

# **NEIGHBORHOOD STABILIZATION PROGRAM SECTION 106 TOOLKIT:**

## **HOW TO COMPLY WITH HISTORIC PRESERVATION REQUIREMENTS**

The materials included in this toolkit are designed to help Responsible Entities comply with the historic preservation requirements of 36 CFR Part 800, "Protection of Historic Properties," that are linked to the use of the funds provided for in § 2301 of the Housing and Economic Recovery Act of 2008 (P.L. 110-289), a.k.a Neighborhood Stabilization Program.

Included in this packet are:

- 1) What triggers the Section 106 review process
- 2) A description of mandatory and invited consulting parties
- 3) Sample "No Historic Properties Affected" letter
- 4) Sample "Adverse Effect Notification" letter
- 5) Sample Preservation Covenant for Real Property Dispositions
- 6) Sample Programmatic Agreement (HOME Prototype, 1994)

All Federally funded programs, including the "Neighborhood Stabilization Program," are required by Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f) to take into account the effects of their actions on historic properties and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such actions.

A Section 106 "Programmatic Agreement" is the legally binding document (like a FONSI in NEPA) used to address adverse effects to historic properties for projects or programs that will have multiple undertakings or take several years to complete.

For additional information or assistance, contact your local HUD Environmental Officer at:  
<http://www.hud.gov/offices/cpd/environment/contact/localcontacts/>

# #1. Threshold for Historic Properties:

## Triggering Section 106 Review

When your project will alter environmental conditions or has the likelihood to effect historic properties, you will need to complete a Section 106 review prior to committing funds. The procedures and obligations for handling this review requirement can be found in the following sources:

- National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f)
- 36 CFR Part 800, "Protection of Historic Properties"
- 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities"

How do you determine which properties to consider? Here is the threshold for Historic Properties:

### 1. General Benchmark:

- Properties that are 50 years old or older. There could be exceptions.

### 2. "Historic properties" are defined as:

- Properties listed on or determined eligible for listing on the National Register of Historic Places (NRHP), including individual properties, those properties defined as "contributing resources" in a historic district, archaeological sites, and properties of significance to federally recognized Indian tribes and Native Hawaiian organizations.

### 3. NRHP Eligibility Criteria may be found at:

- 36 CFR 60.4, "Criteria for Evaluation"
- HP Fact Sheet #4

## #2. Mandatory and invited consulting parties

### Section 106 Consulting Parties

The Section 106 review process requires Responsible Entities (RE) to consult with various interested parties before making decisions that may adversely affect historic properties. Some consulting parties are mandatory; others are invited at the RE's discretion. The goal of this consultation requirement is for the RE to make an informed decision regarding historic properties.

Consulting parties:

#### A. Mandatory:

These parties **are required** to be signatories to a Memorandum of Agreement or Programmatic Agreement. The ACHP may or may not participate, based on criteria in Appendix A of 36 CFR Part 800.

- Responsible Entity ("agency official")
- Development partner(s)
- State or Tribal Historic Preservation Officer (SHPO/THPO)
- Federally recognized Indian tribes or Native Hawaiian organizations
- Advisory Council on Historic Preservation (ACHP)

#### B. Additional (as recognized by the RE):

Interested parties must express their interest in writing. The RE, in consultation with SHPO/THPO, may then consider whether or not to recognize them as consulting parties. Per 36 CFR 800.6(c)(2)(iv), "the refusal of any party invited to be a signatory...does not invalidate the...agreement." In other words, invited parties cannot hold up completion of the Section 106 process. The following is a general list of potential consulting parties.

- Applicants for HUD assistance
- National non-profit preservation group
- State-wide non-profit preservation group
- Local non-profit preservation group
- Local neighborhood or business groups
- Local, state, or tribal housing providers
- Members of the public

## # 3 Sample Correspondence

### SAMPLE “NO HISTORIC PROPERTIES AFFECTED” LETTER

[SHPO Address]

Dear Mr./Ms. \_\_\_\_\_,

In accordance with Section 106 of the National Historic Preservation Act and its implementing regulation, 36 CFR Part 800, we are providing for your review and concurrence information regarding the [project] of [Street Address, City, State, Zip], as part of the [RE Program in City, State].

Based on our research of [Local Government tax records, Planning & Zoning, SHPO records, etc.], performed in consultation with the consulting parties and SHPO staff, we have defined the area of potential effect as the boundaries of the individual lot. Records of the property confirm that it is less than fifty years old and is not located within a district listed on or determined eligible for the National Register of Historic Places.

Attached for your review are copies of relevant documents supporting our findings, along with photographs and a map showing the location of the property. This documentation should satisfy requirements set forth at §800.11(d).

Based on our research and consultation, we have reached a finding of “no historic properties affected.” In accordance with §800.4(d)(1)(i), your office has thirty days to object. Please respond within this timeframe, otherwise we will assume you have concurred with our finding. Should you concur, please sign on the line below and return a copy of this letter by fax or otherwise to [\_\_\_\_\_]. Thank you for your attention to this matter.

Sincerely,

\_\_\_\_\_

Concurrence: \_\_\_\_\_  
State Historic Preservation Officer

## #4 Sample Correspondence

### SAMPLE “ADVERSE EFFECT” NOTIFICATION TO ACHP

Ms. Charlene Vaughn,  
Advisory Council on Historic Preservation  
Old Post Office Building  
1100 Pennsylvania Avenue, NW, Suite 809  
Washington, D.C. 20004

Re: Notification of Adverse Effect Finding for [Project] in [City, State]

Dear Ms. Vaughn,

The [City of \_\_\_\_\_], in consultation with the [State Historic Preservation Office] (SHPO) and consulting parties, have reached a finding of “adverse effect” regarding the [RE Program in State].

In accordance with 36 CFR 800.6(a)(1), we are notifying you of this finding and ask that the Advisory Council determine its participation in the development of a Memorandum of Agreement (MOA) to resolve potential adverse effects to historic properties.

The purpose of this program is to demolish and redevelop single-family properties acquired through foreclosure. Through consultation with the SHPO and other parties, the [RE] has determined that many properties in its current inventory are subject to Section 106 review because they are at least 50 years old or may be located in eligible or listed National Register districts. We anticipate future additions to the inventory will also meet this criteria.

Attached for your review is previous correspondence with consulting parties that supports our finding of “adverse effect” and meets the documentation requirements noted at §800.11(e).

In accordance with §800.6(d)(1)(iii), your office has fifteen days to reply. Please respond within this timeframe, otherwise we will assume you do not want to participate in the development of this MOA. Thank you for your attention to this matter.

Sincerely,

[\_\_\_\_\_]

cc: [State Historic Preservation Officer]

## # 5 Sample Preservation Covenant for Real Property Dispositions

[Use only after legal review to ensure applicability and enforceability under State law.]

### SAMPLE PRESERVATION COVENANT

In consideration of the conveyance of certain [improved] real property, hereinafter referred to as [name of property], located in the [City of \_\_\_\_\_], County of \_\_\_\_\_, State of \_\_\_\_\_, which is more fully described as:

[insert legal description.]

[Name of property recipient] hereby covenants on behalf of [himself/herself/itself], [his/her/its] heirs, successors, and assigns at all times to [specify: Federal agency transferring the property, or SHPO, or other] to maintain and preserve [name all those exterior and interior features that qualify the property for inclusion in the National Register; these may be named within the body of the paragraph or included as an attachment] as follows:

1. [Name of recipient] shall preserve and maintain [name of property] in accordance with the recommended approaches in the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (National Park Service, 1983) [or specify other relevant standard, management plan, archeological treatment plan, etc., with full citation]. In order to preserve and enhance those qualities that make [name of property] eligible for inclusion in the National Register of Historic Places.

2. No [construction, alteration, remodeling/disturbance of the ground surface] or any other thing shall be undertaken or permitted to be undertaken on [name or property] which would affect the [structural] integrity or the [appearance/cultural use/archeological value] or [name of property] without the express prior written permission of [Federal agency transferring the property, or SHPO, or other] signed by a fully authorized representative thereof.

3. The [Federal agency transferring the property, or SHPO, or other] shall be permitted at all reasonable times to inspect [name of property] in order to ascertain if the above conditions are being observed.

4. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, [Federal agency transferring the property, or SHPO, or other] may, following reasonable notice to [name of recipient], institute suit to enjoin said violation or to require the restoration of [name of property]. The successful party shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorney's fees.

5. [Name of recipient] agrees that [Federal agency transferring the property, or SHPO, or other] may at its discretion, without prior notice to [name of

recipient], **convey and assign all or part of its rights and responsibilities contained herein to a third party.**

**6. This covenant is binding on [name of recipient], [his/her/its] heirs, successors, and assigns [in perpetuity/for X years from the date of this instrument]. Restrictions, stipulations and covenants contained herein shall be inserted by [name of recipient] verbatim or by express reference in any deed or other legal instrument by which [he/she/it] divests [himself/herself/itself] of either the fee simple title or any other lesser estate in [name of property] or any part thereof.**

**7. The failure of [Federal agency transferring the property, or SHPO, or other] to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.**

**The covenant shall be a binding servitude upon [name of property] and shall be deemed to run with the land. Execution of this covenant shall constitute conclusive evidence that [name of recipient] agrees to be bound by the foregoing conditions and restrictions and to perform to obligations herein set forth.**

(From ACHP's "Preparing Agreement Documents," page 31)

## # 6 Programmatic Agreement (PA)

### [Example—HOME Prototype PA, 1994]

PROTOTYPE  
PROGRAMMATIC AGREEMENT  
AMONG  
\*\*STATE HOUSING FINANCE AGENCY,  
\*\*STATE HISTORIC PRESERVATION OFFICER,  
and the  
ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
and the  
ADMINISTRATION OF THE HOME INVESTMENT PARTNERSHIP  
PROGRAM

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) proposes to allocate HOME Investment Partnership (HOME) funds to the \*\*State Housing agency (STATE) in accordance with the Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990 (Public Law 101-625, approved November 28, 1990); and,

WHEREAS, pursuant to 24 CFR Part 58, HUD has delegated the responsibility for compliance with the requirements of Section 106 of the National Historic Preservation Act to recipient State agencies and local Participating Jurisdictions receiving funds from the HOME Program; and,

WHEREAS, the STATE has determined that the implementation of the HOME Program may have an effect upon properties included in or eligible for inclusion in the National Register of historic Places (National Register) pursuant to Section 800.13 of the regulations, 36 CFR Part 800; implementing Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f; and

WHEREAS, the STATE, the Council, and the \*\*\*SHPO have determined that the STATE can more effectively fulfill its Section 106 review responsibilities for HOME Program activities if a programmatic approach is used to delegate Section 106 compliance responsibilities to the recipients of State HOME funds, when they agree to assume this responsibility, and to identify HOME Program activities which can be excluded from the Section 106 review because they have limited potential to adversely affect historic properties; and,

WHEREAS, the recipients of STATE will comply with the terms of this Programmatic Agreement on behalf of RECIPIENTS when it determines that the RECIPIENT lacks the in-house professional expertise or the funding to contract qualified professionals to fulfill the terms of the Agreement.

NOW, THEREFORE, the STATE, the \*\*\*SHPO, and the Council agree that the State administered HOME Program shall be administered in accordance with the following stipulations to satisfy the STATE's Section 106 responsibilities for all individual undertakings of the program.

*Source: Environmental Planning Division, Office of Environment and Energy, CPD, October 2008*

## STIPULATIONS

The STATE will ensure that the following measures are carried out:

### 1. ADMINISTRATION OF THE PA \*<sup>1</sup>

A. The STATE will employ or enter into a contract with qualified professionals that meet the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9) to carry out reviews related to their profess that are required under the terms of the Programmatic Agreement, as approved by the SHPO.

1. The STATE shall notify the SHPO annually whether it has employed or contracted with qualified professionals to carry out reviews under the terms of the Programmatic Agreement or whether it will require assistance from the SHPO. The curriculum vitae of qualified professionals and/or contractors shall be provided to the SHPO for review.

2. Should the STATE determine that it cannot employ or contract qualified

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1 An asterisk (\*) indicates those stipulations which are mandatory provisions of the HOME Programmatic Agreement for STATE administered programs. Professionals to carry out reviews pursuant to the Programmatic Agreement, the STATE shall consult with the SHPO to determine whether alternate administrative arrangements should be made to allow the STATE to complete the reviews required pursuant to this Programmatic Agreement. The STATE shall notify the Council in writing of any alternate administrative procedures approved by the SHPO.

### II. EXEMPT ACTIVITIES\*

A. If RECIPIENTS determine that HOME Program activities will involve properties less than fifty (50) years old or HOME Program activities are limited solely to those included in Appendix 1, no further review is required, including evaluation of the property for National Register eligibility,

### III. IDENTIFICATION AND EVALUATION OF HISTORIC PROPETIES\*

A. Identification of Historic Properties: RECIPIENTS shall consult with the SHPO to identify historic properties within the HOME PROGRAM activities' area of potential effect (APE) as set forth in 36 CFR Section 800.2(c). At a minimum, the RECIPIENTS shall review 1) the current listing of the National Register; 2) local or county surveys which have been approved by the SHPO; and, 3) State surveys. When the SHPO determines that additional information is required to adequately assess the presence of historic properties, the RECIPIENTS shall conduct surveys that are responsive to the nature of the undertaking. As appropriate, the focus of the identification surveys shall be on target areas rather than property-by-property.

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B. Evaluation of National Register Eligibility: If RECIPIENTS identify properties fifty (50) years or older within the APE or target areas which are not included on the National Register or local or county surveys, RECIPIENTS shall forward documentation regarding the history and architectural style of the properties and the applicability of the National Register criteria of eligibility to the properties to the SHPO for review.

1. The SHPO Shall notify RECIPIENTS whether it concurs or objects to the RECIPIENTS' determination of eligibility within 30-days following receipt of adequate documentation. If the SHPO fails to respond within 30-days, the SHPO will be deemed to concur with the RECIPIENTS' determination.

2. Should RECIPIENTS disagree with the SHPO'S findings regarding the eligibility of a property, RECIPIENTS shall obtain a formal determination of eligibility from the Keeper of the National Register in accordance with 36 CFR Section 800.4(c) and notify the SHPO accordingly.

C. RECIPIENTS may submit eligibility determinations for properties to the SHPO concurrently with proposed treatment plans to expedite the Section 106 review.

#### IV. TREATMENT OF HISTORIC PROPERTIES\*

A. Properties listed on the National Register, eligible for listing on the National Register, and which have been determined to meet the National Register criteria in accordance with Stipulation III. Shall be treated in accordance with Stipulations IV.B. through IV.E and VIII.

B. Rehabilitation: RECIPIENTS shall ensure that work write-ups or plans and specifications for all rehabilitation activities not listed as exempt in Appendix I. are developed in accordance with the recommended approaches in The Secretary of Interiors Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Standards). RECIPIENTS may use design guidelines, based upon the Standards and approved by the SHPO, in lieu of the Standards for target areas and neighborhood revitalization areas when the SHPO concurs with this approach. The STATE shall document all projects in which design guidelines were used in the annual report required in Stipulation XVI.

1. Prior to the initiation of rehabilitation activities, RECIPIENTS shall submit work write-ups or plans and specifications which evidence adherence to the Standards to the SHPO or qualified professionals for review and approval.

2. Should t he SHPO or qualified professionals recommend modifications to the work write-ups or plans and specifications to ensure that the project meets the Standards, RECIPIENTS shall make the appropriate modifications and submit revised work write-ups or plans to the SHPO or qualified professionals. Should RECIPIENTS

determine that they cannot make the modifications recommended by the SHPO or qualified professionals. Should RECIPIENTS determine that they cannot make the modifications recommended by the SHPO or qualified professionals to the Standards or SHPO approved design guidelines, RECIPIENTS shall consult further with the SHPO to develop a Standard Mitigation Measures Agreement in accordance with Stipulation IV.

3. When the proposed rehabilitation does not adhere to the Standards and the SHPO determines that the Standard Mitigation Measures are not applicable to the undertaking, RECIPIENTS shall consult further with the SHPO to develop a Standard Mitigation Measures Agreement in accordance with Stipulation IV.

C. Relocation of Historic and Contributing Buildings: RECIPIENTS shall consult with the SHPO prior to the approval of plans for the relocation of historic properties when historic properties are proposed for relocation as part of the implementation of a HOME project.

1. If a historic property proposed for relocation is a contributing element within a historic district listed on or eligible for listing on the National Register, RECIPIENTS shall make every effort to relocate the historic property within the same historic district.

RECIPIENTS shall forward documentation to the SHPO explaining why relocation is required; the basis for selection of the new site; the existence of archeological properties on the new site; and, summarizing alternatives to relocation which were considered. If the SHPO agrees that relocation of an historic property is appropriate, the RECIPIENT shall forward documentation regarding the location of the proposed new site to the SHPO for review and comment. If the SHPO objects to the proposed new site, RECIPIENTS shall consult further with the SHPO to evaluate alternate locations.

2. Upon approval of an alternate site by the SHPO, RECIPIENTS shall ensure that all historic properties are moved in accordance with the recommended approaches in Moving Historic Buildings (John Obed Curtis) by a professional mover who has the capability to move historic properties properly. A relocation plan shall be submitted to the qualified professional or SHPO for review and approval.

3. Should RECIPIENTS determine that they cannot identify an alternate site acceptable to the SHPO, RECIPIENTS shall consult with the SHPO to develop a Standard Mitigation Measures Agreement in accordance with Stipulation VI. If the SHPO determines that the Standard Mitigation Measures do not apply, RECIPIENTS shall notify the Council and initiate the consultation process set forth in 36 CFR Section 800.5(e).

D. Demolition: RECIPIENTS shall not proceed with the demolition of contributing buildings within an historic district or properties listed on or eligible for listing on the National Register until the procedures set forth in Stipulation D. are completed.

1. RECIPIENTS shall forward documentation to the SHPO for each historic property proposed for demolition, to include the reason for demolition, a recent structural analysis, a summary of alternatives considered, future plans for the site, the proposed mitigation plan, and the views of the public.
2. If the SHPO determines that the proposed demolition is the most feasible alternative, the SHPO shall develop a Standard Mitigation Measures Agreement in accordance with Stipulation VI.
3. If the SHPO determines that the Standard Mitigation Measures do not apply, RECIPIENTS shall notify the Council and initiate the consultation process set forth in 36 CFR Section 800.5(e).

E. New Construction: RECIPIENTS shall ensure that the design of new construction, infill construction, or additions to historic buildings is compatible with the historic qualities of the historic district or adjacent historic buildings in terms of size, scale, massing, design, color, features, and materials, and is responsive to the recommended approaches for new construction set forth in the Standards.

1. RECIPIENTS shall develop preliminary design plans in consultation with the SHPO. Final plans and specifications will be submitted to the SHPO for review and approval prior to the initiation of construction activities.
2. If the SHPO determines that the design of the new construction does not meet the Standards or would otherwise result in an adverse effect to historic properties, RECIPIENTS shall consult with the SHPO to modify the design or to develop a Standard Mitigation Measures Agreement in accordance with Stipulation VI.
3. If the SHPO determines that the Standard Mitigation Measures do not apply, the RECIPIENTS shall notify the Council and initiate the consultation process set forth in 36 CFR Section 800.5(e).

## V. NEIGHBORHOOD REVITALIZATION PROGRAMS #<sup>2</sup>

A. In lieu of case-by-case reviews, RECIPIENTS may consult with the SHPO to develop a comprehensive mitigation plan, to include design guidelines for rehabilitation, a demolition plan, to include design guidelines for rehabilitation, a demolition plan, a marketing plan, prototype for infill construction, etc., for the implementation of a neighborhood revitalization program within a target area which includes properties listed on or eligible for listing on the National Register. A copy of the neighborhood revitalization program and the proposed mitigation plan shall be submitted to the SHPO for review and approval.

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<sup>2</sup> A (#) indicates optional stipulations for the HOME Programmatic Agreement for STATE administered programs which may be included at the option of the STATE and SHPO.

Source: *Environmental Planning Division, Office of Environment and Energy, CPD, October 2008*

1. Upon approval of the mitigation plan by the SHPO, all activities implemented as part of the neighborhood revitalization program shall adhere to the terms of the approved mitigation plan.
2. RECIPIENTS shall submit semi-annual reports to the SHPO summarizing activities carried out in accordance with the approved mitigation plan and provide sample projects for review. Upon written request from the SHPO, RECIPIENTS shall provide access to project sites.
3. If the SHPO determines that the terms of the mitigation plan are not being met, RECIPIENTS shall submit future projects to the SHPO on case-by-case basis in accordance with Stipulations IV through VIII.

## VI. RESOLUTION OF ADVERSE EFFECTS #

A. If RECIPIENTS, in consultation with the SHPO, determine that a project meets the Criteria of Adverse Effect, RECIPIENTS shall consult with the SHPO to determine whether the historic properties should be treated in accordance with the Standard Mitigation Measures outlined in Appendix 2 or reviewed in accordance with 36 CFR Section 800.5(e).

- 1) RECIPIENTS shall submit background documentation to include, an analysis of alternatives, recent structural reports or assessments of conditions, cost estimates for rehabilitation, programmatic and economic considerations, and marketing studies.
- 2) If the SHPO determines that the proposed demolition is an acceptable loss or no prudent and feasible alternatives exist to implementing the undertaking without adverse effects or mitigating circumstances exists, the a SHPO and RECIPIENTS shall execute a Standard Mitigation Measures Agreement as outlined in Appendix 2.
- 3) Upon receipt of the Standard Mitigation Measures Agreement from the SHPO, RECIPIENTS shall sign the Agreement and return the original to the SHPO within 30-days following receipt. No further review of the undertaking is required by the Council.
- 4) If RECIPIENTS object to the terms of the Standard Mitigation Measures agreement, the Recipients shall notify the SHPO and initiate the consultation process set forth in 36 CFR Section 800.5(e).

B. RECIPIENTS and the SHPO shall not execute Standard Mitigation Measures Agreements when one of the following circumstances exist.

- 1) The SHPO determines that the Standard Mitigation Measures do not apply to an undertaking.
- 2) RECIPIENTS object to the Standard Mitigation Measures proposed by the SHPO.
- 3) The SHPO fails to respond within 30-days.
- 4) The undertaking will adversely affect a National Historic Landmark.
- 5) The public objects.

*Source: Environmental Planning Division, Office of Environment and Energy, CPD, October 2008*

6) Human remains are present within the area of potential effect.

## VII. EMERGENCY UNDERTAKINGS#

A. When emergency demolition is required for historic properties associated with HOME Program activities, RECIPIENTS shall allow the SHPO five (5) business days to respond, if conditions allow. The existence of an emergency situation shall be based upon the need to eliminate an imminent threat to the health and safety of residents as identified by local or County building inspectors, fire department officials, or other local or County officials.

1. RECIPIENTS shall forward documentation to the SHPO for review immediately upon notification that an emergency exists. Documentation should include a) the nature of the emergency; b) the historic property involved; c) the current condition of the building, including photographs; and, d) the time-frame allowed by local officials to respond to, or correct, the emergency situation.

2.) RECIPIENTS shall ensure that any mitigation measures recommended by the SHPO are implemented, if feasible.

## VIII TREATMENT OF ARCHEOLOGICAL SITES\*

A. RECIPIENTS shall notify the SHPO when ground disturbing activities, to include excavation for footings and foundations; installation of utilities such as sewer, water, storm drains, electrical, gas, leach lines, and septic tanks, are proposed as part of an undertaking.

1. RECIPIENTS shall request the SHPO's opinion regarding the potential effect of such activities on archeological properties prior to initiation of project activities. If the SHPO can document that there is a high probability for the presence of significant archeological sites or cultural remains within the project area, RECIPIENTS shall contract qualified archaeologists to conduct archeological surveys. RECIPIENTS shall forward the scope of work for the archeological survey to the SHPO for review and approval.

2. If RECIPIENTS and the SHPO determine that there is the potential for archeological properties listed on or eligible for listing on the National Register to be affected by the undertaking, the SHPO shall advise RECIPIENTS of the appropriate treatment for the archeological properties. If RECIPIENTS cannot avoid the archeological properties or preserve them in-situ, the RECIPIENTS shall develop a data recovery plan that is consistent with the Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 CFR 44734-37) and take into account the Council's publication,

“Treatment of Archeological Properties,” and subsequent revisions made by the Council and appropriate State guidelines. RECIPIENTS shall submit treatment plans to the SHPO for review and approval and shall ensure that the approved plan is implemented by qualified archaeologists.

#### IX. REVIEW OF MODIFICATIONS TO APPROVED ACTIVITIES #

A. RECIPIENTS shall notify the SHPO of any modifications to approved work write-ups, plans and specifications, and Standard Mitigation Measures Agreements previously approved by the SHPO under the terms of this Programmatic Agreement.

1. If the SHPO determines that modifications to a previously reviewed project will not adversely affect historic properties, RECIPIENTS may proceed with the undertaking.
2. If the SHPO determines that modifications to a project or the inclusion of additional properties will adversely affect historic properties, RECIPIENTS and the SHPO shall determine the appropriateness of using a Standard Mitigation Measures Agreement in accordance with Stipulation VI. If the SHPO determines that it is appropriate to use a Standard Mitigation Measures Agreement, RECIPIENTS shall notify the Council and initiate the consultation wet for the in 36 CFR Section 800.5(e).

#### X. DISCOVERY #

A. RECIPIENTS shall notify the SHPO immediately if unidentified historic properties are discovered during the implementation of project activities previously approved under the terms of this Programmatic Agreement or unexpected affects to known historic properties occur.

1. RECIPIENTS shall forward appropriate documentation to the SHPO, to include the location of the property, photographs, and any relevant descriptive information, so that the SHPO can evaluate the properties in accordance with Stipulation III.B.
2. If RECIPIENTS, in consultation with the SHPO, determine that the historic properties are eligible for listing on the National Register and that the historic properties cannot be avoided during implementation project activities, RECIPIENTS shall consult with the SHPO to develop an appropriate treatment plan or Standard Mitigation Measures agreement in accordance with Stipulations IV. or VI.
3. The SHPO will forward comments to RECIPIENTS within five (5) business days after receipt of adequate documentation or within a time frame mutually acceptable to the SHPO and RECIPIENTS.

## XI. PUBLIC INVOLVEMENT \*

A. RECIPIENTS, in consultation with the SHPO, shall determine the public interest in HOME PROGRAM activities which have the potential to affect historic properties by informing the public about historic properties while meeting its public participation requirements as set forth in the regulations for the HOME program and in complying with 24 CFR Part 58. RECIPIENTS shall notify the SHPO of the public interest in any project activities covered under the terms of this Programmatic Agreement.

B. RECIPIENTS or the SHPO may invite interested persons to participate as consulting parties in the consultation process for adverse effects in accordance with 36 CFR Section 800.5(e)(1).

C. At any time during the implementation of the measures stipulated in this Programmatic Agreement, should the public raise an objection pertaining to the treatment of an historic property, RECIPIENTS shall notify the SHPO and take the objection into account. RECIPIENTS, and the SHPO, or COUNCIL, when requested by the objector, shall consult to resolve the objection. RECIPIENTS are not required to cease work while objections are being reviewed.

## XII. ADMINISTRATIVE COORDINATION \*

A. The SHPO shall provide comments within thirty (30)-days for reviews required under the terms of this Programmatic Agreement with the exception of emergency undertakings. In the event that the SHPO fails to comment within the thirty (30)-day time period, the RECIPIENTS can assume that the SHPO concurs.

B. The STATE shall develop management procedures for the implementation of terms of this Programmatic Agreement within 60-days following execution of the Agreement. Such procedures can include the use of Certified local Governments to assist RECIPIENTS in complying with the terms of the Programmatic Agreement. A copy of the procedures will be submitted to the SHPO for approval.

C. The STATE shall conduct periodic training workshops for RECIPIENTS to review the requirement of this Programmatic Agreement. The first training program will be scheduled within 90 days following execution of this Agreement. The SHPO may assist with such training, if so requested, and provide RECIPIENTS with guidance materials related to implementation of the terms of the Programmatic Agreement.

D. The STATE shall ensure that RECIPIENTS, or the STATE when it has acted on behalf of a RECIPIENT, document program activities which involve historic properties and were subject to the terms of this Programmatic Agreement in individual project or environmental files. Each project file shall include at a minimum, 1) documentation why one of the exemptions from review is applicable; 2) comments from qualified professionals or the SHPO regarding the National Register eligibility of the property; 3) proposed treatment of historic properties; 4) before and after photographs; 5) work write-ups; and 6) the date the project was completed. This information shall be available for review by the SHPO or Council following reasonable notice.

E. The STATE shall conduct periodic monitoring visits of RECIPIENT'S project sites to ensure compliance with actions, plans, documents, and agreements approved by the SHPO or Council pursuant to this Programmatic Agreement.

*Source: Environmental Planning Division, Office of Environment and Energy, CPD, October 2008*

### XIII. COORDINATION WITH OTHER HUD AND FEDERAL PROGRAMS #

A. A City or county CDBG entitlement community or a Small City that has executed a CDBG Programmatic Agreement with the SHPO and Council that covers the administration of its CDBG and HOME Programs shall use its existing Programmatic Agreement in lieu of this Agreement when it receives HOME funds from the STATE.

B. RECIPIENTS may coordinate with HUD and other Federal agencies in the review of activities covered by the terms of this Programmatic Agreement when HUD or the Federal agencies have or may allocate funds to be used in conjunction with HOME Program activities. HUD or Federal agency officials shall notify the SHPO early during project planning of their intent is to coordinate with RECIPIENTS to comply with the terms of this Programmatic Agreement for an undertaking.

### XIV. DISPUTE RESOLUTION #

A. Should the Council or the SHPO object within the time frames outlined in this Programmatic Agreement to any plans, specifications, or actions provided for review pursuant to this Programmatic Agreement, the RECIPIENTS will consult further with the SHPO to seek resolution. If RECIPIENTS shall forward all documentation relevant to the dispute to the Council.

1. Within thirty (30) calendar days after receipt of all pertinent documentation, the Council will provide the STATE with recommendations or comments in accordance with 36 CFR Section 800.6(b). The STATE will take into account the Council's recommendations or formal comments in reaching a final decision regarding the dispute.

2. Any Council comment provided to the STATE in response to such a request will be taken into account by the STATE in accordance with 36 CFR Section 800.6(c)(2) with reference to the subject of the dispute. Any recommendation or comment provided by the Council will be interpreted to pertain only to the subject of the dispute, and the responsibility of the STATE to carry out all actions under this agreement that are not the subject of the dispute will remain unchanged.

### XV. MONITORING \*

The SHPO and the Council may monitor any activities carried out pursuant to this Agreement, and the Council will review any activities if requested. The STATE will cooperate with the SHPO and Council should they request to monitor or to review project files for activities at specific project sites.

## XVI. REPORTING \*

A. The STATE shall provide the SHPO and Council with an annual report on or before July 31 of each year summarizing activities carried out under the terms of this Programmatic Agreement. The first report will be submitted by the STATE on July 31, 1995, and subsequent reports each July thereafter.

1. Annual reports shall include a list of RECIPIENTS whose program activities involved historic properties, a summary of the status of Standard Mitigation Measures Agreements executed with the SHPO, and the views of the STATE regarding the effectiveness of the Programmatic Agreement.

2. The signatories to the Programmatic Agreements shall review this information to determine what, if any, amendments are necessary.

B. The STATE shall ensure that the annual report is made available for public inspection, that potentially interested members of the public are made aware of its availability, and that interested members of the public are invited to provide comments to the SHPO and Council as well as the STATE.

## XVIII. AMENDMENTS \*

A. Any party to this Programmatic Agreement may request that it be amended or modified, whereupon the STATE, SHPO, and Council will consult in accordance with 36 CFR Section 800.13 to consider such revisions.

B. Any resulting amendments or addenda shall be developed and executed among the STATE, SHPO, and Council in the same manner as the original Programmatic Agreement.

## XIX. TERMINATION \*

Any party to this Programmatic Agreement may terminate the Agreement by providing thirty (30) calendar days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

## XX. FAILURE TO COMPLY WITH AGREEMENT \*

In the event that RECIPIENTS do not carry out the terms of this Programmatic Agreement, the STATE will comply with 36 CFR Sections 800.4 through 800.6 with regard to each individual HOME project for which the STATE has awarded funding to a RECIPIENT.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that the STATE has satisfied its Section 106 responsibilities for all individual undertakings of the State administered HOME Investment Partnership Program.

## ADVISORY COUNCIL ON HISTORIC PRESERVATION

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By:

Date:

\*\* STATE AGENCY

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By:

Date:

\*\* STATE HISTORIC PRESERVATION OFFICER

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By:

Date:

## APPENDIX I

The following project activities do not require review by the SHPO or Council pursuant to Stipulation II.A.

1. Demolition and rehabilitation on a non-historic property, except when a proposed addition to an existing property may impact a surrounding historic district.
2. Repair, replacement and installation of the following systems provided that such work does not affect the exterior or require the installation of new ducts through the interior:
  - a) electrical work;
  - b) plumbing pipes and fixtures;
  - c) heating system improvements;
  - d) installation of fire detectors;
  - e) ventilation systems; and
  - f) bathroom improvements where work is contained within the existing bathroom.
3. Repainting of exterior surfaces provided that destructive surface preparation treatments, including, but not limited to water blasting, sandblasting, and chemical cleaning are not used.
4. Repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or other trim when the repair or replacement is done in-kind to closely match existing material and form.
5. Caulking, weatherstripping, reglazing, and repainting of windows.
6. Repair, replacement or installation of storm windows (exterior, interior, metal, or wood) provided they match the shape and size of historic windows and that the meeting rail coincides with that of the historic window. Color should match trim.
7. Installation of new window jambs or jamb liners.
8. Repair or replacement of awnings when work is done in-kind to closely match existing materials and form.
9. Roof repair or replacement of historic roofing with material which closely matches the existing material and form. Cement asbestos shingles may be replaced with asphalt based shingles.
10. Repair, replacement, or installation of gutters and downspouts.
11. Installation of insulation in ceilings, attic, and basement spaces provided is installed with appropriate vapor barriers, and within wall cavities provided that decorative interior plaster, woodwork, or exterior siding is not altered or damaged.
12. Replacement of suspended ceiling tile.
13. Replacement of non-significant flat stock trim.

*Source: Environmental Planning Division, Office of Environment and Energy, CPD, October 2008*

14. Repair or replacement of existing roads, driveways, sidewalks, and curbs provided that work is done in-kind to closely match existing materials and form, and there are only minimal changes in dimension or configuration of these features.
15. Treatment of interior surfaces (floors, walls, ceilings, woodwork) when work is limited to repainting, refinishing, re-papering, replacing sheet rock with sheetrock, replacing failing asbestos plaster with plaster sheetrock, or laying carpet or sheet flooring.
16. Interior lead paint abatement when it is limited to washing, scraping and repainting, wallpapering, and chemical stripping of lead-painted surfaces. Exterior lead paint abatement that includes scraping and repainting of exterior wood and masonry surfaces.
17. Repair or replacement of fencing when work is done in-kind to closely match existing material and form.
18. Repair or replacement of water, gas, storm, and sewer lines if it occurs within the dimensions of the original trench.
19. Acquisition of properties which is limited the legal transfer of ownership with no physical improvements proposed.

## APPENDIX 2

### STANDARD MITIGATION MEASURES FOR ADVERSE EFFECTS

A. RECIPIENTS and the SHPO may develop and execute an agreement that includes one more of the following Standard Mitigation Measures, as modified by the SHPO, for undertakings not listed in Stipulation VI.B. when the SHPO deems it appropriate. The Council will not be a party to these agreements, however, RECIPIENTS must submit a copy to the STATE and Council for their records within 30-days after the Agreement is executed between the RECIPIENT AND SHPO.

1. RECIPIENTS shall ensure that the historic property is recorded prior to its demolition, alteration, or relocation in accordance with the Historic American Buildings Survey (HABS) standards or a Recordation Plan developed by the SHPO. At a minimum this Plan will establish recordation methods and standards. The SHPO shall identify appropriate archive, other than the Library of Congress, for the deposit of recordation materials and RECIPIENTS shall be responsible for submitting such materials. RECIPIENTS and the SHPO may mutually agree to waive the recordation requirement if the affected historic properties will be substantially repaired in accordance with the Standards.

2. RECIPIENTS, in consultation with the SHPO, shall identify appropriate parties to receive salvaged architectural features. RECIPIENTS shall ensure that significant architectural features are salvaged prior to the initiation of demolition activities and properly stored and curated. When feasible, salvaged architectural features shall be reused in other preservation projects, if appropriate.

3. RECIPIENTS shall ensure that the treatment of historic properties or the design of new buildings which the SHPO has determined cannot feasibly meet the Standards or SHPO approved design guidelines is carried out in accordance with the construction documents or work write-ups reviewed and approved by the SHPO.

4. RECIPIENTS shall ensure that the marketing plan proposed by the SHPO is implemented for a mutually agreed upon period prior to the demolition or relocation of historic properties. RECIPIENTS shall review all purchase offers in consultation with the SHPO. If a successful purchaser is selected, RECIPIENTS shall include preservation covenants approved by the SHPO in the transfer deed. If no successful purchaser is identified, RECIPIENTS may either convey the property without covenants or proceed with the demolition or relocation after the historic properties have been recorded pursuant to HABS standards or SHPO guidelines.