

**PROGRAMMATIC AGREEMENT
AMONG
THE UNITED STATES DEPARTMENT OF ENERGY, THE NEW MEXICO ENERGY,
MINERALS AND NATURAL RESOURCES DEPARTMENT (EMNRD),
THE NEW MEXICO MORTGAGE FINANCE AUTHORITY (MFA) AND
THE NEW MEXICO STATE HISTORIC PRESERVATION OFFICER (SHPO)
REGARDING EECBG, SEP AND WAP UNDERTAKINGS**

WHEREAS, the United States Department of Energy (DOE) administers the following financial assistance programs: *the Energy Efficiency and Conservation Block Grant Program* under the Energy Independence and Securities Act of 2007 (EECBG); *the State Energy Plan* under the Energy Policy and Conservation Act of 1975 and the State Energy Efficiency Programs Improvement Act of 1990 (SEP); and *the Weatherization Assistance Program* (WAP) for Low-Income Persons under Title IV of the Energy Conservation and Production Act, the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and the American Recovery and Reinvestment Act of 2009 (ARRA); collectively referred to as the "Programs";

WHEREAS, the unprecedented levels of funding available to the Programs, due in large measure to ARRA, has created a large volume of projects requiring expedited historic preservation reviews to ensure the timely obligation of funds, that create new jobs, and improve local and state economies;

WHEREAS, the projects funded by the Programs are undertakings subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA) and its implementing regulations at 36 C.F.R. part 800 and include rehabilitation, energy efficiency retrofits, renewables, and weatherization (Undertakings);

WHEREAS, the New Mexico SHPO is experiencing unprecedented numbers of requests for historic preservation review of Undertakings funded by all federal agencies, including Undertakings funded by the Programs;

WHEREAS, EMNRD and MFA are receiving financial assistance from DOE to carry out the Programs;

WHEREAS, DOE has determined that these Undertakings may adversely affect properties that are listed in or eligible for listing in the National Register of Historic Places (National Register) and subject to the requirements of the National Historic Preservation Act (NHPA);

WHEREAS, in accordance with 36 C.F.R. 800.14(b)(4), the Advisory Council on Historic Preservation (the ACHP) has designated this Agreement as a Prototype Programmatic Agreement (PA), which does not require the participation or signature of the ACHP;

WHEREAS, DOE, the ACHP, and the National Conference of State Historic Preservation Officers (NCSHPO) have determined that the requirements of Section 106 can be more effectively and efficiently fulfilled if a programmatic approach is used to stipulate roles and responsibilities, exempt Undertakings from Section 106 review, establish tribal protocols, facilitate identification and evaluation of historic properties, establish treatment and mitigation measures, and streamline the resolution of adverse effects;

WHEREAS, by memorandum dated August 28, 2009 (attached as Appendix C), DOE delegated certain tasks necessary for compliance with Section 106 of the NHPA to grantees and sub-grantees of funding from the Programs (Recipients);

WHEREAS, according to the August 28, 2009 memorandum, the Recipients are authorized, to initiate Section 106 compliance in accordance with 36 C.F.R. 800.2 (c)(4);

WHEREAS, the Undertakings covered under this PA are not located on Tribal lands and are primarily smaller scale activities and routine projects, with little if any potential for adversely affecting historic properties, rather than complex Undertakings with a greater potential to adversely affect historic properties, which would require completion of the typical Section 106 review process;

WHEREAS, DOE and the ACHP were guided by the principles set forth in the ACHP's Affordable Housing Policy statement, adopted on November 9, 2006, in negotiating this Programmatic Agreement upon which this PA is based;

NOW, THEREFORE, DOE, EMNRD, MFA and SHPO agree that the Programs shall be administered in accordance with the following stipulations to satisfy DOE's Section 106 responsibilities for all individual Undertakings of the Programs:

STIPULATIONS

DOE, the Recipients, and the SHPO shall ensure that the following stipulations are carried out:

- I. Roles and Responsibilities
 - A. DOE shall be responsible for providing oversight of the PA, executing a PA with the SHPO, participating in the resolution of disputes between the SHPO and the Recipients, and providing technical assistance and guidance as needed. DOE shall be responsible for government-to-government consultation with Indian tribes, unless the Indian tribe agrees to the delegation of this responsibility to a Recipient.
 - B. The Recipients shall be responsible for consulting with consulting parties and conducting Section 106 reviews in a timely manner, preparing documentation for the SHPO and DOE, and maintaining records on Undertakings. Undertakings that involve properties greater than 50 years old and are not listed on either Appendices A or B shall be submitted to the SHPO for review in accordance with this agreement.

- C. The Recipients shall ensure that the provision of this PA apply to its sub awards.
- D. The Recipients are encouraged to use qualified professionals in conducting their Section 106 requirements.
- E. The SHPO shall be responsible for reviewing project documentation and participation in consultation as set forth in this PA.
- F. The ACHP shall be responsible for providing technical guidance, participating in dispute resolutions if appropriate, and monitoring the effectiveness of this PA.

II. Tribal Review

- A. Execution of this PA presumes that DOE will conduct its government-to-government responsibilities with federal recognized Indian tribes or its Section 106 consultation requirements with Native Hawaiian Organizations (NHO) consistent with federal laws and regulations. The Recipients shall not substitute for DOE in matters related to potential effects on historic properties of cultural and religious significance to Indian tribes, except with the concurrence of the Indian tribe or NHO.
- B. DOE acknowledges that Indian tribes possess special expertise in assessing the National Register eligibility of properties with tribal religious and cultural significance, and requires the Recipients to consult with them, as appropriate, in identifying historic properties listed in or eligible for listing in the Area of Potential Effect (APE) of program areas.
- C. If the Recipients notify DOE that an Undertaking may result in an adverse effect on cultural resources with tribal religious and cultural significance, DOE shall notify Indian tribes of individual Undertakings that may result in an adverse effect on cultural resources with tribal religious and cultural significance and invite them to participate in consultations. Indian tribes and the Recipients may develop a bi-party agreement that outlines their review procedures for Undertakings covered in a PA. Such agreements will be submitted to DOE for review and approval, and a copy sent to the ACHP for its records.

III. State Interagency Agreements

The Recipients may review an Undertaking in accordance with the terms of an interagency agreement, in lieu of the other terms of this PA, if:

- 1) The interagency agreement was in negotiations executed by the Recipients and the SHPO on or before February 5, 2010 and will be executed no later than February 19, 2010;
- 2) The Recipients and SHPO all agree through execution of this PA that the interagency agreement applies to the Undertaking and provides a historic preservation review process that is similar to that provided by the other terms of this PA; and
- 3) DOE does not object to the use of the interagency agreement to fulfill the requirements of Section 106 of the NHPA for the Undertakings.

- IV. Exemptions from Section 106 review
- A. The Recipients shall not submit to the SHPO Undertakings in accordance with Appendices A or B as they do not have the potential to cause effects on historic properties even when historic properties may be present. The Recipients and the SHPO may agree to modify Appendix A or Appendix B, with advance notification of such modifications to the ACHP and DOE. Recipients will maintain file records with verification that Undertakings were determined to be exemptions for a period of three (3) years from project completion and make them available for review if requested by DOE or the ACHP.
 - B. If a property has been determined to be ineligible for inclusion in the National Register within the last five (5) years from the date the Recipients made their application for DOE financial assistance, then no further review is required under this PA.
 - C. Recipients of any of the Programs may use either Appendix A or Appendix B in identifying exempt Undertakings, regardless of whether the Appendix in which the Undertaking is listed relates to another federally funded program.
- V. Review Procedures for Non-exempt Undertakings
- A. *For Undertakings not exempted under Stipulation III or IV, if the Recipients have an executed Section 106 Agreement per 36 CFR part 800 for Community Development Block Grants (CDBG) with the SHPO that 1) is still in effect; 2) covers the same Undertakings as the DOE grant programs; and 3) is up to date with reporting to the SHPO, no separate Section 106 review is needed.*
 - B. Otherwise, the Recipients shall review the Undertaking in accordance with Stipulations VI through X below, or consistent with SHPO approved historic preservation protocols (such as the February 17, 2010, Memorandum of Agreement between SHPO and MFA outlining policy preferences and procedures for the MFA New Mexico Energy Smart ARRA-funded projects).
- VI. Identification and Evaluation
- A. The Recipients shall establish the Area of Potential Effect (APE) for all Program Undertakings defined in the DOE grant agreement for the State.
 - B. The Recipients shall complete the identification and evaluation of historic properties using existing information including the National Register, state surveys, and county and local surveys. In addition, the Recipients and SHPO may use or develop protocols that are consistent with 36 C.F.R. Section 800.4 for the review of consensus determinations of eligibility.
 - C. The Recipients shall consult with Indian tribes or NHOs to determine if there are historic properties of religious or cultural significance that were not previously identified or considered in surveys or related Section 106 reviews, as appropriate.
 - D. Archaeology surveys are required only for new ground disturbing project Undertakings and shall be limited in scope subject to the concurrence of

Indian tribes or NHOs that may attach religious or cultural significance to historic properties in the project area. Project Undertakings requiring more than minimal ground disturbance shall be forwarded to the SHPO and THPOs or Indian tribes or NHOs concurrently for review.

- E. In order to avoid potential delays, prior to initiating Undertakings the SHPO may review the Recipients' scopes of work for above ground surveys and archaeology surveys that are deemed necessary to administer the Recipients' Programs and to implement the terms of this PA.
- F. The Recipients shall refer disputes regarding determinations of eligibility to DOE for review and referral to the Keeper of the National Register in accordance with 800.4(c)(2).

VII. Treatment of Historic Properties

- A. When the Recipients and the SHPO concur that an Undertaking is designed and planned in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68, July 12, 1995 *Federal Register*) (Standards), that Undertaking will not be subject to further Section 106 review.
- B. The Recipients and SHPO will make best efforts to expedite reviews through a finding of "No Adverse Effect with conditions" when the Recipients and the SHPO concur that plans and specifications or scopes of work can be modified to ensure adherence to the Standards. If the Undertaking cannot meet the Standards or would otherwise result in an adverse effect to historic properties, the Recipients will proceed in accordance with Stipulation VIII.

VIII. Resolution of Adverse Effects

- A. The Recipients shall consult with the SHPO, and Indian tribes or NHOs as appropriate, to resolve adverse effects. The Recipients will notify DOE of the pending consultation, and DOE will participate through its designated representative.
- B. The Recipients may use standard stipulations included in Appendix A or Appendix B of this PA, or as negotiated as part of this PA between the SHPO and the Recipients, or if the project warrants, use of an alternate PA due to the complexity of the project activity.
- C. Consultation shall be coordinated to be concluded in 45 days or less to avoid the loss of funding. In the event the consultation extends beyond this period, DOE shall formally invite the ACHP to participate in consultation. The ACHP will consult with DOE regarding the issues and the opportunity to negotiate a Memorandum of Agreement (MOA). Within seven days after notification, the ACHP will enter consultation and provide its recommendation for either concluding the Section 106 review through an MOA or Chairman's comment from the ACHP to the Secretary of DOE within 21 days.
- D. In the case of an ACHP Chairman comment, DOE may proceed once DOE provides its response to the ACHP.

IX. Emergency Situation Undertakings

- A. When an emergency Undertaking is required for historic properties associated with the undertakings, the Recipients shall allow SHPO five business days to respond, if feasible. Emergencies exist when there is a need to eliminate an imminent threat to health and safety of residents as identified by local or County building inspectors, fire department officials, or other local or County officials.
 - 1. The Recipients shall forward documentation to the SHPO for review immediately upon notification that an emergency exists. Documentation should include a) nature of the emergency; b) the address of the historic property involved; c) photographs showing the current condition of the building; and d) the time-frame allowed by local officials to respond to, or correct, the emergency situation.
 - 2. The Recipients shall consider mitigation measures recommended by the SHPO and implement them, if feasible.

- X. Public and Consulting Party Involvement
 - A. The Recipients shall maintain a list of Undertakings and shall make the documentation available to the public. The Recipients shall notify the SHPO if they are notified of other consulting parties or public interest in any Undertakings covered under the terms of the PA.
 - B. The Recipients, independently or at the recommendation of the SHPO, may invite interested persons to participate as consulting parties in the consultation process for adverse effects in accordance with Stipulations VI, VII, and VIII.

- XI. Administrative Coordination
 - A. The Recipients, in consultation with the SHPO, may develop procedures allowing for the use of local reviews conducted by Certified Local Governments (CLG) when such procedures avoid the duplication of efforts.
 - B. The Recipients, in consultation with the SHPO, may determine that an Undertaking has already been reviewed under an existing Section 106 effect determination or agreement document, then no further Section 106 review under this PA is required.
 - C. The SHPO shall provide comments to the Recipients within 30 days, unless otherwise agreed upon by the SHPO and the Recipients, for reviews required under the terms of this PA with the exception of emergency Undertakings. In the event that the SHPO fails to comment within the established period, the Recipients can assume the SHPO has concurred, and proceed.
 - D. The Recipients shall advise sub-grantees in writing of the provisions in Section 110 (k) of the Act and will advise the sub-grantees that Section 106 reviews may be compromised when project Undertakings are initiated prematurely.

- E. The SHPO and the Recipients shall make every effort to expedite Section 106 reviews for a period of less than the 30-day review when consistent with the terms of the DOE grant agreements and the Recipients intend to use the services of qualified professionals.
- F. For projects that will require either an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA), nothing contained in this PA shall prevent or limit the Recipients and DOE from using the procedures set forth in 36 C.F.R. 800.8 to coordinate and conduct the historic preservation review in conjunction with the NEPA review.
- G. Each Recipient is responsible for its own performance and any subrecipients under the PA and shall not be required to perform the obligations of other signatories or be held liable for the performance or failure to perform by other signatories.

XII. Discoveries

If historic properties are discovered or unanticipated effects on historic properties located within a project's Area of Potential Effect (APE) after the Undertaking has been initiated, the Recipients will implement the following procedures:

- A. The Recipients shall immediately cease all operations for the portion of the Undertaking with the potential to affect an historic property;
- B. The sub-grantee shall advise the Recipients of the National Register eligibility of the historic property and the potential of the Undertaking to impact its qualifying characteristics and an explanation of whether the SHPO or Indian tribes and Native Hawaiian Organizations (NHOs) concur with proposed avoidance, treatment plan or mitigation plan;
- C. The Recipients or DOE shall notify Indian tribes or NHOs of any discoveries that have the potential to adversely affect sites or buildings of religious or cultural significance to them. After reviewing such discoveries, the Indian tribes or NHOs can request further consultation on the project by notifying DOE, ACHP, and the SHPO in writing;
- D. The Recipients or sub-grantee shall implement the avoidance, treatment or mitigation plan and advise the Recipients and DOE, if appropriate, of the satisfactory completion of the approved work. Once the approved work is complete the Recipients may resume the activities that were halted to address the discovery situation.

XIII. Dispute Resolution

- A. Should the SHPO object within the time frames outlined in this PA to any project Undertakings, the Recipients shall consult further with the SHPO to attempt to remove the basis for the SHPO's objection. In the event that the SHPO's objection is not withdrawn, then the Recipients shall refer the matter to DOE. The Recipients shall forward all documentation relevant to DOE, who will notify and consult with the ACHP.
- B. The ACHP will provide its recommendations, if any, within 21 days following receipt of relevant documentation. DOE will take into account

the ACHP's recommendations or formal comments in reaching a final decision regarding the dispute.

XIV. Reporting and Monitoring

- A. DOE, the ACHP, and the SHPO may monitor any Undertakings carried out pursuant to this PA. The ACHP may review Undertakings, if requested by DOE. DOE shall be entitled to address and make determinations on overall policy or administrative issues related to the implementation of these Programs.
- B. The Recipients shall adhere to DOE's established protocols for ARRA reporting program Undertakings.
- C. DOE will submit annual reports to ACHP and NCSHPO commencing October 15, 2010 summarizing the Programs' Undertakings, to include data on number of Undertakings, the number of exempt Undertakings, and reviews conducted under this PA.

XV. Amendments

DOE, the SHPO, or the Recipients may request that this PA be amended, whereupon DOE and the SHPO, and the ACHP, if involved, will consult to consider such an amendment. Any such amendments shall be developed and executed among DOE, the Recipients, and the SHPO in the same manner as the original PA, and pertain only to this State PA.

XVI. Duration of Agreement

This PA will be valid for 3 years from the date of execution, as verified with DOE filing the PA with the ACHP.

XVII. Termination of Agreement

DOE, the SHPO, or the Recipients may terminate the PA, provided that the party proposing termination notifies the other signatories and the ACHP in writing explaining the reasons for termination and affording the other signatories at least 30 days to consult and seek alternatives to termination.

SIGNATORIES:

Kim Kearney 8/5/10

NM Energy, Minerals and Natural Resources Department Date

Frank R. Murphy 8/20/10 MAM
NM Mortgage Finance Authority Date

Jan Bell 7/28/10
NM State Historic Preservation Officer Date

T. Russell 9/1/10
ACTING DWIP PROGRAM MANAGER Date
UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY
OFFICE OF WEATHERIZATION AND INTERGOVERNMENTAL PROGRAMS
ROBERT ADAMS FOR TOBIAS RUSSELL

APPENDIX A—WAP UNDERTAKINGS EXEMPT FROM SECTION 106 REVIEW

All Undertakings will be done in accordance with applicable local building codes or the International Building Code, where applicable. In accordance with 36 CFR 800.3(a)(1), the following Undertakings have been determined to have no potential to cause effects on historic properties:

A. Exterior Work

- 1) Air sealing of the building shell, including caulking, weather-stripping, and other air infiltration control measures on windows and doors, and installing thresholds in a manner that does not harm or obscure historic windows or trim.
- 2) Thermal insulation such as non-toxic fiberglass and foil wrapped, in walls, floors, ceilings, attics, and foundations in a manner that does not harm or damage historic fabric.
- 3) Blown in wall insulation where no holes are drilled through exterior siding, or where holes have no permanent visible alteration to the structure.
- 4) Removable film on windows (if the film is transparent), solar screens, or window louvers, in a manner that does not harm or obscure historic windows or trim.
- 5) Reflective roof coating in a manner that closely resembles the historic materials and form, or with materials that restore the original feature based on historic evidence, and in a manner that does not alter the roofline, or where not on a primary roof elevation or visible from the public right-of-way.
- 6) Storm windows or doors, and wood screen doors in a manner that does not harm or obscure historic windows or trim. Interior storm units are preferred.
- 7) In-kind replacement or repair of primary windows, doors and door frames that closely resemble existing substrate and framing.
- 8) Repair of minor roof and wall leaks prior to insulating attics or walls, provided repairs closely resemble existing surface composite.

B. Interior Work

Special Note: Undertakings to interior spaces where the work will not be visible from the public right-of-way; no structural alterations are made; no demolition of walls, ceilings or floors occurs; no drop ceilings are added; or no walls are leveled with furring or moved, shall be automatically excluded from SHPO review. This work includes:

1. *Energy efficiency work within the building shell:*

- a. Thermal insulation in walls, floors, ceilings, attics, crawl spaces, ducts and foundations.
- b. Blown in wall insulation where no decorative plaster is damaged.
- c. Plumbing work, including installation of water heaters.
- d. Electrical work, including improving lamp efficiency.
- e. Sealing air leaks using weather stripping, door sweeps, and caulk and sealing major air leaks associated with bypasses, ducts, air conditioning units, etc.

- f. Repairing or replacing water heaters.
- g. Adding adjustable speed drives such as fans on air handling units, cooling tower fans, and pumps.
- h. Installing insulation on water heater tanks and water heating pipes.
- i. Installing solar water heating systems, provided the structure is not visible from the public right-of-way.
- j. Installing waste heat recovery devices, including desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment.
- k. Repairing or replacing electric motors and motor controls like variable speed drives.
- l. Incorporating other lighting technologies such as dimmable ballasts, day lighting controls, and occupant controlled dimming,

2. *Work on heating and cooling systems:*

- a. Cleaning, tuning, repairing or replacing heating systems, including furnaces, oilers, heat pumps, vented space heaters, and wood stoves.
- b. Cleaning, tuning repairing or replacing cooling systems, including central air conditioners, window air conditioners, heat pumps, and evaporative coolers.
- c. Installing insulation on ducts and heating pipes.
- d. Conducting other efficiency improvements on heating and cooling systems, including replacing standing pilot lights with electronic ignition devices and installing vent dampers.
- e. Modifying 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. Installing programmable thermostats, outdoor reset controls, UL listed energy management systems or building automation systems and other HVAC control systems.

3. *Energy efficiency work affecting the electric base load of the property:*

- a. Converting incandescent lighting to fluorescent.
- b. Adding reflectors, LED exist signs, efficient HID fixtures, and occupancy (motion) sensors.
- c. Replacing refrigerators and other appliances.

4. *Health and safety measures:*

- a. Installing fire, smoke or carbon dioxide detectors/alarms.
- b. Repairing or replacing vent systems on fossil-fuel-fired heating systems and water heaters to ensure that combustion gasses draft safely to outside.

- c. Installing mechanical ventilation, in a manner not visible from the public right-of-way, to ensure adequate indoor air quality if house is air-sealed to building tightness limit.

APPENDIX B – SEP AND EECBG UNDERTAKINGS EXEMPT FROM SECTION 106 REVIEW

A. Category 1 - No Consultation Required

In addition to the Undertakings provided in *Appendix A (WAP Undertakings exempt from Section 106 Review)*, DOE and the SHPO have concluded that the following Undertakings do not have the potential to cause effects on historic properties per 36 CFR § 800.3(a)(1):

1. General efficiency measures not affecting the exterior of the building:

- a. Energy audits and feasibility studies.
- b. Weatherization of mobile homes and trailers.
- c. Caulking and weather-stripping around doors and windows in a manner that does not harm or obscure historic windows or trim.
- d. Water conservation measures – such as low flow faucets, toilets, shower heads, urinals – and distribution device controls .
- e. Repairing or replacing in kind existing driveways, parking areas, and walkways with materials of similar appearance.
- f. Excavating to gain access to existing underground utilities to repair or replace them, provided that the work is performed consistent with previous conditions.
- g. Ventilating crawl spaces.
- h. Replacement of existing HVAC equipment including pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, heat exchangers that do not require a change to existing ducting, plumbing, electrical, controls or a new location, or if ducting, plumbing, electrical and controls are on the rear of the structure or not visible from any public right of way.
- i. 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 like smoke detectors and carbon monoxide detectors (wired or non-wired).
- j. New installation of non-hard wired devices including photo-controls, occupancy sensors, carbon dioxide, thermostats, humidity, light meters and other building control sensors, provided the work conforms with applicable state and local permitting requirements.
- k. Adding variable speed drive motors.
- l. Insulation of water heater tanks and pipes.
- m. Furnace or hot water tank replacement that does not require a visible new supply or venting.

2. Insulation measures not affecting the exterior of the building:

- a. Thermal insulation installation in walls, floors and ceilings (excluding spray foam insulation).
- b. Duct sealing, insulation, repair or replacement in unoccupied areas.
- c. Attic insulation with proper ventilation; if under an effective R8 - add additional R-19 up to R-38 (fiberglass bat only).
- d. Band joist insulation - R-11 to R19 as applicable.
- e. Water heater tank and pipe insulation.

3. Electric base load measures not affecting the exterior of the building:

- a. Appliance replacement (upgrade to EnergyStar appliances).
- b. Compact fluorescent light bulbs.
- c. Energy efficient light fixtures, including ballasts (Replacement).
- d. LED light fixtures and exit signs (Replacement).
- e. Upgrade exterior lighting (replacement with metal halide bulbs, LEDs, or others) along with ballasts, sensors and energy storage devices not visible from any public right of way.

B. Category 2 - No Consultation Required when SOI Standards are Adhered to and verified by Qualified Professionals, if applicable.

The following Undertakings may have effects on historic properties as defined in 36 C.F.R. Part 800.5. However, if the activity or undertakings meet the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 C.F.R. Part 68, July 12, 1995 *Federal Register*) (Standards) specified below then, DOE and the SHPO agree that the Undertakings will have no adverse effect upon historic properties and DOE/Recipients shall not be required to further consult with the SHPO if reviews are conducted by Qualified Professionals. **Qualified Professionals** are individuals who meet the *Secretary of Interior's Professional Qualifications Standards* set forth in 36 C.F.R. Part 61, Appendix A, are listed in the SHPO Directory of Qualified Supervisory Personnel (4.20.8.11 New Mexico Administrative Code) in the discipline appropriate to the properties being evaluated or treated, and are approved by SHPO.

Based on the above, the following work will not meet the Criteria of Adverse Effect when it adheres to the recommended approaches in the Standards and does not involve following significant spaces: entrances, entry halls, lobbies, areas for public gathering and circulation. Alternatively, if the following Undertakings occur in a significant space, work will have no adverse effect on historic properties as long as it does not damage historic materials or finishes and new wiring, piping, and ductwork are concealed. All building Undertakings under this section will be done in accordance with the Standards, or conditions and modifications proposed by the SHPO.

1. Efficiency and repair measures:

- a. Painting over previously painted exterior surfaces, provided destructive surface preparation treatments are not used (such as water-blasting, sandblasting and chemical removal).
- b. Installation or replacement of downspout extensions, provided that the color of the extensions is historically appropriate for the period and style of the property.
- c. Repairing or upgrading electrical or plumbing systems and installing mechanical equipment, in a manner that does not permanently change the appearance of the interior or exterior of the building.
- d. Installation of new HVAC equipment (such as pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, or heat exchangers) in a manner that does not permanently change the appearance of the building. If roof-mounted, the unit should not be visible from the public right-of-way.
- e. Integrated shingle-style or thin film solar systems on the rear roof of the structure, behind the parapet or not visible from the public right of way.
- f. Solar systems (including photovoltaic and solar thermal) not visible from the public right of way and if ground-mounted can be installed without ground disturbance and if roof-mounted will not require new building reinforcement.
- g. Wind system additions to existing wind power facilities that will not require ground disturbance and if building mounted will not require building reinforcement.
- h. Lead-based paint abatement in accordance with the Standards and Preservation Brief #37.
- i. Building cleaning in accordance with the Standards and Preservation Briefs #1, #6, and #10.
- j. Repairing masonry, including re-pointing and rebuilding chimneys in accordance with the Standards and Preservation Brief # 2.
- k. New lighting controls including photo-sensors and shading elements if not visible from the public right of way.
- l. New metering devices in a manner that does not permanently change the appearance of the interior or exterior of the building, or if the addition is on the exterior of the structure and is not visible from the public right of way.
- m. New water efficient fixtures and fittings in a manner that does not permanently change the appearance of the interior or exterior of the building.

2. Installation or repair of roofing, siding, and ventilation:

- a. White Roofs, Cool Roofs, Green Roofs, Sod or Grass Roofs not visible from the public right-of-way.
- b. Rainwater catches and/or gray water systems not viewable from the public right-of-way.
- c. Repair or replacement of existing exterior siding provided that new siding closely resembles the existing siding in dimension, profile and texture.

- d. Flat or shallow pitch roof replacement (shallow pitch is defined as a pitch with a rise-to-run ratio equal to or less than 3" to 12") with no part of the surface of the roof visible from the ground.
- e. Roof repair or replacement with materials that closely resemble the historic materials and form, or with replacement materials that are close to the original in color, texture, composition and form to restore the original feature based on historic evidence, and in a manner that does not alter the roofline.
- f. Installing vents (such as continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit and frieze board vents or combustion appliance flues) if not located on a primary roof elevation or not visible from the public right-of-way.
- g. Installing foundation vents, if painted or finished to match the existing foundation material.

3. Windows and doors:

- a. Installing storm windows, storm doors or wood screen doors in a manner that does not harm or obscure historic windows, doors or trim. Interior storm units are preferred.
- b. Installing insulated exterior replacement doors where the door openings are not altered and are not visible from the public right-of-way. If the door is historic, the new door must match in-kind the historic door.
- c. Window or glazing treatments that do not change the appearance of the interior or exterior of the building, or if the addition is on the exterior of the structure.

APPENDIX C---August 28, 2009 DELEGATION MEMORANDUM
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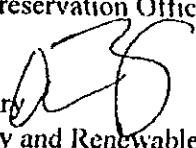


Department of Energy
Washington, DC 20585

August 28, 2009

MEMORANDUM

TO: State Historic Preservation Officers
Tribal Historic Preservation Officers

FROM: Catherine R. Zoi 
Assistant Secretary
Energy Efficiency and Renewable Energy

SUBJECT: Memorandum from EERE Regarding Delegation of Authority for Section 106 Review of Undertakings, Assisted by the U. S. Department of Energy, Office of Energy Efficiency and Renewable Energy

The Department of Energy (DOE), through the Office of Energy Efficiency and Renewable Energy (EERE), provides financial assistance to states, U.S. territories, units of local government, and Indian Tribes through the Energy Efficiency and Conservation Block Grant (EECBG) Program, Weatherization Assistance Program (Weatherization), and State Energy Program (SEP). Attached hereto is a one-page summary of the three programs. Additional program information is available at the following links: <http://www.eecbg.energy.gov/>; <http://apps1.eere.energy.gov/wip/weatherization.cfm>; http://apps1.eere.energy.gov/state_energy_program/.

Through this memorandum, DOE intends to formalize the role of the States and DOE's award recipients (Applicants) to assist DOE in carrying out its Section 106 compliance responsibilities. In order to streamline DOE's compliance with Section 106 and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800), EERE is authorizing its Applicants under the EECBG, Weatherization, and SEP programs to initiate consultation pursuant to 36 CFR § 800.2(c) (4). Effective immediately, EERE Applicants and their authorized representatives may consult with the State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs) to initiate the review process established under 36 CFR Part 800 and to carry out some of its steps. Specifically, EERE Applicants are authorized to gather information to identify and evaluate historic properties, and to work with consulting parties to assess effects. EERE retains responsibility to document its findings and determinations in order to appropriately conclude Section 106 review.

EERE also remains responsible for initiating government-to-government consultation with federally recognized Indian Tribes. EERE's responsibility to consult on a government-to-government basis with Indian Tribes as sovereign nations is established through specific authorities and is explicitly recognized in 36 CFR Part 800. Accordingly, EERE may not delegate this responsibility to a non-federal party without



the agreement of the Tribe to do so. Where no such agreement exists, EERE will initiate tribal consultation.

Authorized Applicants must notify EERE whenever:

- Either the EERE Applicant or the SHPO/THPO believes that the Criteria of Adverse Effect pursuant to 36 CFR § 800.5, apply to the proposal under consideration by EERE;
- There is a disagreement between an Applicant, or its authorized representative, and the SHPO/THPO about the scope of the area of potential effects, identification and evaluation of historic properties and/or the assessment of effects;
- There is an objection from a consulting party or the public regarding their involvement in the review process established by 36 CFR Part 800, Section 106 findings and determinations, or implementation of agreed upon measures; or
- There is the potential for a foreclosure situation or anticipatory demolition as defined under 36 CFR § 800.9(b) and 36 CFR § 800.9(c), respectively.

EERE will participate in the consultation when such circumstances arise.

EERE expects its Applicants that are so authorized, to involve consulting parties in Section 106 findings and determinations and to carry out the exchange of documentation and information in a respectful, consistent and predictable manner. Technical assistance is available to Applicants from EERE regarding the coordination of Section 106 reviews, if needed.

If you have any questions, please contact Dr. F. G. (Skip) Gosling, DOE Federal Preservation Officer/Chief Historian, Office of History and Heritage Resources, (202) 586-5241 or skip.gosling@hq.doe.gov or Steven P. Blazek, NEPA Compliance Officer, (303) 275-4723 or steve.blazek@go.doc.gov.

ATTACHMENT A: STANDARD MITIGATION MEASURES FOR ADVERSE EFFECTS

The Recipient and the SHPO may develop and execute an Agreement that includes one or more of the following Standard Mitigation Measures, as may be modified to a particular activity, with the concurrence of both parties, for undertakings determined to have an adverse effect on listed or eligible historic resources. The ACHP will not be a party to these Agreements. However, the Recipient must submit a copy of each signed Agreement to the SHPO, and the ACHP within 30 days after it is signed by the Recipient and the SHPO.

1. Recordation

The Recipient shall ensure that the historic property is recorded prior to its alteration in accordance with methods or standards established in consultation with the SHPO. The SHPO shall identify appropriate archive locations for the deposit of recordation materials and the Recipient shall be responsible for submitting required documentation to identified archive locations. The Recipient and the SHPO may mutually agree to waive the recordation requirement in situations where the integrity of the building has been compromised or other representative samples of a similar historic resources has been previously recorded.

2. Architectural Salvage

The Recipient, in consultation with the SHPO, shall identify significant architectural features for salvage, and appropriate parties to receive the salvaged features. The Recipient shall ensure that any architectural features identified for salvage are salvaged prior to initiation of undertakings and properly stored and curated. When feasible, and determined appropriate in consultation with SHPO, salvaged architectural features shall be reused in other preservation projects.

3. Rehabilitation

The Recipient shall ensure that the treatment of historic properties which the SHPO has determined does not meet the *Standard*, or SHPO approved design guidelines, is carried out in accordance with treatments agreed upon by the Recipient and the SHPO and are incorporated in the final plans and specifications. The final plans and specifications shall be approved by the SHPO prior to initiating the undertaking.

4. New Construction

The Recipient shall ensure that the design of new buildings, or additions, which the SHPO has determined does not meet the *Standards*, or SHPO approved design guidelines, is carried out in accordance with the final plans and specifications reviewed and approved by the SHPO prior to initiating the undertaking.

5. Archaeology

In cases where the undertaking will cause unavoidable adverse effects to National Register eligible archaeological properties, the Recipient shall consult with the SHPO to determine whether data recovery or some other treatment measure is in the public interest. If data recovery is the agreed upon treatment measure, the Recipient shall consult further with the SHPO to develop and implement a data recovery plan for those portions of the historic property that will be adversely affected. The data recovery plan shall:

- be based on firm background data, sound planning, and accepted archaeological methods;
- be consistent with applicable State laws and regulations;
- be accomplished in a thorough, efficient manner, using the most cost-effective techniques practicable;
- provide for appropriate curation of archeological materials and records, and
- provide for reporting and interpretation of what has been learned in a format understandable and accessible to the public;
- be consistent with the National Park Service's *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (at: http://www.nps.gov/history/local-law/arch_stnds_7.htm), and shall take into account the ACHP's publications, *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999), *ACHP Section 106 Archaeology Guidance* (at: <http://www.achp.gov/archguide/>), and any archaeological guidance issued by the SHPO.