

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS,
AND SPECIFIC STATE HISTORIC PRESERVATION OFFICERS,
REGARDING IMPLEMENTATION OF NEIGHBORHOOD STABILIZATION PROGRAM/ROUND 2
UNDERTAKINGS CARRIED OUT BY NON-PROFIT GRANTEES AND SUBJECT TO
HUD'S ENVIRONMENTAL RULE, 24 CFR PART 50**

WHEREAS, the American Recovery and Reinvestment Act of 2009 (P.L. 111-005) (Recovery Act), appropriated funds for a second round of the Neighborhood Stabilization Program (NSP2), a HUD-administered program originally established under the Housing and Economic Recovery Act of 2008 (P.L. 110-289)(HERA); and

WHEREAS, the purpose of NSP2 is to stabilize communities hardest hit by the housing foreclosure crisis through the purchase and redevelopment of foreclosed and abandoned homes and residential properties; and

WHEREAS, HUD, through a Notice of Funding Availability (NOFA) posted in May 2009, announced that NSP2 funds would be awarded competitively to State, tribal, and local governments, as well as to public-private consortia and non-profit applicants; and

WHEREAS, the Secretary of HUD, in January 2010, announced the NSP2 awards, identifying the specific non-profit grantees (see Appendix 1); and

WHEREAS, in accordance with the Recovery Act statute and HUD regulations, NSP2 activities carried out by private non-profit grantees are subject to environmental reviews based on 24 CFR Part 50, "Protection and Enhancement of Environmental Quality," establishing HUD as the "agency official" for the purposes of compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, if funds from a NSP2 non-profit grantee will be used in conjunction with other HUD funds that are subject to environmental/Section 106 review per 24 CFR Part 58 (e.g., Community Development Block Grant, HOME Investment Partnerships Program), HUD will request the Responsible Entity (State, Tribal, or local government) to be the Section 106 "agency official" for the project; and

WHEREAS, in March 2010, HUD issued a memorandum to the Advisory Council on Historic Preservation (ACHP) and State/Tribal Historic Preservation Officers (SHPO/THPO), notifying them that NSP2 non-profit grantees were authorized by HUD to initiate Section 106 consultation under specific conditions (see Appendix 2); and

WHEREAS, HUD recognizes that federally recognized Indian tribes have special expertise in the identification and evaluation of historic properties of religious or cultural significance to them; and

WHEREAS, HUD remains legally responsible for compliance with Section 106 for the NSP2 activities carried out by non-profit grantees and has administrative oversight of the overall NSP2 program; and

WHEREAS, the NSP2 non-profit grantees will receive environmental and historic preservation technical assistance from HUD environmental staff as well as from HUD-trained technical assistance providers under contract to HUD;

WHEREAS, HUD has consulted with ACHP and the National Conference of State Historic Preservation Officers (NCSHPO) and determined that some NSP2 eligible activities may cause adverse effects to “historic properties” (i.e., those listed on or eligible for the National Register of Historic Places, as defined at 36 CFR § 800.16(l));

WHEREAS, HUD, the ACHP, and NCSHPO have agreed that the requirements of Section 106 can be more effectively and efficiently fulfilled if applicable states enter into a Programmatic Agreement (PA) that stipulates roles and responsibilities, exempts undertakings from Section 106 review, establishes tribal protocols, facilitates identification and evaluation of historic properties, establishes treatment and mitigation measures, and streamlines the resolution of adverse effects;

WHEREAS, HUD, in consultation with ACHP and NCSHPO, has determined that a PA among the 25 states and District of Columbia is an acceptable approach for HUD to manage its Section 106 compliance responsibilities for its NSP2 non-profit grantees, therefore, this PA will apply only to those States and the District where the SHPO executes an addendum to this PA and forwards it to HUD and the ACHP;

NOW THEREFORE, HUD, ACHP, and NCSHPO agree that the NSP2 program for non-profit grantees shall be implemented in accordance with the following stipulations to take into account the effects of the undertakings on historic properties.

STIPULATIONS

HUD, in coordination with the NSP2 private non-profit grantees, will ensure that the following stipulations are carried out:

I. Applicability

A. This PA applies only to undertakings that are subject to HUD's environmental regulation, 24 CFR Part 50, and are carried out by non-profit grantees in specific states (see Appendix 1) using NSP2 funds provided by HUD in accordance with the Recovery Act. If funds from a NSP2 non-profit grantee will be used in conjunction with other HUD funds that are subject to 24 CFR Part 58 (e.g., CDBG or HOME), HUD will request the Responsible Entity (State, Tribal, or local government) to be the "agency official" for Section 106 reviews for the jointly-funded project.

B. Some SHPOs may have already developed alternative procedures, protocols, or templates appropriate for use by HUD and its NSP2 grantees to meet Section 106 requirements. In those cases, HUD and the SHPO may agree to use those existing alternatives rather than the process in this PA. However, HUD must maintain evidence of the specific, agreed upon alternative in the environmental review record (e.g., letter from SHPO, executed alternative agreement) and notify the ACHP (along with a copy of the document) in writing of such before using them.

C. If for some reason HUD determines that certain NSP2 activities do not or cannot fall under the provisions of this PA, HUD must complete Section 106 reviews for those NSP2 projects on a case by case basis, pursuant to 36 CFR §§ 800.3-800.7.

D. HUD has determined that undertakings falling under the following NSP2 eligible activity category *will not be subject to this PA*, and instead will be reviewed and processed on a case by case basis per 36 CFR §§ 800.3-800.7:

"Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-second, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers" (HERA, Pub. L. 110-289, § 2301(c)(4)(A), (codified at 42 U.S.C. 5301 note)

II. Responsibilities

A. The Section 106 review process to be followed under this PA will be the one set forth in 36 CFR §§ 800.3-800.7, but with the modifications included in this PA (e.g., exemptions, Neighborhood Target Review, certified review, standard mitigation) or the alternate process per Stipulation I.B. of this PA.

B. NSP2 non-profit grantees are authorized by HUD to initiate Section 106 consultation, in accordance with 36 CFR § 800.2(c)(4) and HUD's notification memorandum, dated March 26, 2010 (see Appendix 2).

C. To expedite this review process, HUD will require NSP2 non-profit grantees to contract or employ a person or entity meeting the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738, September 29, 1983) in the appropriate field(s). Per the NSP2 NOFA, the expenditure of funds for this purpose is an allowable administrative expense.

D. HUD expects NSP2 non-profit grantees and/or their consultants to conduct searches for determinations of National Register eligibility on their own, with limited assistance from the SHPO. SHPOs will not assume responsibility for identification and evaluation of historic properties on behalf of non-profit grantees and/or their consultants, including conducting basic archival research.

E. In consultation with SHPO, NSP2 non-profit grantees will identify other consulting parties and invite them to participate in the identification and evaluation of historic properties, assessment of effects, and in the review of projects under the terms of this PA. Additionally, in consultation with the SHPO and other consulting parties (including tribes), the non-profit grantees will create project schedules and milestones to help guide the coordination of Section 106 reviews.

F. Regarding tribal consultation, HUD environmental staff will:

1. Make a reasonable and good faith effort to identify federally recognized Indian tribes that may attach religious and cultural significance to properties potentially affected by an NSP2-funded undertaking and invite them to participate in the identification and evaluation of historic properties, assessment of effects, and in the review of undertakings under the terms of this PA;
2. Refer to one or more of the following: HUD's Tribal Directory Assessment Tool (<http://www.hud.gov/offices/cpd/environment/tribal/>), ACHP's *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook* (November 2008), and the U.S. Army Corps of Engineers St. Louis District Native American Tribal PoC Database (<http://www.mvs.usace.army.mil/engr/curation/CMAC%20TrbIDb.html>)
3. Contact federally recognized Indian tribes to determine how and when to seek tribal input on project activities carried out by NSP2 non-profit grantees when a NSP2 undertaking does not meet the criteria set forth in Stipulation IV below; agreed upon protocols will be documented for the benefit of NSP2 non-profit grantees; and
4. Serve as the HUD point of contact for NSP2 projects and provide their contact information to the ACHP, SHPO, and tribes, as appropriate.

G. The ACHP will be available to address policy and program issues that evolve during the administration of this PA.

H. This PA will apply within a State after the relevant SHPO signs a copy of the addendum and provides copies to HUD and ACHP, the latter of which will accept it as filed per 36 CFR § 800.6(b)(1)(iv).

III. Eligible Activities Allowable Under the NSP2 Program That Are Subject to this Programmatic Agreement

The language appearing in quotations below, describing NSP2 eligible activities, comes directly from HERA, Pub. L. 110-289, § 2301(c)(4), (codified at 42 U.S.C. 5301 note) (as amended by the Recovery Act, Pub. L. 111-5, 123 Stat. 218). The terms appearing in parentheses and italics are HUD's general interpretation of the categories of undertakings that could result from these statutorily allowable activities:

A. "Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties" (*acquisition, rehabilitation, demolition, disposition*).

B. "Establish and operate land banks for homes and residential properties that have been foreclosed upon" (*land banking*).

C. "Demolish blighted structures" (*demolition*).

D. "Redevelop demolished or vacant properties as housing" (*acquisition, disposition, demolition, new construction, rehabilitation*).

E. A combination of activities described in III.A.-D. above.

IV. NSP2 Undertakings Exempt from Section 106 Review

The following NSP2 undertakings will be exempt from Section 106 review:

A. Activities that HUD determines are covered by 24 CFR § 50.19(b) (see Appendix 3).

B. Work that HUD determines meets the definition of "maintenance," per HUD's policy memorandum dated March 28, 2006 (see Appendix 4).

C. Work (including demolition and rehabilitation) on properties that are less than 50 years old *unless*

1. They are located within a National Register -eligible or -listed historic district, *or*
2. They have been determined eligible under National Register Criterion Consideration G for "exceptional significance" by
 - a. the Keeper of the National Register,
 - b. the SHPO, or
 - c. through a consensus determination made pursuant to 36 CFR § 800.4(c).
3. While 50 years is the general bench mark for National Register eligibility, age of property may be adjusted to 45 years based on individual SHPO preference/practice, after HUD and the SHPO consult on the matter. If agreed, HUD will note the age change in IV.C. Also, HUD will make a reference to the age change on the SHPO addendum. Both parties should initial the changes.

D. Demolition of individual properties that have been determined not eligible for the National Register within the last five years by

1. the Keeper of the National Register,
2. the SHPO, or
3. through a consensus determination made pursuant to 36 CFR § 800.4(c).

E. Repair and/or Rehabilitation

1. on properties that have been determined not individually eligible for the National Register within the last five years by
 - a. the Keeper of the National Register,
 - b. the SHPO, or
 - c. through a consensus determination made pursuant to 36 CFR § 800.4(c)
2. of interior spaces *unless* the property has been determined individually eligible for or listed on the National Register (in which case there may be documented, significant character-defining features) by
 - a. the Keeper of the National Register,
 - b. the SHPO, or
 - c. through a consensus determination made pursuant to 36 CFR § 800.4(c)

F. New construction (attached, detached, infill, etc.) on or within properties determined not eligible for the National Register within the last five years by

1. the Keeper of the National Register,
2. the SHPO, or
3. through a consensus determination made pursuant to 36 CFR § 800.4(c).

G. Land banking activities (i.e., acquisition and holding of property *with no known reuse*) for the purpose of assembling parcels of land for future reuse within 10 years, per HUD's existing guidance, "Section 106 Guidance for NSP Land Banking," dated January 2010 (see Appendix 5). In other words, acquisition without the intent to demolish is exempt from Section 106 review, but future activities and reuse plans (mothballing, demolition, rehabilitation, etc.) will require a subsequent Section 106 review.

H. Acquisition and disposition of residential property that comply with HUD's policy memorandum, dated June 30, 2010, entitled "Acquisition/Resale Activities Determined to have 'No Potential to Cause Effects' to Historic Properties" (see Appendix 6).

I. Disposal of residential historic properties that are acquired with NSP2 funds without adequate preservation protections (e.g., deed restrictions) since:

1. NSP2 is a temporary program, established by the Recovery Act, to assist with the Nation's housing and financial recovery;
2. NSP2 will acquire and dispose of a very large number of residential properties, anticipated to be in the hundreds of thousands; and
3. The signatories want to avoid encumbering such a large number of residential

properties with preservation deed restrictions as a result of this temporary federal recovery program.

4. HUD will consider exceptions to this stipulation only when SHPO provides a timely written request, a preservation-based justification explaining the need for adequate preservation protections, and other pertinent details (e.g., restrictive language, identification of easement holder).

J. Ground disturbance

1. that HUD determines, in consultation with SHPO and other consulting parties (including tribes), is *minimal*; and/or
2. of documented, previously disturbed soil, as determined by HUD, in consultation with SHPO and other consulting parties (including tribes).
3. Consultation on these issues will be guided by the ACHP's Archaeology Guidance (see Appendix 7, esp. Question #30, pp. 20-22) and the ACHP's 2007 *Policy Statement on Affordable Housing and Historic Preservation (Implementing Principle VIII)* (72 FR 7387, February 15, 2007).

K. A combination of activities described in IV.A.-J. above

V. Neighborhood Target Reviews

A. To expedite Section 106 reviews and streamline workload for both HUD and SHPOs, NSP2 non-profit grantees may develop and follow a Neighborhood Target Review process to allow acquisition of single family homes in lieu of a property by property Section 106 review under specific limitations described below and in HUD guidance issued on July 26, 2010 (see Appendix 8). Neighborhood Target Review is only permitted for specific activities described in Stipulation V. B. below in a limited geographic area that has few environmental complications. The intent of HUD's Neighborhood Target Review is to enable NSP2 grantees to expeditiously acquire single family homes in neighborhoods that have few, if any, environmental complications and where property specific mitigation will not be required. For instance, HUD envisions this strategy to be employed in newly developed neighborhoods located outside of the 100 year Floodplain with no known impact from toxics and hazards.

B. Neighborhood Target Reviews are limited to the acquisition, disposition, and/or minor rehabilitation of single family homes. Minor rehabilitation is where rehabilitation costs are less than 50% of market value of structure, or if the structure has been damaged and is being restored, 50% of the value before the damage occurred. Minor rehabilitation includes ground disturbance.

C. If the Neighborhood Target Review project meets the criteria described in Stipulation IV above, then HUD will consider it as exempt from review.

D. If the Neighborhood Target Review project does not meet the criteria described in Stipulation IV above, then non-profit grantees will provide the SHPO and other consulting parties (including tribes) with the Neighborhood Target Review geographic boundary information and survey findings to inform any additional consultation that may be required per this PA.

E. Should there be any disputes with SHPO or consulting parties (including tribes) regarding Neighborhood Target Reviews, HUD will seek resolution with the ACHP via Stipulation XI.F., Dispute Resolution.

VI. NSP2 Undertakings Needing a “Certified” Review

The following undertakings do not require Section 106 review when certified by a qualified preservation entity, as determined by HUD, in consultation with SHPO, and such certification is provided to the SHPO:

A. Repair and Rehabilitation work on historic properties (including work on contributing and non-contributing resources in historic districts) that is deemed to meet the *Secretary of the Interior’s Standards for Rehabilitation*, as certified by

1. a person or entity meeting the *Secretary of the Interior’s Professional Qualifications Standards* (48 FR 44738, September 29, 1983) in the appropriate field(s);
2. a Certified Local Government (CLG) or local historic preservation commission; or
3. the Federal/State Historic Rehabilitation tax credit review process.

B. New construction on historic properties (including work on contributing and non-contributing resources in historic districts) that is deemed to meet the *Secretary of the Interior’s Standards for Rehabilitation*, as certified by

1. a person or entity meeting the *Secretary of the Interior’s Professional Qualifications Standards* (48 FR 44738, September 29, 1983) in the appropriate field(s); or
2. a CLG or local historic preservation commission.

C. If a SHPO objects to the idea of certified reviews done by a professionally qualified preservation consultant, as noted above, then the SHPO will participate in reviews as described in VI.A.1 and VI.B.1. The SHPO will disclose this in writing to the ACHP, HUD, and other consulting parties.

VII. Archaeological Surveys

A. When HUD determines, in consultation with SHPO and other consulting parties (including tribes) that a project will exceed *minimal ground disturbance* and/or will impact undisturbed soil, or if there is disagreement from one or more of the consulting parties (including tribes) about the level of effort needed to identify/evaluate archaeological resources, then:

1. HUD will refer to *HP Factsheet #6* as the primary guidance for deciding when to do Phase I/II archaeology surveys (see Appendix 9).

2. HUD will also refer to ACHP's Archaeology Guidance and the ACHP's *Policy Statement on Affordable Housing and Historic Preservation*, as cited in Stipulation IV.J.3.

B. Should there be any disputes with SHPO or consulting parties (including tribes) regarding archaeological issues, HUD will seek resolution with the ACHP via Stipulation XI.F., Dispute Resolution.

VIII. Consultation to Avoid, Minimize or Mitigate Adverse Effects

Should HUD and a non-profit grantee fail to reach agreement within 60 days of initiating consultation with the SHPO and/or other consulting parties (including tribes) on how to avoid, minimize, or mitigate adverse effects to historic properties, HUD will notify the ACHP and invite it to participate in concluding the review.

IX. Standard Mitigation Measures

In cases of adverse effects, HUD may use the following standard mitigation measures (when relevant) in lieu of negotiating a Memorandum of Agreement (MOA):

- A. Design Review for Repair, Rehabilitation, and/or New Construction
 1. Non-profit grantees will develop and implement designs that follow the *Secretary of the Interior's Standards for Rehabilitation*, to the extent feasible.
 2. Non-profit grantees must confirm with SHPO at what stages of development plans and specifications should be submitted to SHPO for 30-day review and comment periods and then adhere to that schedule (e.g., 35% 65% 95% is typical).
 3. HUD will require non-profit grantees to document how they have taken SHPO comments into account.
 4. When adherence to the *Secretary of the Interior's Standards for Rehabilitation* is not feasible, HUD will require non-profit grantees to document why the *Standards* cannot work and provide options that are sympathetic to the historic property. Within 21 days of receipt of the grantee's options, the SHPO and ACHP will provide comments before providing them to HUD and the non-profit grantee. HUD will then consider the comments and document its decision before approving the project.
- B. Demolitions
 1. Per the Recovery Act, "a [non-profit] grantee may not use more than 10 percent of its grant under this heading for demolition activities under section 2301(c)(3)(C) and (D) [of HERA, i.e., "land banking" and "demolish blighted structures"] unless the Secretary determines that such use represents an appropriate response to local market conditions" (Recovery Act, Pub. L. 111-5, 123 Stat. 218, (codified at 42 U.S.C. 5301 note)).

2. In cases where non-profit grantees seek to demolish a historic property, HUD will require non-profit grantees to
 - a. prepare a written justification for proposed demolitions of historic properties, summarizing alternatives that were considered and specific reasons why demolition is needed;
 - b. submit demolition requests to SHPO/THPO;
 - c. afford SHPO/THPO 30 days to review and comment on proposed demolitions; and
 - d. record the property (using SHPO standards or Historic American Building Survey, depending on the circumstances) or perform other feasible mitigation (e.g., interpretive exhibits, plaques, walking tours), as recommended by SHPO/THPO.

C. Archaeology

If archaeology work beyond a Phase II survey is needed (based on Stipulations IV.J. and VII. above), HUD and the non-profit grantee will consult with SHPO/THPO and other consulting parties (including tribes), as needed, to develop and implement a research design and data recovery plan.

D. Should there be any disputes with SHPO/THPO or consulting parties (including tribes) regarding the use of these standard mitigation measures, HUD will notify the ACHP and invite it to participate in negotiating an MOA.

X. Memoranda of Agreement

A. If HUD determines, in consultation with SHPO/THPO and other consulting parties (including tribes) that one or more of the standard mitigation measures noted in Stipulation IX is not appropriate for or commensurate with the adverse effects posed by a NSP2 non-profit grantee's undertaking, then HUD and the non-profit grantee will consult with SHPO and the other consulting parties (including tribes) in accordance with 36 CFR §§ 800.5-800.6 to develop and execute a MOA.

B. The signatories recognize that these executed NSP2 MOAs may facilitate future NSP2 reviews and, as such, may agree to adopt certain MOA mitigation measures as standard mitigation measures (as described in Stipulation IX above) for the purposes of this PA. New standard mitigation measures may be added to Stipulation IX by amending the PA per Stipulation XI.G., Amendments and Termination.

C. Should HUD and a non-profit grantee fail to negotiate an MOA within 60 days of initiating consultation, HUD will notify the ACHP and invite it to participate in concluding the Section 106 review.

XI. Administrative Stipulations

A. Public/Citizen Participation and Input

1. HUD and its non-profit grantees will comply with NSP2 program requirements related to public/citizen participation as noted in the Notice of Funding Availability (May 4, 2009) and the public participation requirements as noted in 24 CFR § 50.23.
2. Accordingly, and in reference to Stipulation II.D., the non-profit grantee will seek public input and develop a creative strategy for public participation to respond to the nature of the undertakings and the level of public interest.
3. For the purposes of this PA, the signatories agree that compliance with Stipulations XI.A.1 and XI.A.2. above meets the intent of the public participation provisions in 36 CFR Part 800.

B. Emergency Situations

1. In responding to an emergency declared by the President, Governor, or tribal government, HUD and its NSP2 non-profit grantees will comply with 36 CFR § 800.12(b)(2)
2. In responding to an emergency declared by the local government's chief elected official or legislative body, HUD and the non-profit grantee will comply with 36 CFR § 800.12(c)
3. Such undertakings must take place within 30 days of the declared emergency

C. Unanticipated Discoveries

1. If, during project implementation, a non-profit grantee or any of its contractors discovers or identifies potential historic properties within a project site that may be adversely affected, or should there be any unanticipated adverse effects to historic properties on a project site or immediately adjacent to a project site, the non-profit grantee shall, within 48 hours, promptly notify HUD and the SHPO and shall, in consultation with them, develop a treatment or mitigation plan for such property or adverse effect condition and submit it to ACHP, SHPO, and consulting parties for comment within 15 days. The failure of the ACHP and others to comment within that time period shall constitute concurrence with the proposed plan. HUD and the non-profit shall consider comments before finalizing their treatment or mitigation plans and will ensure their implementation. Under emergency conditions, the 15 day period may be shortened, with the ACHP's concurrence.
2. The non-profit grantee may proceed with all project activities while the treatment or mitigation plan is being developed and reviewed, but shall not take or permit actions that would adversely affect such property during such period.

D. Reporting and Monitoring

1. NSP2 non-profit grantees will be required by HUD to report regularly on the status of their projects. Electronic reporting systems, such as HUD's Recovery Act

Management Performance System and FederalReporting.gov, may provide some useful data for ACHP, SHPO, and others. HUD will share this data upon request, as appropriate.

2. HUD will also maintain Section 106-related compliance information (including lists of projects determined exempt from review) in the environmental review record and will respond to inquiries from SHPO, ACHP, and/or consulting parties (including tribes) upon request.
3. Upon request, HUD will coordinate monitoring visits for SHPO and/or ACHP.

E. Technical Assistance and Training

1. As noted in the preamble, NSP2 non-profit grantees will receive technical assistance from HUD-assigned "technical assistance providers," who received HUD-sponsored environmental training in the Spring/Summer of 2010 and will refer to the *NSP2 Environmental Review Guide* (see http://hudnsphelp.info/media/resources/ERGuide_NS2Nonprofits.pdf) when dispensing technical assistance.
2. ACHP agrees to provide training to HUD environmental staff and SHPO staff that are charged with carrying out the provisions of this PA. The training may be a question and answer session via webinar or teleconference call which HUD and ACHP will schedule within 90 days of implementation of this PA.

F. Dispute Resolution

1. Should the SHPO or consulting parties (including tribes) object within 30 days to any plans for action proposed pursuant to this PA, HUD will consult with the objecting party to resolve the dispute. If HUD determines that the objection cannot be resolved, HUD shall forward all documentation relevant to the dispute to the ACHP. Within 30 days following receipt of adequate documentation, the ACHP will either:
 - a. provide HUD with recommendations, which HUD will take into account in reaching a final decision regarding the dispute; or
 - b. notify HUD that it will comment pursuant to 36 CFR § 800.7(c), and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by HUD in accordance with 36 CFR § 800.7(c)(4) with reference to the subject dispute.
2. The ACHP's responses to such request will be taken into account by HUD in accordance with 36 CFR § 800.7(c) with reference only to the subject of the dispute; HUD's responsibility to carry out all actions under this PA that are not the subject of the dispute will remain unchanged.

G. Amendments and Termination

1. Any of the signatories (including the SHPOs) may seek to amend this PA by submitting its request in writing to the other signatories. Any and all amendment(s) will go into effect when agreed to in writing by the signatories. Amendments will be attached to the original PA as addendums and filed with the ACHP in accordance with

36 CFR § 800.6(b)(1)(iv).

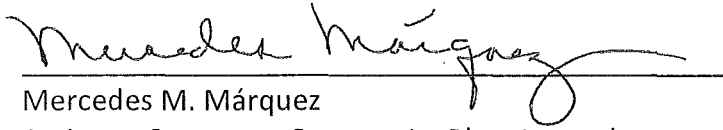
2. The HUD NSP2 Program Director is delegated authority from the Assistant Secretary for Community Planning and Development to sign any amendment or termination of this PA.
3. Termination of this PA may occur when one of the signatories notifies the other signatories in writing of the specific reasons for termination. The signatories will consult over the termination request and consider possible amendments to resolve the matter. If after 30 days the signatories cannot reach agreement on possible amendments, then the PA will be terminated and the undertakings will be reviewed in accordance with 36 CFR §§ 800.3-800.7. A SHPO seeking termination need not notify other SHPO signatories, and other SHPO signatories need not consult on such proposed termination. A termination by an individual SHPO will only terminate the applicability of the PA for that State.

H. Duration

1. Except as noted in XI.H.2. below, this PA will take effect as of the date of the last signatory below, and will apply in a State on the date as indicated on the SHPO addenda as they are signed and filed with the ACHP and HUD, and will remain in effect for the duration of the non-profit grantee's agreement with HUD, which per the Recovery Act expires 36 months from the time HUD makes the NSP2 funds available to the grantee for obligation.
2. In those cases where non-profit grantees undertake land banking activities, this PA will remain in effect for 10 years or until such time as the non-profit grantee completes Section 106 reviews for the redevelopment of the land banked property, whichever comes first. The NSP2 NOFA allows non-profit grantees to land bank property for no more than 10 years, at which point it must be redeveloped, otherwise NSP2 funds used for the acquisition must be recaptured by HUD and returned to the U.S. Treasury.
3. Upon execution of this PA by the signatories (HUD, ACHP, and NCSHPO), SHPOs will have 60 days to sign the addendum in order for the PA to apply in its State. If a SHPO fails to execute this PA within this timeframe, the SHPO will not be able to use this PA for complying with Section 106 and will be required to clarify the Section 106 compliance strategy for their State to HUD and the ACHP.

Execution and implementation of this Programmatic Agreement is evidence that HUD has afforded the Advisory Council on Historic Preservation an opportunity to comment on the NSP2 program and that HUD has taken into account the effects of the NSP2 program on historic properties.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT



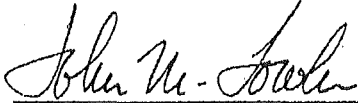
Mercedes M. Márquez
Assistant Secretary, Community Planning and
Development

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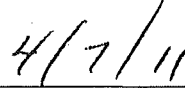
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ADVISORY COUNCIL ON HISTORIC PRESERVATION



John M. Fowler
Executive Director



Date

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NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

Ruth Pierpont

Ruth Pierpont
President

March 16, 2011

Date

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AMONG
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS,
AND SELECT STATE HISTORIC PRESERVATION OFFICERS,
REGARDING IMPLEMENTATION OF NEIGHBORHOOD STABILIZATION PROGRAM/ROUND 2
ACTIVITIES CARRIED OUT BY NON-PROFIT GRANTEES AND SUBJECT TO
HUD'S ENVIRONMENTAL RULE, 24 CFR PART 50**

ADDENDUM:

By signing and dating below, the State Historic Preservation Officer agrees to abide by the terms of this Programmatic Agreement.

June Edwards Deputy
State Historic Preservation Officer

5-4-11
Date

Illinois
State

APPENDIX 1

List of NSP2 private non-profit grantees and the states in which their undertakings will occur:

Multi-grant recipients:

Center for Community Self Help: CA, CT, GA, IL

Chicanos Por La Causa: AZ, CA, CO, DC, IL, MD, NM, PA, TX

The Community Builders: DC, NC, NY, OH, PA, IL, MA, VA

Habitat for Humanity: CA, NY, FL, TX, WI

Neighborhood Housing Services: CA

Single grant recipients:

Camden Housing Authority: NJ

Camden Redevelopment Authority: NJ

El Paso Collaborative for CUED: TX

Healthy Neighborhoods: MD

National Housing Trust Development Fund: DC

Reno Housing Authority: NV

APPENDIX 2




OFFICE OF COMMUNITY PLANNING
AND REVITALIZATION

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

MAR 26 2010

MEMORANDUM FOR: All State and Tribal Historic Preservation Officers

FROM: Yolanda Chávez, Deputy Assistant Secretary
for Grant Programs, DG 

SUBJECT: Authorization of NSP2 Non-Profit Grantees to Initiate
Consultation per 36 CFR Part 800, "Protection of Historic
Properties"

The American Recovery and Reinvestment Act of 2009 (P.L. 111-5) appropriated to the Department of Housing and Urban Development a second round of funding for the Neighborhood Stabilization Program 2 (NSP2). NSP2 is a grant competition that includes non-profits and non-profit consortia as eligible applicants. Where these non-profits and non-profit consortia lack a State, local, or tribal general government partner, HUD is responsible for completing the environmental and Section 106 reviews under 24 CFR Part 50. For purposes of this notification, "non-profit grantees" refers to those NSP2 grantees for whom HUD is responsible for completion of Section 106 reviews.

In order to facilitate the Section 106 review process, HUD has determined that it is consistent with 36 CFR § 800.2(c)(4) for NSP2 non-profit grantees (and their authorized representatives) to initiate Section 106 consultation with State and/or Tribal Historic Preservation Officers (SHPO/THPO) and other consulting parties.

Effective immediately, NSP2 non-profit grantees and their authorized representatives may initiate the Section 106 review process; identify and evaluate historic properties; and assess effects. When consulting with SHPO/THPOs and others, authorized representatives of NSP2 non-profit grantees shall identify the non-profit grantee they are representing, including an appropriate contact person within the non-profit grantee, and the undertaking for which they have been hired to coordinate the Section 106 review.

HUD will remain responsible for participating in the Section 106 consultation process when:

- There is a disagreement between the non-profit grantee (or its authorized representative) and the SHPO/THPO, Advisory Council on Historic Preservation, or Secretary of the Interior regarding identification and evaluation and/or assessment of effects;
- There is an objection from consulting parties or the public regarding assessment of effects, the implementation of agreed upon provisions, or their involvement in a Section 106 review;
- When it is determined, in accordance with the *Criteria of Adverse Effect*, that there is an adverse effect on a historic property; or
- There is potential for either a foreclosure situation per 36 CFR § 800.9(b) or anticipatory demolition as specified in Section 110(k) of the National Historic Preservation Act.

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This notification to SHPO/THPOs allows NSP2 non-profit grantees to initiate their project planning and the Section 106 review process in a coordinated and efficient manner. Per § 800.2(c)(4), HUD remains legally responsible for all findings and determinations made by non-profit grantees (or their authorized representatives) and for its government-to-government relationship with Indian tribes.

The Section 106 reviews must be conducted within the timeframes set forth in 36 CFR Part 800 and in HUD's published Notice of Funding Availability for the NSP2 program (74 FR 21377, May 7, 2009). The exchange of documentation and consultations between non-profit grantees and consulting parties should be carried out consistent with the Section 106 regulations. To this end, HUD has arranged for technical assistance to be provided to the non-profit grantees to help them carry out the process set forth in this notification.

Questions about HUD's Historic Preservation program should be directed to Mr. David Blick, Deputy Federal Preservation Officer, at (202) 402-5718, or by email at David.G.Blick@hud.gov. Questions regarding NSP2 should be directed to Mr. Hugh Allen, Deputy Director, Financial Management Division, at (202) 402-4654, or by email at Hugh.Allen@hud.gov. For on-line information about NSP2, see: <http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/arrfactsheet.cfm>

APPENDIX 3

24 CFR Part 50.19(b): Categorical exclusions not subject to the Federal laws and authorities cited in Sec. 50.4.

(1) Environmental and other studies, resource identification and the development of plans and strategies.

(2) Information and financial advisory services.

(3) Administrative and management expenses.

(4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs.

(5) Inspections and testing of properties for hazards or defects.

(6) Purchase of insurance.

(7) Purchase of tools.

(8) Engineering or design costs.

(9) Technical assistance and training.

(10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.

(11) Tenant-based rental assistance.

(12) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services.

(13) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs; however, in the case of equipment, compliance with Sec. 50.4(b)(1) is required.

(14) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or physical expansion of existing facilities; however, in the case of equipment purchase, compliance with Sec. 50.4(b)(1) is required.

(15) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and downpayment assistance, interest buydowns, and similar activities that result in the transfer of title.

(16) Housing pre-development costs including legal, consulting, developer and other costs related to site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

(17) HUD's insurance of one-to-four family mortgages under the Direct Endorsement program, the insurance of one-to-four family mortgages under the Lender Insurance program, and HUD's guarantee of loans for one-to-four family dwellings under the Direct Guarantee

procedure for the Indian Housing loan guarantee program, without any HUD review or approval before the completion of construction or rehabilitation and the loan closing; and HUD's acceptance for insurance of loans insured under Title I of the National Housing Act; however, compliance with Secs. 50.4(b)(1) and (c)(1) and 24 CFR 51.303(a)(3) is required.

(18) HUD's endorsement of one-to-four family mortgage insurance for proposed construction under Improved Area processing; however, the Appraiser/Review Appraiser Checksheet (Form HUD-54891) must be completed.

(19) Activities of the Government National Mortgage Association under Title III of the National Housing Act (12 U.S.C. 1716 et seq.).

(20) Activities under the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.).

(21) Refinancing of HUD-insured mortgages that will not allow new construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance; however, compliance with Sec. 50.4(b)(1) is required.

(22) Approval of the sale of a HUD-held mortgage.

(23) Approval of the foreclosure sale of a property with a HUD-held mortgage; however, appropriate restrictions will be imposed to protect historic properties.

(24) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance; however, compliance with Secs. 50.4 (b)(1) and (c)(1) and 51.303(a) is required.

APPENDIX 4




U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

MAR 28 2008

MEMORANDUM FOR: Regional Environmental Officers
Field Environmental Officers

FROM: Richard H. Brown, Director, Office of Environment and
Energy, DCE 

SUBJECT: Guidance for categorizing an activity as maintenance for compliance
with HUD's environmental regulations, 24 CFR Parts 50 and 58

This memo clarifies the difference between maintenance and repair for compliance with HUD's environmental regulations, 24 CFR Parts 50 and 58, and expands upon the May 5, 1989 policy memorandum—Policy: Flood Insurance Requirements Not Applicable to Building Maintenance. In that memo, HUD determined that national flood insurance requirements do not apply to HUD financial assistance used for "routine maintenance" of buildings located within Special Flood Hazard Areas.

Environmental reviews for repair activities are more extensive, requiring compliance with related federal environmental laws in §50.4 and §58.5, including the National Historic Preservation Act of 1966. In contrast, maintenance activities do not require compliance with federal environmental laws. (See 24 CFR 50.19(b)(13) and 58.35(b)(3)). Distinguishing between maintenance and repair activities requires careful examination. Unless the activity meets the definition of maintenance provided below, the activity should be considered a repair or improvement, and the environmental review will require compliance with the related federal environmental laws at §50.4 or §58.5. Unlike repair and improvements, maintenance activities do not materially add to the value of the building, appreciably prolong its useful life, or adapt it to new uses.

Definition-- Maintenance activities are:

- (1) cleaning activities;
- (2) protective or preventative measures to keep a building, its systems, and its grounds in working order; or
- (3) replacement of appliances or objects that are not fixtures or part of the building. A fixture is an object that is physically attached to the building and cannot be removed without damage to the building, and includes systems designed for occupant comfort and safety such as HVAC, electrical or mechanical systems, sanitation, fire suppression, and plumbing. Fixtures also include, but are not limited to, kitchen cabinets, built-in shelves, toilets, light fixtures, staircases, crown molding, sinks, and bathtubs.

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However, if items that would otherwise be considered maintenance are done as part of an extensive remodeling or renovation of a building, the entire job is considered a repair or improvement. Also, deferred maintenance and non-routine maintenance do not meet this definition of maintenance.

Items not meeting the definition of maintenance can be excluded from historic preservation review through a Memorandum of Agreement or Programmatic Agreement per 36 CFR Part 800.

For examples of some common maintenance activities, please see Attachment. If you have any questions, please have your Regional Environmental Officer contact Danielle Schopp at Danielle_L_Schopp@hud.gov / (202) 708-0614, extension 4442 or David Blick at David_G_Blick@hud.gov / (202) 708-0614, extension 5718.

Attachments

Attachment: Examples of Maintenance Activities

Cleaning Activities	Protective Measures	Replacing existing appliances or objects that are not fixtures or part of the building
- cleaning gutters and down spouts	- fixing gutters or floors	- kitchen appliances that are not attached to the building, where removal would not cause any damage (stoves, refrigerators)
- cleaning floors	- mending cracked plaster	- light bulbs
- lawn care (litter pickup, mowing, raking)	- fixing broken windowpane(s), or door locks	- carpeting or vinyl flooring
- cleaning interior or exterior of building*	- fix roofing or plumbing leaks	- washing and dryer machines
- washing windows	- caulking, weather stripping, re-glazing	- air filters
- trash collection	- reapplication of protective coatings	- HVAC window unit
- trim trees and shrubs	- installation of protective plywood, alarm systems, or temporary fencing	
- snow/ice removal	- repainting previously painted surface (including limited scraping)*	
- unclog sink and toilet	- waterproofing (sealant)	
- neighborhood cleanup	- servicing and maintenance of mechanical systems	

*Non-destructive methods only (e.g., no sandblasting or high pressure spraying).



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-7000

OFFICE OF THE ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

MAY - 5 1969

MEMORANDUM FOR: Regional Administrators
Attention: Regional Environmental Officers

FROM: Audrey E. Scott, General Deputy Assistant Secretary for
Community Planning and Development, CD

SUBJECT: Policy: Flood Insurance Requirements Not Applicable to
Building Maintenance

The Department has determined that National flood insurance requirements do not apply to HUD financial assistance used for the "routine maintenance" of buildings located within Special Flood Hazard Areas (SFHA). "Routine maintenance" falls below the threshold of building rehabilitation and is unlike building "repair" or "improvement", which are statutory terms used in the definition of "financial assistance for acquisition or construction purposes" in Section 3(a)(4) of the Flood Disaster Protection Act and therefore trigger the requirement to comply with Section 102(a) and 202(a) of the Act.

"Routine maintenance" activities should be carefully distinguished from "repair" or "improvement" of any SFHA building. "Routine maintenance" merely keeps a building in good order and an ordinary, efficient operating condition. It does not materially add to the value of a structure, appreciably prolong its useful life, or adapt it to new uses, whereas "repairs" or "improvements" might do so. Some examples of building maintenance are: (1) painting either the exterior or interior of a building, (2) fixing gutters or floors, (3) mending leaks or plastering, and (4) replacing thermostats, broken windowpanes or door locks. In contrast, adding a room, putting in a new system of plumbing or electrical wiring or air conditioning, installing a new roof, replacing a boiler, or fixing of damages sustained by a building from flooding or other hazards are considered to be "repairs" or "improvements". However, if items that would otherwise be considered "routine maintenance" are done as part of an extensive remodeling or renovation of a building, the entire job is considered "a repair" or "an improvement".

Of course, owners of SFHA buildings should be advised that the purchase of flood insurance on a voluntary basis is always prudent as it protects their own equity, in such buildings from potential financial loss due to flooding damage. The National Flood Insurance Program is designed to provide a cost effective alternative to Federal disaster assistance used to meet the escalating costs of repairing damage caused by floods.

Please inform appropriate Regional Program Directors and Field Office Managers of this policy. If you have any questions or wish to report your experience on this matter, please have your Regional Environmental Officer contact Richard H. Braun, Director, Office of Environment and Energy, or his staff specialist, Walter Prybyla, (Room 7138) FTS 755-5610.

APPENDIX 5

SECTION 106 GUIDANCE FOR NSP LAND BANKING

Neighborhood Stabilization Program (NSP) recipients (Responsible Entities (REs) under 24 CFR Part 58) are strongly encouraged to enter into a Section 106 Programmatic Agreement with the State/Tribal Historic Preservation Officer (SHPO/THPO) covering their NSP program activities before acquiring properties under the NSP program.¹ However, where the RE does not have an executed Programmatic Agreement, the RE may determine that where residential property that has been foreclosed on is acquired by the RE or a subrecipient (or acquired by the RE and subsequently transferred to a subrecipient) for the purpose of establishing land banks, the mere acquisition of the property has "no potential to cause effects" to historic properties, in accordance with 36 CFR § 800.3(a)(1), as long as all of the following conditions are met:

- The properties to be acquired are not being acquired with intent to demolish existing structures on the property.
- The RE has completed the first tier of a tiered environmental review on its NSP program activities (see text box);

HISTORIC PRESERVATION AND TIERING

Tiering is appropriate when there is a requirement to evaluate a proposal in the early stages of development and a more focused analysis is better done at a later date. The broad review should establish the policy, standard, or process to be followed in the site specific review. See 24 CFR 58.15.

Section 106 compliance needs to be incorporated into the tiered review as follows:

The broad review needs to describe the process for complying with Section 106 throughout the land bank program – including acquisition of properties, the identification of historic properties acquired, mitigation measures for holding historic properties, and the reuse of these properties (rehabilitation, demolition, disposition, etc).

The site specific review(s) will follow the process in the broad review and may include multiple site specific analyses for the various stages of the land bank program.

- The completed tier of the environmental review describes the process of property-specific historic preservation consultation that will be conducted in accordance with this policy guidance;
- HUD (or the State) has approved the RE's Request for Release of Funds and certification (HUD Form 7015.15) for the use of the NSP funds;
- Immediately upon closing on the acquired property, the RE will submit to the SHPO/THPO an adequately documented finding regarding the action of holding the property (see attached sample letter) and will commence any necessary actions to prevent "demolition by neglect" of a historic property (see below); and
- When a subrecipient will acquire and/or hold the property, the RE will impose appropriate environmental controls on the subrecipient through execution of a grant agreement or similar contract, to meet the conditions herein.

¹ See HUD's "NSP Section 106 Toolkit."

In this context, acquisition or the mere transfer of title to a property into the RE's (or subrecipient's) control or ownership, in and of itself, can be determined to have no potential to cause effects to historic properties provided that the conditions above are met. Under 36 CFR § 800.3(a)(1), the RE then "has no further obligations under section 106 or [36 CFR part 800]", in regard to the acquisition itself.

The holding of property, or land banking, however, may potentially affect historic properties and is thus subject to Section 106 review per 36 CFR §§ 800.3 through 800.6. This review will entail an initial determination and consultation with the SHPO/THPO, as described above.

After its own determination or after its consultation with the SHPO/THPO, the RE may find that it has acquired some historic properties. Mitigation for the holding of property that is eligible for or listed on the National Register of Historic Places (NRHP) must include:

- Taking any actions necessary to prevent "demolition by neglect" of the property, unless and until the RE determines that the property is not historic and either the SHPO does not object to this determination or the Section 106 consultation process is otherwise completed. These preventive actions would include mothballing any vacant property per the National Park Service's *Preservation Brief 31, Mothballing Historic Buildings*. Other mothballing procedures, such as locally approved security and maintenance plans, may be employed, but the RE's decision to use them must be made only after completing consultation per 36 CFR §§ 800.3 through 800.6.
- Completing additional Section 106 review in the future with regard to reuse or disposition of the property, when the RE (or subrecipient) initiates development of reuse/disposition plans.

This guidance applies only to the NSP land banking activities described in Sec. 2301(c)(3)(C) of the Housing and Economic Recovery Act of 2008.

SAMPLE SECTION 106 LETTER

[Return address]

[Date]

[SHPO/THPO mailing address]

(See: www.ncshpo.org or www.nathpo.org)

Dear [SHPO/THPO]:

In accordance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f), and its implementing regulation, 36 CFR Part 800, "Protection of Historic Properties," and as authorized by the U.S. Department of Housing and Urban Development (HUD) under 24 CFR Part 58, we are submitting for your review information regarding the proposed [xxx project] (ex. holding of 123 Elm Street, Anytown, AB). Please find enclosed the necessary documentation per § 800.11.

Based on our initial research, we have made the required determinations and findings, which we now ask you to review. Please respond in writing within the thirty-day time period as noted at § 800.3(c)(4). If we haven't heard back from you within thirty days, we will assume you concur with our findings.

If you concur with the findings in this submission, you may simply sign and date on the line below and return to the address noted above. If you do not concur, we request that you express your specific concerns and/or objections clearly in writing so that we may continue the consultation process as needed. Please also indicate in your response if there are other sources of information that we should check, and if there are other parties, Indian tribes, or members of the public we should include in the consultation process. Thank you for your prompt attention to this matter.

Sincerely,

[NSP Recipient]

CONCURRENCE: _____
State/Tribal Historic Preservation Officer Date

[See § 800.11 (d), (e) & (f) for details]

Description of the Undertaking

[xxx] (Specify federal involvement; include photographs, drawings, location map, etc).

Area of Potential Effect

We define the Area of Potential Effect for this proposed project as [xxx] (written boundary description). Please see the attached map marked with the APE boundary. We made this determination for the following reason(s): [xxx]

RE Option #1: Basis for Determining "No Historic Properties Affected"

To obtain background information on the APE and to identify any potential historic properties, we researched and contacted the following sources:

[xxx] (List surveys, National Register data, research at SHPO office or local government, etc.)

Based on our initial information search, it is our determination that no historic properties will be affected by this project. We base this finding on: [xxx].

OR

RE Option #2: Basis for Determining "Historic Properties Affected"/"No Adverse Effect"

To obtain background information on the APE and to identify any potential historic properties, we researched and contacted the following sources:

[xxx] (List surveys, National Register data, research at SHPO office or local government, etc.)

Based on our initial information search, it is our determination that historic properties will be affected by this project and that additional consultation will be required to assess/resolve effects. We base this finding on: [xxx].

OR

We have determined that the undertaking will have "no adverse effect" on historic property because we will implement the following conditions:

[See guidance above regarding "preventing demolition by neglect"]

APPENDIX 6



OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

JUN 30 2010

MEMORANDUM FOR: Regional Environmental Officers
Field Environmental Officers

FROM: Robert Groberg, Acting Director, Office of Environment and
Energy, DGE *Robert Groberg*

SUBJECT: Acquisition/Resale Activities Determined to have "No Potential to
Cause Effects" to Historic Properties

In accordance with 35 CFR § 800.3(a)(1), the Department has determined that the following activities, funded by MSP Rounds 1 and 2, carried out either by Responsible Entity (RE) grantees under 24 CFR Part 58 or by non-profit grantees under 24 CFR Part 50, have "no potential to cause effects" to historic properties. Consequently, the REs and HUD have no further obligations under Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and may proceed with the activity.

- Acquisition of *move-in ready* residential property that has been abandoned or foreclosed upon, for the sole purpose of reselling it to a third-party home-buyer for continued use as a residence (there cannot be any intermediate use). The grantee *must not perform* any repair or rehabilitation work on the acquired property. However, the grantee may perform only routine maintenance, such as changing the locks, repainting, updating appliances, etc. (see previous memorandum on maintenance, dated March 28, 2006, at <http://www.hud.gov/offices/cpd/environment/review/maintmemo.pdf>).
- Individual acquisitions of *substantially completed, but never occupied* residential property that has been abandoned or foreclosed upon, for the sole purpose of reselling it to a third-party home-buyer for use as a residence. The grantee may perform only the minimal construction (including minimal ground disturbance) required to obtain a local occupancy permit.

Once the third-party home-buyer has closed on the property, the activity ceases to be a federal action for the purposes of Part 50 or 58.

In terms of completing the environmental review record, REs and HUD may document the acquisition activity as being in compliance with historic preservation requirements (i.e., "no potential to cause effects," § 800.3(a)(1)), cite this memorandum, and explain how the activity falls into one of the two categories described herein.

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This memorandum applies to activities assisted with NSP1 and NSP2 funds, and to activities assisted with CDBG, CDBG-R, or HOME funds *only* when used in conjunction with NSP1 or NSP2 funds. If you have any questions on this, please contact Mr. David Blick, Deputy Federal Preservation Officer, at (202) 402-5718, or by email at David.G.Blick@hud.gov.

APPENDIX 7

29. Should the area of potential effects (APE) also be defined vertically?

Yes. Since an undertaking's effects are not restricted to the surface, in delineating the APE, a federal agency also should consider the potential for the undertaking's effects to occur above and below ground. Because the APE is three dimensional, agencies should consider how the undertaking might impact historic properties on the surface, above it, and below it.

In setting the APE's lower limits, the federal agency should rely on scientific and engineering analyses to define a depth beyond which alteration to any eligible or listed archaeological site, if present, is not reasonably expected to occur. This analysis should demonstrate that any such site, if present, would not be affected by the undertaking through changes in soil compaction or soil chemistry, for example. The challenge is to determine a vertical limit below which a knowledgeable person can reasonably say there will be no effect to the integrity of a site, should one be present.

The APE for construction of a surface parking lot, for example, might be quite shallow because its limited subsurface disturbance is unlikely to affect deeply buried archaeological properties. However, construction of an airport runway that is designed to support enormous weight, while still essentially a surface disturbance, could lead to compaction of buried archaeological properties, and thus would warrant testing to a greater depth.

In determining the geographic extent of the APE, the nature of the historic properties that might be present also should be considered to better understand the nature and magnitude of the effects that might apply. For example, a project that would construct over an eligible archaeological site deemed of religious and cultural significance to an Indian tribe may not cause physical damage to the property. However, depending on the property's significance, the proposed construction might be expected to diminish the property's integrity through loss of feeling or association. For this reason agencies are encouraged to consult early and be willing to refine the dimensions of the APE as more information is gathered during the course of Section 106 review.

[Related questions:

- How should federal agencies consider the likely nature and location of historic properties within the area of potential effects in determining the appropriate level of effort for identification?
- What kind of information is necessary to evaluate the eligibility of an archaeological site?]

30. What constitutes a "reasonable and good faith effort" to identify historic properties in accordance with the ACHP's *Policy Statement on Affordable Housing and Historic Preservation*?

Principle VIII of the ACHP's 2006 *Policy Statement on Affordable Housing and Historic Preservation* [Affordable Housing Policy, 72 FR 7387-7389]

(<http://www.achp.gov/polstatements.html>) states that: "Archaeological investigations should be avoided for affordable housing projects limited to rehabilitation and requiring minimal ground disturbance."

Neither existing guidance from the Department of Housing and Urban Development [HUD; e.g., *Historic Preservation Fact Sheet #6, "When Should I do Archaeological Surveys?"* (<http://www.hud.gov/utilities/intercept.cfm?offices/cpd/environment/review/hpfactsheet06.pdf>)] nor the ACHP's Affordable Housing Policy Statement provides a definition of what constitutes "minimal ground disturbance," indeed, it is likely that a simple definition useful for purposes of affordable housing rehabilitation and applicable across the country is not possible. Rather than define the term the focus should properly be shifted to the question of whether or not an archaeological investigation

is needed in order to meet the "reasonable and good faith" regulatory standard for the identification of historic properties established by the ACHP's regulations.

In determining whether an archaeological survey is necessary, the ACHP's regulations set forth several factors that should be considered in meeting the "reasonable and good faith" test [36 CFR § 800.4(b)(1)]. Most importantly for purposes of affordable housing rehabilitation, these include consideration of the "magnitude and nature of the undertaking" and "the nature and extent of potential effects on historic properties."

Consider the magnitude and nature of the undertaking: The ACHP's policy pertains solely to rehabilitation of existing building stock, not new construction, demolition, or redevelopment. Therefore, most work is limited to bringing existing housing stock up to local code standards. In doing this work, rehabilitation might take place on the interior and exterior of the building, as well as on utility connections between the building and the street.

Examples of common rehabilitation activities that can cause ground disturbance include, but is in no way limited to, foundation repair, installation of exterior foundation drainage, upgrading of existing utility lines, and the delivery and staging of materials to the housing site. Given the nature of the undertaking, ground disturbance associated with affordable housing rehabilitation activities typically is limited in scope and predictable. Accordingly, the broader the scope and more intense the previous construction activities, the less likely are new construction activities to affect historic properties.

Consider the nature and extent of potential effects to historic properties: Typically, utility trenches for affordable housing projects, especially in urban contexts, traverse small front yards from the building directly to the street. Most front yards already have been disturbed from previous construction and the installation of infrastructure. Accordingly, the placement of new utility lines in existing trenches should result in minimal or no new ground disturbance, and absent special circumstances, it would be appropriate to conclude that a reasonable and good faith identification effort does not require any archaeological testing. Similarly, repair of building foundations usually takes place in areas disturbed during the original construction of the building. When such rehabilitation activities are confined to such previously disturbed areas, identification efforts should not require any archaeological testing.

When new utility lines are to be installed in new trenches it still may be appropriate some times to conclude that no archaeological testing is necessary to meet the reasonable and good faith identification standard. Again, the agency official, working with the housing sponsor, needs to take into account several factors. One is the scope and degree of disturbance experienced when the target building was constructed and its infrastructure installed, as most front yards would have already been disturbed by these activities. This factor should not be considered alone, but must be weighed against the size and depth of the new trench. As the width and depth of a new trench increases so does the scope of the ground disturbance.

Because there is always the potential for National Register-eligible archaeological sites to be adversely affected in housing rehabilitation involving ground disturbance, the housing agency official and housing sponsor should work with the SHPO when negotiating Memoranda of Agreements (MOAs) to develop a plan for post-review discoveries in accordance with the ACHP's regulations [36 CFR § 800.13].

Delivery methods and staging areas also have the potential to affect historic properties, but the scope of these activities also can be minimized. Delivery may vary from dumping construction material to the use of a forklift for unloading. Materials may be staged in yards or adjacent lots, but also can be placed on existing driveways or roadways. Proper equipment used under the right surface conditions

sized appropriately for the job helps to reduce ground disturbance, making it reasonable to conclude that archaeological testing is not warranted.

Affordable housing officials and project sponsors should consider ways to minimize ground disturbance with those who will be carrying out the rehabilitation projects. Exercising caution and common sense, in conjunction with adopting measures that limit ground disturbing activities, can minimize ground disturbance and support the position that a reasonable and good faith identification effort does not need to include archaeological testing.

[Related questions:

- What is the "reasonable and good faith effort" regulatory standard?
- How do federal agencies meet the "reasonable and good faith effort" standard?
- Should the area of potential effects (APE) also be defined vertically?]

D. DETERMINING WHICH ARCHAEOLOGICAL SITES ARE SIGNIFICANT: EVALUATION

31. How are eligibility determinations made in Section 106 review?

The regulations require the federal agency to apply the National Register eligibility criteria in consultation with the SHPO/THPO and any Indian tribe or NHO that attaches traditional religious and cultural significance to the property [36 CFR § 800.4(c)(1)]. During such consultation, a federal agency may use in-house expertise or rely on information and recommendations provided by applicants or consultants/contractors. The federal agency, however, is legally responsible for decisions on National Register eligibility.

Most eligibility determinations made within the Section 106 process are called "consensus determinations" because agreement between the federal agency and the SHPO/THPO is all that is required; no formal nomination to or listing on the National Register is necessary. Consensus determinations that properties are not eligible should also be documented so that consulting parties and the public have an adequate basis upon which to evaluate the agency decision.

When the federal agency and the SHPO/THPO disagree about eligibility, the opinion of the Keeper of the National Register must be sought [36 CFR § 800.4(c)(2)].

[Related questions:

- Why should federal agencies consult with other parties about archaeology?
- What special role do Indian tribes and Native Hawaiian organizations have in evaluating properties?]

32. What are the consequences of eligibility determinations in the Section 106 process?

The determination that an archaeological site is eligible for the National Register subjects it to Section 106 review. This means the federal agency must then decide if the undertaking will alter that property's qualifying characteristics, and if so, whether it will do so in a manner that will diminish the property's integrity. If the agency determines there could be an adverse effect, then the agency consults further on appropriate measures to avoid, minimize, or mitigate that effect to the property.

In order to carry out these steps effectively, it is essential that the federal agency fully identify a property's qualifying characteristics. To do so, the federal agency should explore the full range of National Register criteria that may apply to an archaeological site.

APPENDIX 8




OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

JUL 26 2010

MEMORANDUM FOR: Regional Environmental Officers
Field Environmental Officers

FROM:  Charles Bien, Acting Director, Office of Environment and Energy,
DGE

SUBJECT: Strategies to Expedite Environmental Reviews for NSP2

This memorandum provides strategies to expedite environmental reviews for NSP2 program.

Overview of Different Approaches: Batching, Tiering, Neighborhood Target Reviews

Batching, Tiering and Neighborhood Target Reviews are approaches that can help expedite the environmental review process for NSP2 grants. The TA provider and/or HUD may recommend one of these approaches depending upon the nonprofit's internal capacity and program design.

Batching refers to a single submission of numerous residential properties (up to 100 single family). The single submission is only appropriate where the environmental conditions for the properties are identical and the properties are in close proximity to one another.

Tiering is a process that focuses on a limited geographic area to address and analyze environmental impacts related to the proposed activities that might occur on a typical project site within that area. Once individual project sites are located, any remaining environmental compliance issues that could not be resolved until project locations became known are completed, according to standards for approval previously established for the target area.

Finally, a Neighborhood Target Review is always limited to acquisition, minor rehabilitation and/or disposition of existing single family homes. In essence, a Neighborhood Target Review is a specific form of a Tiered review, that because its limited activities are within a limited geographic area, environmental clearance is achievable for a neighborhood, allowing acquisition of existing single family homes *without* a site-specific review.

Neighborhood Target Reviews

Neighborhood Target Review: This policy is limited to the acquisition, disposition, and/or minor rehabilitation (rehab costs are less than 50% of the market value of structure, or if the structure has been damaged and is being restored, 50% of the value before the damage occurred) of single family homes. Minor rehabilitation includes minimal ground disturbance.

A Neighborhood Target Review allows for a defined area to undergo environmental analysis and review at sufficient detail that a site-specific review is not necessary, enabling a grantee to acquire a set amount of properties within the defined neighborhood without undertaking a site-specific review. *This review could be completed prior to the identification of the individual sites for purchase so long as they fall within a defined geographic zone and scope of activities.*

Neighborhood Target Reviews rely upon area wide surveys and studies; therefore, this approach is only recommended when the grantee is able to procure environmental staff and/or consultants with knowledge and experience with historic property surveys, area wide screening for toxic and hazards¹, and flood insurance. Any properties that require mitigation for toxics and hazards or historic preservation need to be identified in the Neighborhood Target Review – these properties will require a site-specific review and cannot be cleared on an area review, without prior approval from HUD staff for Part 50 reviews or Responsible Entity staff for Part 58 reviews, to ensure the level of analysis is specific enough to identify appropriate and individual mitigations.

Given the right circumstances, the Neighborhood Target Review approach may provide some grantees with greater flexibility in quickly acquiring properties as they become available. This method may provide the grantee with greater flexibility and fewer processing barriers while providing a more comprehensive approach to analyzing environmental conditions in environmentally homogenous target areas with few environmental concerns. However, it is not a method that could be used with success in every area. Certain areas may prove too impact rich, prohibitively expensive, or time-consuming. Identifying standard mitigation measures in advance may prove unfeasible in complex situations. Projects involving property demolition, reconstruction, new construction activities, or face other complex issues, cannot be used for this expedited approach because individual studies or consultation would be required for each property.

¹ Note: Environmental professionals with experience preparing and reviewing ASTM reports have the necessary skills to evaluate the required Environmental Data Registry (EDR) report (or its equivalent) to identify areas that, based upon available information, will not be affected by toxics or contamination.

Project Description:

A project may be defined to include more than one property at a time. Under the principle of aggregation, geographically close or functionally interdependent activities should be evaluated as a single project. When multiple units are proposed for similar activities within a clearly defined target area, an aggregated review can be performed to the extent that a meaningful evaluation of the environmental impacts can be conducted. An accurate and finite project description that informs decision-makers and the public what is proposed and where it is proposed is always required.

The degree of project aggregation should be based on the level of project complexity and homogeneity of the target area or neighborhood. For example, a Neighborhood Target Review could be used to clear an entire subdivision or neighborhood for the purchase, minor rehabilitation and resale of a defined number of foreclosed units. The project description must include the maximum number of houses that the grantee will purchase within this identified target neighborhood. Furthermore, the project description must clearly define the geographic boundaries of the target neighborhood – the target neighborhood boundaries will vary in accordance with the physical environment of the particular area; however, the neighborhood target area cannot be larger than one census tract, and in most instances may be much smaller.

Finally, the project description should exclude properties that face complex issues such as historic properties, properties that are within the 100 year flood zone or properties that are impacted by toxics and hazards. Such properties may be subject to site-specific reviews to identify appropriate mitigations.

Historic Preservation:

Because of the statutory/regulatory requirement to afford State/Tribal Historic Preservation Offices (SHPO/THPO) a minimum 30 day period to comment on each undertaking, Historic Preservation will normally be the most time-consuming environmental review factor for projects involving minor exterior rehabilitation or disposition activities. Therefore, reviewers should consider strategies to resolve historic preservation (HP) in a timely fashion, such as a Programmatic Agreement.

Appropriate alternatives to achieve HP compliance for Neighborhood Target Reviews will hinge upon the program design. A Neighborhood Target Review identifies a single-family residential subdivision or discrete neighborhood where the grantee intends to sponsor many acquisition-rehabilitation-disposition activities. If the project description is strictly limited to interior rehabilitation, maintenance, acquisition and disposition, **or** if **all** properties in the Neighborhood Target Review are documented to be less than 50 years old (*SHPO/THPO preferences may vary*), the Agency (HUD for Part 50 reviews, Responsible Entity for Part 58 reviews) may make a “no potential to cause effects” on historic properties determination and unilaterally conclude the Historic Preservation review.

On the other hand, if the project description includes exterior rehabilitation activities and if that target area contains some properties over 50 or more years old, a cultural resources survey

should be done at the earliest opportunity and submitted to SHPO/THPO for comment, identifying few or even no historic properties. If SHPO/THPO agrees with that determination, or fails to object after 30 days, every subsequent activity affecting non-historic properties in the target area would NOT be subject to any further SHPO/THPO consultation and delays. This target area approach for a cultural resources study is also very feasible in localities where a Certified Local Government has already undertaken surveys of historic properties. By excluding the historic properties from the Neighborhood Target Review, the rest of the neighborhood review can be expedited for environmental clearance, while the historic property can be subjected to a separate environmental review including the required consultation process.

Flood Insurance:

The same Neighborhood Target Review area could then be compared to FEMA floodplain maps. Addresses within the target area that fall in a mapped 100 year flood zone would be identified in the review. In the project description, the grant recipient may exclude these special flood hazard properties from the target neighborhood review. The floodplain risks and lifelong costs associated with flood insurance should be considered prior to inclusion of these properties in a project. If any floodplain properties are to be purchased or rehabilitated, then property address, proof of purchase and maintenance of flood insurance documentation are required. As long as the activities being considered are outside of the floodway and limited to acquisition and minor rehab of single family homes (defined as 1-4 units per site), no additional floodplain management compliance is required. HUD financial assistance may not be used for floodway activities other than functionally dependent uses. Floodplain restoration and associated demolition of structures are considered functionally dependent uses. This same target area approach may apply to coastal zones, airport clear zones, prime farmland, and coastal barrier compliance.

Toxics and Hazards:

Toxics and hazards are another aspect that must be reviewed for compliance for acquisition and rehabilitation activities. For the purpose of a Target Neighborhood Review, an Environmental Data Registry (EDR) database report or its equivalent would need to be acquired for the target area and supplemented with field observations. These database searches identify any properties with the potential for Recognized Environmental Concerns (REC's) within a target radius. These reports are easy to obtain and relatively low in cost. If the review shows that the area is free of toxic spills and hazards, the review can proceed with no conditions. If there are properties identified within the area that are recognized hazards, the project description should exclude them. If acquisition of these properties is still desired, an individual site-specific review detailing the approved mitigation protocols will be required.

Summary

The Neighborhood Target Review approach described above is a useful tool to expedite environmental reviews for limited activities within a limited geographic area that has few environmental complications. This approach is recommended only when the grantee is able to procure environmental staff and/or consultants with knowledge and experience with historic

property surveys, area wide screening for toxics and hazards, and flood insurance. Any properties that are excluded from the project description due to complicating environmental issues may be funded with HUD funds; however, the property will be subject to a site-specific review.

APPENDIX 9

HP FACT SHEET #6:

WHEN TO DO ARCHAEOLOGICAL FIELD INVESTIGATIONS

HUD offers the following guidance on when to do professional archaeological field investigations. It is applicable to both Part 50 and Part 58 programs. It meets the "reasonable and good faith effort" requirement to identify historic properties, per 36 CFR § 600.4(b).

- Archaeological field investigations and related work should be approved only when HUD or the Responsible Entity (RE) is *persuaded* by authoritative sources of information that there is a "likely" (§ 600.4(b)(1)) presence of National Register-eligible or -listed properties within the project site and that the project may affect National Register resources.
- Authoritative sources of information include, but are not limited to, reports, studies, surveys, predictive models, National Register data, and/or tribal input. These data must demonstrate that the project site contains or is reasonably adjacent to archaeological sites that meet National Register criteria.
- The SHPO/THPO and other qualified persons may provide such information. The information should indicate a close and direct relationship between such previously discovered sites and the project site. It should also indicate the likelihood that National Register resources will be affected. Archaeological field investigation in such cases would help determine the presence of resources on site and provide the basis for establishing their significance and the project effects on them.
- For urban areas, it is reasonable to consider the project site relationship only to such off-project archeological sites that are immediately adjacent to the project site.
- In the case of projects for new developments in areas not previously developed or disturbed, a somewhat more distant site or ring of sites may be considered as relevant to the project site. But still, in this scenario, HUD or the RE *must be persuaded* that documented archaeology sites outside the APE are reasonably close enough to the project site to establish a likely relationship and so warrant a professional field investigation on the project site.
- HUD or the RE should generally not honor a request for a professional archaeological field investigation without specific justification or solely on grounds that previous surveys have never been conducted in the area. HUD or the RE may turn down such requests as an unjustifiable public expense, particularly where private or non-federal lands are involved.

This guidance is supported further by the Advisory Council on Historic Preservation's 2007 *Policy Statement on Affordable Housing and Historic Preservation* (72 FR 7387-7389), Implementation Principle #8, that limits archaeological field investigations in certain situations.

Implementation Principle #8:

"Archaeological investigations *should be avoided* for affordable housing projects limited to rehabilitation and requiring minimal ground disturbance"
(*emphasis added*).

NEED ADDITIONAL HELP?

CONTACT YOUR LOCAL HUD ENVIRONMENTAL OFFICER.

Source: Office of Environment and Energy, Environmental Planning Division, GPD, May 2009