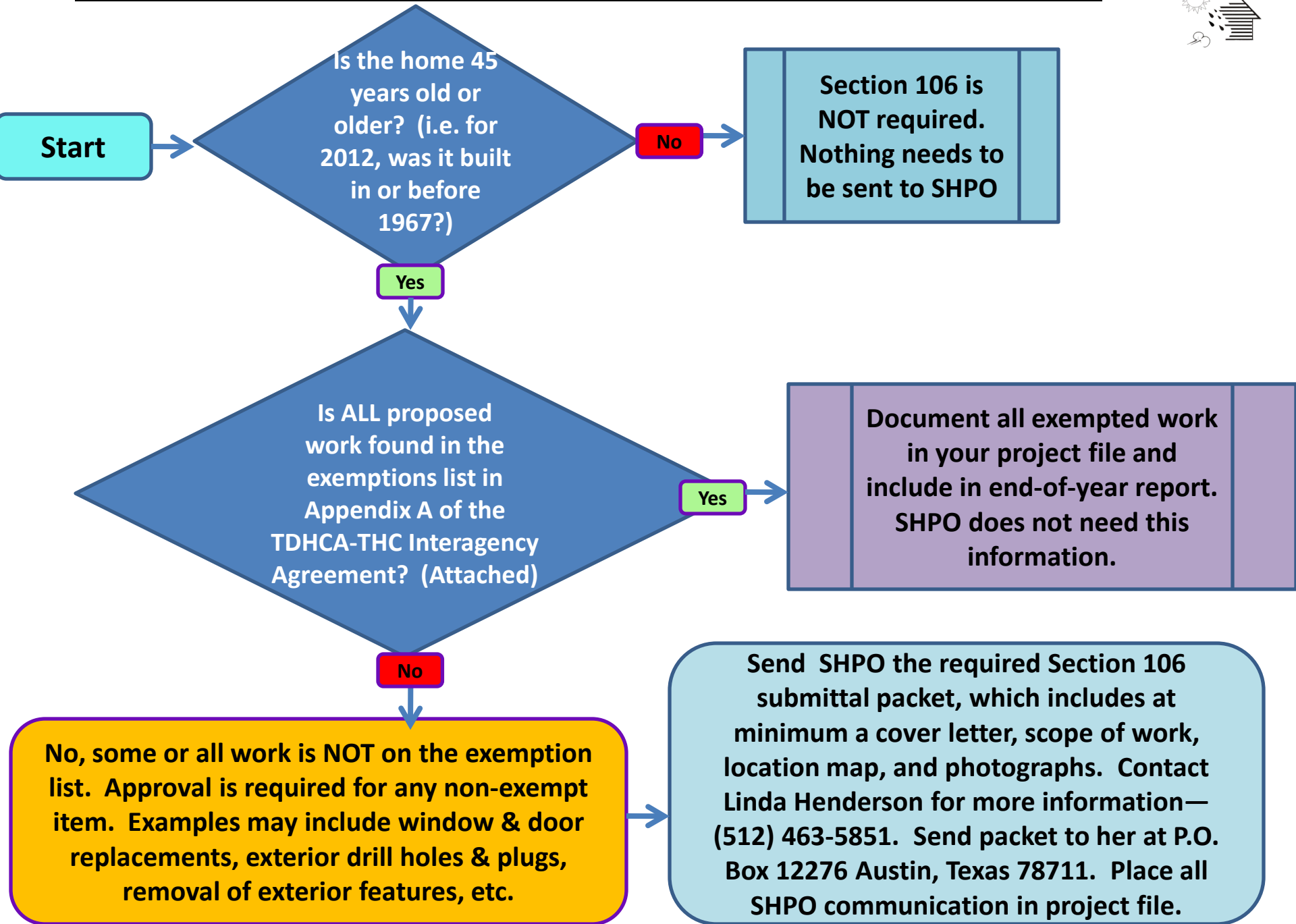


# Historic Preservation (Section 106) Process Flowchart for Weatherization work



**INTERAGENCY AGREEMENT  
BETWEEN  
THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS AND  
THE TEXAS STATE HISTORIC PRESERVATION OFFICER  
REGARDING HISTORICAL PROPERTIES AFFECTED BY USE OF  
DEPARTMENT OF ENERGY WEATHERIZATION ASSISTANCE PROGRAM FUNDS  
February 10, 2010**

By and among the Texas Department of Housing and Community Affairs (TDHCA) and the Texas Historical Commission, acting as the Texas State Historic Preservation Officer (SHPO), regarding properties affected by use of the United States Department of Energy (DOE) *Weatherization Assistance Program* (WAP, herein called the Program), with funds from the American Recovery and Reinvestment Act of 2009 (ARRA), herein called the Agreement.

**WHEREAS**, the projects funded by the Program are undertakings subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f and its implementing regulations at 36 CFR Part 800;

**WHEREAS**, by memorandum dated August 28, 2009 (attached as Appendix B), DOE delegated certain tasks necessary for compliance with Section 106 of the NHPA to recipients of funding from the Program, including TDHCA, and authorized recipients to initiate Section 106 consultation in accordance with 36 CFR 800.2(c)(4);

**WHEREAS**, TDCHA has awarded WAP grant funds to Subrecipients responsible for weatherization at individual properties;

**WHEREAS**, TDHCA has determined that projects funded by this Program may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (National Register) and has consulted with the SHPO pursuant to the requirements of the NHPA;

**WHEREAS**, the unprecedented levels of funding available to the Program, 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 SHPO is experiencing unprecedented numbers of requests for historic preservation review of undertakings funded by all Federal Agencies, including projects funded by this Program;

**WHEREAS**, TDHCA is receiving financial assistance from DOE to carry out the Program;

**WHEREAS**, TDHCA and SHPO agree that TDHCA will provide SHPO with additional staff and funding in order to cover the time and costs of providing technical assistance and an expedited review of TDHCA's undertakings;

**NOW, THEREFORE,** TDHCA and SHPO agree that the Program will be administered in accordance with the following stipulations to satisfy the Section 106 responsibilities for all individual undertakings of the Program.

## **STIPULATIONS**

TDHCA and the SHPO shall ensure that the following stipulations are carried out:

### **I. APPLICABILITY OF AGREEMENT**

The review process established by this Agreement will be completed prior to TDHCA approval of any Subrecipient altering any property eligible for assistance under the Program.

### **II. STAFFING AND PAYMENT FOR SHPO SERVICES**

In consideration for providing technical assistance to TDHCA and its WAP Subrecipients and for treating TDHCA's review requests in an expedited manner, TDHCA shall provide staffing and payment for SHPO services. Beginning within thirty (30) days of execution of this Agreement and extending for a period of two (2) years, TDHCA shall fund a staff person to serve as a dedicated reviewer for the Program. The staff person shall be considered an employee of TDHCA but will office with the SHPO. Hiring shall be performed jointly by TDHCA and SHPO, and the staff person shall meet the Secretary of the Interior's Professional Qualification Standards in the area of Architectural History or Historic Architecture, or have equivalent education and experience. His or her salary shall not exceed \$50,000 per year. TDHCA shall also pay SHPO \$48,000 in equal monthly installments of \$2,000 for travel and overhead expenditures associated with the staff person for the Program.

### **III. EXEMPTIONS FROM SECTION 106 REVIEW**

TDHCA and its Subrecipients shall not submit undertakings listed in Appendix A to the SHPO for review. The SHPO has concluded that these work items do not meet the definition of undertaking since they do not have the potential to cause effects on historic properties per 36 CFR 800.3(a) and thus no historic properties will be affected per 36 CFR 800.4(d), or they have limited potential to affect historic properties per 36 CFR 800.5 and will have no adverse effect upon historic properties if carried out as described. TDHCA and its Subrecipients are not required to consult further with the SHPO for work in this category. TDHCA and its Subrecipients are responsible for ensuring that work is carried out as described in Appendix A and for documenting their compliance.

### **IV. REVIEW PROCEDURES FOR NON-EXEMPT UNDERTAKINGS**

TDHCA Subrecipients shall submit all undertakings not covered by Appendix A to the SHPO for review as they do have the potential to cause adverse effects on historic properties. Review procedures shall follow 36 CFR 800.4-6 and standard SHPO procedures, as further clarified or modified by the terms of this Agreement.

A. Identification and Evaluation of Historic Properties:

- i. The Area of Potential Effect for weatherization projects consists solely of the property being weatherized.
- ii. Subrecipient shall submit documentation of each property requiring review, to include at minimum the address (including city and county), known or estimated date of construction, street map with the property location shown, and current, clear overall photographs of the property. Subrecipient may reference the Texas Historic Sites Atlas at <http://atlas.thc.state.tx.us> to determine if the property already has historical designations. The submittal should indicate whether the property is listed in the National Register, if known, and/or determine whether it is eligible for listing in the National Register. If an eligibility determination is provided, SHPO shall concur or not concur with the determination, or if not provided, SHPO shall determine whether the property meets National Register criteria.
- iii. If the property is determined not eligible for the National Register, and thus there are no historic properties affected by the undertaking per 36 CFR 800.4(d)(1), the Section 106 review process is complete and no further coordination with the SHPO shall be required for the property.
- iv. Disputes regarding determinations of eligibility shall be forwarded to DOE, through TDHCA, for review and referral to the Keeper of the National Register in accordance with 36 CFR 800.4(c)(4).

B. Treatment of Historic Properties

- i. For properties determined eligible for the National Register, Subrecipient shall submit documentation of any proposed weatherization activities that do not fall within the exclusions of Appendix A. Documentation shall include a scope of work, plans and specifications, or other detailed description of the project. Additional photographs of areas in which work is to be performed should be included. Subrecipient should make a determination as to whether the project would have an adverse effect on the historic property per 36 CFR 800.5. If an effect determination is provided, SHPO shall concur or not concur with the determination, or if not provided, SHPO shall determine whether the work meets the criteria of adverse effect.
- ii. When the subrecipient and SHPO concur that a project is designed and planned in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68, herein called the Standards), the project shall be considered to have no adverse effect, and no further coordination with the SHPO shall be required for the property.
- iii. The subrecipient and SHPO will make best efforts to expedite reviews through a finding of "no adverse effect with conditions" when the scope of work can be modified to ensure adherence with the Standards. If the undertaking cannot meet the Standards or otherwise would result in an adverse effect to historic properties, the Subrecipient shall proceed with further consultation.

C. Resolution of Adverse Effects

The Subrecipient shall consult with the SHPO, TDHCA, and the public, as appropriate, to resolve adverse effects per 36 CFR 800.6. TDHCA shall notify and invite DOE to participate in consultation per the terms of the memorandum attached as Appendix B.

V. TDHCA RESPONSIBILITIES

- A. TDHCA will require Subrecipients to retain access to pre- and post-documentation of the weatherization work completed, including the work write-ups and photographs, as part of its permanent project records. For projects determined to be exempt from SHPO review per Stipulation III, Subrecipient shall compile an annual report per Stipulation VIII. Subrecipient shall provide SHPO access to project documentation upon request per Stipulation IX.
- B. TDHCA will monitor every Subrecipient for compliance with this Agreement.
- C. TDHCA or its Subrecipients are responsible for involving consulting parties and the public in Section 106 consultation, as appropriate, per 36 CFR 800.2 and any applicable guidance from DOE.

VI. SHPO RESPONSIBILITIES

- A. SHPO is permitted thirty (30) calendar days upon receipt to review and comment on documentation submitted pursuant to Stipulation IV. If SHPO does not provide comments within thirty (30) calendar days, it may be assumed that SHPO accepts the documentation to meet the reporting requirements of this Agreement and concurs with the determinations made in the submittal.
- B. An expedited process of seven (7) calendar days will be in effect so long as the staffing and funding noted under Section II is provided, and the documentation required in Stipulation IV is electronically submitted directly to the dedicated reviewer for the Program.
- C. SHPO will provide technical assistance and training on the requirements of Section 106 and application of the Secretary of Interior's *Standards for the Treatment of Historic Properties* to TDHCA and its Subrecipients.

VII. DISCOVERIES AND UNFORESEEN EFFECTS

If, during the implementation of these programs, a previously unidentified property that may be eligible for inclusion in the National Register is encountered, or is affected in an unanticipated manner, the Subrecipient responsible for the weatherization will assume its responsibilities pursuant to 36 CFR 800.13, and will notify TDHCA of the unanticipated discovery.

VIII. REPORTING

During each year this Agreement is in effect, Subrecipients shall forward to the SHPO by December 31<sup>st</sup> an annual report of all completed projects that were exempted from review

under Stipulation III of this Agreement. The projects should be listed by the property address including city and county, and should include the construction date of the property and the type of project.

#### IX. MONITORING

SHPO may monitor any activities carried out pursuant to this Agreement. TDHCA Subrecipients will cooperate with SHPO in carrying out these monitoring and review responsibilities.

#### X. DISPUTE RESOLUTION

If TDHCA, TDHCA Subrecipients, and SHPO are unable to resolve any disagreement arising under the provisions of this Agreement, the Subrecipient will, unless the dispute relates to the National Register eligibility of any property, forward full documentation regarding the project and the basis for the dispute to DOE, who will initiate consultation with the Advisory Council on Historic Preservation (Council) in accordance with 36 CFR 800.9.

#### XI. AMENDMENTS

Any party to this Agreement may request that it be amended, whereupon the parties will consult with each other. No amendment to this Agreement will become effective without the written concurrence of all the parties.

#### XII. TERMINATION

- A. Any party to this Agreement may terminate the Agreement by providing thirty (30) days written notice to the other parties, provided that the parties consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination.
- B. In the event of termination, TDHCA will require Subrecipients to ensure compliance with 36 CFR 800.4-6 with respect to individual undertakings covered by this Agreement.
- C. This Agreement applies only to ARRA-funded WAP projects and will expire three (3) years from the date on which it becomes effective, unless such programs are extended, in which case this Agreement may be extended as necessary by letter agreement signed by all parties.

#### XIII. FAILURE TO COMPLY WITH TERMS OF AGREEMENT

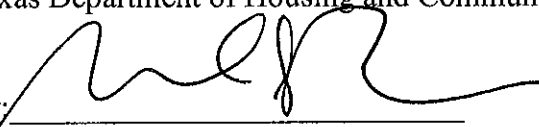
In the event that the terms of this Agreement cannot be carried out by the Subrecipient, no action will be taken or sanction of any action or any irreversible commitment by Subrecipient that would result in an adverse effect to historic properties or would foreclose the Council's consideration of modifications or alternatives to the undertaking.

XIV. LIABILITY LIMITATIONS

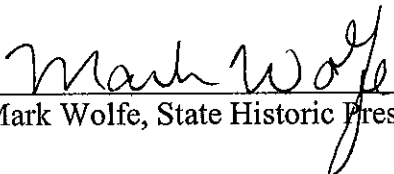
In the event that the terms of this Agreement are not carried out by the Subrecipient as indicated in the work plans submitted to TDHCA, the Subrecipient will assume all responsibility for the weatherization project as indicated in the Grant Agreement between TDHCA and Subrecipient.

APPROVED:

Texas Department of Housing and Community Affairs (TDHCA)

By:  Date: 2/12/10  
Michael Gerber, Executive Director

Texas Historical Commission acting as Texas State Historic Preservation Officer (SHPO)

By:  Date: 2/12/10  
Mark Wolfe, State Historic Preservation Officer

## APPENDIX A: WAP UNDERTAKINGS EXEMPT FROM SHPO REVIEW

Projects affecting only properties less than forty-five (45) years old at the time the work takes place shall not require SHPO review, provided the property has not been previously determined eligible under National Register Criteria Consideration G for exceptional significance (36 CFR 60.4). In addition, the following project types affecting properties forty-five (45) years old or older shall not require SHPO review:

### A. Interiors:

- 1) Projects limited to interior spaces where the work will not be visible from the exterior of the building; no structural alterations are made; no demolition of walls, ceilings or floors occurs; no drop ceilings are added; and no walls are leveled with furring or moved.
- 2) Repairing or upgrading electrical or plumbing systems in a manner that does not affect the exterior of the building.
- 3) Replacing existing appliances, repairing or replacing water heaters, and installing compact fluorescent light bulbs.
- 4) Installing fire, smoke or carbon monoxide detectors.
- 5) Installing mechanical equipment in a manner that does not affect the exterior of the building.
- 6) Repairing, upgrading or replacing existing mechanical equipment, provided that any new equipment is installed in the location of existing equipment and no physical alterations to the building are required.
- 7) Conducting weatherization or energy conservation activities including insulating attics, ceilings, floors, crawl spaces, foundations, exterior walls, water heaters, and ductwork, provided repairs are made by a qualified contractor using current best practices and methods that are consistent with the preservation techniques in *Preservation Brief #3: Conserving Energy in Historical Buildings*. Spray-foam insulation is not included in this exemption. For exterior blown-in wall insulation, holes shall not be drilled through exterior siding or decorative plasterwork on the interior, and should result in no permanent visible alteration to the structure.

### B. Roofing:

- 1) Limited in-kind replacement of existing roofing material.
- 2) Installing reflective roof coatings, with materials that closely match 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 installing reflective roof coatings on flat or low-slope roofs where not visible from the public right-of-way.
- 3) Installing continuous ridge vents covered with ridge shingles or boards, or roof jacks/vents, bath and kitchen fan vents, gable vents, soffit and frieze board vents, and combustion appliance flues, if not located on a primary roof elevation or visible from the public right-of-way.



C. Exterior Painting:

- 1) Painting exterior surfaces unless the property is subject to local landmark ordinance provision, provided destructive surface preparation treatments, including but not limited to water-blasting, sandblasting and chemical removal, are not used.
- 2) Conducting Lead-based Paint Abatement or "Management in Place" activities carried out by a qualified contractor using current best practices and methods that are consistent with the preservation techniques in *Preservation Brief #37: Appropriate Methods for Reducing Lead-Paint Hazards in Historic Housing*.

D. Masonry:

- 1) Power-washing exterior masonry performed by a qualified contractor at no more than 500-psi with mild detergent, using current best practices and methods that are consistent with the preservation techniques in *Preservation Brief #1, The Cleaning and Waterproof Coating of Masonry Buildings*.
- 2) Limited repairs to masonry, including repointing, and rebuilding chimneys if the joints are done by hand and the mortar matches the original composition and color, and installing chimney flue liners, provided repairs are made by a qualified contractor using current best practices and methods that are consistent with the preservation techniques in *Preservation Brief #2: Re-pointing Mortar Joints in Historic Brick Buildings*.

E. Windows and Doors:

- 1) Repairing or replacing 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) Installing interior storm windows or doors, or exterior storm or wood screen doors, in a manner that does not harm or obscure historic windows or trim.
- 3) 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.

F. Foundations:

- 1) Underpinning and ventilating crawl spaces, provided the underpinning materials are set at least 2 inches behind the outer face of piers or foundations on the front façade.
- 2) Installing foundation vents, if painted or finished to match the existing foundation material.

G. Other Exterior:

- 1) Repair of minor roof and wall leaks prior to insulating attics or walls, provided repairs are in-kind and match the existing surface.

H. Site Work:

- 1) Repairing or replacing driveways, parking areas, and walkways, in a manner that does not disturb historic landscape materials or features.
- 2) Repairing or replacing sewer lines, water lines, and drain connections in a manner that does not disturb historic exterior building or landscape materials or features, and where all construction occurs within existing trenches.

APPENDIX B: AUGUST 28, 2009, DELEGATION MEMORANDUM  
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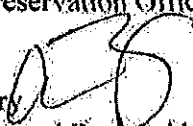


**Department of Energy**  
Washington, DC 20585

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/](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](mailto:skip.gosling@hq.doe.gov) or Steven P. Blazek, NEPA Compliance Officer, (303) 275-4723 or [steve.blazek@go.doe.gov](mailto:steve.blazek@go.doe.gov).