

**PROGRAMMATIC AGREEMENT
BETWEEN THE CALIFORNIA ENERGY COMMISSION
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING SECTION 106 COMPLIANCE FOR DEPARTMENT OF ENERGY
AMERICAN RECOVERY AND REINVESTMENT ACT PROGRAMS**

WHEREAS, the United States Department of Energy's (DOE) August 28, 2009 *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* authorizes recipients of DOE awards under American Recovery and Reinvestment Act (ARRA) programs to initiate consultation with appropriate State Historic Preservation Officers (SHPOs) pursuant to Section 106 of the National Historic Preservation Act of 1966 (16 USC 470f), as amended (Act), and implementing regulations in 36 CFR Part 800, and to carry out steps with the SHPOs in that regulatory process; and

WHEREAS, the State Energy Resources Conservation and Development Commission (California Energy Commission or Energy Commission) is a recipient of DOE ARRA program awards; and

WHEREAS, the Energy Commission has determined that the administration of DOE ARRA programs has the potential to adversely affect properties included in or eligible for inclusion in the National Register of Historic Places (National Register), historic properties, and has consulted with the California State Historic Preservation Officer (SHPO) pursuant to 36 CFR § 800.14(b)(3) and DOE's aforementioned August 28, 2009 *Memorandum Regarding Delegation of Authority for Section 106 Review*.

NOW THEREFORE, the Energy Commission and SHPO agree that the DOE ARRA programs will be administered in accordance with the following stipulations in order to take into account the effects of the undertakings proposed under these programs on historic properties, and further agree that these stipulations shall govern the administration of these programs until this Agreement expires or is terminated.

STIPULATIONS

The Energy Commission shall ensure that the following measures are carried out:

- I. APPLICABILITY OF AGREEMENT
 - A. The review process established by this Agreement will be completed prior to Energy Commission approval of any property owner altering any property eligible for assistance under the subject DOE ARRA programs.

Any program or undertaking that does not qualify for review under the terms of this Agreement will be reviewed in accordance with the procedures outlined in 36 CFR Part 800.

- B. Attachment A establishes categories of undertakings under the DOE ARRA programs that are exempt from SHPO review. The Energy Commission shall review documentation from applicants for DOE ARRA program funds to verify that individual undertakings qualify for review exemption under Attachment A, report such exemptions to the SHPO in accordance with stipulation VIII below, retain that documentation for three (3) years, and issue letters of verification of review exemptions to each such applicant. It is understood by the signatories that the Energy Commission review pursuant to this Agreement shall be performed by Energy Commission staff in the Cultural Resources Unit of the Environmental Protection Office of the Energy Commission's Siting, Transmission, and Environmental Protection Division, namely Michael D. McGuirt and Michelle C. Messinger, or by equivalent Energy Commission staff of similar qualifications, expertise, and experience in the Section 106 consultation process and that meet the Secretary of the Interior's Professional Qualifications Standards (36 CFR Part 61). Such equivalent staff shall be subject to the approval of the SHPO.

II. AREA OF POTENTIAL EFFECTS

The Area of Potential Effects (APE) will be limited to the individual building when an undertaking is limited to the weatherization, rehabilitation, and/or improvement of the existing building. If construction of exterior additions or the expansion of an existing building is anticipated, the APE shall be expanded to include surrounding historic properties that may be visually impacted.

For ARRA programs where undertaking implementation would include the construction or modification of ancillary facilities exterior to existing buildings or structures, the APE shall include the subject existing buildings and structures, the associated ancillary facilities, historic properties in the viewshed of the existing buildings and structures and the ancillary facilities, and any ground, the disturbance of which is requisite to the implementation of a proposed undertaking.

111. IDENTIFICATION OF HISTORIC PROPERTIES

The Energy Commission will initiate the Section 106 review process by studying all existing and pertinent information on all properties in an APE, including review of the National Register, local inventories, and records housed at the California Historical Resources Information System (CHRIS) regarding those properties which have been determined to be historic

properties, either individually, as part of a historic district, or as part of a multiple property nomination. If an APE expands beyond an individual building and other properties in that APE have not been surveyed, the Energy Commission will cause the applicant for DOE ARRA program funds to conduct an inventory effort consistent with 36 CFR § 800.4(b)(1). When considering the results of any such inventory effort,

- 1) a property listed in the National Register is an historic property and subject to an assessment of the potential effects of an undertaking on it,
- 2) a property found eligible for the National Register by the Energy Commission is considered historic and subject to an assessment of the potential effects of an undertaking on it, and
- 3) a property determined, pursuant to 36 CFR § 800.4(c)(2), to be ineligible for inclusion in the National Register in the last five (5) years is not historic and the property will not be subject to further review.

IV. ASSESSMENT OF EFFECTS

A. The Energy Commission will assess, pursuant to 36 CFR §§ 800.4(d)(1) and 800.5(a) and (b), the potential effects of each nonexempt undertaking on historic properties, and will review the scope of work for each such undertaking to determine whether the undertaking would conform to the recommended approaches contained in the Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards).

- 1) If the Energy Commission finds, pursuant to 36 CFR § 800.4(d)(1), that an undertaking would affect no historic properties, either because there are no historic properties present, or no historic properties will be impacted physically or visually, the Energy Commission will notify the applicant for that undertaking of that finding, and, upon receipt of the notification, the applicant will be able to proceed with the implementation of the subject undertaking, as submitted, without further review.
- 2) If the Energy Commission finds, pursuant to 36 CFR § 800.5(b), that an undertaking would not adversely affect historic properties, because it will have only a minor impact and conforms to the Standards, the Energy Commission will notify the applicant for that undertaking of that finding, and, upon receipt of the notification, the applicant will be able to proceed with the implementation of the subject undertaking, as submitted, without further review.

- 3) If the Energy Commission is unable, pursuant to 36 CFR §§ 800.5(a) and (b), to find that an undertaking would not adversely affect historic properties, the Energy Commission may recommend to the applicant for an undertaking modifications on the scope of work or conditions under which the project would be found to conform to the Standards and provide the applicant an opportunity to consider those recommendations. If the applicant is able to agree to the modifications recommended, or proposes other changes that meet the Standards, the Energy Commission will subsequently forward all documentation on the subject undertaking to the SHPO for further review and to conclude the Section 106 process. Alternately, if an applicant for an undertaking wishes to forward the original iteration of the undertaking to the SHPO without considering the recommendations of the Energy Commission or proposes other changes that meet the Standards, the Energy Commission will so forward the original documentation on the subject undertaking to the SHPO.
- 4) If the Energy Commission believes, in accordance with 36 CFR § 800.5(d)(2), that an undertaking would adversely affect historic properties, because it will have a major impact to such properties and does not conform to the Standards, the Energy Commission will subsequently forward all documentation on the subject undertaking to the SHPO for further review and to conclude the Section 106 process.

V. ENERGY COMMISSION RESPONSIBILITIES

- A. The Energy Commission will require sub-grantees of DOE ARRA program funds to retain access to pre- and post- documentation of completed DOE ARRA program-funded work, including the work write-ups and photographs as part of its permanent project records.
- B. The Energy Commission will monitor every program for compliance with this Agreement according to established guidelines.
- C. The Energy Commission will notify SHPO of any changes to an approved scope of work, other than exempted activities, and will provide SHPO with the opportunity to review and approve such changes.

VI. SHPO RESPONSIBILITIES

- A. SHPO is permitted thirty (30) calendar days after the receipt of any submitted documentation to review and comment on such material. If SHPO does not provide comments within this time period, the Energy Commission may assume the concurrence of the SHPO with any determinations and findings in the submitted documentation and proceed with the Section 106 consultation for any such undertakings.

VII. DISCOVERIES AND UNFORESEEN EFFECTS

If, during the implementation of the DOE ARRA programs, a previously unidentified property that may be eligible for inclusion in the National Register is encountered, or is affected in an unanticipated manner, Energy Commission staff will consult with the SHPO pursuant to 36 CFR § 800.13(b).

VIII. REPORTING

The Energy Commission will forward to the SHPO, by the tenth calendar day following the last day of each calendar quarter, a report of all review exemptions verified and all reviews completed for undertakings covered by the terms of this Agreement. The exemptions and reviewed undertakings 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. The Energy Commission will cooperate with SHPO in carrying out these monitoring and review responsibilities.

X. DISPUTE RESOLUTION

If the Energy Commission and the SHPO are unable to resolve any disagreement arising under the provisions of this Agreement, the Energy Commission will, unless the dispute relates to the National Register eligibility of any property, forward full documentation regarding the project, the basis for the dispute, and initiate consultation with the Advisory Council on Historic Preservation (Council) in accordance with 36 CFR § 800.2(b)(2).

XI. AMENDMENTS

Any signatory 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 both signatories.

It is contemplated by the parties that Attachment A of the Agreement may be revised from time to time to better clarify and identify exempt undertakings not subject to the SHPO's direct review and consultation.

XII. TERMINATION

A. Any party to this Agreement may terminate the Agreement by providing thirty (30) days notice to the other signatory, provided that the signatories

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, the Energy Commission will ensure compliance with 36 CFR §§ 800.(4)--(6) with respect to individual undertakings covered by this Agreement.

XIII. FAILURE TO COMPLY WITH TERMS OF AGREEMENT

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

XIV. LIABILITY LIMITATIONS

In the event that the terms of this Agreement are not carried out by sub-grantees of DOE ARRA program funds as indicated in work plans submitted to the Energy Commission, the sub-grantee will assume all responsibility for any undertaking as indicated in the agreement between the Energy Commission and that sub-grantee.

XV. DURATION OF THE AGREEMENT

- A. Unless terminated pursuant to stipulation XII, or an amended Agreement supersedes it, this Agreement will be in effect following execution by the signatory parties until the Energy Commission, in consultation with the other signatory, determines that all of its stipulations have been satisfactorily fulfilled. This Agreement will terminate and have no further force or effect on the day that the Energy Commission notifies the other signatory in writing of the Energy Commission's determination that all stipulations of this Agreement have been satisfactorily fulfilled.
- B. The terms of this Agreement shall be satisfactorily fulfilled within five years following the date of execution by the signatory parties. If the Energy Commission determines that this requirement cannot be met, the signatories to the Agreement will consult to reconsider its terms. Reconsideration may include continuation of the Agreement as originally executed, amendment of the Agreement, or termination. In the event of termination, the Energy Commission will comply with subpart B of stipulation XII if the Energy Commission determines that the administration of the DOE ARRA programs will proceed notwithstanding termination of the Agreement.

- C. If the administration of DOE ARRA programs is not complete five years following execution of this Agreement by the signatory parties, this Agreement shall automatically terminate and have no further force or effect. In such event, the Energy Commission shall notify the other signatory in writing and, if it chooses to continue with the administration of DOE ARRA programs, shall reinstate the review of such programs in accordance with 36 CFR Part 800.

XVI. EFFECTIVE DATE

This Agreement will take effect on the date that it has been executed by the Energy Commission and the SHPO.

EXECUTION and implementation of this Agreement, pursuant to 36 CFR § 800.14(b)(3), including its transmittal by the Energy Commission to the Council in accordance with 36 CFR § 800.6 (b)(1)(iv), shall evidence that the DOE and the Energy Commission, on behalf of the DOE, have taken into account the effects of the administration of DOE ARRA programs on historic properties in order to resolve (avoid, minimize, or mitigate) any adverse effects on such properties and thereby comply with Section 106 of the Act, and shall further evidence that the DOE has afforded the Council an opportunity to comment on the administration of DOE ARRA programs and their effects on historic properties.

SIGNATORIES

California State Historic Preservation Officer

By: Milford Wayne Donaldson Date: 18 FEB 2010
Milford Wayne Donaldson, FAIA,
State Historic Preservation Officer

California Energy Commission

By: Melissa Jones Date: 2.18.2010
Melissa Jones
Executive Director

ATTACHMENT A

EXEMPT UNDERTAKINGS-UNDERTAKINGS NOT REQUIRING REVIEW BY SHPO

- A. ***Properties Less than Fifty Years Old.*** Undertakings affecting only properties less than fifty (50) years old at the time the work takes place; provided it has not been determined to be eligible under National Register Criterion Consideration G for exceptional significance (36 CFR 60.4).
- B. ***Undertakings for Planning, Training and Educational Purposes***
- 1) Undertakings to fund regional workforce development programs focused on occupations in energy efficiency, water efficiency, renewable energy (distributed generation and utility-scale), and alternative and renewable transportation technologies.
 - 2) Undertakings to support existing clean energy job training for new hires and retraining programs for incumbent workers.
 - 3) Undertakings to fund energy efficiency, water efficiency, and renewable energy training for incumbent and new workers to add new skills to their professional toolbox.
 - 4) Undertakings to support state planning and energy assurance capabilities by improving state emergency preparedness plans and ensure quick recovery and restoration from any energy supply disruptions.
 - 5) Undertakings to fund training for energy infrastructure and supply systems, and conduct and participate in state and regional energy and emergency exercises.
 - 6) Undertakings to conduct residential and commercial building energy audits or assessments.
 - 7) Undertakings for the design and operation of programs to educate the public, identify the most effective methods for achieving the maximum participation and efficiency rates, establish measurement and verification protocols, and identify energy efficient technologies for possible implementation.
 - 8) Undertakings to develop and implement programs to conserve energy used in the transportation sector, including the use of flex time by employers, use of satellite work centers, development and promotion of zoning guidelines or requirements that promote energy efficient development, and synchronization of traffic signals.
 - 9) Undertakings to develop and implement building codes and inspection services, and associated training and enforcement of such codes in order to support code compliance and promote building energy efficiency.
- C. ***Interiors***

- 1) Undertakings limited to the interior spaces of properties not listed in the National Register where the work will not be visible from the exterior of the building.
- 2) Repairing or upgrading electrical or plumbing systems, installing fire, smoke or carbon dioxide detectors, and installing mechanical equipment, in a manner that does not affect the exterior of the building.
- 3) Conducting weatherization or energy conservation activities such as air sealing and insulating attics and floors, provided repairs are made by a qualified contractor using current best practices.
- 4) Undertakings to replace existing residential appliances with new California-qualified residential ENERGY STAR® appliances, where the new appliances must replace appliances of the same type (AC for AC, clothes washer for clothes washer, etc.) and the replaced appliance must be properly recycled.
- 5) Undertakings to replace lighting in buildings, parking lots, traffic signals and street lighting with energy efficient technologies, where only the lighting equipment is replaced and there are no ground disturbances.
- 6) Undertakings to replace existing heating, ventilation, and air conditioning equipment, electric motors, lighting, and lighting controls with more energy efficiency equipment, where only the equipment is replaced and there are no changes to the building or structure or ground disturbance.
- 7) Undertakings to install dual technology occupancy sensors to control lighting for intermittently occupied spaces.
- 8) Undertakings to install variable frequency drives (VFDs) for electric motors, fans, and pumps.
- 9) Undertakings to install vending machine controls to conserve energy.
- 10) Undertakings to install programmable thermostats or integrated landscaping control systems to conserve energy.
- 11) Undertakings to install sensors and equipment controls for purposes of increasing energy efficiency.

D. Roofing

- 1) Repairing or replacing roofing 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.
- 2) 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.

E. Exterior painting

- 1) Painting exterior surfaces unless the property is subject to review by SHPO under PRC 5024 and 5024.5 or by local landmark ordinance provisions, 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*.

F. Masonry

- 1) Power-washing exterior masonry performed by a qualified contractor at no more than 300 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) Repairing masonry, including repainting, 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*.

G. 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 storm windows or doors, and wood screen doors in a manner that does not harm or obscure historic windows or trim.
- 3) Installing insulated exterior replacement doors where the openings are not altered and they cannot be viewed from the public right-of-way.

H. 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 facade.
- 2) Installing foundation vents, if painted or finished to match the existing foundation material.

I. 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 existing trenches in a manner that does not disturb historic exterior building or landscape materials or features.