP's advice regarding the Section 106 process.



As IHDA seems to have indicated that it has not yet made a determination under Section 106, we would like to remind you that Section 110(k) of the NHPA prohibits a federal agency from granting a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid Section 106 of the NHPA, has intentionally significantly adversely affected an historic property to which the grant would relate, or, having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the ACHP, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. IHDA should be aware of this requirement going forward with this project to ensure that its applicant does not inadvertently undertake any actions which could adversely affect historic properties before completing the Section 106 review.

We remain available to assist IHDA in meeting its Section 106 responsibilities. If there are any questions regarding our comments, please contact Ms. Jaime Loichinger at (202) 517-0219 or via email at jloichinger@achp.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charlene D.", written in black ink.

Charlene D. [REDACTED]
Assistant Director
Office of Federal Agency Programs
Federal Permitting, Licensing and Assistance Section