
TECHNICAL HANDBOOK FOR
ENVIRONMENTAL HEALTH AND ENGINEERING
VOLUME IV - REAL PROPERTY MANAGEMENT
PART 35 - DISPOSAL

CHAPTER 35-4 DISPOSAL OF HISTORIC PROPERTY

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35-4.1 INTRODUCTION

A. PURPOSE

The purpose of this chapter is to provide guidance on disposal of Government-owned historic property. The process and requirements applicable for all real property disposals are contained in the Technical Handbook for Environmental Health and Engineering, Volume IV, Part 35, Chapter 35-1, Disposal of Real Property. This chapter provides additional guidance for the disposal of property that has historic significance, whether through transfer or demolition.

Addressed in this chapter is disposal of property that:

1. Is listed in the National Register of Historic Places;

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2. Is part of a National Historic District or National Landmark; or
3. Has been determined to be eligible for listing in the National Register of Historic Places.

The phrase "historic property" used in this chapter will refer to any property meeting at least one of the criteria listed above.

There are three types of property transfers available to the Indian Health Service (IHS):

1. Direct transfer to another government agency, typically to the Bureau of Indian Affairs (BIA);
2. Transfer to a Tribe or Tribal organization; or
3. Excessing through the General Services Administration (GSA) for transfer to another Government agency or sale.

Surplus Government-owned property that cannot be transferred may be a candidate for demolition after National Historic Preservation Act (NHPA) consultation and appropriate documentation.

B. OVERVIEW

The NHPA, Executive Order 13287, and associated laws, regulations and guidance relative to historic and cultural resources require that the IHS actively advance the protection, enhancement, and use of its Federally-owned historic or culturally-significant properties. As such, all disposal actions relating to historic or culturally-significant properties shall comply with these laws, regulations, and Executive Order.

C. LAWS AND EXECUTIVE ORDERS

National Historic Preservation Act of 1966 (NHPA). Section 106 of the Act requires all Federal agencies to take into account the effects of their actions on historic properties, and provide the Advisory Council on Historic Preservation (ACHP) with a reasonable opportunity to comment on those actions and the manner in which Federal agencies are taking historic properties into account in their decisions. Section 110 of the Act requires Federal agencies to identify, evaluate, and nominate properties that are eligible for listing on the National Register of Historic Places. The IHS must consider historic preservation prior to an undertaking, and take necessary actions to address any adverse effects on the historic significance of the property.

Historic Sites, Buildings, and Antiquities Act of 1935. The Act declared the preservation of historic sites, buildings, and objects to be a National policy. It authorized the Secretary of Interior to obtain information, survey, conduct research, maintain, and preserve

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sites with archaeological significance. This Act also established the National Park Service Advisory Council to advise on sites.

Public Law 93-638, Indian Self-Determination and Educational Assistance Act. For purposes of this part, the Act authorizes the IHS, in certain situations, to acquire and/or transfer title of excess Federal real property to Indian Tribes or Tribal organizations for use in the delivery of services pursuant to a self-determination contract or compact.

Executive Order 13287, Preserve America. This order emphasizes the partnerships with State and local governments, private entities and Indian Tribes. It also enhanced the stewardship and property management of historic properties by Federal agencies.

Standard clauses and requirements addressing environmental and other aspects of property transfer are included in the IHS Environmental Review Manual and the Technical Handbook for Environmental Health and Engineering, Volume IV, Part 35, Chapter 35-1, Disposal of Real Property.

D. HISTORIC PRESERVATION COMPLIANCE

Disposal of property with historic significance from Federal ownership without taking steps to avoid, minimize, or mitigate the effects constitutes an adverse effect under the NHPA as stated in:

36 CFR 800 *Protection of Historic Properties*, §800.5, "Assessment of Adverse Effects," which states:

(a)(2)(vii) "Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance."

An adverse effect may be avoided in one of two ways:

- Do not transfer of the property; or
- Develop and execute an agreement (or covenant) between the Agency and the new owner, in consultation with the appropriate State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) and, if applicable, consultation with the Advisory Council on Historic Preservation (ACHP).

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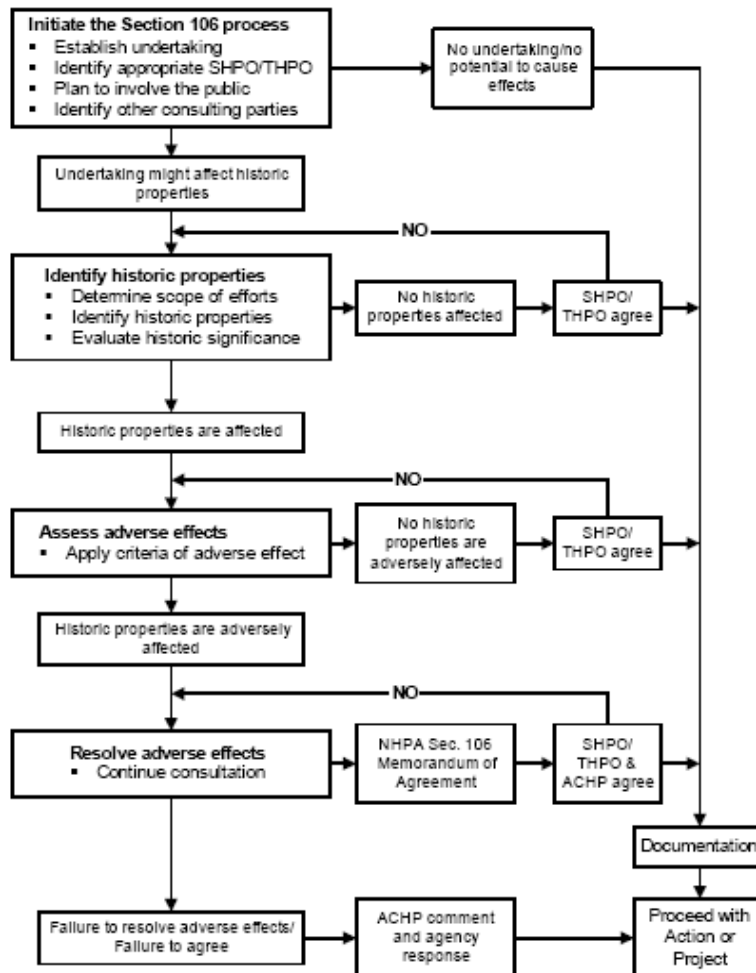
Adverse Effects may be minimized in consultation with SHPO, THPO, and other interested parties by developing and executing a Memorandum of Agreement (MOA) to outline steps necessary to minimize the adverse effects. An example of minimizing an adverse effect is moving a house with historic significance from Government property to private land.

Adverse Effects may be mitigated in consultation with SHPO, THPO, and other interested parties, by developing a Memorandum of Agreement to outline steps necessary to mitigate the adverse effects. A step that can be taken to mitigate an adverse effect is to perform a Historic American Buildings Survey (HABS) and, if appropriate, a Historic American Engineering Record (HAER) to document the property prior to transfer from Federal ownership. The HABS documents historic architecture and cultural landscapes. The HAER documents engineering works and industrial sites.

The flow chart in Figure 1, "Process for Historic Preservation Compliance Actions," summarizes the process for historic preservation compliance actions:

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Figure 1 Process for Historic Preservation Compliance Actions



35-4.2 REQUIREMENTS

A. PRE-DISPOSAL

Prior to the disposal of an historic property, the IHS must:

- Perform all the necessary historic assessments in consultation with SHPO, THPO and others.
- Prepare and implement a historic preservation plan in accordance with the Secretary of Interior's Standards for the Treatment of Historic Properties.
- Review and assess the planned undertaking, determine if the action might adversely impact the historic property. Use the IHS Environmental Review Manual as a guide.

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- Maintain the property in accordance with the preservation plan until the disposal is executed and/or the historic documentation has been prepared, accepted, and included in the permanent archive.

B. CONSULTATION WITH OTHERS

The NHPA requires an agency to consult with interested parties prior to taking any action that would have an adverse effect on a property that is listed in the National Register of Historic Places, that is part of a National Historic District or National Landmark, or that has been determined to be eligible for listing in the National Register of Historic Places. Consultation with SHPO, THPO, Tribes with a cultural affiliation for the geographic area, and interested private entities is required.

The NHPA consultation requirements would also apply to the preparation of any MOA, covenant, etc. that would be completed as part of the disposal of property. The SHPO or THPO is offered an opportunity to review and concur with these documents. Consultation is also required if the chosen method of transfer includes utilizing a HABS/HAER to document the property.

Additionally, the Advisory Council on Historic Preservation (ACHP) should be given the opportunity to comment on the proposed transfer, even if all interested parties are in agreement to the terms and conditions of the transfer. Refer to Section 106 NHPA: "*...agency shall afford the Advisory Council on Historic Preservation ... a reasonable opportunity to comment with regard to such undertaking.*"

C. MEMORANDUM OF AGREEMENT

A Memorandum of Agreement (MOA) between the IHS, the SHPO/THPO, and other parties as necessary is prepared that outlines the steps to be taken prior to disposal to avoid, minimize or mitigate any adverse effect of the transfer of the property.

The MOA sets forth the measures agreed to the IHS and the consulting parties to avoid, minimize, or mitigate adverse effects of an undertaking on historic properties. The MOA is signed by IHS, ACHP (if participating), and SHPO/THPO. The Indian tribe affected by the undertaking and other consulting parties may also sign the MOA. Once filed with the ACHP and implemented, the MOA evidences the IHS compliance with NFPA Section 106. The MOA addresses all of an undertaking's parts. Failure to comply with the conditions set forth in the MOA, means that IHS must re-comply with Section 106 requirements and that additional action is necessary to avoid or mitigate adverse effects.

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Exhibit 1, "MOA Example" provides an example MOA. Stipulations in a MOA may include:

- Measures to avoid, minimize, or mitigate adverse effects on historic properties;
- Duration of the agreement;
- Post-review discoveries (discovery without prior planning);
- Monitoring and reporting;
- Dispute resolution;
- Amendments and non-compliance; and
- Termination.

D. HISTORIC AMERICAN BUILDINGS SURVEY/HISTORIC AMERICAN ENGINEERING RECORD

If the property is to be demolished or if a covenant is not sufficient for the long-term preservation of a transferred property, preparing HABS/HAER documentation may be used to mitigate adverse effects. Under the Mitigative Documentation Program, Federal agencies are required to produce documentation to HABS/HAER standards on buildings, structures, sites, and objects that are listed in or eligible for listing in the National Register of Historic Places and that are threatened with demolition or substantial alteration by projects with Federal involvement.

In order to ensure compliance with law and policy governing historic properties, The Secretary of Interior's Guidelines for Architectural and Engineering Documentation should be used. The guidelines are prepared under the authority of section 101(g) and section 110 of the NHPA. The HABS/HAER documentation is usually in the form of measured drawings, photographs, and written data by a person or firm with the appropriate professional qualifications and in accordance with the Secretary of Interior and National Park Service's guidelines. Any HABS or HAER documentation that does not use the Guidelines for Architectural and Engineering Documentation as a basis, must demonstrate compliance with appropriate law and policy.

There are three levels of documentation quality; determining which is applicable in specific situations, is based on the level of historic significance of the property. The National Park Service Regional Office will determine the level of documentation required and inform the responsible agency regarding the requirements. Generally, Level I documentation is required for nationally significant buildings and structures, defined as National Historic Landmarks. Level II or Level III documentation is required of buildings with less historic significance.

The HABS/HAER promotes documentation of the highest quality and employs the principle of independent verification of all factual

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information. Engaging an Architectural/Engineering firm or qualified historic preservation individuals with extensive experience in HABS/HAER documentation is necessary. The Service Unit or Area Office should not attempt to perform this function. The National Park Service has issued Professional Qualification Standards as part of the Secretary of Interior's Guidelines for Architectural and Engineering Documentation, which are published in the Code of Federal Regulations (36 CFR 61). However, the Service Unit or Area Office should be well versed in the requirements of the HABS/HAER documentation process to monitor the progress of the surveys and ensure a desired outcome.

In order to complete an accurate and complete HABS and/or HAER, the Service Unit and/or Area office should:

1. In consultation with SHPO/THPO, submit historic assessments and preservation documentation to the Regional Office of the National Park Service requesting a determination of the level of documentation required for the HABS/HAER survey.
2. Enter into a Memorandum of Agreement with the appropriate SHPO or THPO that outlines the steps to be taken in the documentation process.
3. Employ a qualified firm or individuals to prepare the HABS/HAER documentation to the level specified by the National Park Service.
4. Perform the HABS/HAER surveys in accordance with the Secretary of Interior's Guidelines for Architectural and Engineering Documentation.
5. Submit the documentation to the regional coordinator of the National Park Service for review. If accepted, the documentation is transmitted to the HABS/HAER collections at the Library of Congress.

Once the documentation has been accepted by the National Park Service, the transfer or demolition of the property may proceed.

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E. COVENANTS

A covenant is a promise contained in a contract or agreement. A covenant is a legally-binding agreement that attaches to the deed, or is included in the deed, and is carried forth to any future owners. A covenant attached to the transfer of a property with historic significance must clearly define all requirements necessary to ensure preservation of the historic aspects of the property in perpetuity. Use Exhibit 2 "Covenant Clauses" and Exhibit 3 "Covenant Example" as guides when drafting a covenant.

F. DOCUMENTATION

The IHS should make full disclosure on all aspects of the property that is to be transferred. The transfer documents must include clauses stating that the property recipient has received copies of all available historic preservation records that includes:

1. Historic Assessments and all correspondence documents to and from SHPO, THPO, the ACHP or other interested parties.
2. If the property is listed in the National Register, include registration number and supporting documentation.
3. If the property is part of a Historic District or National Landmark, include the District or Landmark number and supporting documentation.
4. Historic Preservation Plan.

35-4.3 DISPOSAL METHODS

A. TRANSFER TO A TRIBE OR TRIBAL ORGANIZATION

The IHS has the authority to transfer properties to Indian Tribes or Tribal organizations under PL 93-638 in connection with a self-determination contract or compact. Because the property will no longer be controlled by the Federal Government, this is considered an adverse effect under the NHPA. For this reason, the IHS must consult with the appropriate SHPO, THPO, and other interested parties on the proposed transfer. A Memorandum of Agreement between the IHS and SHPO/THPO is prepared that outlines the steps to be taken prior to transfer to avoid, minimize or mitigate any adverse effect of the transfer of the property.

Because ownership would transfer from Federal control, legally enforceable restrictions or conditions may also be included in the transfer document (i.e., quitclaim deed) to ensure long-term

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preservation of the property's historic significance. This is accomplished as a covenant that the IHS develops through consultation with the affected parties. If the use of a covenant is not an agreeable solution to the SHPO, THPO, or the accepting Tribal entity, it may be necessary to perform a HABS/HAER documentation survey of the property as a way of mitigating the adverse effect. Ideally through the consultation process, the IHS resolves the adverse effects on the properties to the satisfaction of the SHPO/THPO and affected parties prior to transfer of the property.

B. TRANSFER TO ANOTHER GOVERNMENT AGENCY

The authorities, requirements, and process of transferring property to another Government agency are covered in the Technical Handbook for Environmental Health and Engineering, Chapter 35-1, Disposal Authorities. The actual transfer action is usually accomplishing by excessing the property through the GSA, with the exception for some property transfers to the BIA.

Trust properties may not be transferred to other government agencies with the exception of transfer to the BIA.

In transferring property between agencies, the property retains Federal ownership, consequently there is no adverse effect. The accepting agency assumes title and all responsibility for the property from the time of transfer forward into perpetuity. This includes any requirement for compliance with historic preservation laws.

The transfer must include full disclosure. The IHS must provide, to the accepting agency, all documentation regarding the property including but not limited to, historic surveys, preservation plans, identification of archaeological or culturally significant assets, etc.

C. EXCESSING THROUGH GSA

Properties located on trust land are not available for excessing through the GSA and may not be transferred to other Federal agencies (with the exception of the BIA) and are not available for sale.

Properties that are no longer needed to support the IHS mission should be disposed of. The NHPA and EO 13287 require any agency of the Federal Government to evaluate reuse options for historic properties by either the agency or the local community first. The IHS must comply with this requirement before excessing the property through GSA. If no alternative use for the property can be found and if the property is fee-simple, the IHS can proceed with disposal through GSA. The GSA will offer the excess property to other Government agencies.

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If no other Government agency has a use for the property, GSA may dispose of the property as Government surplus (e.g., sale).

The GSA typically takes the lead in consultations with the SHPO/THPO to adopt mitigation measures and incorporating the same in a MOA as part of the sale process. Prior to the actual transfer or sale of the property, the GSA will notify the Secretary of the Interior in accordance with NHPA, Section 110(e), who has 90 days to respond to the sale or transfer. Refer to 16 U.S.C. 470h-2(e), Transfer of Federal historic properties: *"The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than 90 days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced."*

The property remains under IHS control until GSA completes the disposal transaction. If GSA is unable to dispose of the property, then the IHS retains control of the property.

D. DEMOLITION

Surplus Government-owned property that cannot be transferred may be a candidate for demolition after National Historic Preservation Act (NHPA) consultation and appropriate documentation as applicable. Prior to considering demolition of a historic property, the IHS must explore alternative uses for the property, and prior to demolition, the IHS must:

- Take into consideration what effects the demolition will have on the historic property, and take steps to mitigate that effect.
- Consult with the appropriate SHPO, THPO and other interested parties on the proposed demolition. A MOA between the IHS and SHPO/THPO is prepared that outlines the steps to be taken prior to demolition to avoid, minimize or mitigate any adverse effect of the demolition of the property.
- Complete the HABS/HAER documentation, if agreed to through consultation process, in accordance with the Secretary of Interior's Guidelines for Architectural and Engineering Documentation.

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35-4.4 RESPONSIBILITIES

A. DIVISION OF FACILITIES OPERATIONS, HEADQUARTERS

As the delegated IHS Historic Preservation Coordinator, the Director, Division of Facilities Operations (DFO) coordinates with the Department of Health and Human Services, Area Offices, the IHS NEPA Coordinator, and other parties in the management and oversight of IHS historic or culturally-significant properties.

B. AREA OFFICES

Each Area Office is responsible for:

- Ensuring that the disposal, whether through transfer or demolition, of historic properties is in compliance with laws, regulations, Executive Orders, etc.
- Consulting with the SHPO, THPO, affected and interested parties, etc., regarding any planned disposal action.
- Funding and preparing the appropriate documentation for the planned disposal action.
- Submitting draft MOAs, covenant, HABS/HAER documentation, etc. to DFO for review.
- Ensuring the accuracy and completeness of documentation.

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Exhibit 1 MOA Example

[The following is an example of a Memorandum of Agreement between the IHS, a SHPO and a Tribe in the transfer of a property that is eligible to be listed on the National Register of Historic Places. In this instance the Tribe does not recognize, or otherwise desire to perpetuate the historic significance of the building. The MOA developed between the IHS and the SHPO calls for HABS documentation as a method of mitigating the adverse effect of transferring the property from Federal control. The level of documentation set by the National Park Service calls for Level II documentation. Level I is the most stringent type of documentation.]

MEMORANDUM OF AGREEMENT
BETWEEN THE INDIAN HEALTH SERVICE, _____ AREA OFFICE
AND THE _____ STATE HISTORIC PRESERVATION OFFICER
REGARDING THE TRANSFER TO THE _____ TRIBE
INDIAN HEALTH SERVICE BUILDING No. 00999.
LOCATED IN THE VILLAGE OF _____, ON THE _____ INDIAN
RESERVATION IN THE STATE OF _____.

WHEREAS the _____ Area Indian Health Service (IHS) currently owns Building No. 00999, located in the Village of _____, on the _____, Indian Reservation, _____; and

WHEREAS the _____ Area, IHS proposes to transfer the ownership of Building No. 00999 to the _____ Tribe; and

WHEREAS the _____ Tribe has agreed to accept the transfer of this building; and

WHEREAS the _____ Area, IHS has consulted with the State Preservation Office (SHPO) in accordance with Section 106, of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470, and determined that Building 00999 is eligible for inclusion in the National Register of Historic Places; and

WHEREAS the transfer of ownership of Building No. 00999 constitutes an adverse effect on a historic property in accordance with the NHPA implementing regulations, 36 CFR § 800.5(a)(2)(vii); and

WHEREAS the SHPO has, in a letter dated _____, concurred with this finding of adverse effect and agreed to the execution of a memorandum of agreement (MOA) without the involvement of the Advisory Council for Historic Preservation (ACHP); and

WHEREAS the _____ Area, IHS has informed the ACHP its desire to execute the MOA without the ACHP involvement; and

WHEREAS the _____ Area, IHS has invited the _____ Tribe to participate in this consultation and concur with this MOA;

NOW THEREFORE, the _____ Area, IHS and the SHPO agree that prior to the transfer of Building No. 00999, the _____ Area, IHS will

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ensure that the following stipulations are implemented, in order to take into account the adverse effect that will occur as a result of this proposed undertaking.

STIPULATIONS

The _____ Area, IHS will ensure that the following measures are carried out:

A. Building Documentation

1. Documentation of Building No. 00999 using standards developed by the Historic American Building Survey for Level II recording, including scaled sketch drawings printed on archival paper showing building plan and elevations, and an architectural details determined appropriate by _____ Area, IHS staff or its consulting architectural historian.
2. A written history of the building.
3. Digital photography printed on archival paper showing all four building elevations and any distinguishing architectural features as determined by the _____ Area, IHS and its consulting architectural historian.
4. Copies of all documentation will be provided to the SHPO and the _____ Tribe upon project completion.

B. Resolving Objectives

1. Should any party to the MOA object to an action carried out with respect to the transfer of Building 00999 or implementation of this MOA, the _____ Area, IHS shall consult with the objecting party to resolve the objection. If, after initiating such consultation, the parties fail to reach agreement, the _____ Area, IHS shall forward all documentation relevant to the objection to the ACHP, including _____ Area, IHS proposed response to the objection. With thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
 - (a) Advise the _____ Area, IHS that the ACHP concurs with the _____ Area, IHS decision, whereupon the _____ Area, IHS will respond to the objection accordingly;
 - (b) Provide the _____ Area, IHS with recommendations, which the _____ Area, IHS shall take into account

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in reaching a final decision regarding its response to the objection; or

(c) Notify the _____ Area that the objection will be referred for comment pursuant to 36 CFR § 800.7(c)(4) and § 110(1) of the NHPA.

2. Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the _____ Area, IHS may assume the ACHP concurrence in its proposed response to the objection.
3. The _____ Area, IHS shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the _____ Area, IHS responsibility to ensure that all responsibilities under this MOA that are not the subjects of the objection are carried out shall remain unchanged.
4. At any time during implementation of the measures stipulated in this MOA, should an objection pertaining to this MOA be raised by a member of the public, the _____ Area, IHS shall notify the parties to this MOA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this MOA to resolve the objection.

C. Amendments

1. Any party to this MOA may propose to the _____ Area, IHS that the MOA be amended, whereupon the _____ Area, IHS shall consult with the other parties to this MOA to consider such and amendment. 36 CFR § 800.6(c)(7) shall govern the execution of any such amendment.

D. Termination

1. If the _____ Area, IHS determines that it cannot ensure implementation of the terms of this MOA, or the SHPO or ACHP determines that the MOA is not being properly implemented, the _____ Area, IHS, the SHPO, or the ACHP may propose to the other parties to this MOA that it be terminated.
2. The party proposing to terminate this MOA shall so notify all parties to this MOA, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternative to termination.

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3. Should such consultation fail and the MOA be terminated, the _____ Area shall either.
 - (a) Consult in accordance with 36 CFR § 800.6 to develop a new MOA; or
 - (b) Request the comments of the ACHP pursuant to CFR § 800.7.

4. If the terms of this MOA have not been implemented by 20xx, this MOA shall be considered null and void and the Area, IHS, if it chooses to continue with its transfer of Building 00999, shall re-execute an MOA pursuant to 36 CFR § 800.

Execution of this MOA and implementation of its terms is evidence that the _____ Area, IHS has afforded the ACHP an opportunity to comment on the transfer of Building 00999 out of Federal ownership and to the _____ Tribe, and that the _____ Area, IHS has taken into account the effects of this undertaking on historic properties.

SIGNED:

Indian Health Service, _____ Area Office

By: _____ Date: _____

State Historic Preservation Officer, _____.

By: _____ Date: _____

CONCUR:

The _____ Tribe

By: _____ Date: _____

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Exhibit 2 Covenant Clauses

[The following is a list of items that may be included in a covenant. Each property is unique and covenants should be tailored as appropriate. If it doesn't apply, leave it out. Include others as necessary.]

1. The parties involved in the transfer.
2. A statement that all parties recognize the historic significance of the property.
3. A statement as to who will administer the covenant. In transferring a property to private entities through GSA, it is advantageous to find a local historic preservation group or society to administer the covenant.

Transfers to a Tribe or Tribal organization cannot utilize an off-reservation entity without the consent of the Tribe or Tribal organization's governing body. The covenant administrator would likely come from within the Tribe or Tribal organization. It may be possible to appoint the THPO as the administrator. The enforcement authority is the Tribal governing body through the Tribal court system.

4. A brief description of what constitutes significance of this property.
5. A statement that the property will be continuously maintained to the most current version of the Secretary of Interior's Standards for the Treatment of Historic Properties.
6. Include language that would allow demolition of the property if the condition of the property were to deteriorate beyond reasonable repair, or if it no longer met Tribal governmental needs. The demolition would only be allowed if the assessments and documentation are performed as prescribed through the ACHP standards and guidelines. This would include consultation with SHPO/THPO and other interested entities. It would also include an Historic American Building Survey (HABS) or Historic American Engineering Record (HAER) if appropriate.
7. Include language that will address any violation to the covenant, who will take what action. For example if the historic significance of a property is altered or damaged through negligence, the covenant Administrator can request the property be restored to its condition, prior to the damage.
8. A statement that the costs of historic preservation shall be borne solely by the new owner. Nothing in this agreement shall prohibit the new owner or Tribe from seeking financial assistance from

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any source available to them.

9. A statement prohibiting any alteration to the property without concurrence from the SHPO/THPO and written permission of the covenant's administrator.

10. A statement prohibiting any addition to the property without concurrence from the SHPO/THPO and written permission from the covenant's administrator.

11. If interior sections or aspects of a building are considered to have historic significance include a statement and brief description of the significance aspects. Again, anything that alters or impacts the historic significance of the interior is prohibited without concurrence from SHPO/THPO and written permission from the covenant's administrator.

12. If there are any fixtures that have been identified as being of historic significance, such as murals or other items that may have artistic value, their preservation should be addressed in the covenant.

13. If a property has historic significance associated with the surrounding buildings, district, or if the significance comes from the "feel" of the setting, then the covenant should include language that prohibits alteration or additions to the surrounding properties without written permission from the appropriate SHPO/THPO and covenant administrator.

14. If the surrounding landscape is considered significant to the historic property, then language should be included outlining what is significant and is to be preserved.

There are exceptions that should be included that allows the removal of landscaping necessary for the protection of the general public, for prevention of disease or for the protection of the historic property.

15. If the property includes miscellaneous structures that are significant, or enhance the significance of the property, and they are to be maintained as contributing to the historic property, they need to be addressed. This would include things like rock retaining walls, fencing or flagstone walkways. It could also include such items as sidewalks.

16. Where applicable include language that allows routine maintenance without a lengthy approval process. For example: Alteration of the landscaping is prohibited. However, the performance of routine grass mowing, tree trimming, watering, fertilizing and other necessary aspects of landscape care are encouraged and do not need the

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permission of the covenant administrator. A separate Memorandum of Agreement (MOA) may be developed between the new owner and the SHPO/THPO addressing routine operation and maintenance procedures.

17. If the colors of the exterior of a building are considered to be significant and cannot be changed include a clause in the covenant that allows minor or routine touch-up with a pre-approved paint (both type and color).

18. Provide a time frame for response from SHPO/THPO and the covenant administrator. For example: If the person in charge of maintaining the building needed to replace a door that could no longer function as needed, for instance if it could no longer be locked, and the door was listed as part of the historic character of the building. The maintenance person must provide a proposal to the SHPO/THPO and covenant administrator to replace the door. There needs to be a set amount of time for SHPO/THPO and the administrator to respond, (45 days). If there is no response the door replacement can proceed as proposed.

19. Language should be included that the covenant administrator can only prohibit proposed alterations on the basis of the Secretary of Interior's Standards for the Treatment of Historic Properties.

20. Language must be included that grants the covenant administrator the right to enter the property for the purpose of monitoring covenant compliance. Also, the enforcing authority must be granted access to the property for the purpose of ensuring historic preservation.

21. If the property is to be accessible to other persons or groups it should be stated in the covenant.

22. If the new owner of the property is required to carry insurance on the property it should be noted.

23. If the property contains any certain hazards that have not been abated prior to transfer they need to be noted. For example if removal of the exterior lead-based paint would significantly alter the historic aspects of the property, the property may be transferred with the hazard remaining intact to preserve its historic significance. The covenant should include language that attests to the fact that all parties are aware of the hazard and a plan is in place to manage the hazard.

24. If the covenant administrator is unable to fulfill the duties, language should be included to transfer those responsibilities to another entity. If the Tribal Historic Preservation Officer were appointed as the covenant administrator, and the Tribal Historic Preservation Office were dissolved, then the responsibilities for the

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historic prevention would fall to the Tribal Council.

25. A clause should be included that addresses what happens if the surrounding conditions change so dramatically that the historic significance of the property is no longer applicable. It may necessitate the extinguishment of the covenant. Such an extinguishment must have the concurrence of the appropriate SHPO or THPO.

26. Original documents are often considered historic, if preserving the documents is to be part of the covenant add a clause that would allow for the preservation of the original drawings or other documents. Address any archival standards that are to be used for preservation.

27. Finally, a statement that this covenant and its restrictions as set forth shall run in perpetuity.

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Exhibit 3 Covenant Example

[Most of the transfers of historic properties from the IHS would be to a Tribe or Tribal organization. If the Tribe or Tribal organization accepting transfer of the property is desirous of perpetuating the historic significance of the property, the following example of a covenant could be used as an instrument to ensure historic preservation and avoid the adverse effect of transferring control from a Federal agency. All covenants are to be prepared in consultation with the SHPO/THPO and other interested parties. All clauses are negotiable.]

COVENANT

WHEREAS, the PHS Hospital Complex and associated acreage located at 1 Agency Circle, New Hope Village in Westerly County, in the State of _____, on the _____ Indian Reservation, herein referred to as the Property, is property of recognized historic, cultural and architectural significance and is individually listed in the National Register of Historic Places (2003ST000026); and a part of the New Hope Village Historic District (2001ST00004); and

WHEREAS, the Indian Health Service (IHS) and the _____ Tribe, hereafter referred to as the Tribe, both desire that the historic Property be preserved for the enjoyment and edification of future generations; and

WHEREAS, The IHS and the Tribe both desire that the Property shall no longer be under Federal control; and

WHEREAS, the Tribe will acquire certain rights and responsibilities pursuant to historic preservation agreements that will ensure that structures located within the _____ Reservation of recognized historic and architectural significance are preserved and maintained for the benefit of future generations; and

NOW THEREFORE, the IHS and Tribe do hereby agree that the Property shall permanently remain subject to the following agreement, easements, covenants and restrictions:

1. These covenants shall be administered by _____ as appointed by the _____ Tribal Council, known henceforth as the Administrator, his/her successor as assigned; the Administrator shall be the sole party entitled to administer these covenants. In the event that the Administrator is unable to fulfill the requirements of the right and interests in these easements, covenants, and conditions subject to such duties and obligations which it assumed, then hereby the organization of responsibility shall be made to the Tribal Council or their designated appointee which shall then be the sole party entitled to administer those covenants.

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2. This covenant is legally enforceable through the _____ *Tribal Court System*. The Administrator and/or members of the *Tribal Council* may initiate proceeding for any direct violations of the terms and conditions in this agreement.

3. The Tribe agrees to continuously maintain, repair, and administer the Property herein described in accordance with the Secretary of Interior's *Standards for the Treatment of Historic Properties* so as to preserve the historical integrity of features, materials, appearances workmanship and environment of the Property. Maintenance shall be continuously provided. Said standards are attached by means of the IHS-produced and implemented historic preservation plan and are hereto and incorporated in these covenants by reference.

4. No alteration and no physical or structural change and no changes in the color, material or surfacing shall be made to the exterior of the Property without the prior written approval of the Administrator. When repair becomes necessary every effort shall be made to maintain the Property in its original color, material and/or surfacing as outlined in the preservation plan.

5. No addition or additional structure shall be constructed or permitted to be built upon the Property unless the plans and exterior designs for such structure or addition have been approved in advance in writing by the Administrator and concurrence is received from the SHPO or THPO as appropriate. The Administrator in reviewing the plans and designs for any addition or additional structure shall consider the following criteria; Exterior building materials; height, fenestration; roof shapes, forms and material; surface textures; expression of architectural detailing; scale; relationship of any additions to the main structure; general form and proportion of structures; orientation to street; setback; spacing of buildings, defined as the distance between adjacent buildings; lot coverage; use of local or regional architectural tradition; and effect on archaeological resources. Contemporary designs for additions or additional structures shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, color, material and character of the Property and its environment.

6. The Tribe and the Administrator hereby agree that the interior architectural features as described in the attached historic assessment are elements which contribute to the architectural significance of the Property. No removal, relocation, or alteration of the features mentioned shall be made without the prior written approval of the Administrator and concurrence received from the SHPO or THPO as appropriate.

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7. The Tribe and the Administrator hereby agree that the murals on the interior walls of the main entry to the hospital have historic artistic value. Preservation requirements for the murals are outlined in the preservation plan. No removal, alteration or cleaning of the murals is allowed without the written approval of the Administrator and concurrence received from the SHPO or THPO as appropriate. Additionally, no alteration to the main entry, or any construction activities in the main entry may be initiated without an approved plan for ensuring protection of the murals.

8. The Tribe and the Administrator hereby agree that the PHS Hospital Complex location on a small rise constitutes a prominent place in the surrounding community. Preservation of the prominence is desired. The Tribe agrees to limit any construction activity in the immediate vicinity of the Property that would alter or adversely change the sight lines from the surrounding community.

9. The Tribe and the Administrator hereby agree that the mature landscaping on the entire complex add to the "feel" of the Property. No living trees greater than 12-inches in diameter at a point 4-feet above the ground shall be removed from the Property without the express written approval of the Administrator and concurrence received from the SHPO or THPO as appropriate, unless immediate removal is necessary for the protection of any persons coming onto the Property or of the general public; for the prevention or treatment of disease; or for the protection and safety of the Property itself, or other permanent improvements on the Property. Any tree of the aforementioned size which must be removed shall be replaced within a reasonable time by a new tree of a substantially similar species. If so requested, the Administrator may approve the use of an alternate species. Routine landscape maintenance such as mowing the grass, trimming trees and bushes, fertilizing and other activities required to maintain a safe, pleasant condition of the grounds is encouraged and does not require the approval of the Administrator.

10. The Tribe and the Administrator agree that the circular driveway and the inlaid brick sidewalks are contributing fixtures to the Property and are to be preserved as outlined in the preservation plan. The driveway surface has been replaced throughout the years and holds no historic significance, however the circular shape is significant to the Property. No alteration to the width or shape of the driveway may be made without the written approval of the administrator, and concurrence received from the SHPO or THPO as appropriate. Routine maintenance activity such as regarding, resurfacing, sealing or even snow removal do not need approval from the Administrator. The inlaid brick sidewalks are to be preserved. No alteration to the sidewalks, no removal of bricks is allowed without the written permission of the Administrator. When it is necessary to replace damaged bricks to ensure safety, only bricks that meet the requirements set forth in the

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preservation plan may be used.

11. The Tribe and the Administrator agree that the ramada to the north of the entry is a contributing historic feature of the Property. No removal or alteration of the original timbers is permitted without the written permission of the administrator. The timbers are to be maintained in there natural condition. No paint may be applied. If a timber has become so weathered that it creates a threat to the public it may need to be replaced. Only timber of the type and size similar to the existing timbers may be used. Replacement of timber must have the written approval of the Administrator.

12. The Tribe and Administrator hereby agree that maintenance of the Property is of primary importance, and a lengthy approval process may have an adverse impact to preservation. The Administrator shall approve/disprove any submitted proposal within 45 calendar days of receipt. Failure of the Administrator to approval or disprove a proposal within 45 days will automatically constitute acceptance of the proposal.

13. The Tribe and Administrator hereby agree that the Administrator can only prohibit proposed alterations to the Property on the basis of the Secretary of Interior's *Standards for Historic Preservation*.

14. The Tribe and Administrator agree that periodic inspections to the Property are required in order to ensure the Property's historic significance is being preserved. The Administrator shall be granted access to the Property for the purpose of conducting inspections, and monitoring the covenant compliance. The Tribal Council, being the enforcement authority also is hereby granted access to the property for the purpose of ensuring covenant compliance.

15. The Tribe and the Administrator hereby agree that the historic significance of the Property is such that other persons can greatly benefit from access to the property. The buildings shall be made available to researchers, scholars and educational groups interested in historic preservation. They shall be granted access to the interior of the building by special appointment at various times and intervals during each year.

It is hereby agreed that this covenant and its restrictions as set forth shall run in perpetuity