

PROGRAMMATIC MEMORANDUM OF UNDERSTANDING
BETWEEN THE IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT
AND THE
IOWA STATE HISTORIC PRESERVATION OFFICE
REGARDING CONSULTATION UNDER
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

WHEREAS, Iowa Department of Economic Development (hereafter Agency) receives the following funds administered through the U.S. Department of Housing and Urban Development (hereafter HUD) including but not limited to: Community Development Block Grants (CDBG) and HOME Investment Partnerships Program (HOME) (hereafter Programs); and

WHEREAS, the Agency will award Program funds to recipients throughout the State of Iowa; and

WHEREAS, the Recipients under the authority of 24 CFR Part 58 will assume the roles and responsibilities of the ‘agency official’ as defined by 36 CFR part 800.2(a) for the purposes of complying with Sections 106 and 110 of the National Historic Preservation Act of 1966, as amended (hereinafter, Act); and

WHEREAS, Section 106 and the Council for Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969 (NEPA) require those having jurisdiction over a federally assisted undertaking to take into account the effects of the undertaking upon properties listed on, or considered eligible for listing on, the National Register of Historic Places; and

WHEREAS, the Recipient will coordinate the Section 106 review with required reviews under NEPA as allowed by 36 CFR Part 800.8 when such coordination is judged to be prudent and feasible; and

WHEREAS, it is the responsibility of the Recipient to determine that a proposed project, activity, or program constitutes an “undertaking” and also to establish, in consultation with the State Historic Preservation Office of Iowa (hereafter SHPO), a designated undertaking’s area of potential effects (hereinafter APE); and

WHEREAS, the Agency, in consultation with the SHPO, has determined that certain types of undertakings implemented under the aforementioned Programs normally do not result in effects to properties included in or eligible for inclusion in the National Register of Historic Places (hereafter National Register); and

WHEREAS, in an effort to streamline the consultation process and expedite the implementation of certain Program activities, the signatories identified hereunder agree consultation with the

SHPO for such undertakings is deemed to be unnecessary provided that the qualifying criteria or exempt activities as described in Exhibit A are met;

NOW, THEREFORE, AND IN CONSIDERATION OF THE FOREGOING DECLARATIONS, IT IS AGREED BY THE PARTIES TO THIS “CATEGORICAL NO HISTORIC PROPERTIES AFFECTED” PROGRAMMATIC MEMORANDUM OF UNDERSTANDING:

THAT: the stipulation found in Section I and the qualifying criteria or exempt activities, as found in Exhibit A, provide acceptable screening for Program activities, by which the parties may exclude from further review under 36 CFR Part 800 all projects that meet the stipulation and qualifying criteria or exempt activities; and

THAT: adherence to this agreement by the Recipient for qualifying projects will satisfy the Recipient’s responsibilities under Sections 106 and 110 of the Act and NEPA to consider the effects of these project categories on cultural resources through consultation with the SHPO; and

THAT: this agreement does not fulfill the Recipient’s responsibility to consult with American Indian Tribes or other parties that may be interested in the properties affected by this project; and

THAT: for other categories of federally assisted undertakings not included in the Exhibit A or included in Exhibit A but having been found as individual projects to not meet all of their applicable qualifying criteria, the Recipient, for all of those exceptions, shall identify and evaluate historic properties which may be affected, assess the undertakings’ effect upon those resources, consult with the SHPO, and afford the President’s Advisory Council on Historic Preservation (Council) an opportunity to comment, when appropriate under 36 CFR Part 800; and

THAT: if any interested person objects to any determination made by the Recipient and the SHPO pursuant to this agreement, the Recipient shall ensure that the concerned public has a reasonable opportunity to comment, per 36 CFR Part 800 and 24 CFR part 58; and

THAT: documentation of all undertakings processed under this agreement shall be retained by the Recipient and made available to the SHPO; and

THAT: the Agency will track projects processed and advanced without SHPO review under this agreement and ensure that the overall desirability, effectiveness and reliability of its procedures can be readily verified. Based upon the results of tracking information, the parties may establish a mutually agreeable interval for conducting a formal review of the process for revision, addition or deletion of individual project exclusions, or to specify procedural changes.

I. STIPULATION

The parties to this agreement stipulate that all classes of actions described in Exhibit A “Undertaking Not Normally Requiring Consultation with Iowa SHPO” 1) are hereby considered to result in “No Historic Properties Affected” and 2) will require neither individual nor categorical review or consultation with the SHPO provided that they satisfy all of the qualifying

criteria or exempt activities set forth at the beginning of, or contained in, their respective Sections of Exhibit A.

ADMINISTRATIVE CONDITIONS

II. DURATION

This document will be null and void if its terms are not carried out within five (5) years from the date of its execution signature, unless the term is extended by mutual agreement of the signatories. Prior to such time, Agency may consult with the other signatories to reconsider the terms of the agreement and amend it in accordance with Stipulation VI below.

III. POST-REVIEW DISCOVERIES

Unanticipated Discovery (exclusive of human remains and human burials): If during the implementation of any exempt undertaking, project activities uncover an item(s) that might be of archeological, historical or architectural interest, or if important new archeological, historical or architectural data should be encountered within or immediately adjacent to the project APE, the recipient should make reasonable efforts to avoid further impacts to the resources until an assessment can be made by an individual meeting the Secretary of the Interior's Professional Qualifications found in 36 CFR Part 61 Appendix A. The Recipient will immediately contact the SHPO.

Unanticipated Discovery of Human Remains and Human Burials: All human burials in the State of Iowa are protected by law. In the event that human remains or burials are encountered during archaeological investigations or construction activities, work in the area will cease and appropriate steps will be taken to secure the site and notify officials at the Burials Program at the Office of the State Archaeologist or the Iowa Department of Health.

If the remains appear to be ancient (i.e. older than 150 years), the burial is legally protected under Chapters 263B and 716.5 of the Iowa Code. The Office of the State Archaeologist shall have jurisdiction. Timetables and options will be the purview of the State Archaeologist or his/her designee in consultation with appropriate descendant groups. Preservation in place is always the preferred option. Determination of cultural affiliation will follow procedures that are consistent with the provisions of the Native American Graves protection and Repatriation Act (25 U.S.C. 3001 through 3005). If the remains are determined to be American Indian and can be affiliated with a federally recognized American Indian Tribe, the Office of the State Archaeologist shall assist with consultation over disposition of those remains.

If the remains appear to be less than 150 years old, the burial would be legally protected under Chapters 144.34, 566 and 716.5 of the Iowa Code and would fall under the jurisdiction of the Iowa Department of Public Health.

IV. MONITORING AND REPORTING

The Recipient shall retain documentation and record project information on the Exempt from SHPO Review, Project Determination Form. Before and after photographs for structures will be attached to the form. By January 31 of each year, the Agency shall submit an annual report to SHPO for review and comment on all Program activities that occurred through December 31 of the previous year. The report will include a packet of Exempt from SHPO Review, Project

Determination Forms received from recipients for projects that did not consult with SHPO. Supporting documentation will be available to the SHPO upon written request. From time to time, the SHPO may review files for the activities to verify that the Agency is properly implementing the terms of the Agreement.

V. DISPUTE RESOLUTION

If at any time during implementation of this agreement a written objection is made by the SHPO or the Agency regarding any measure or its manner of implementation, the signatories shall take the objection into account and consult as needed with the objecting party to resolve the objection. The responsibility of the signatories to carry out all actions under this agreement that are not the subject of the objection shall remain unchanged. If, after consultation among the signatories and objecting party, the objection or dispute persists, then those undertakings subject to the conditions and exclusions shall revert to individual project review pursuant to the requirements of 36 CFR Part 800.

VI. AMENDMENTS

The signatories to this agreement may propose to amend its terms by providing a written request for such amendment to the other signatories whereupon all parties shall consult as appropriate within thirty (30) calendar days of receipt of the written request. Any resulting amendments shall be developed in writing and shall be executed immediately upon consensus.

VII. TERMINATION

This agreement may be terminated prior to its designated expiration date by either of the signatories upon written notice to the other. Notice of impending termination will be provided to the other 30 days prior to termination so that the signatories will have sufficient time to consult in order to avoid termination. Upon termination, all conditions and exclusions shall become null and void, and those undertakings subject to the conditions and exclusions shall revert to individual project review pursuant to the requirements of 36 CFR Part 800.

EXECUTION OF THE AGREEMENT

By their signatures below, the parties to this agreement indicate their concurrence with its provisions and their intent to fully abide by its provisions. Execution of this Categorical No Historic Properties Affected Programmatic Memorandum of Understanding evidences that the Agency and the SHPO have reached agreement on the exclusion from SHPO review the specified categories of undertakings.

Iowa Department of Economic Development

BY: _____
Sandy Ehrig, Division Administrator

DATE: _____

IOWA STATE HISTORIC PRESERVATION OFFICER

BY: _____
Lowell Soike, Deputy State Historic Preservation Officer

DATE: _____

Exhibit A**UNDERTAKINGS NOT NORMALLY REQUIRING CONSULTATION WITH IOWA SHPO INVOLVING GROUND DISTURBANCE****Qualifying Criteria:**

If any of the following are met SHPO does not need to review the project regardless of activity:

1. The Area of Potential Effect (APE) has been intensively surveyed after 1989 and determined by the federal agency not to contain historic properties, and this finding was accepted by the Iowa SHPO.
2. If the APE has been profoundly disturbed – meaning:
Profound disturbance as it relates to the APE: Profound disturbance occurs when a past activity(ties) has physically altered the three-dimensional Area of Potential Effects of an undertaking in its entirety to the point where there is no potential for an archaeologically-significant property to remain.
3. Project will NOT involve buildings, districts, objects, structures, sites, or landscapes in the APE that are more than 50 years old.

Exempt Activities:

If the project involves:

1. Excavation occurring within the APE on ground not qualifying as profoundly disturbed (see definition under qualifying criteria)
2. Buildings, districts, objects, structure, sites, or landscapes that are more than 50 years old in the APE

Then, the following activities will be considered exempt from further review by the SHPO or ACHP, because the activities have limited potential to affect historic properties:

1. Photoscopic pictures of water and/or sewer pipe
2. Re-lining of water and/or sewer pipe
3. Point repairs of water and/or sewer pipe
4. Hydrant replacements
5. Manhole cover replacements
6. New/replacement service lines and related appurtenances involving boring or slit trenches up to 2'
7. Equipment replacement, purchase, removal, and/or installation
8. Disturbances confined to the current footprint of the compound such as buildings, water treatment plants, and/or sewer treatment plants
9. Directional boring of utility lines without sending and receiving pit.
10. Connecting pits relating to directional boring for utility lines no bigger than 10 feet x 10 feet
11. Parallel water and/or sewer mains installed within 5 feet of the original (existing) routes and if no known National Register of Historic Places listed or potentially eligible sites or historic districts are within the Area of Potential effect
12. Wells in existing well fields
13. Test boring/well sites to determine soil suitability if no recorded sites are in the vicinity
14. Replacement of concrete or asphalt sidewalks
15. Replacement (demolition) of water towers less than 50 years old on the same building parcel less than 1 acre in size when the new tower is not over a 10% increase in capacity or 20 feet in height as compared to the existing water tower.
16. Utility upgrades without land disturbance

17. Parking lot rehabilitation or construction of less than one acre in size, located on row-cropped agricultural land provided that any ground disturbance activities will be confined to the plowzone, which generally extends 10 to 12 inches below the surface
18. Overhead power line replacement
19. Resurfacing and/or rehabilitation of existing concrete or asphalt roads, drives, or entries where the area is within both existing horizontal and vertical alignment
20. Conversion of an existing gravel road to concrete or asphalt where the area is within both existing horizontal and vertical alignment
21. Pavement widening and/or shoulder construction and the addition of auxiliary lanes, such as turn lanes or climbing lanes where the area is within both existing horizontal and vertical alignment of an existing right of way.

Exhibit A

UNDERTAKINGS NOT NORMALLY REQUIRING CONSULTATION WITH IOWA SHPO INVOLVING ARCHITECTURAL/HISTORICAL RESOURCES

Qualifying Criteria

If any of the following are met SHPO does not need to review the project regardless of activity:

1. The Area of Potential Effect (APE) has been intensively surveyed by a professional historian or architectural historian within the last 8 years and determined not to contain historic properties, if the finding was accepted by the Iowa SHPO.
2. The Project will involve a building of any type that is less than 50 years old.
3. The Project will involve a single-family dwelling built after 1930, unless that home is architect-designed; in a pre-1960 neighborhood containing housing of similar age and type with high integrity; or is considered a factory-produced industrial housing type (e.g., Lustron House, pre-cut "Kit" homes – please note that this does not include mobile homes).

Exempt Activities

When the following activities are proposed for any properties not meeting the Qualifying Criteria, they will be considered exempt from further review by the SHPO, because the activities have limited potential to affect historic properties.

1. Rehabilitation
 - a. Exterior
 - i. Caulking, weather stripping, re-glazing, extremely low-pressure (less than 100 psi) power washing, scraping and/or repainting.
 - ii. Window repair and/or replacement in-kind (i.e., new windows will duplicate the material, dimensions, design, detailing, and operation of the extant or known historic windows).
 - (a). Repair, scrape, and repainting of existing windows.
 - (b). In-kind replacement of window sash, glass, and/or hardware, including jam tracks.
 - (c). In-kind replacement of damaged and non-operable transoms.
 - iii. Installation of storm windows and doors provided that they conform to the shape and size of the historic windows and doors. The meeting rail of storm windows must coincide with that of the existing sash. Color should complement trim; mill finish aluminum is not acceptable.
 - iv. In-kind repair and/or replacement (i.e., the new features will duplicate the extant material, dimensions, and detailing):
 - (a). Porches - railings, post/columns, brackets, cornices, steps, flooring, ceilings, and other decorative treatments
 - (b). Roofs
 - (c). Siding
 - (d). Exterior architectural details and features
 - (e). Doors, including cellar/bulkhead doors
 - (f). Gutters and downspouts
 - v. Masonry repair using materials, mortar composition, color, joint profile, and width that matches the historic materials
 - vi. Installation of temporary wheelchair ramps
 - vii. Construction or replacement of wheelchair ramps, provided the ramps are on secondary façades and will not directly impact the material fabric of the building.
 - b. Interior

- i. Plumbing rehabilitation/replacement - includes pipes and fixtures when no structural alteration is involved
 - ii. HVAC system rehabilitation/replacement/cleaning - includes furnaces, pipes, ducts, radiators or other HVAC units when no structural alteration is involved
 - iii. Electrical wiring - includes switches and receptacles when no structural alteration is involved
 - iv. Restroom improvements for handicapped accessibility, provided work is contained within existing restroom
 - v. Repair of interior surfaces (floors, walls, ceilings, decorative plaster, woodwork) - provided the work is restricted to repainting, refinishing, repapering or laying carpet or vinyl floor materials
 - vi. Installation of drywall over existing wall surface, provided no decorative plaster or other decorative features are being covered.
 - vii. Insulation, provided that it is restricted to ceilings, attic spaces, and crawl spaces
 - viii. Insulation in wall spaces provided an appropriate interior vapor barrier or vapor barrier paint is used.
 - ix. Repair or pouring of concrete cellar floor, in an existing cellar
 - x. Repair or replacement of cabinets and countertops provided cabinets are not "built-in"
2. Site Improvements
- a. In-kind repair/replacement of existing asphalt and concrete curb, sidewalks, driveways and ramps
- In-kind replacement or installation of site improvements including, but not limited to, landscaping and park equipment
3. Other
- a. Mortgage financing assistance. This is understood to include projects where no change in use will occur and physical improvements, if any, will be limited to those listed in Exempt Activities 1.
 - b. Purchase of equipment, fixtures, computers, machinery where physical improvements, if any, will be limited to those listed in Exempt Activity 1 or 2, herein
 - c. Administrative costs of housing and/or public service programs
 - d. Building acquisition where physical improvements, if any, will be limited to those listed in Exempt Activity 1 or 2, herein