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PROTOTYPE PROGRAMMATIC AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY, THE STATE OF NEVADA HOUSING DIVISION, THE NEVADA STATE OFFICE OF ENERGY AND THE NEVADA STATE HISTORIC PRESERVATION OFFICER 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"; and

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; and

WHEREAS, the Nevada State Historic Preservation Officer (SHPO) is experiencing unprecedented numbers of requests for historic preservation review of undertakings funded by all Federal Agencies, including undertakings funded by the Programs; and

WHEREAS, the Nevada Housing Division (Recipient) and the Nevada State Office of Energy are receiving financial assistance from DOE to carry out the Programs; and

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 CFR part 800 and include rehabilitation, energy efficiency retrofits, renewables, and weatherization (undertakings); and

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); and

WHEREAS, in accordance with 36 CFR 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; and

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; and

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); and

WHEREAS, by a Memorandum of Understanding (MOU) dated November 4, 2009 (attached as Appendix D) the SHPO and the Nevada State Office of Energy agreed to a streamlined procedure for compliance with Section 106 of the NHPA. The previously negotiated procedures and exemptions contained in the MOU are now incorporated into this Programmatic Agreement to the extent that they are consistent with this Programmatic Agreement. To the extent that provisions of the MOU and provisions of this Programmatic Agreement are in conflict, the provisions of this Programmatic Agreement shall prevail; and

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

WHEREAS, the undertakings covered under this PA are not located on Tribal lands and are primarily smaller scale activities and routine projects, without the 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; and

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; and

NOW, THEREFORE, DOE, the State of Nevada Housing Division, the Nevada State Office of Energy and the Nevada 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 Recipient, 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 PAs with SHPOs, participating in the resolution of disputes between the SHPO and the Recipient, 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 Recipient 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 fifty (50) years old and are not listed on either Appendices A, B or D shall be submitted to the SHPO for review in accordance with this agreement.
C. Recipient shall ensure that the provisions of this PA apply to its sub-awards.
D. The Recipient is 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 Recipient 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 Recipient 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 Recipient notifies 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 Recipient 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 Recipient may review an undertaking in accordance with the terms of an interagency agreement, in lieu of the other terms of this PA, if:

A. The interagency agreement was in negotiations by the Recipient and SHPO on or before February 5, 2010, and will be executed no later than February 19, 2010;

B. The Recipient and SHPO both 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

C. 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 Recipient 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 Recipient and the SHPO **may agree to modify Appendix A, B and/or Appendix D**, with advance notification of such modifications to the ACHP and DOE. Recipient 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 Recipient made its application for DOE financial assistance, then no further review is required under this PA.

C. Recipients of any of the Programs may utilize Appendix A, B or D in identifying exempt undertakings, regardless of whether the Exhibit on which the undertaking 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 Recipient has 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 Recipient shall review the undertaking in accordance with Stipulations VI through X below, or consistent with SHPO approved historic preservation submission requirements.

VI. Identification and Evaluation

A. The Recipient shall establish the Area of Potential Effect (APE) for all program undertakings defined in the DOE grant agreement for the State.

B. The Recipient shall complete the identification and evaluation of historic properties utilizing existing information including the National Register, state surveys, and county and local surveys. In addition, the Recipient and SHPO may use or develop protocols that are consistent with 36 CFR Section 800.4 for the review of consensus determinations of eligibility.

C. The Recipient 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 Recipient's scopes of work for above ground surveys and archaeology surveys that are deemed necessary to administer the Recipient's Programs and to implement the terms of this PA.

F. The Recipient 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 Recipient 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 Recipient and SHPO will make best efforts to expedite reviews through a finding of "No Adverse Effect with conditions" when the Recipient 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 Recipient will proceed in accordance with Stipulation VIII.

VIII. Resolution of Adverse Effects

A. The Recipient shall consult with the SHPO, and Indian tribes or NHOs as appropriate, to resolve adverse effects. The Recipient will notify DOE of the pending consultation, and DOE will participate through its designated representative.

B. The Recipient may use standard stipulations included in Attachment A of this PA, or as negotiated as part of this PA between the SHPO and the Recipient, 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 (7) 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 Recipient shall allow SHPO five (5) 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 Recipient 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 Recipient shall consider mitigation measures recommended by the SHPO and implement them, if feasible.

X. Public and Consulting Party Involvement

A. The Recipient shall maintain a list of undertakings and shall make the documentation available to the public. The Recipient shall notify the SHPO if its notified of other consulting parties or public interest in any undertakings covered under the terms of the PA.

B. The Recipient, 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 Recipient, 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 Recipient, in consultation with the SHPO, may determine that an undertaking has already been reviewed under an existing Section 106 effect determination or agreement document, and then no further Section 106 review under this PA is required.

C. The SHPO shall provide comments to the Recipient within thirty (30) days, unless otherwise agreed upon by the SHPO and the Recipient, 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 Recipient can assume the SHPO has concurred, and proceed.

D. The Recipient 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 Recipient 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 Recipient intends to utilize 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 Recipient and DOE from utilizing the procedures set forth in 36 CFR 800.8 to coordinate and conduct the historic preservation review in conjunction with the NEPA review.

XII. Discoveries

If historic properties are discovered or unanticipated effects on historic properties located within a project's APE after the undertaking has been initiated, the Recipient will implement the following procedures:

A. The Recipient shall immediately cease all operations for the portion of the undertaking with the potential to affect an historic property;

B. The subgrantee shall advise the Recipient of the National Register eligibility of the historic property and the potential of the undertaking to impact its qualifying characteristics and an explanation of the whether the SHPO or Indian tribes and NHOs concur with proposed avoidance, treatment plan or mitigation plan;

C. The Recipient 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 Recipient or subgrantee shall implement the avoidance, treatment or mitigation plan and advise the Recipient and DOE, if appropriate, of the satisfactory completion of the approved work. Once the approved work is complete 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 Recipient 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 Recipient shall refer the matter to DOE. The Recipient 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 Recipient 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 Recipient 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 Recipient, and the SHPO in the same manner as the original P A, and pertain only to this State PA.

XVI. Duration of Agreement

This PA will be valid for three (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 Recipient 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 thirty (30) days to consult and seek alternatives to termination.

Signatories:

7-29-10

CHARLES L. HORSEY, III, NEVADA HOUSING DIVISION — Date

29 JUL 10

NEVADA STATE OFFICE OF ENERGY — Date

7-27-10

RONALD M. JAMES, STATE HISTORIC PRESERVATION OFFICER — Date

Tor Ruell 7/23/10

UNITED STATES DEPARTMENT OF ENERGY Date
OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY
OFFICE OF WEATHERIZATION AND INTERGOVERNMENTAL PROGRAMS

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) (l), these 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 and will require SHPO review if the building is older than 50 years of age. .
6) Storm windows or doors, and wood screen doors in a manner that does not harm or obscure historic windows or trim.
7) In-kind replacement or repair of primary windows, doors and door frames that closely resemble existing substrate and framing and will require SHPO review if the building is older than 50 years of age.
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, should 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. Repair or replace water heaters
g. Adding adjustable speed drives such as fans on air handling units, cooling tower fans, and pumps
h. Install insulation on water heater tanks and water heating pipes
i. Install solar water heating systems, provided the structure is not visible from the public right of way
j. Install waste heat recovery devices, including superheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment
k. Repair or replace electric motors and motor controls like variable speed drives
l. Incorporate other lighting technologies such as dimmable ballasts, day lighting controls, and occupant controlled dimming
m. Drywall repair

2. Work on heating and cooling systems:

a. Clean, tune, repair or replace heating systems, including furnaces, oilers, heat pumps, vented space heaters, and wood stoves
b. Clean, tune repair or replace cooling systems, including central air conditioners, window air conditioners, heat pumps, and evaporative coolers
c. Install insulation on ducts and heating pipes
d. Conduct other efficiency improvements on heating and cooling systems, including replacing standing pilot lights with electronic ignition devices and installing vent dampers
e. Modify 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. Install 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. Convert incandescent lighting to fluorescent
b. Add reflectors, LED exit signs, efficient HID fixtures, and occupancy (motion) sensors
c. Replace refrigerators and other appliances

4. Health and safety measures

a. Installing fire, smoke or carbon dioxide detectors /alarms
b. Repair or replace vent systems on fossil-fuel-fired heating systems and water

heaters to ensure that combustion gasses draft safely to outside

c. Install 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 *Exhibit 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 -like 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-II to R19 as applicable
   e. Water heater tank and pipe insulation

3. ***Electric base load measures not affecting the exterior 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 if SOI Standards are Adhered to and Verified by Qualified Staff meeting the SOI professional qualifications standards, if Applicable

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.
   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
b. Installing insulated exterior replacement doors where the door openings are not altered and are not visible from the public right-of-way
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
(next page)

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

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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) 586-5241or skip.gosling@hq.doe.gov or Steven P. Blazek, NEPA Compliance Officer, (303) 275-4723 or steve.blazek@go.doe.gov.

APPENDIX D –
MEMORANDUM OF UNDERSTANDING
BETWEEN THE STATE OF NEVADA OFFICE OF ENERGY
AND THE NEVAD STATE HISTORIC PRESERVATION OFFICE
(next page)

MEMORANDUM OF UNDERSTANDING

between

STATE OF NEVADA OFFICE OF ENERGY

and

NEVADA STATE HISTORIC PRESERVATION OFFICE

WHEREAS, this Memorandum of Understanding (MOU) is entered into between the State of Nevada Office of Energy (Office) and the Nevada State Historic Preservation Office (SHPO) to set forth procedures for administration of grants from the U.S. Department of Energy under the American Recovery and Reinvestment Act of 2009 (ARRA); and

WHEREAS, the Department of Energy (DOE) requires grantees to consult with State Historic Preservation Offices in accordance with 24 CFR part 58 where environmental review responsibilities have been delegated to the Office; and

WHEREAS, the Office has determined that the administration of these programs may have an effect on historic properties and the Office has consulted with the Nevada SHPO pursuant to 36 CFR 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C Section 470f),

NOW THEREFORE, the Office and Nevada SHPO agree that the Program shall be administered in accordance with the following stipulations to satisfy the Office's responsibilities for all individual undertakings of the Program within the State of Nevada.

STIPULATIONS

The Office will ensure that the following measures are carried out:

I. Identifying Historic Properties

A. Office staff, or other persons/agencies designated with the responsibility of conducting environmental reviews on behalf of the Office, will determine the age of all properties eligible for rehabilitation by consulting appropriate public documents, such as documents indicated purchases and sales of property on file with Assessor's Offices throughout Nevada.

B. If public records indicate that a property is less than fifty (50) years of age and if the property does not appear to be of extraordinary historic or architectural importance, no further consultation with Nevada SHPO is required and the project may proceed, as determined by the Office or other designated entity.

C. If public records indicate that a property is fifty (50) years of age or older, it must be evaluated for potential historic or architectural importance unless the property is exempt from further consultation with Nevada SHPO as specified in Stipulation II, Exempt Activities.

D. If the project affecting a property fifty (50) years of age or older is not exempt from further consultation with he Nevada SHPO, the Office will submit the following documentation to SHPO for review:

1. Age of the property, as indicated on applicable Assessors records.

2. Color or digital photographs of the property, showing all four elevations or as many sides a possible.

3. Map indicating property location, including Area of Potential Affect (APE).

4. Brief description of the property, to include address and APN.

5. Description of rehabilitation work to be completed on the property.

E. In accordance with "Guidelines for Section 106 Submissions to the Nevada State Historic Preservation Office", Nevada SHPO will have thirty (30) days upon receipt of documentation to offer comments. Failure of the Nevada SHPO to respond within this time period shall not preclude the Office from proceeding with this project.

F. If Nevada SHPO and the Office agree that the property is not historic, no further consultation is required and the project may proceed after submission of documentation to Nevada SHPO.

G. If Nevada SHPO and the Office disagree regarding the potential eligibility of the property, the Office will employ a professional architectural historian to inventory the property and recommend National Register eligibility to the State SHPO office.

H. Following the inventory, should Nevada SHPO and the Office fail to agree on the eligibility of the property to the National Register, the Office shall send the appropriate documentation to the "Keeper of the National Register" for an official determination. Failure of the Keeper to respond to the Office within forty-five (45) days of submission of documentation to the Keeper of the National Register shall not preclude the Office from proceeding with a project.

I. If a property is determined eligible for inclusion in the National Register, the Office will consult with Nevada SHPO as per 36 CFR 800.5-6.

II. Exempt Activities

The following activities, whether undertaken separately or cumulatively do not require further consultation with Nevada SHPO:

A. Electrical work

B. Plumbing work

C. Installing of mechanical equipment that does not affect the exterior of the building.

D. Drywall repair

E. Caulking and weather-stripping

F. Interior work to accommodate handicap accessibility. Exterior work to accommodate handicap accessibility is subject to consultation with Nevada SHPO

G. Installation of fire and smoke detectors

H. Replaced or added insulation

I. Replacement of windowpanes in kind or with double or triple glazing as long as glazing is clear and not colored, and replacement does not alter existing window material and form; however, work involving windows with original leaded or stained glass will be submitted for review

J. Re-roofing flat, not readily visible roof and re-roofing that does not alter existing roof material and form

K. Interior lead base paint abatement and/or hazardous material reduction. However, prior to the undertaking of any exterior lead base paint abatement and/or hazardous material reduction activity (i.e. exterior siding, windows, roof work, etc.) that may potentially impact the integrity of an historic property, the Office will consult with Nevada SHPO

L. Professional services and administrative costs of any of these programs

M. Emergency Repairs in accordance with DOE's course of action to preserve the health and safety of its occupants; to include, but not be limited to the following measures:

1. Repair and/or replacement of inadequate heating and cooling;
2. Repair and/or replacement of inadequate plumbing;
3. Retrofitting of interior spaces to accommodate the disabled;
4. Repair or replacement of roofing (if materials are replaced in kind)
5. Replacement and/or installation of insulation materials;
6. Repair of electrical hazards; and
7. Any necessary repairs to preserve the health and safety of occupants (provided materials are replaced in kind).

If the Office determines an emergency repair exists under HUD's definition of "actions taken to preserve the health and safety of its occupants" that is not covered by Stipulation II (M), the Office shall expediently provide information to Nevada SHPO (i.e. fax, email or other expedient method). Nevada SHPO shall provide comments within two (2) working days of receipt of the Office's information. The Office will take into account Nevada SHPO's comments in allocating funds to remediate the condition.

III. Resolution of Disagreement

1) Should any party disagree about the implementation of this agreement for a specific project, the parties will meet to resolve the dispute. If the parties cannot resolve the dispute, the Office will forward all documentation to the Advisory Council for Historic Preservation for comment.

2) Members of the public, and organization or tribe that disagree with the Office's efforts to identify historic properties will bring their concerns to the Nevada SHPO who will meet with the Office to resolve the dispute. If the parties cannot resolve the dispute, the Office will forward all documentation to the Advisory Council for Historic Preservation for comment.

IV. Maintenance of Records of Consultation

1) The Nevada State Office of Energy shall maintain records of all consultation with SHPO as documentation of compliance with requirements established pursuant to U.S. Department of Energy Grants.

V. Duration, Amendment and Termination of this Memorandum

1) Duration: This MOU will become effective upon signature by the Office and the Nevada SHPO and automatically terminate in three years after the date of the last signature unless it is extended by written agreement of the parties.

2) Amendment: amendments to this MOU may be requested of either party for consideration on inclusion in this MOU. No amendment or addendum to this MOU will go into effect without the signed concurrence of the Office and the Nevada SHPO.

3) Termination: This MOU may be terminated at any time by the Office or the Nevada SHPO upon thirty (30) days written notice. If the MOU is terminated, the Office will consult as per 36 CFR 800.3-7 for all projects described in this MOU.

APPROVED:

NEVADA STATE ENERGY OFFICE

James M. Brandmueller

James M. Brandmueller
Acting Director

11/4/09
Date

NEVADA STATE HISTORIC PRESERVATION OFFICE

Alice M Baldrica, Deputy

Alice Baldrica, Nevada State Historic Preservation Officer

11/4/09
Date

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 resource 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.