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Preserving America's Heritage

February 5, 2010

The Honorable Dr. Steven Chu
Secretary of the Department of Energy
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Re: Office of Weatherization and Intergovernmental Programs (OWIP)

Dear Secretary Chu:

In recent conversations between our agencies, the Department of Energy (DOE) requested the assistance of the Advisory Council on Historic Preservation (ACHP) in developing a tool that the Department of Energy could share with the States administering the Energy Efficiency and Conservation Block Grant (EECBG), State Energy Plan (SEP), and the Weatherization Assistance (WAP) Programs. Since DOE must comply with the requirements of Section 106 of the National Historic Preservation Act as a condition of obligating Federal funds, including American Recovery and Reinvestment Act of 2009 monies, we explored options that would expedite historic preservation reviews and improve coordination between the State's energy agencies and the State Historic Preservation Officers (SHPOs). We have identified an approach that meets these goals and allows DOE to proceed with the administration of its OWIP undertakings.

Accordingly, I hereby designate the attached document as a Prototype Programmatic Agreement under 36 C.F.R. § 800.14(b)(4). It was developed by DOE and the ACHP with input from the National Conference of State Historic Preservation Officers (NCSHPO). It addresses DOE's responsibilities under Section 106 for the EECBG, SEP, and WAP. The Prototype Programmatic Agreement (Prototype PA) enables States to streamline Section 106 reviews by establishing review protocols and methods for resolving adverse effects to historic properties. Further, it will address the workload concerns that SHPOs are confronting in the review of ARRA projects while ensuring the timely obligation of DOE funds for OWIP undertakings.

The benefits that the Prototype PA provides include:

- exempting the majority of routine activities with limited potential to affect historic properties from review;
- allowing the use of current interagency agreements between the SHPO and State Energy agencies (Recipients) for Section 106 compliance if they have established historic preservation review protocols similar to those that would otherwise be established by the Prototype PA itself;

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- establishing a template PA that can be readily signed to evidence Section 106 compliance;
- allowing DOE, SHPO, and State Energy agencies to execute it without ACHP involvement; and
- requiring DOE to develop tribal and Native Hawaiian Organization (NHO) protocols if projects may affect historic properties of religious and cultural significance to those parties.

SHPOs and Recipients may add other provisions to the Prototype PA that establish further efficiencies and improve the management of undertaking effects on historic properties. When modifying the Prototype PA, States and SHPOs should focus on additions to Stipulations IV, V, VI, and VII, which can further tailor the historic preservation reviews to unique circumstances within a specific State. The other Stipulations in the Prototype PA should be retained as they reflect the negotiations between DOE, ACHP, and NCSHPO that were critical to developing the framework of this tool. Moreover, they summarize the consultations that were conducted to take into account the effect of the EECBG, SEP, and WAP on historic properties. Modifications to the attached Prototype PA will not change the status of the document as a Prototype PA, so long as the modifications (1) are agreed to by the Recipient, DOE and the relevant SHPO, and (2) do not substantially change the consultative role given to other consulting parties.

DOE must file all executed Prototype PAs with the ACHP prior to their use. This will enable the ACHP to monitor the effectiveness of the Prototype PAs and engage DOE in future discussions regarding the Section 106 administration of the weatherization programs after the conclusion of ARRA funding.

DOE remains responsible for consultation with federally recognized Indian tribes and NHOs. Any administration of tribal grants requires coordination directly with DOE as the Prototype PA is focused on grants to State Recipients.

We appreciate DOE's cooperation and ongoing support of historic preservation initiatives. We are particularly appreciative of the tireless efforts provided by Kathryn Aleda and Derek G. Passarelli of DOE's Golden Field Office in developing the Prototype PA. Their contributions were invaluable, particularly their knowledge of DOE and its policies.

We look forward to working with DOE as an observer on the ACHP and as a partner in this important interagency agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Nau, III". The signature is fluid and cursive, with a prominent loop at the beginning and a sharp end.

John L. Nau, III
Chairman

Enclosure