

AMENDMENT TO
"PROGRAMMATIC AGREEMENT
AMONG
THE UNITED STATES DEPARTMENT OF ENERGY,
MARYLAND ENERGY ADMINISTRATION,
AND THE MARYLAND STATE HISTORIC PRESERVATION OFFICE
REGARDING
MARYLAND ENERGY ADMINISTRATION GRANT PROGRAMS"

TO INCLUDE
MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

WHEREAS, on April 29, 2010 The U.S. Department of Energy (DOE), Maryland Energy Administration (MEA), and Maryland State Historic Preservation Office entered into a Programmatic Agreement (PA) to establish an alternate procedure for DOE to achieve compliance with Section 106 of the National Historic Preservation Act (Section 106) for undertakings funded by the American Recovery and Reinvestment Act (ARRA) and implemented by MEA; and

WHEREAS, Maryland Department of Housing and Community Development (DHCD) will also receive ARRA funding from DOE; and

WHEREAS, it is desirable that the PA be amended to establish an alternate procedure for DOE to achieve compliance with Section 106 for undertakings funded by ARRA and implemented by DHCD; and

WHEREAS, Stipulation VIII of the PA allows for amendment of the PA in the same manner as the original PA was executed;

NOW THEREFORE, the Signatories to the PA and DHCD agree to amend the PA to establish the procedure set forth in the Stipulations below for DHCD programs assisted by DOE, and the Signatories agree that this Amendment has no bearing on the existing procedure established by the PA for MEA programs or the responsibilities of any Signatory as they relate to MEA programs.

STIPULATIONS

U.S. Department of Energy (DOE) and Maryland Department of Housing and Community Development (DHCD) shall ensure that weatherization, rehabilitation, energy efficiency retrofits, and renewable energy projects that use financial assistance from DOE (Undertakings) are implemented in accordance with the following Stipulations in order to take into account the possible effects of the Undertakings on historic properties.

I. Roles and Responsibilities:

- A. DOE shall be responsible for providing oversight of this Amendment, participating in the resolution of disputes between the MD SHPO and DHCD, and providing technical assistance and guidance as needed.
- B. DHCD shall maintain the services of a qualified professional (QP), meeting *The Secretary of the Interior's Professional Qualifications* (36 CFR Part 61, Appendix A) for Architectural History or Historic Architecture, who will advise other DHCD employees about the sensitive treatment of historic properties and implement the alternate Section 106 procedure established by this Amendment.

- C. DHCD shall be responsible for consulting with Consulting Parties, participating as required in Section 106 reviews in a timely manner, preparing documentation for the MD SHPO and DOE, and maintaining records on Undertakings.
- D. DHCD shall ensure Undertakings not exempted from consultation under Stipulations II.A to II.C of this Amendment are submitted to the MD SHPO for review in accordance with this Amendment.
- E. DHCD shall ensure that the provisions of this Amendment apply to its sub-awards and recipients.
- F. The MD SHPO shall be responsible for reviewing project documentation and participating in consultation as set forth in this Amendment.

II. Review Process:

DHCD may choose to follow the alternate Section 106 procedure set forth in this Stipulation for any Undertaking implemented during the duration of the PA. For any Undertaking, DHCD or DOE may also choose to follow the standard Section 106 review process, submitting each individual Undertaking to the MD SHPO for review and comment pursuant to 36 CFR Part 800.

- A. Undertakings limited to the activities listed in Amendment Exhibit I are unlikely to adversely affect historic properties and do not require any additional consultation pursuant to Section 106.
- B. For Undertakings not exempted from MD SHPO review by Stipulation II.A of this Amendment, the QP, or other DHCD employee(s) in close consultation with the QP, shall review each proposed Undertaking, and the Undertaking is exempt from MD SHPO review if DHCD determines that both of the following are true:
 - 1. the project area contains no buildings, structures, or significant landscape features that are more than 45 years old, and
 - 2. no part of the project area is recorded in the Maryland Inventory of Historic Properties (MIHP) for buildings, structures, archeology, or any other reason.
- C. For Undertakings not exempted from MD SHPO review by Stipulations II.A or II.B of this Amendment, the QP personally will review the Undertaking, and the Undertaking is exempt from MD SHPO review if either of the following are true:
 - 1. the project site is recorded in the MIHP and there is a MD SHPO Determination of Eligibility form documenting that the project site is not eligible for listing in the National Register of Historic Places (National Register); or
 - 2. the QP determines that the project conforms to *The Secretary of the Interior's Standards for the Treatment of Historic Properties* and is limited to activities listed in Amendment Exhibits I and II.
- D. If the Undertaking is not exempt from MD SHPO review by Stipulations II.A to II.C of this Amendment, the QP will submit a completed MD SHPO Project Review Form, including all of the attachments listed in Section D of the MD SHPO Project Review Form, to the MD SHPO.
 - 1. If the MD SHPO responds that the project area is not eligible for listing in the National Register, then the Section 106 review is complete and no additional consultation is necessary.
 - 2. If the MD SHPO responds that the Undertaking will have "no adverse effect" on historic properties, then the Section 106 review is complete and no additional consultation is necessary.

3. If the MD SHPO responds that the Undertaking will or may adversely affect historic properties, then the QP shall consult with the project proponents and, if an alternative is developed that will avoid adverse effects, submit the revised Undertaking to the MD SHPO for review and comment.
 4. If the MD SHPO does not respond within sixty (60) days, then DHCD may assume the MD SHPO agrees with the determination of the QP that either the project area is not eligible for listing in the National Register or the Undertaking conforms to *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (36 CFR Part 68, July 12, 1995 *Federal Register*), and no additional consultation is necessary.
- III. Resolution of Adverse Effects: Should DOE decide to proceed with any Undertaking that will or may adversely affect a property that is eligible for listing in the National Register, consultation for that Undertaking pursuant to Section 106 shall follow 36 CFR 800.6, and the adverse effects of the Undertaking shall be resolved pursuant to a memorandum of agreement signed by DOE, DHCD, the MD SHPO, and any other consulting or concurring parties.
- IV. Coordination with the Maryland Historical Trust Act of 1985: The MD SHPO agrees that the fulfillment of the terms of this Amendment will satisfy the responsibilities of any Maryland state agency under the requirements of the Maryland Historical Trust Act of 1985, as amended, State Finance and Procurement Article 5A-325 and 5A-326 of the Annotated Code of Maryland, for those Undertakings that require licensing, permitting and/or funding actions from Maryland agencies.
- V. Reporting and Monitoring
- A. During the duration of the PA, DHCD shall maintain records of all Undertakings exempted from MD SHPO review under Stipulations II.A to II.C of this Amendment. By January 30th of each year for the duration of the PA, DHCD shall provide the MD SHPO with an annual summary the Undertakings exempted from review under Stipulations II.A to II.C of this Amendment for the preceding calendar year.
 - B. DOE, the ACHP, and the MD SHPO may monitor any Undertakings carried out under the PA, including Undertakings carried out under this Amendment.
- VI. Public and Consulting Party Involvement
- A. DHCD shall make records of all Undertakings performed under this Amendment available to the public.
 - B. DHCD shall notify the MD SHPO and DOE if it is notified of public interest in any Undertakings covered by this Amendment.
- VII. Dispute Resolution: Should any Signatory to the PA or this Amendment, or any member of the public, object to any actions performed pursuant to the PA or this Amendment, DHCD shall notify DOE and the MD SHPO of the objection and follow the guidance of DOE to ensure compliance with Section 106.
- VIII. Amendment: Any Signatory to this Amendment may propose future amendments to the PA. No proposed amendment to the PA shall be valid unless signed by all of the Signatories to this Amendment.
- IX. Termination: This Amendment may be terminated for cause by any Signatory to this Amendment, and termination of this Amendment shall have no effect on the duties and procedures related to MEA set forth in the original PA.

- X. Duration: This Amendment shall take effect on the date of last signature and remain in force until the expiration of the PA on April 29, 2013.

Signatories:

U.S. DEPARTMENT OF ENERGY

By: Tobias Russell Date: 15 Sept. 2010
Tobias Russell
Claire Broide-Johnson, Acting Program Manager
Office of Energy Efficiency and Renewable Energy
Office of Weatherization and Intergovernmental Programs

MARYLAND ENERGY ADMINISTRATION

By: Malcom Wolf Date: 11/5/10
Malcom Wolf, Director

MARYLAND STATE HISTORIC PRESERVATION OFFICE

By: J. Rodney Little Date: 8-19-10
J. Rodney Little
Director \ State Historic Preservation Officer

MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

By: Clarence Snuggs Date: 2/22/11
Clarence J. Snuggs, Deputy Secretary

**Amendment Exhibit I
Undertakings Not Requiring MD SHPO Review
Pursuant to Stipulation II.A.**

- 1. Exterior weatherization and efficiency upgrades:**
 - A. Caulking, weather-stripping, and other air-infiltration control measures on windows, doors, and thresholds.
 - B. Blown-in insulation where no holes are drilled through exterior siding.
 - C. Removable film on windows, solar screens, and removable window louvers.
 - D. Reflective coatings on flat roofs.
 - E. Repair of minor roof and wall leaks prior to insulating attics or walls.
 - F. Rainwater catches and/or gray water systems.

- 2. Interior weatherization and efficiency upgrades:**
 - A. Roll insulation in walls, floors, ceilings, attics, crawl spaces, ducts, and foundations.
 - B. Blown-in insulation where no holes are drilled through exterior siding.
 - C. Plumbing work, including replacement or installation of water heaters.
 - D. Electrical work, including improving lamp efficiency.
 - E. Sealing air leaks using weather stripping, door sweeps, and caulking and sealing major air leaks associated with bypasses, ducts, air conditioning units, etc.
 - F. Adding adjustable speed drives such as fans on air handling units, cooling tower fans, and pumps.
 - G. Install insulation on water heater tanks and pipes.
 - H. Install waste heat recovery devices, including desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment.
 - I. Repair or replace electric motors and motor controls like variable speed drives.
 - J. Incorporate lighting technologies such as dimmable ballasts, day lighting controls, and occupant controlled dimming.
 - K. Convert incandescent lighting to fluorescent.
 - L. Add reflectors, LED exit signs, efficient HID fixtures, and occupancy (motion) sensors.
 - M. Replace refrigerators and other appliances.
 - N. Installing fire, smoke or carbon dioxide detectors / alarms.
 - O. Install band joist insulation.

- 3. Work on heating and cooling systems:**
 - A. Clean, tune, repair or replace heating systems, including furnaces, oilers, heat pumps, vented space heaters, and wood stoves.
 - B. Clean, tune repair or replace cooling systems, including central air conditioners, window air conditioners, heat pumps, and evaporative coolers.
 - C. Install insulation on ducts and heating pipes.
 - D. Conduct other efficiency improvements on heating and cooling systems, including replacing standing pilot lights with electronic ignition devices and installing vent dampers.
 - E. Modify duct and pipe systems so heating and cooling systems operate efficiently and effectively, including adding return ducts, replace diffusers and registers, replace air filters, install thermostatic radiator controls on steam and hot water heating systems.
 - F. Install programmable thermostats, outdoor reset controls, UL listed energy management systems or building automation systems and other HVAC control systems.
 - G. Repair or replace vent systems on fossil-fuel-fired heating systems and water heaters to ensure that combustion gasses draft safely to outside.
 - H. Install mechanical ventilation to ensure adequate indoor air quality if house is air-sealed to building tightness limit.

- I. Replacement or installation of HVAC equipment including furnaces, hot water tanks, pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, heat exchangers, plumbing, electrical, controls, ducting.
 - J. Adding or replacing existing building controls systems including HVAC control systems and the replacement of building-wide pneumatic controls with digital controls, thermostats, dampers, and other individual sensors.
4. **General efficiency and repair measures:**
- A. Energy audits and feasibility studies.
 - B. Water conservation measures -- like low flow faucets, toilets, shower heads, urinals -- and distribution device controls.
 - C. Repairing or replacing driveways, parking areas, and walkways.
 - D. New installation of non-hard wired devices including photo-controls, occupancy sensors, carbon dioxide, thermostats, humidity, light meters and other building control sensors.
 - E. Electric base load measures not affecting the exterior of the building.
 - F. Compact fluorescent light bulbs.
 - G. Energy efficient light fixtures, including ballasts.
 - H. LED light fixtures and exit signs.
 - I. Painting over previously painted exterior surfaces.
 - J. Installation or replacement of downspout extensions.
 - K. Repairing or upgrading electrical or plumbing systems.
 - L. Building cleaning.
 - M. New metering devices.

Amendment Appendix Exhibit II
Undertakings Not Requiring MD SHPO Review if Determined
by the QP to conform to *The Secretary of the Interior's Standards for the Treatment of Historic Properties*
Pursuant to Stipulation II.C.2

1. **Exterior weatherization and efficiency upgrades:**
 - A. Installation of storm windows or doors and installation of screen doors.
 - B. Repair of windows, doors, and door frames.
 - C. Replacement of non-historic windows, doors, and door frames.
 - D. Replacement of historic windows, doors, and door frames when they are deteriorated beyond repair and the replacement features conform to the Standards.
 - E. White Roofs, Cool Roofs, Green Roofs, Sod or Grass Roofs.
 - F. Repair or replacement of exterior siding.
 - G. Roof replacement.

2. **Clean Energy projects:**
 - A. Install solar water heating systems on non-prominent locations.
 - B. Solar systems (including photovoltaic and solar thermal) on non-prominent locations.
 - C. Wind system at non-prominent locations.
 - D. Geothermal systems at properties not recorded in the MIHP.

3. **General efficiency and repair measures:**
 - A. Excavating to gain access to existing underground utilities to repair or replace them, provided that the work is performed consistent with previous conditions and the project area is not recorded in the MIHP.
 - B. Lead-based paint abatement.
 - C. Repairing masonry, including re-pointing and rebuilding chimneys.
 - D. Installing vents (such as ridge vents, roof vents, bath and kitchen vents, crawl space and foundation vents, soffit and frieze board vents, or combustion appliance flues).