

**PROGRAMMATIC AGREEMENT  
 AMONG  
 THE NATIONAL PARK SERVICE,  
 THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
 THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
 REGARDING CULTURAL RESOURCES GRANTS AND FINANCIAL ASSISTANCE  
 (AGREEMENT)  
 JULY 12, 2024**

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**WHEREAS**, Congress authorizes the Secretary of the Interior (Secretary), acting through the Director of the National Park Service (NPS), to administer Federal financial assistance to advance the national historic preservation program through the acquisition, interpretation, preservation and protection of historic and cultural resources; and

**WHEREAS**, Congress authorizes the Secretary to administer Federal financial assistance to assist in the inventory, identification, and repatriation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony under the Native American Graves Protection and Repatriation Act (NAGPRA); and

**WHEREAS**, the NPS makes financial assistance available to federally recognized Indian Tribes, Alaska Native Villages/Corporations and Native Hawaiian organizations, States, local governments, other government entities, museums, educational institutions, nonprofit organizations, and other eligible applicants to advance the protection and interpretation of the nation's heritage through programs (NPS Cultural Resources Financial Assistance Programs) as set forth in Appendix A of this Agreement; and

**WHEREAS**, the definitions in the National Historic Preservation Act (NHPA), 54 U.S.C. §§ 300101-300321 are applicable to this Agreement and are incorporated by reference herein; including, but not limited to, the definitions for "State" (54 U.S.C. § 300317), "Tribe" (54 U.S.C. § 300309), and "Native Hawaiian organization" (54 U.S.C. § 300214); and

**WHEREAS**, the NPS has determined that the undertakings for which Federal financial assistance may be provided could affect properties listed in or eligible for listing in the National Register of Historic Places (National Register), and the undertakings are therefore subject to review under Section 106 of the NHPA, 54 U.S.C. § 306108, and its implementing regulations, 36 CFR Part 800; the definitions in 36 CFR Part 800 are applicable to this Agreement and are incorporated by reference herein; and

**WHEREAS**, the NPS is the federal agency responsible for carrying out the Section 106 review for activities funded through its NPS Cultural Resources Financial Assistance Programs; and

**WHEREAS**, the NPS Cultural Resources Financial Assistance Programs undertakings with the potential to cause effects on historic properties are typically required by statute, regulation, or the design of the financial assistance program to result in no adverse effects to historic properties; and

**WHEREAS**, the NPS has a staff of professionals to carry out the NPS Cultural Resources Financial Assistance Programs; and

**WHEREAS**, the NPS has developed standards and guidelines that guide preservation work at the national, Tribal, State, and local levels, including, but not limited to, *The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* and *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating,*

*Restoring & Reconstructing Historic Buildings*, collectively referred to herein as *The Secretary of the Interior's Standards and Guidelines* and further listed in Appendix G; and

**WHEREAS**, the NHPA authorizes State Historic Preservation Offices (SHPO) in the 50 States, 5 Territories, 3 Freely Associated States, and the District of Columbia, 54 U.S.C. §§ 302301-304, to administer the State Historic Preservation Program, including the State program of Federal assistance for historic preservation within the State; and

**WHEREAS**, the SHPO must appoint or employ a professionally qualified staff, at a minimum, one individual meeting the *Secretary of the Interior's Professional Qualifications Standards* in each of the disciplines of history, archeology, and architectural history consistent with 36 CFR § 61.4(e); and

**WHEREAS**, the NPS and the relevant SHPO can certify a local government (Certified Local Government) to carry out parts of the national preservation program within their jurisdiction consistent with 54 U.S.C. §§ 302501-302505; and

**WHEREAS**, the NHPA authorizes Tribal governments with a signed Agreement with the NPS to assume the duty of the Historic Preservation Officer (THPO) on their Tribal lands consistent with 54 U.S.C. §§ 302702, 302703. A federally recognized Tribe may assume all or any part of the responsibilities that would otherwise be performed by a State Historic Preservation Officer with respect to its Tribal land (54 U.S.C. § 300319), through an agreement with the National Park Service (THPO Agreement). Tribal programs that assume these responsibilities are eligible to apply for NPS financial assistance to support carrying out these responsibilities; and

**WHEREAS**, the NPS provides Federal financial assistance through both grants and cooperative agreements (financial assistance instrument) consistent with the government-wide policies and procedures for management of Federal agencies' grants and agreements in 2 CFR Part 200, the definitions in 2 CFR Part 200 are applicable to this Agreement and are incorporated by reference herein; and

**WHEREAS**, the NPS may authorize specific recipients working on NPS assisted undertakings to carry out a portion of the Section 106 review process (Authorized Recipient), but the NPS will remain legally responsible for all findings and determinations; and

**WHEREAS**, the NPS and the United States has a unique trust relationship with, and responsibility to protect and support, Tribal governments and the NPS has a responsibility to consult with Tribal governments when formulating policies and undertaking activities that may directly or indirectly affect Tribal lands and interests; and

**WHEREAS**, pursuant to 36 CFR § 800.2(c)(2)(ii)(B) and Advisory Council on Historic Preservation (ACHP) guidance "Limitations on the Delegations of Authority by Federal Agencies to Initiate Tribal Consultation Under Section 106 of the National Historic Preservation Act," the NPS remains responsible, under this Agreement, for all consultation with federally recognized Tribes, retains its government-to-government relationship with and responsibility to Tribal Nations, and cannot unilaterally delegate Tribal consultation responsibilities to an Authorized Recipient nor presume that such discussions substitute for federal agency Tribal consultation responsibilities; and

**WHEREAS**, the NPS will fulfill its obligation to consult with Tribes and Native Hawaiian organizations consistent with all relevant Executive Orders, Secretary's Orders, the Department of the Interior Departmental Manual, and NPS Director's Orders and Related Guidance; and

**WHEREAS**, the NPS recognizes and considers Indigenous Knowledge consistent with the November 30, 2022 Guidance for Federal Departments and Agencies on Indigenous Knowledge issued by the White House Office of Science and Technology Policy and Council on Environmental Quality and the Departmental Manual (301 DM 7, Departmental Responsibilities for Consideration and Inclusion of Indigenous Knowledge in Departmental Actions and Scientific Research); and

**WHEREAS**, implementation of the NPS Cultural Resources Financial Assistance Programs which utilize certain types of appropriations can challenge the NPS's ability to complete the Section 106 process prior to the obligation of funding; and

**WHEREAS**, the NPS will advise applicants about the applicability of Section 110(k) of the NHPA, 54 U.S.C. § 306113, and inform applicants that project proposals involving potential effects to historic properties (e.g. ground disturbing activities) must not commence until completion of the Section 106 review; and

**WHEREAS**, the NPS identified activities, listed in Appendix B, assisted by its NPS Cultural Resources Financial Assistance Programs that have no potential to cause effects on historic properties, assuming such historic properties were present; therefore, the NPS has no further Section 106 responsibilities with regards to those activities, pursuant to 36 CFR § 800.3(a)(1); and

**WHEREAS**, the majority of the NPS Cultural Resources Financial Assistance Programs are designed to support the preservation and interpretation of America's historic places consistent with *The Secretary of the Interior's Standards and Guidelines*, and therefore, should generally not result in adverse effects to historic properties, which is defined in the financial assistance program requirements within Notice of Funding Opportunities, Grant Manuals, Grant Agreements, Cooperative Agreements, or other similar documents; and

**WHEREAS**, the NPS will advise applicants to design their proposals to avoid adverse effects on historic properties consistent with the financial assistance program requirements, however, the NPS may on rare occasions provide financial assistance for an undertaking that will have the potential to adversely affect historic properties; and

**WHEREAS**, the NPS provides oversight to ensure financial assistance program requirements have been met through Federal award conditions within the grant or cooperative agreement, which may require additional review and approvals by the NPS prior to the final agency decision authorizing Federal financial assistance on an undertaking (financial assistance technical review process); and

**WHEREAS**, the NPS identified activities, listed in Appendix C, assisted by its NPS Cultural Resources Financial Assistance Programs, that due to the financial assistance program requirements and financial assistance technical review process, would result in no adverse effects to historic properties; the NPS identified programmatic allowances in this Agreement to address the Section 106 review process for these activities (Programmatic Allowances); and

**WHEREAS**, the NPS will seek to minimize harm to any National Historic Landmark (NHL) prior to the approval of Federal financial assistance that may directly affect any NHL, pursuant to Section 110(f) of the NHPA (54 U.S.C. § 306107) and the NPS or its Authorized Recipient will consult with the NPS NHL Program on any undertakings with the potential to affect an NHL; and

**WHEREAS**, the NPS determined the requirement to take into account the effects to historic properties of its undertakings as described above may be more effectively and efficiently implemented through the development and use of this Agreement, pursuant to 36 CFR § 800.14(b)(2), to stipulate roles and

responsibilities for both the federal agency and the recipients, provide allowances for certain types of undertakings, establish protocols for consultation, facilitate identification and evaluation of historic properties, and streamline the assessment and resolution of adverse effects; and

**WHEREAS**, the NPS consulted with the National Conference of State Historic Preservation Officers (NCSHPO) and the ACHP, collectively, the Signatories (Signatories) pursuant to 36 CFR § 800.14(b)(2)(iii); and

**WHEREAS**, the NPS invited federally recognized Tribes, Alaska Native Corporations, Native Hawaiian organizations, and THPOs to consult on the development of this Agreement pursuant to 36 CFR § 800.14(f); and

**WHEREAS**, the NPS invited the National Association of Tribal Historic Preservation Officers, the National Trust for Historic Preservation, and National Heritage Areas to consult on the development of this Agreement; and

**WHEREAS**, the NPS hosted virtual consultation meetings regarding the proposed Agreement, meetings were hosted on Microsoft Teams on June 29, 2023 (Tribes/Alaska Native Corporations/Native Hawaiian organizations), July 10, 2023 (SHPOs/THPOs), July 11, 2023 (National Heritage Areas), July 17, 2023 (Tribes/Alaska Native Corporations/Native Hawaiian organizations), July 18, 2023 (All Consulting Parties), January 17, 2024 (SHPOs/THPOs), January 18, 2024 (Tribes/Alaska Native Corporations/Native Hawaiian organizations), January 24, 2024 (All Consulting Parties); and

**WHEREAS**, the NPS provided opportunities for public review and comment by publishing information on the development of this Agreement through a dedicated project page on the NPS Planning, Environment, and Public Comment website and requesting public comment on the proposal by August 17, 2023 and the draft Agreement by February 23, 2024; and

**NOW, THEREFORE**, the NPS, the ACHP, and NCSHPO, agree that the Section 106 review for the NPS Cultural Resources Financial Assistance Programs shall be implemented in accordance with the following Stipulations in order to take into account the effects of the undertakings assisted by those Programs on historic properties:

## **STIPULATIONS**

The NPS shall ensure that the following measures are implemented:

### **I. Applicability**

- A. Purpose. This Agreement sets forth the process by which the NPS will meet its responsibilities pursuant to Section 106 for undertakings receiving funding from its NPS Cultural Resources Financial Assistance Programs (identified in Appendix A). The purpose of this Agreement is to promote the efficiency of the Section 106 review for undertakings funded by the NPS that have little to no potential to cause adverse effects to historic properties or that otherwise do not warrant case-by-case consultation.
- B. Agreement application on Tribal lands. A Tribe with a THPO Agreement may authorize NPS use of this Agreement for any undertakings that are proposed to occur on or have the potential to affect historic properties located on their Tribal lands as defined at 54 U.S.C. § 300319. A Tribe will submit the Tribal Signatory Page in Appendix D signed by an authorized Tribal Official or designated representative of the Tribe authorizing such intent to the NPS Associate Director of Cultural Resources, Partnerships, and Science (Associate Director). Once a written and signed notification is received by the Associate Director, the NPS will notify the Signatories, any other

existing Tribal Signatories, and the relevant SHPO/THPO, and the Tribe will become a Tribal Signatory to the Agreement and the provisions of the Agreement will be applicable to proposed undertakings that may occur on or affect historic properties on that Tribe's lands.

1. Once a Tribe becomes a Tribal Signatory to the Agreement, it will remain a signatory until the Agreement is amended without the Tribe in accordance with Stipulation XIV.A.1., expires, or is terminated.
  2. A Tribe may terminate its role as a Tribal Signatory by providing 90 days written notice to the Associate Director, provided that the Tribal Signatory will consult with the NPS during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.
  3. Termination by any Tribal Signatory will be limited to termination of the Agreement's applicability to undertakings that would occur on or affect historic properties on the Tribal lands under the jurisdiction of the Tribal Signatory.
  4. At any point after a Tribe becomes a Tribal Signatory, the Tribe and the Associate Director may agree in writing that the NPS will follow 36 CFR §§ 800.3-800.7 or another applicable program alternative for a particular undertaking proposed to occur on or have the potential to affect historic properties on Tribal lands rather than the terms of the Agreement; this determination will occur prior to the initiation of Section 106 for the proposed undertaking.
- C. Existing agreements. Existing programmatic agreements, including appropriation- or program-specific programmatic agreements, that may apply to the NPS Cultural Resources Financial Assistance Programs as set forth in Appendix A of this Agreement, remain applicable unless the other programmatic agreements expire or are terminated according to their terms.

## II. Roles in the Section 106 Process

### A. National Park Service

1. Director, National Park Service (NPS Director)
  - i. The NPS Director is authorized on behalf of the Secretary to administer the NPS Cultural Resources Financial Assistance Programs in accordance with Department of the Interior *Departmental Manual Part 245, Chapter 1.1.C*.
2. Associate Director for Cultural Resources, Partnerships, and Science (Associate Director)
  - i. The Associate Director is the senior NPS official responsible for guiding the national historic preservation program.
  - ii. The Associate Director executes this Agreement on behalf of the NPS Cultural Resources Financial Assistance Programs.
  - iii. The Associate Director will direct Cultural Resources Financial Assistance Program Managers to ensure that all work carried out pursuant to this Agreement will be done by or under the direct supervision of professionals who meet the *Secretary of the Interior's Professional Qualifications Standards* in the appropriate discipline for the proposed undertaking.
3. Deputy Associate Directors, Cultural Resources, Partnerships, and Sciences
  - i. Reporting to the Associate Director, the Deputy Associate Directors within the Cultural Resources, Partnerships, and Science Directorate each lead their respective program areas.
4. Cultural Resources Financial Assistance Program Managers
  - i. Each program manager has general oversight authority to operate their NPS Cultural Resources Financial Assistance Programs.

- ii. Each program manager is the responsible agency official as defined in 36 CFR § 800.2(a)(2) for purposes of their individual financial assistance program's Section 106 compliance through the implementation of this Agreement.
        - iii. The program manager will identify which staff will be responsible for Section 106 compliance under this Agreement.
        - iv. The program manager will ensure Authorized Recipients are carrying out their responsibilities consistent with this Agreement.
  5. Cultural Resources Financial Assistance Staff
    - i. The NPS Cultural Resources Financial Assistance Programs are administered by a group of NPS employees and/or contractors.
    - ii. These NPS staff may have titles including, but are not limited to, Grant Management Specialists, Awarding Officers, Agreement Technical Representatives, Community Planners, Regional or Program Coordinators, and Technical Reviewers.
    - iii. NPS Cultural Resources Financial Assistance Program staff which meet the *Secretary of the Interior's Professional Qualifications Standards* in the appropriate discipline for the proposed undertaking will be responsible for evaluating all undertakings under this Agreement.
    - iv. If the NPS Cultural Resources Financial Assistance Program staff determines an Authorized Recipient does not employ a professional meeting the *Secretary of the Interior's Professional Qualifications Standards* in the appropriate discipline to review undertaking(s) under this Agreement, the NPS will reassume the Section 106 review for all undertakings to that recipient.
    - v. NPS Cultural Resources Financial Assistance Program staff carry out the financial assistance technical review process for all undertakings covered by this Agreement, including those with Section 106 review carried out by Authorized Recipients.
- B. State and Tribal Historic Preservation Offices
1. State Historic Preservation Offices (SHPO) in the 50 states, 5 territories, 3 Freely Associated States, and the District of Columbia; 54 U.S.C. §§ 302301-302304.
    - i. The SHPO selects eligible activities to be assisted by the NPS Federal financial assistance for annual grants-in-aid (Historic Preservation Fund [HPF]) Formula Grants). Projects can be conducted by the SHPO or they may be subawards to a subrecipient.
    - ii. A SHPO may be an eligible entity to apply for and receive financial assistance from NPS Cultural Resources Financial Assistance Programs in addition to an HPF Formula Grant.
    - iii. The SHPO will consult with the NPS, applicants/recipients, and subapplicants/subrecipients (when applicable), or their designees, to help the NPS complete the Section 106 review process.
  2. Tribal Historic Preservation Offices (THPO) are part of Tribal governments with a signed Agreement with the NPS to assume the duty of the Historic Preservation Officer on Tribal lands consistent with 54 U.S.C. §§ 302702, 302703.
    - i. The THPO selects eligible activities to be assisted by the NPS Federal financial assistance for annual grants-in-aid (HPF Formula Grants). Projects can be conducted by the THPO or they may be subawards to a subrecipient.

- ii. A THPO may be an eligible entity to apply for and receive financial assistance from NPS Cultural Resources Financial Assistance Programs in addition to an HPF Formula Grant.
        - iii. When a Tribe has a THPO Agreement with the NPS and is a Tribal Signatory to this Agreement in accordance with Stipulation I.B., the THPO will consult with the NPS, applicants/recipients, and subapplicants/subrecipients (when applicable), or their designees, to help the NPS complete the Section 106 review process.
        - iv. If a Tribe has a THPO Agreement with the NPS, but is not a Tribal Signatory to this Agreement, the NPS will be responsible for completing the Section 106 process in accordance with 36 CFR Part 800 for any undertaking that may receive financial assistance through the NPS Cultural Resources Financial Assistance Programs unless the Tribe elects to become a Tribal Signatory through the process outlined above in Stipulation I.B.
3. Certified Local Governments (CLG)
  - i. A CLG may be a subrecipient of the SHPOs HPF Formula Grant consistent with 54 U.S.C. § 302902(c)(4),
  - ii. When a subrecipient of the SHPO's HPF Formula Grant, a CLG will consult with the SHPO to help the NPS complete the Section 106 review process.
- C. National Heritage Areas, a component of the National Heritage Area System as authorized in 54 U.S.C. §§ 120101-120104.
  1. The Secretary, acting through the NPS Director, may provide technical and financial assistance to local coordinating entities to support each National Heritage Area.
  2. Each National Heritage Area is designated by Congress, which also names a local coordinating entity responsible for developing and implementing a management plan for the National Heritage Area.
  3. NPS enters into a cooperative agreement with a National Heritage Area local coordinating entity as a recipient of financial assistance to facilitate the development and implementation of their management plan.
  4. During the development of annual work plans, the NPS will determine if the National Heritage Area local coordinating entity employs a professional meeting the *Secretary of the Interior's Professional Qualifications Standards* in the appropriate discipline(s) to meet the requirements to be an Authorized Recipient to review undertaking(s) under this Agreement.
    - i. If the NPS determines the National Heritage Area local coordinating entity does not meet the requirements to be an Authorized Recipient, the NPS will carry out the Section 106 review for the undertaking(s).
- D. Applicants/Subapplicants and Recipients/Subrecipients
  1. Eligible applicants for the NPS Cultural Resources Financial Assistance Programs vary depending upon the program or appropriation authorization.
  2. Recipients, as those applicants selected to receive NPS financial assistance, will understand and acknowledge any conditions or requirements that may be placed upon undertakings as a result of the Section 106 consultation and the provisions of this Agreement.
  3. Authorized Recipients are those recipients authorized by the NPS to carry out a portion of the Section 106 process and, as outlined in Stipulation III.A., will ensure that their



subrecipients comply with any project-specific conditions as a result of the Section 106 consultation and the provisions of this Agreement.

4. Recipients must notify the NPS as soon as possible of any proposed changes to the approved project as outlined in Stipulation IX. Subrecipients will notify the recipient who provided their subaward, who will notify the NPS.
  5. If the recipient or subrecipient has concerns regarding confidentiality or the disclosure of discretionary information, they must consult with the NPS.
- E. Use of Agreement for Other Federal Agency Undertakings
1. For any undertaking where a federal agency other than the NPS is considering funding, permitting, licensing, or approving a portion of an undertaking funded in whole or in part by the NPS Cultural Resources Financial Assistance Programs, that agency may use the terms of this Agreement to satisfy its Section 106 responsibility for the undertaking, after it has notified the NPS, the relevant SHPO/THPO, consulting parties, and the ACHP in writing that it intends to do so. Such notification would not require the federal agency to become a signatory or concurring party to this Agreement.
- F. Advisory Council on Historic Preservation (ACHP)
1. The ACHP will participate in consultation to resolve adverse effects when determined appropriate by ACHP.
  2. The ACHP may assist in resolving disputes among signatories of this Agreement, any affected Tribe(s) or Native Hawaiian organizations (NHOs), any recipient, subrecipient, or any consulting party.
  3. The NPS or any party may request ACHP involvement or comment as outlined in Stipulation XII.
- G. Local Governments
1. Pursuant to 36 CFR § 800.2(c)(3), a representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur may participate as a consulting party.
  2. The NPS or an Authorized Recipient will invite local governments, including but not limited to those local governments that are CLGs, to participate in the consultation when carrying out the Standard Review Process in Stipulation V.B.1.
- H. Public Involvement
1. The NPS will arrange for public participation appropriate to the subject matter and the scope of work and involve the individuals, organizations and entities likely to be interested.
  2. The NPS will notify the public of proposed undertakings in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

### **III. Responsibilities in the Section 106 Process**

- A. The NPS authorizes the following Authorized Recipients of the NPS Cultural Resources Financial Assistance Programs to independently perform the Section 106 review steps as outlined in Stipulations IV-V on behalf of the NPS:
1. State Historic Preservation Offices (SHPO);
  2. Tribal Historic Preservation Offices (THPO), when the THPO's Tribe is a Tribal Signatory to this Agreement in accordance with Stipulation I.B; and
  3. National Heritage Areas local coordinating entities.

- B. The NPS will carry out the Section 106 process as outlined in Stipulations IV-V for:
  - 1. All other eligible recipients receiving Federal financial assistance from the NPS Cultural Resources Financial Assistance Programs;
  - 2. Any grant or cooperative agreement to a THPO when a THPO's Tribe is not a Tribal Signatory to this Agreement; and
  - 3. National Heritage Area local coordinating entities that do not employ a professional meeting the *Secretary of the Interior's Professional Qualifications Standards* in the appropriate discipline as determined in Stipulation II.C.4. above.
- C. The NPS is responsible for the following actions, which may not be delegated to Authorized Recipients or any other recipients:
  - 1. Initiate consultation with federally recognized Tribes and NHOs in accordance with federal requirements for government-to-government consultation.
  - 2. Resolution of a dispute that cannot be resolved within 90 calendar days, regardless of the nature (designation of Area of Potential Effects, suitability of consulting parties, phased identification, eligibility, and effects determinations) in accordance with Stipulation XII of this Agreement.
  - 3. Consultation regarding the resolution of adverse effects with undertakings where the NPS has worked with the recipient to avoid adverse effects, but has determined the adverse effects are unavoidable.
  - 4. Resolution of adverse effects through development and execution of a Memorandum of Agreement or Programmatic Agreement as outlined in Stipulation VI.

#### **IV. Undertakings Not Requiring Further Section 106 Review**

- A. For activities identified in Appendix B, the NPS determined the activities do not have the potential to cause effects on historic properties regardless of the setting or surroundings where the work is to be undertaken. NPS has no further Section 106 responsibilities with regards to these activities, pursuant to 36 CFR § 800.3(a)(1).
- B. After selection of successful grant proposals, or for cooperative agreements, during the proposal of annual work plans and/or the approval of specific task orders, an NPS or Authorized Recipient will review the proposal and determine if the proposed undertaking is a type of activity listed in Appendix B.
- C. For any proposal consisting of all activities listed in Appendix B, the NPS or the Authorized Recipient may proceed without further Section 106 consultation.
- D. For undertakings that include any activities in addition to those listed in Appendix B, the NPS or the Authorized Recipient will conduct the Section 106 process for the undertaking as outlined in Stipulation V below for the entire undertaking.

#### **V. Section 106 Review of NPS Cultural Resources Financial Assistance Proposals**

- A. Programmatic Allowances
  - 1. The NPS or an Authorized Recipient will determine if an undertaking conforms to one or more Programmatic Allowances as outlined in Appendix C of this Agreement.
  - 2. If the NPS or the Authorized Recipient determines any portion of an undertaking's scope of work does not conform to one or more Programmatic Allowances listed in Appendix C, the NPS or the Authorized Recipient will conduct the standard project review, as appropriate, for the entire undertaking in accordance with Stipulation V.B.
    - i. The NPS will notify the recipient, and in the cases with an Authorized Recipient, they will notify any proposed subrecipients, that standard Section 106 project review is required.

3. If the undertaking involves an NHL, prior to making a final determination, the NPS or the Authorized Recipient will notify the appropriate SHPO/THPO, any Tribe(s) and Native Hawaiian organization(s) that may attach religious and cultural significance to historic properties that may be affected by the undertaking, and the NPS NHL Program if the undertaking conforms to one or more Programmatic Allowances. The NPS or the Authorized Recipient will provide information about the proposed scope of work for the undertaking and the Programmatic Allowances enabling this determination.
    - i. If the SHPO/THPO, Tribe or Native Hawaiian organization, or the NPS NHL Program, object to the use of Programmatic Allowances for the undertaking, they have 30 calendar days from notification to inform the NPS or Authorized Recipient and request the undertaking utilize the standard project review in Stipulation V.B. below.
  4. For NPS reviewed undertakings, the NPS will conclude the Section 106 process by documenting the use of one or more Programmatic Allowance in the official file of record.
  5. For Authorized Recipients, the Authorized Recipient will conclude the Section 106 process by documenting the use of one or more Programmatic Allowances in the official file of record, and notify the NPS in accordance with existing NPS reporting requirements.
    - i. The NPS will carry out the financial assistance technical review process for all undertakings, including those reviewed by Authorized Recipients.
    - ii. If the NPS determines any undertaking does not meet one or more Programmatic Allowances as determined by an Authorized Recipient, the NPS will notify the Authorized Recipient the undertaking requires the standard project review Process as outlined in Stipulation V.B.
  6. Programmatic Allowances may be revised, and new Programmatic Allowances may be added to Appendix C in accordance with Stipulation XIV.B.
- B. Standard Project Review
1. The NPS or the Authorized Recipient will ensure the following standard project review steps are implemented. The NPS or the Authorized Recipient may combine some or all of these steps to expedite consultation in accordance with 36 CFR § 800.3(g).
    - i. Define the proposed undertaking (36 CFR § 800.16(y));
    - ii. Identify and consult as appropriate in the steps below with those parties that have a consultative role in the Section 106 process consistent with 36 CFR § 800.2(c);
    - iii. The NPS will invite Tribes and NHOs to consult in accordance with Stipulation VII;
    - iv. Determine and document the area of potential effects (36 CFR § 800.16(d));
    - v. Research existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified (36 CFR § 800.4(a)(2));
    - vi. For NHLs, the NPS or an Authorized Recipient will notify the NPS NHL Program; and
    - vii. The NPS or the Authorized Recipient will assess effects to historic properties by applying the criteria of adverse effect (36 CFR § 800.5(a)).
  2. The NPS or the Authorized Recipient will ensure the proposal adheres to the relevant *Secretary of the Interior's Standards and Guidelines*, and if the proposal avoids adverse

effects, the NPS or the Authorized Recipient will propose a finding of no adverse effect to all consulting parties, including the SHPO/THPO.

- i. For all undertakings, the NPS will provide the standard review materials to consulting Tribes and NHOs; and
    - ii. When the SHPO or THPO is the Authorized Recipient, they will provide the Section 106 materials to its Review and Compliance staff for concurrence.
  3. If the project cannot be modified to meet the *Secretary of the Interior's Standards and Guidelines* or would otherwise result in an adverse effect on historic properties, the NPS or the Authorized Recipient will proceed in accordance with Stipulation VI, below.
  4. If the SHPO/THPO or any consulting party, including Tribes and NHOs, disagrees with the finding, they should notify the NPS in writing that they disagree with the finding. The NPS will proceed in accordance with Stipulation XII, below.
- C. Congressionally Directed Spending
  1. Congress may direct the NPS to award Federal financial assistance to carry out activities associated with one or more NPS Cultural Resources Financial Assistance Programs under this Agreement (“Congressionally Directed Spending”).
  2. If the Congressionally Directed Spending project requires Section 106 review and does not meet a Programmatic Allowance in Appendix C, the NPS will initiate the standard Section 106 project review outlined in Stipulation V.B after the project’s appropriation has been authorized by Congress.
  3. For Congressionally Directed Spending undertakings, the NPS and SHPO/THPO will ensure the proposal adheres to the relevant *Secretary of the Interior's Standards and Guidelines*, and, if it avoids adverse effects, the NPS will propose a finding of no adverse effect to all consulting parties, including the SHPO/THPO.
  4. If the Congressionally Directed Spending undertaking cannot be modified to meet the *Secretary of the Interior's Standards and Guidelines* or would otherwise result in an adverse effect on historic properties, the NPS will proceed in accordance with Stipulation VI, below.

## **VI. Resolving Adverse Effects**

- A. Authorized Recipients will notify the NPS if they determine an undertaking may have the potential to result in an adverse effect and the NPS will enter consultation to resolve the adverse effects.
- B. If the NPS finds that the project will have an adverse effect on historic properties and the SHPO/THPO concurs, the NPS will continue consultation with the SHPO/THPO, recipient, subrecipient (if applicable), and other appropriate consulting parties, including appropriate federally recognized Tribes and NHOs in accordance with 36 CFR § 800.6, to develop alternatives or modifications to the project that could avoid, minimize or mitigate effects on historic properties.
- C. The NPS will notify the ACHP of all adverse effect findings, provide documentation specified in 36 CFR § 800.11(c), and invite the ACHP to participate in a manner consistent with 36 CFR § 800.6(a)(1)(i).
- D. Should adverse effects be determined to be unavoidable, the NPS, SHPO/THPO, the ACHP (if participating), and the recipient, subrecipient (if applicable), along with any Tribes, NHOs or consulting parties, will develop a Memorandum of Agreement (MOA) or project-specific Programmatic Agreement (PA) to resolve adverse effects for the subject undertaking.

- E. The NPS may use the standard stipulations included in Attachment F of this Agreement to expedite development of an MOA, or, if the project warrants due to its complexity, develop a project-specific PA.

## **VII. Consultation with Tribes and Native Hawaiian Organizations**

- A. The NPS retains its government-to-government relationship with and responsibility to federally recognized Tribes (Tribes) and its government-to-sovereign relationship with the Native Hawaiian community and remains responsible, pursuant to this Agreement, for all consultation with Tribes and NHOs.
- B. When appropriate to the proposal, applicants may have preliminary discussions with Tribes and NHOs in developing a funding proposal.
- C. The NPS will take the lead in identifying and consulting with Tribes, and also take the lead in identifying and consulting with NHOs, pursuant to 36 CFR § 800.2(c)(2) and 36 CFR § 800.3(c)-(f) for all NPS Cultural Resources Financial Assistance Program undertakings requiring Section 106 review.
- D. The NPS will initiate consultation with Tribes and NHOs that may attach cultural and religious significance to properties affected by the proposed undertaking as soon as it is in receipt of sufficient documentation from the recipient, or Authorized Recipient, as outlined in Stipulation V.B.1., above.
- E. Consultation on Undertakings on Tribal Lands
  - 1. For undertakings that will take place on Tribal lands where there is a Tribal Signatory to this Agreement, the provisions of this Agreement will be applicable to the proposed project(s) that may occur on or affect historic properties on that Tribe's lands.
  - 2. When a proposed undertaking is located partly or wholly on Tribal lands, or may affect historic properties located on Tribal lands, and the affected Tribe has not signed this Agreement as a Tribal Signatory, the provisions of this Agreement are not applicable, and the NPS will consult with the Tribe and/or THPO in accordance with 36 CFR Part 800.

## **VIII. Emergency Actions**

- A. Emergency actions are those actions deemed necessary as an immediate and direct response to an emergency situation, which is a disaster or emergency declared by the President, a Tribal government, or the Governor of a State, or another immediate threat to life or property as identified by the Associate Director. Emergency actions implemented under this Agreement are only those response actions related to undertakings from the NPS Cultural Resources Financial Assistance Programs listed in Appendix A, currently within their period of performance, and implemented within 30 calendar days from the initiation of the emergency situation.
- B. In the event the NPS, the recipient, and the subrecipient (if applicable), agree that an emergency action has the potential to affect historic properties, the NPS will:
  - 1. Notify the appropriate SHPO/THPO, identifying the shortened review time, and any Federally recognized Tribe(s)/NHO(s) that may attach cultural and religious significance to historic properties likely to be affected prior to the undertaking and afford them an opportunity to comment on the plan to address the emergency within 7 calendar days of notification. If the SHPO/THPO and other parties do not comment or object to the plan within the review period, the NPS will implement the proposed plan.
  - 2. If the NPS is unable to consult with the SHPO/THPO and other parties prior to carrying out emergency actions, the NPS will notify the SHPO/THPO and other parties as appropriate within 48 hours after the initiation of the emergency action. This notification will include a description of the emergency action taken, the effects of the action(s) to

historic properties, and, where appropriate, a request for review of any further proposed measures to avoid, minimize, or mitigate potential adverse effects to historic properties. The SHPO/THPO and other parties will have 7 calendar days to review and comment on the proposal where further action is required to address the emergency. If the SHPO/THPO and other parties do not object to the plan within the review period, the NPS and recipient will implement the proposed plan.

- C. These emergency procedures apply only to actions that are implemented within 30 calendar days after the disaster or emergency has been formally declared by the appropriate authority. The NPS may request an extension of the period of applicability from the ACHP prior to the expiration of the 30 calendar days.

#### **IX. Changes to an Approved Scope of Work**

- A. If a recipient or subrecipient proposes changes to an approved scope of work for an undertaking, they will notify the NPS or Authorized Recipient that carried out the financial assistance technical review process.
- B. The NPS or the Authorized Recipient will approve the change if the change qualifies as an undertaking not requiring further Section 106 review (Stipulation IV.A-C.), meets a Programmatic Allowance as outlined in Stipulation V.A., or, if the NPS or Authorized Recipient determines that the proposed change would have no effect on historic properties.
- C. If the change can be modified to meet a Programmatic Allowance, the NPS or the Authorized Recipient will require the modification to be made and can conclude its Section 106 responsibilities.
- D. If the NPS or the Authorized Recipient determines that the change does not qualify as an undertaking not requiring Section 106 review (Stipulation IV.A-C.) or meet a Programmatic Allowance (Stipulation V.A.), the NPS or the Authorized Recipient will reinstate Section 106 consultation pursuant to Stipulation V.B.

#### **X. Curation**

- A. If applicable, as required by the financial assistance instrument, the recipient, or subrecipient (if applicable), will deposit all archeological materials and appropriate field and research notes, maps, drawings and photographic records collected as a result of archeological investigations arising from this Agreement for permanent curation with a curation facility which meets the requirements in 36 CFR Part 79, Curation of Federally Owned and Administered Archeological Collections except for Native American human remains or cultural items that will be subject to the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. §§ 3001-3013)).
- B. With the exception of Native American human remains or cultural items subject to NAGPRA, archeological collections and accompanying data and records resulting from NPS Cultural Resources Financial Assistance Program assisted work must be made available for scholarly research by qualified professionals for use in research, interpretation, preservation, and resource management needs. 36 CFR §§ 800.6(a)(5) and 800.11(c) recognize some information may be withheld from public disclosure under 54 U.S.C. § 307103 (Section 304 of the NHPA).

#### **XI. Inadvertent Discoveries**

- A. Recipients will coordinate the review of any inadvertent discoveries, including the discovery of human remains, with other applicable federal, state, Tribal, and local laws and ordinances as appropriate.

- B. All recipients will ensure the following procedures are included within any contract with subrecipients and/or contractors to address if historic properties are discovered, human remains are discovered, or the undertaking creates an unanticipated effect on historic properties:
1. Immediately halt all activity within a 100 foot radius of the discovery, clearly mark the area of discovery, and implement measures as appropriate to protect the discovery from damage, looting, and vandalism;
  2. If the discovery involves human remains, notify local law enforcement office and coroner/medical examiner in accordance with any applicable State or Commonwealth statute(s);
  3. Have a professional in the appropriate discipline meeting the *Secretary of the Interior's Professional Qualifications Standards*, inspect the area of the discovery to determine the extent of the discovery, provide recommendations regarding National Register eligibility of the discovery, and proposed measures to avoid, minimize, or mitigate adverse effects if the discovery is determined to be National Register-eligible; and
  4. Within 48 hours of the discovery, the recipient will notify the NPS and the SHPO/THPO of the discovery in writing describing the measures that have been implemented to comply with this Stipulation and the preliminary assessment of the National Register eligibility of the discovery and the measures proposed to avoid, minimize, or mitigate adverse effects, if eligible. In making its evaluation, the recipient may assume the discovery to be National Register eligible for the purposes of Section 106 pursuant to 36 CFR § 800.13(c).
- C. Within 48 hours of notification from the recipient, the NPS will notify any Tribe or NHO of any discoveries or unanticipated effects on historic properties that have the potential to adversely affect historic properties of religious and cultural significance to the Tribe or NHO. The NPS will at a minimum notify the Tribe or NHO utilizing electronic mail and by telephone.
1. The NPS will take into account any Tribe's or NHO's recommendations regarding National Register eligibility of the discovery and the recipient's proposed measures to avoid, minimize, or mitigate adverse effects, if determined or assumed to be National Register-eligible.
  2. The NPS, SHPO/THPO, recipient, and any participating Tribes or NHOs will consult on final measures to avoid, minimize, or mitigate adverse effects within 15 calendar days of the initial discovery and eligibility determination. Upon agreement regarding such measures, the recipient will implement them.
  3. If the NPS, the SHPO/THPO, recipient, and any Tribes or NHOs cannot reach agreement on final measures to avoid, minimize, or mitigate adverse effects, the NPS will utilize the process in Stipulation XII.A.
- D. The recipient will provide the NPS, SHPO/THPO, and any consulting parties, including Tribes or NHOs, a report of the actions taken to resolve the adverse effect to the discovered historic property when they are completed.
- E. If a burial site, human remains, or funerary objects are discovered, in addition to notifying the local law enforcement office and coroner/medical examiner in accordance with any applicable State or Commonwealth statute(s), the recipient will follow applicable federal, state, and Tribal burial laws and ordinances, and as appropriate, consult with the NPS, the SHPO/THPO (if not the recipient), participating Tribe(s) or NHO(s), and other consulting parties on a plan for the treatment of the human remains. When applicable, the NPS will advise recipients to follow the principles within the ACHP's Policy Statement on Burial Sites, Human Remains, and Funerary Objects, dated March 1, 2023.

1. If applicable, the recipient will be responsible for compliance with the requirements of NAGPRA (25 U.S.C. §§ 3001-3013) and its implementing regulations (43 CFR Part 10) upon the discovery of Native American human remains or cultural items.

## **XII. Dispute Resolution**

- A. Should any recipient, subrecipient (if applicable), SHPO/THPO, Tribe or NHO, or other consulting party object in writing to the NPS regarding any undertaking reviewed under this Agreement, then the NPS will consult with the objecting party for not more than 60 days to resolve the objection. If the NPS determines within 60 days that such objection cannot be resolved through consultation, the NPS will:
  1. Forward to ACHP all documentation relevant to the objection, including the NPS proposed resolution to the objection. The ACHP will provide the NPS with their response to the NPS proposed resolution of the dispute within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the NPS will consider any advice or comments regarding the dispute from the ACHP and provide them with a written response. The NPS will then proceed according to its final decision and notify any consulting parties.
  2. If the ACHP does not provide their advice regarding the dispute within the 30 day period, the NPS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the NPS will consider any comments regarding the dispute from the ACHP and provide them with a written response. The NPS will then proceed according to its final decision and notify any consulting parties.
  3. The NPS responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remains unchanged.
- B. Excluding disputes raised regarding specific undertakings covered by this Agreement, should any Signatory or Tribal Signatory to this Agreement object to the way the stipulations provided herein are being implemented, the Signatories will meet to attempt to resolve the dispute. If a Signatory determines that such dispute cannot be resolved, the NPS will:
  1. Forward all documentation relevant to the dispute, including the NPS's proposed resolution, to the other Signatories. The Signatories will provide the NPS with their responses to the NPS's proposed resolution of the dispute within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the NPS will consider any advice or comments regarding the dispute from the Signatories and provide them with a written response. The NPS will then proceed according to its final decision and notify the Signatories of such decision.
  2. If the Signatories do not provide their advice regarding the dispute within the 30-day period, the NPS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the NPS will consider any comments regarding the dispute from the Signatories and provide them with a written response. The NPS will then proceed according to its final decision and notify the Signatories of such decision.

## **XIII. Reporting and Monitoring of Agreement**

- A. Each Cultural Resources Financial Assistance Program Manager will generate an annual report for their program documenting undertakings carried out pursuant to this Agreement. The reporting period will be the Federal fiscal year from October 1 to September 30. The annual report will include a list of undertakings that met Programmatic Allowances as outlined in Appendix C.



- B. Starting 2 years after the execution of the Agreement, the NPS will report biennially to Signatories a summary of its performance meeting the terms of this Agreement (Biennial Report). The NPS will utilize the annual reports outlined in Stipulation XIII.A. to compile the Biennial Report. The Biennial Report must include, but is not limited to:
1. A list of those recipients that met the requirements to be an Authorized Recipient consistent with Stipulation III.A.3. The list of Authorized Recipients will include the name(s) and location(s) of the grant or cooperative agreement associated with their reviews under this Agreement;
  2. A list of undertakings that met a Programmatic Allowance, including the project name, location (City/County, State);
  3. A discussion identifying any problems the NPS encountered in carrying out the terms of this Agreement that need to be addressed by the Signatories through amendments or development of guidance documents; and
  4. Any other information the NPS wishes to provide that might improve the effectiveness of this Agreement.
- C. The NPS will convene an in-person and/or virtual meeting of the Signatories to the Agreement every 2 years to review the terms of the Agreement, the performance of the NPS in meeting its responsibilities set forth in this Agreement, and to discuss any programmatic or policy issues encountered in the implementation of its Stipulations. If all Signatories agree such a meeting is not necessary at that time, the meeting may be waived.

#### **XIV. Amendments**

- A. Signatories to this Agreement, including current Tribal Signatories, may request that it be amended. All Signatories will consult to consider such amendment. The NPS will facilitate consultation, including notification to consulting parties, within 30 calendar days of the request. The amendment will be effective on the date a copy of the amendment is signed by the Signatories, including current Tribal Signatories. Any amendments will be filed with the ACHP.
1. Any current Tribal Signatories must sign any amendment for the Agreement's continued applicability on its Tribal lands. If the NPS, ACHP, and NCSHPO agree to an amendment, but a Tribal Signatory does not agree to sign such an amendment in writing, the Tribe would terminate its participation in the Agreement and the Agreement will no longer be applicable on its Tribal lands.
- B. Appendices may be modified without formal amendment to the Agreement. The NPS will provide the draft updated Appendix or Appendices to all Signatories for review. If no Signatory objects in writing within 30 calendar days of receipt of the NPS proposed modification to the Appendix or Appendices, the NPS will sign and date the amended Appendix and distribute the updated Appendix to the Signatories. If a Signatory objects in writing within 30 calendar days or requests the updated Appendix should be modified through a formal amendment, then the NPS will following the process in Stipulation XIV.A. Such an amendment will go into effect on the date the NPS transmits the final updated Appendix to the other Signatories.

#### **XV. Termination**

- A. The NPS, NCSHPO, or the ACHP may terminate this Agreement by providing 90 days' written notice to the other Signatories, provided that the Signatory will consult with the other Signatories during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.
- B. After a Tribal Signatory signs the Agreement, termination of the Agreement by that Tribe only terminates the applicability of the Agreement on those Tribal lands. Termination by a Tribal

Signatory to the Agreement will not terminate the Agreement in any jurisdiction other than its own Tribal land.

**XVI. Duration and Execution**

- A. This Agreement shall take effect in each State (as defined by 54 U.S.C. § 300317) on the date it is signed by the NPS, the NCSHPO, and the ACHP. This Agreement shall continue to be in effect until September 30, 2034 unless otherwise amended or terminated prior to that date. Prior to such time, the NPS, NCSHPO, and the ACHP may agree in writing to extend its duration, with an option for renewal in 5-year increments with agreement of the Signatories.
- B. This Agreement shall take effect on Tribal lands on the date an authorized Tribal Official or designated representative of the Tribe with a THPO Agreement signs the Tribal Signatory Page in Appendix D.
- C. Execution of this Agreement by the NPS, the NCSHPO, and the ACHP and implementation of its terms evidence that the NPS has taken into account the effects of undertakings assisted by the NPS Cultural Resources Financial Assistance Programs on historic properties and afforded the ACHP an opportunity to comment.
- D. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

**PROGRAMMATIC AGREEMENT  
AMONG  
THE NATIONAL PARK SERVICE,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING CULTURAL RESOURCES GRANTS AND FINANCIAL ASSISTANCE  
(AGREEMENT)**

**NATIONAL PARK SERVICE**

**JOY BEASLEY** Digitally signed by JOY BEASLEY  
Date: 2024.08.28 12:44:08  
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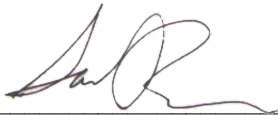
Joy Beasley  
Associate Director, Cultural Resources, Partnerships, and Science

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Date

**PROGRAMMATIC AGREEMENT  
AMONG  
THE NATIONAL PARK SERVICE,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING CULTURAL RESOURCES GRANTS AND FINANCIAL ASSISTANCE  
(AGREEMENT)**

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**



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Sara C. Bronin  
Chair

September 6, 2024

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Date

**PROGRAMMATIC AGREEMENT  
AMONG  
THE NATIONAL PARK SERVICE,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING CULTURAL RESOURCES GRANTS AND FINANCIAL ASSISTANCE  
(AGREEMENT)**

**NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS**



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Ramona M. Bartos  
President

8/14/2024

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Date

## **Appendix A: NPS Cultural Resources Federal Financial Assistance Programs**

*This Appendix may be amended in accordance with Stipulation XIV, Amendments*

The following NPS programs, named and briefly described below, are the NPS Cultural Resources Financial Assistance Programs to which this Agreement shall apply:

### **Historic Preservation Fund**

54 U.S.C. § 303101 et seq.

The Historic Preservation Fund (HPF) was first funded in 1977 to assist in the implementation of the National Historic Preservation Act to record, document, repair, and protect properties, landscapes, traditional cultural practices, and archeological sites. The fund also supports planning activities, education, training, and technical assistance activities. Over the past 40-plus years, grants have invested more than \$1.2 billion in Federal funding for preservation projects in all 50 states, the territories, the Freely Associated States, the District of Columbia, and across more than 200 Tribes with signed THPO partnership agreements.

HPF grant programs assist with a variety of historic preservation and community projects focused on heritage preservation. The funding for all grants, regardless of program, comes from the Historic Preservation Fund.

Formula Grants, 54 U.S.C. § 302902 (States); 54 U.S.C. § 302701 et seq. (Tribes)

Competitive Grants, 54 U.S.C. § 302901 et seq.

Congressionally Directed Spending, 54 U.S.C. § 302901 et seq.

Historically Black Colleges and Universities Historic Building Restoration and Preservation, Pub. L. 104-333, div. I, title V, §507, Nov. 12, 1996, 110 Stat. 4156

Save America's Treasures Program, 54 U.S.C. § 308901 et seq.

Emergency Supplemental Historic Preservation Fund, The Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99-177, § 251(b)(2)(A)(i).

### **National Heritage Areas**

54 U.S.C. § 120101, notes.

National Heritage Areas (NHA) are designated by Congress to promote the conservation of natural, historic, scenic, and cultural resources. The areas are the management responsibility of Federal commissions, nonprofit groups, universities, State agencies or municipal authorities named by Congress. NHAs are guided by management plans approved by the Secretary of the Interior. Via this partnership strategy, heritage areas provide a powerful tool for the preservation of community heritage, combining historic preservation; cultural and natural resource conservation; local and regional preservation planning; and heritage education and tourism. The NPS provides planning, technical assistance, and financial assistance as authorized and appropriated by Congress. Each NHA's designating legislation provides a funding authority for the Secretary of the Interior, acting through the NPS, to award funds to the named local coordinating entity.

### **National Maritime Heritage**

54 U.S.C. § 308701 et seq.

The National Maritime Heritage Grants Program provides funding for education and preservation projects designed to preserve historic maritime resources and to increase public awareness and appreciation for the maritime heritage of the United States. The grant is funded through a percentage of the proceeds from the sale or scrapping of obsolete vessels of the National Defense Reserve Fleet. All grants awarded must be matched on a 1-to-1 basis with non-federal assets.

### **Native American Graves Protection and Repatriation Act (NAGPRA) Grants**

25 U.S.C. § 3008

Section 10 of NAGPRA authorized the Secretary to make grants to Tribes, Native Hawaiian organizations, and museums for the purposes of assisting in consultation, documentation, and repatriation of Native American human remains and cultural items, including human remains, funerary objects, sacred objects, and objects of cultural patrimony. Federal agencies and the Smithsonian Institution are ineligible to apply for all NAGPRA grants.

NAGPRA Consultation/Documentation Grants support consultation projects related to compiling or revising a NAGPRA inventory and making or responding to requests for repatriation of items in a NAGPRA summary. Documentation projects support determining the geographical origin, cultural affiliation, and other basic facts related to the acquisition of Native American human remains or cultural items. NAGPRA Repatriation Grants defray costs associated with the packaging, transportation, contamination removal, and/or storage of NAGPRA-related human remains and cultural items.

Repatriation grant applications must demonstrate the following for each unique repatriation:

1. The human remains and/or cultural items that are being physically transferred have been published in a Notice of Inventory Completion and/or Notice of Intent to Repatriate in the Federal Register, and the required 30 day waiting period has passed.
2. The legal transfer of control of the human remains and/or cultural items from the museum or Federal agency to the Indian tribe or NHO has occurred and is documented in writing.

### **Preservation of Japanese American Confinement Sites**

Public Law 109-441, 120 Stat. 3288

The Japanese American Confinement Sites Grant Program provides financial assistance to organizations and entities working to preserve historic Japanese American confinement sites and their history, including: private nonprofit organizations; educational institutions; State, Tribal, and local governments; and other public entities, for the preservation and interpretation of U.S. confinement sites where Japanese Americans were detained during World War II.

### **Lower Mississippi Delta Initiative Local Heritage Grants**

Public Law 103-433

The Lower Mississippi Delta Initiative Local Heritage Grants provides grants to support preservation of the Lower Mississippi Delta's cultural and natural resources and to increase heritage tourism. Examples of projects include: installation of historical markers, archeological surveys, development of interpretive exhibits, and support of heritage festivals. Projects must be physically located within the Delta Region as defined by the Lower Mississippi Delta Initiative Program.

### **Preservation Technology and Training (PTT) Grants**

54 U.S.C. § 305304

Preservation Technology and Training Grants (PTT Grants) are intended to create better tools, better materials, and better approaches to conserving buildings, landscapes, sites, and collections. The PTT Grants are administered by the National Center for Preservation Technology and Training (NCPTT), the National Park Service's innovation center for the preservation community.

### **Cultural Resources, Partnerships, and Science Directorate Cooperative Agreements**

54 U.S.C. § 300101 et seq.

The NPS Cultural Resources, Partnership, and Science Directorate enters into cooperative agreements with a variety of organizations and educational institutions. These cooperative agreements allow the NPS to partner with a non-Federal entity to carry out activities where substantial involvement by the NPS is anticipated.

### **Alaska Native and Native Hawaiian Culture and Arts Development Grant Program**

20 U.S.C. § 4441

The Alaska Native and Native Hawaiian Culture and Arts Development Grant Program provides funding to support culture and art programs, including traditional and contemporary expressions of language, history, visual and performing arts, and crafts. The grant is open to private, nonprofit organizations or institutions which primarily serve and represent Native Hawaiians and Alaska Natives and have been recognized by the Governor of the State of Hawaii or the Governor of the State of Alaska, respectively, for the purpose of making such organization or institution eligible to receive such grants.



## **Appendix B: Undertakings Not Requiring Further Section 106 Review**

*This Appendix may be amended in accordance with Stipulation XIV, Amendments*

The following activities constitute activity types that may be eligible for NPS Cultural Resources Financial Assistance across one or more financial assistance programs. Inclusion on this list does not indicate eligibility for funding; applicants should reference the program's specific eligibility requirements. Undertakings not requiring further Section 106 Review are not necessarily exempt from compliance with other Federal laws (e.g. National Environmental Policy Act, Native American Graves Protection and Repatriation Act) or any State, Tribal, or local laws. Due to the type of activity, consultation with or participation by SHPOs/THPOs, Tribes, or NHOs to carry out the activity may be required by the financial assistance program. Such consultation would be separate and distinct from the Section 106 review (e.g. review of National Register nominations).

For the following activities, the NPS has determined that there is no potential to cause effect on historic properties, assuming such historic properties were present; therefore, the NPS has no further Section 106 responsibilities with regards to them, pursuant to 36 CFR § 800.3(a)(1). No further Section 106 consultation is required for:

### **A. Administration**

1. Overall management activities directly related to finance (accounting, auditing, budgeting, contracting), general administrative salaries and wages (grant administration, personnel, property management, equal opportunity), and other "overhead" functions (general legal services, general liability insurance, depreciation on buildings and equipment, etc.) not directly attributable to specific program areas identified in the financial assistance instrument.
2. Salaries and fringe benefits for personnel involved with the development, selection, review, monitoring, and administration of Subaward Programs (e.g. individuals that meet or exceeds the *Secretary of the Interior's Professional Qualifications Standards*). Subawards require specific Section 106 review based upon their proposed assisted activity.
3. Salaries and fringe benefits for personnel that provide assistance in advancing the historic preservation program of the agency, government, or organization (e.g. State Historic Preservation Office, Tribal Historic Preservation Office, Certified Local Government, National Heritage Area local coordinating entities). This may involve providing technical assistance to any individual or entity who is not a part of the recipient's staff; such as, subrecipients, other State, Tribal, or local governments, Federal agencies, and the public. Activities may include but are not limited to:
  - a. review of and use of Federal, State, Tribal, or local historic preservation tax incentives;
  - b. review of, and comment on, proposed Federal or federally funded, licensed, permitted, or approved undertakings, pursuant to Section 106 of the National Historic Preservation Act, as amended;
  - c. developing and administering the Certified Local Government process; and
  - d. implementing or administering State, Tribal, and local historic preservation laws, regulations, or ordinances, provided that the laws and activities are in conformity with Federal historic preservation law, regulation, or requirements (especially *The Secretary of the Interior's Standards and Guidelines*).

### **B. Consultation and Partnerships**

1. Consultation with partners, subject matter experts, and/or the relevant community to advance the goals of the assisted project. For the assisted undertaking, consultation may require administrative and logistical arrangements.

2. Consultation meetings, including supplies, technology resources, support for hosting of in-person or virtual meetings, teleconferences, webinars, rental of facilities, speaker fees, attendee stipends, ceremonial food and supplies, and other incidental costs.
3. Design and printing costs, publishing press releases, developing brochures or signage, and any other physical materials to support project activities.

### **C. Education, Public Programs, and Outreach**

1. Development of, or supporting attendance at, meetings, trainings, workshops, conferences, and programs that will facilitate an exchange of ideas and access to information for participants; including meetings or conferences with the involvement of the NPS staff in carrying out educational content to participants (e.g. SHPOs, THPOs).
2. Development and production of print or digital educational materials and media. Dissemination of information related to the project's goals.
3. Curriculum design for an educational program. Public program development, including audience-focused studies and evaluation, physical or digital products specific to the program.
4. Providing instruction in traditional skills, techniques, and methodologies involved in the history, preservation, archeology, and affiliated disciplines.

### **D. Collections, Exhibitions, and Interpretation**

1. Collections research, such as interviews, genealogy research, or limited physical non-destructive testing of collections. Artifact processing, conservation, or analysis for research or interpretation.
2. Curatorial services to enhance public access to collections. Purchase of collections storage materials, such as display cases or storage furniture.
3. Curation of artifacts or materials recovered as a direct result of assisted activities. Those activities resulting in the data recovery are reviewed separately.
4. Temporary or traveling exhibits, such as those that have stand-alone panels, or those temporarily secured to building interiors not requiring alterations.

### **E. Planning and Research**

1. Strategic/organizational/administrative planning, including developing, conducting research on, designing or carrying out a planning process, or providing support for the development of a planning process design, for State, Tribal, regional, local, or organizational needs provided the resulting plan does not commit to any specific action that may have the potential to effect historic properties (e.g. State, Tribal, and local historic preservation planning, management plans, business plans, heritage tourism plans, fundraising plans, strategic plans, economic impact studies).
2. Developing, or providing support for the development of, ordinances, regulations, standards, and guidelines that support State, Tribal, regional, or local planning goals.
3. Printing and distributing plans, planning studies, ordinances, regulations, guidelines, or similar documents.

### **F. Repatriation of Native American Human Remains or Cultural Items**

1. Preparing human remains or cultural items for consultation, documentation, repatriation, and/or reburial.
2. Rehousing collections containing human remains or cultural items for consultation, documentation, temporary storage, or transportation.

3. Acquisition of a burial site or cemetery plot to facilitate the reburial of human remains or cultural items under NAGPRA.
4. Transportation of Native American human remains or cultural items for repatriation under NAGPRA.
5. Compiling or revising a NAGPRA inventory and making or responding to requests for repatriation of items in a NAGPRA summary. May include documentation projects that support determining the geographical origin, cultural affiliation, and other basic facts related to the acquisition of Native American human remains or cultural items.

#### **G. Survey, Inventory, and Documentation**

1. Preparation and review of materials to determine eligibility for the National Register of Historic Places. May involve activities related to public understanding and participation in the nomination process.
2. Preparation of a National Historic Landmark, National Register of Historic Places, and/or State or Tribal register nomination, amendment (including boundary expansions), historic context, or theme study.
3. Historic American Buildings Survey (HABS), Historic American Engineering Record (HAER), and Historic American Landscapes Survey (HALS) documentation projects.
4. Oral histories, including recording, transcribing, digitally processing, distributing, and archiving the interviews.
5. Land surveying and map creation, such as boundary surveys, Geographic Information Systems (GIS)/Global Positioning System (GPS) mapping, nondestructive data collection (e.g. field, aerial, and satellite surveying and mapping).
6. Reconnaissance survey of above-ground resources, including archival research and field visits to determine the identity and location of historic properties present in an area.
7. Reconnaissance level archeological surveys (may be referred to as a Phase I archeological survey), which may include pedestrian surveys, shovel test pits, and remote sensing. Limited subsurface archeological testing is allowable within a reconnaissance level survey only to the extent that is needed to collect sufficient information to identify a resource and determine if it is worthwhile to obtain additional level of documentation necessary to fully evaluate eligibility for listing in the National Register of Historic Places.

#### **H. Technology**

1. Acquisition of equipment to facilitate the project's goals, including hardware or software supplies.
2. Developing, purchasing, adapting, or implementing technology to advance project or program goals.
3. Developing, purchasing, adapting, or implementing advanced planning/computer technologies and applications to further historic preservation planning program goals (e.g., computer mapping and analysis technology such as GIS).
4. Developing digital content to advance project goals, such as websites, videos, mobile applications, podcasts, publications, or webinars.

#### **I. Travel**

1. Travel, including but not limited to airfare or other transportation, lodging, and per diem, for project staff or partners to facilitate the project or program goals.

## **Appendix C: Programmatic Allowances**

*This Appendix may be amended in accordance with Stipulation XIV., Amendments*

This list of Programmatic Allowances details the NPS financial assistance activities that based on NPS experience would not result in adverse effects to historic properties if implemented as specified and will not require Section 106 review by the SHPO and/or THPO, consulting parties, including Tribes(s) or Native Hawaiian organization(s) pursuant to this Agreement.

As part of the financial assistance technical review of the proposal and/or conditions placed in the financial assistance instrument, which occurs prior to any final agency decision authorizing or permitting the expenditure of Federal financial assistance on an undertaking, the NPS or an Authorized Recipient will ensure such projects will be carried out:

- i. in accordance with the relevant *Secretary of the Interior's Standards and Guidelines*; and
- ii. with participation of a professional that meets or exceeds the *Secretary of the Interior's Professional Qualifications Standards* in the appropriate discipline to develop, review, and/or oversee project activities.

Undertakings meeting one or more of the Programmatic Allowances below are not necessarily exempt from compliance with other Federal laws (e.g. National Environmental Policy Act, Native American Graves Protection and Repatriation Act) or any State, Tribal, or local laws. Due to the type of activity, consultation with or participation by SHPOs/THPOs, Tribes, or NHOs to carry out the activity may be required by the financial assistance program. Such consultation would be separate and distinct from the Section 106 review (e.g. SHPO acquiring conservation and preservation easements or covenants).

### **A. Acquisition**

1. Acquisition of fee simple non-Federal real property, provided, the acquisition does not involve any effects to historic properties and there is an easement or covenant recorded.
2. Acquisition of less-than-fee simple interests in real property (e.g. recorded conservation and preservation easements or covenants), provided, the acquisition does not involve any effects to historic properties.

### **B. Preservation and Construction**

1. Repair, rehabilitation, or stabilization to historic properties consistent with the *Secretary of the Interior's Standards and Guidelines*.
2. Protection, stabilization, or preservation of specific archeological resources consistent with the *Secretary of the Interior's Standards and Guidelines*. Stabilization may include site burial, revegetation, or repair of the site's physical/structural integrity to reduce or eliminate such damaging forces as erosion.
3. Production and installation of a temporary project sign, provided, its placement will not affect historic properties.
4. Providing instruction on preservation, repair, and maintenance traditional skills involving physical repairs to historic properties consistent with *Secretary of the Interior's Standards and Guidelines*.

### **C. Collections, Exhibitions, and Interpretation**

1. Interpretive plans, which may include research, designs of interpretive products (print, web, multimedia), and proposed installation locations/methods.

2. Research, development, fabrication, and installation of interior exhibits or signage for educational purposes, where placement will not physically or visually affect historic properties and are installed in a way to be reversible.
3. Directional, informational, and wayfinding exterior signage installation on documented previously disturbed areas, where placement will not physically or visually affect historic properties and are installed in a way to be reversible.

#### **D. Planning and Research**

1. Historic structure reports, preservation plans, condition assessments, or similar resource management and treatment plans consistent with the *Secretary of the Interior's Standards and Guidelines*.
2. Development of architectural and engineering plans and specifications consistent with the *Secretary of the Interior's Standards and Guidelines*.
3. Cultural landscape inventories and reports, including activities such as research, existing condition surveys, mapping, and treatment recommendations consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties and the Guidelines for the Treatment of Cultural Landscapes*.
4. Cultural resource-specific feasibility studies and land use plans (e.g. viability of the rehabilitation and/or reuse of a cultural resource).
5. Planning for the adaptation or mitigation of historic properties due to the impact of natural and man-made disasters, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate adverse effects on historic properties.

#### **E. Reburial of Native American Human Remains or Cultural Items**

1. Facilitating reburial of Native American human remains or cultural items that have completed the required Notice of Inventory Completion or Notice of Intent to Repatriate in the Federal Register, the required 30-day waiting period has passed, and repatriation has occurred. Repatriation means a museum or Federal agency acknowledges and recognizes a lineal descendant, Indian Tribe, or Native Hawaiian organization has control or ownership of the human remains or cultural items and must be documented in writing.
  - i. Reburials do not require further Section 106 review provided the Indian Tribe or Native Hawaiian organization that has control or ownership of the human remains or cultural items has identified in writing that the reburial will not affect any historic properties.

#### **F. Survey, Inventory, and Documentation**

1. Intensive level archeological surveys (may be referred to as a Phase II archeological survey). An intensive level survey is the systematic, detailed field (and archival) inspection of an area designed to identify fully architectural, archeological, and historic properties, which may include test units, and calculated to produce a level of documentation sufficient, without any further data, to evaluate National Register eligibility. To meet this Programmatic Allowance, such surveys must be carried out consistent with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* and must be preceded by consultation on the research methodology/research design with the SHPO/THPO, and all applicable State, Tribal, or local agencies. Any archeological data recovery activities require further Section 106 review.

**Appendix D: Tribal Signatory Page**

*This Appendix may be amended in accordance with Stipulation XIV, Amendments*

**PROGRAMMATIC AGREEMENT  
AMONG  
THE NATIONAL PARK SERVICE,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING CULTURAL RESOURCES GRANTS AND FINANCIAL ASSISTANCE  
(AGREEMENT)**

As Tribal Signatory to the Nationwide Programmatic Agreement (Agreement) referenced above, the provisions of the Agreement will be applicable to all subject proposed Undertaking(s) occurring on or affecting historic properties on [Tribe's] Tribal lands.

Termination of this addendum will terminate the Agreement on the Tribal lands under the jurisdiction of the Tribal Signatory.

[TRIBE NAME]

\_\_\_\_\_  
[Name, Title of authorized Signatory for the Tribe]

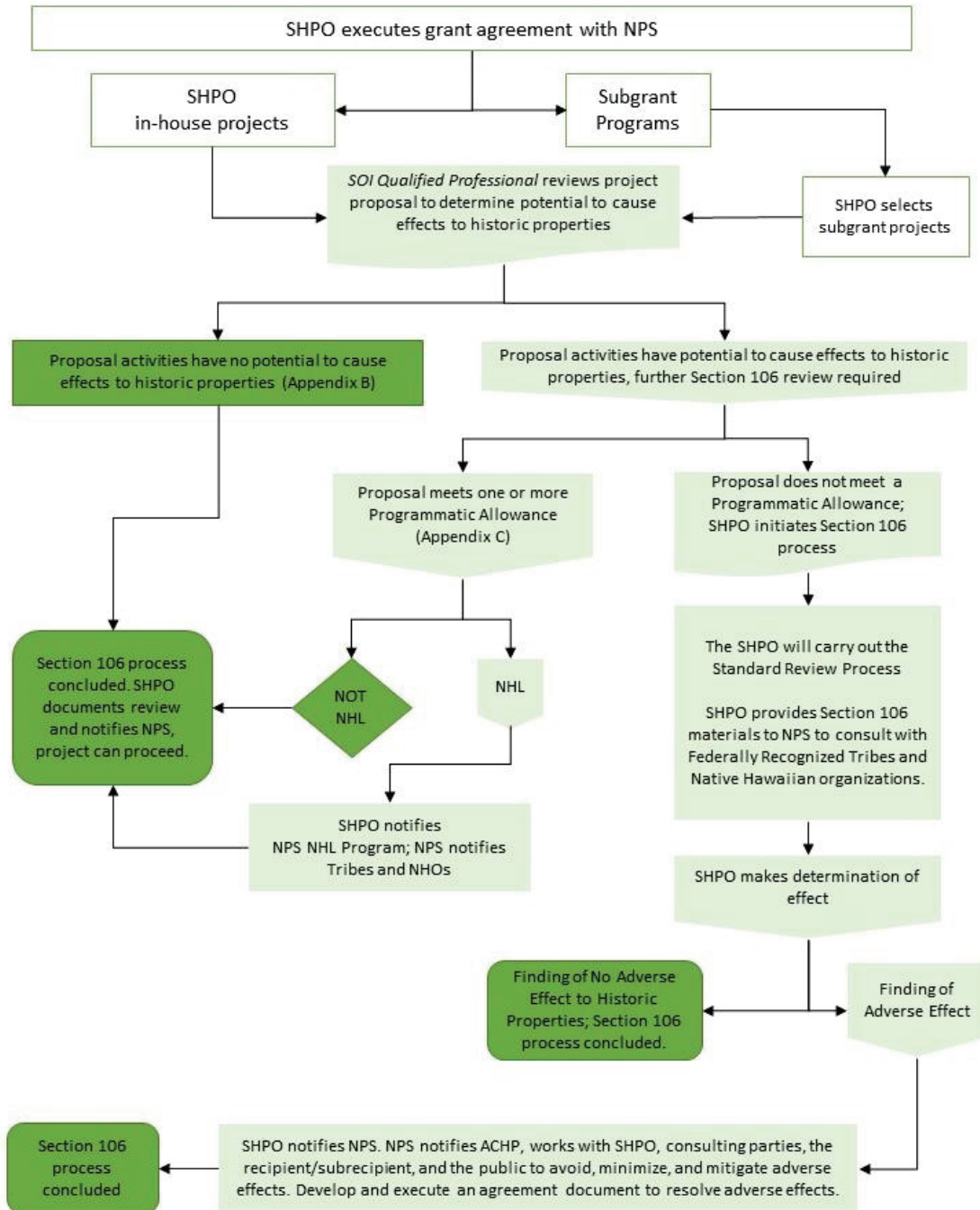
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Date

**Appendix E: Flow Charts**

*This Appendix may be amended in accordance with Stipulation XIV, Amendments*

**Section 106 Process for State Historic Preservation Offices (SHPO)**

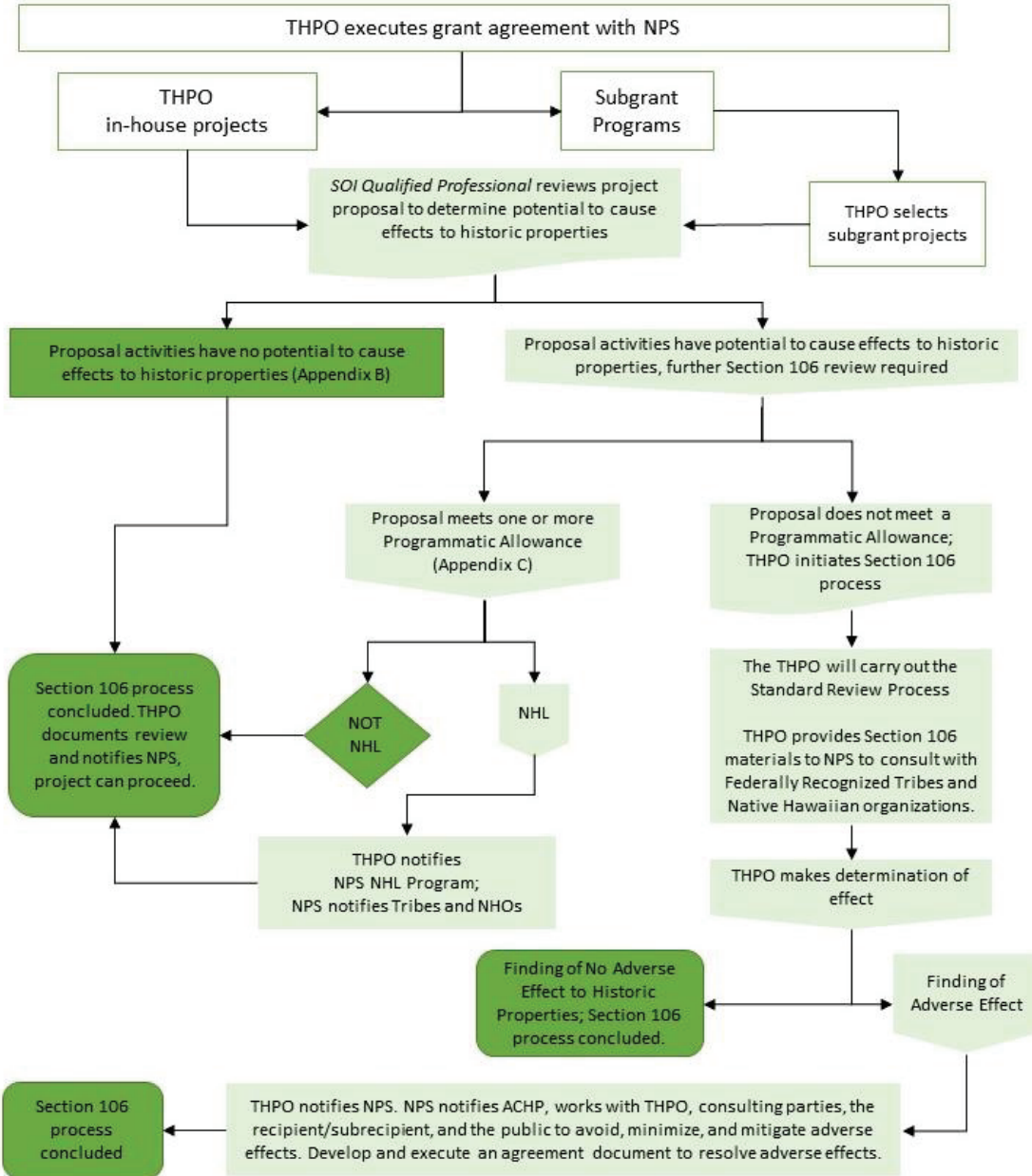
*For Formula Grants, SHPO submits annual grant application to NPS.  
For Competitive Grants (incl. Disaster Recovery when applicable), Section 106 process begins after NPS selection of proposals. SHPO follows this process if they are awarded funding by NPS by a program listed in Appendix A.*



**Section 106 Process for Tribal Historic Preservation Offices (THPO)**

A Tribal Nation with a THPO Agreement with NPS becomes Tribal Signatory to the Agreement; agreement applies on their Tribal lands. For all other THPOs, NPS utilizes Section 106 process at 36 CFR Part 800.

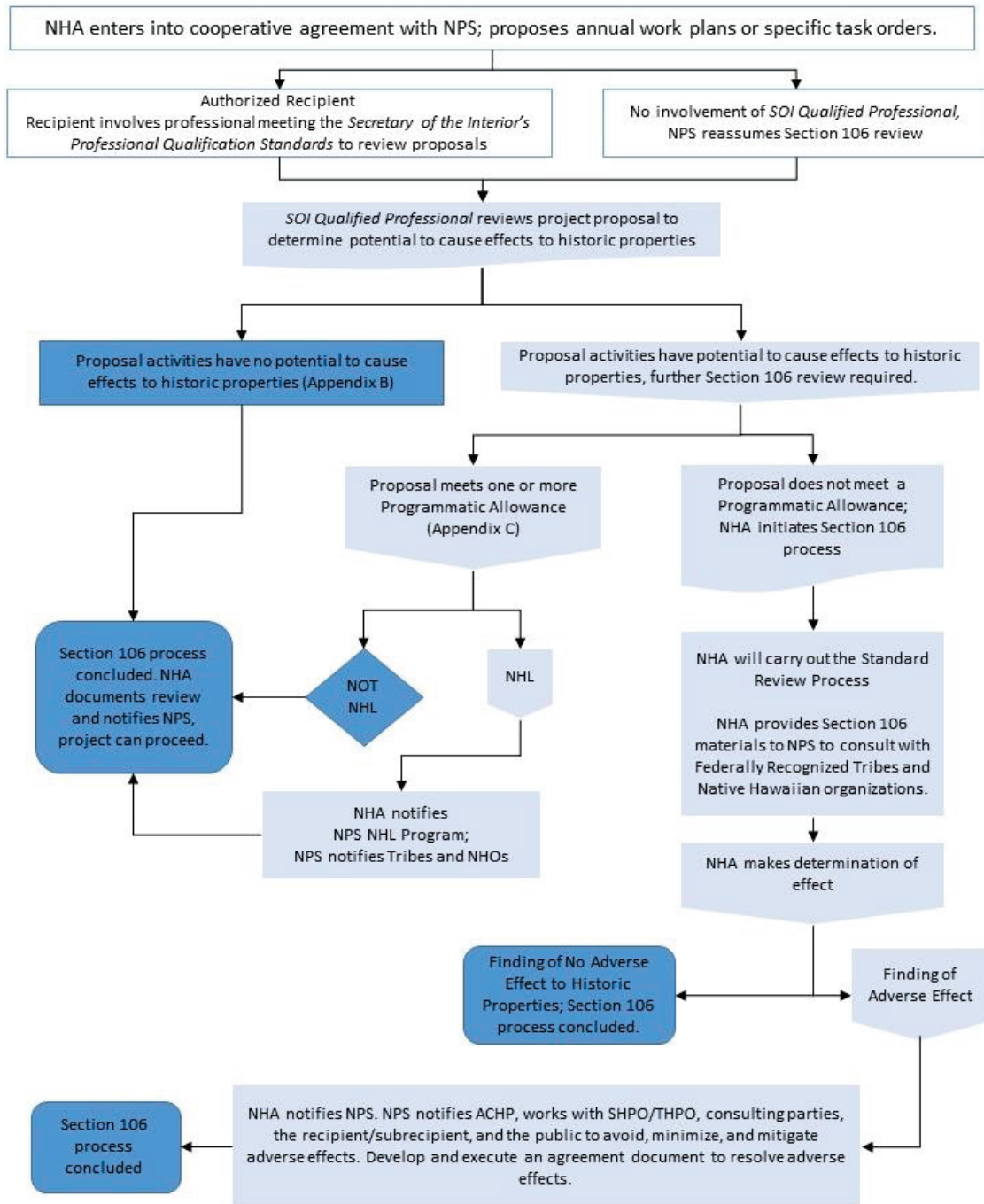
*For Formula Grants, THPO submits annual grant application to NPS.  
For Competitive Grants, Section 106 process begins after NPS selection of proposals.  
THPO follow this process if they are awarded funding by NPS by a program listed in Appendix A.*





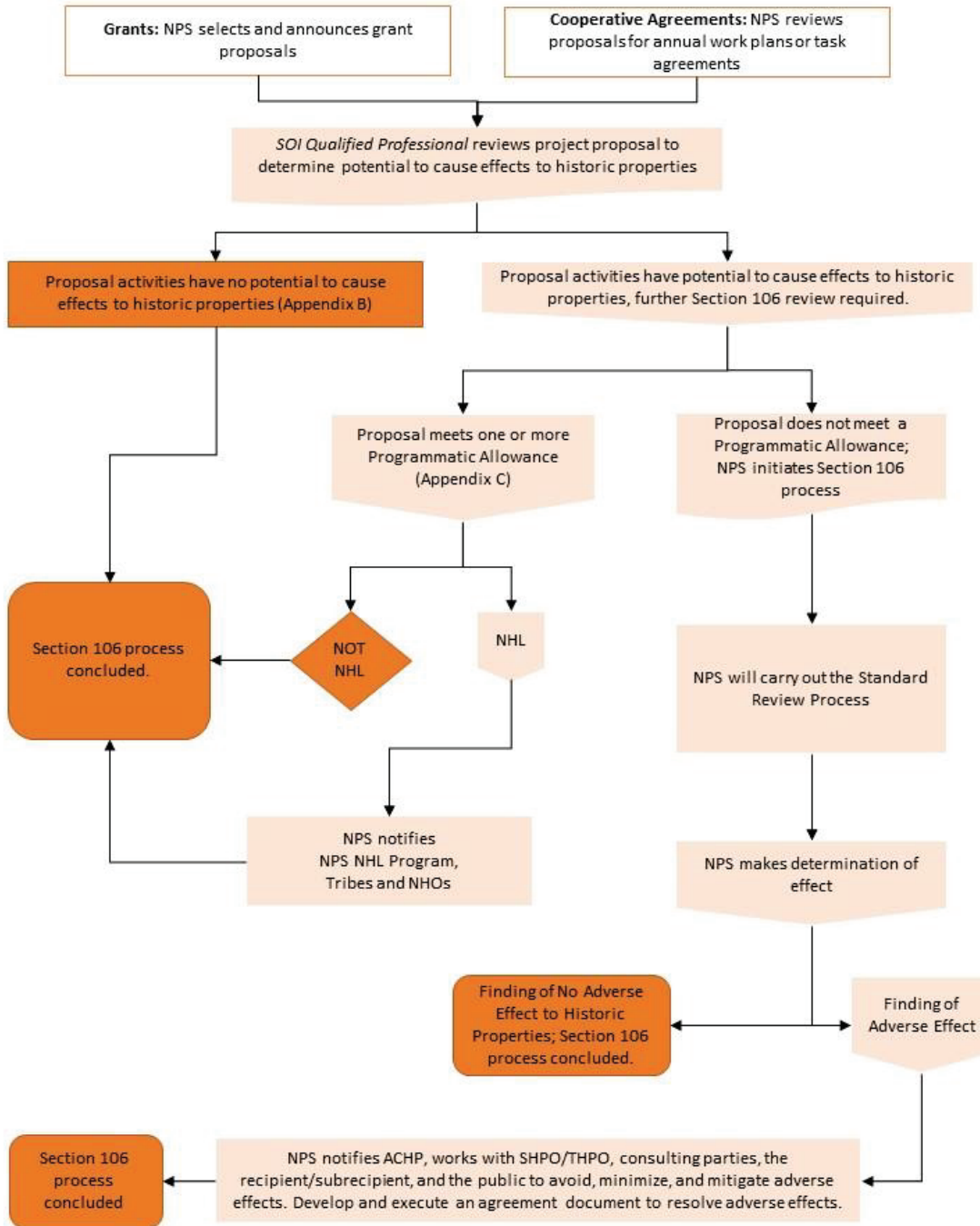
### Section 106 Process for National Heritage Area (NHA) Local Coordinating Entities

The process is for any National Heritage Area local coordinating entity with a cooperative agreement with the NPS to support the implementation of their management plan.



### Section 106 Process for All Other Recipients

The process is for all other recipients for any type of financial assistance award administered by the National Park Service by a program listed in Appendix A that is not otherwise covered by this Agreement.



## **Appendix F: ACHP Template Agreement Documents**

*This Appendix may be amended in accordance with Stipulation XIV, Amendments*

Included below are two agreement templates: a two-party Memorandum of Agreement (MOA) template (followed by instructions on how to turn it into a three-party MOA template), and a template to amend an MOA or a project Programmatic Agreement (project PA).

### **ACHP Model Two-Party MOA Template:**

**MEMORANDUM OF AGREEMENT  
BETWEEN [insert Agency] AND THE  
[insert name of State or Tribe] ["STATE" or "TRIBAL"] HISTORIC PRESERVATION  
OFFICER  
REGARDING THE [insert project name and location]**

**WHEREAS**, the [Agency] ([insert Agency abbreviation]) plans to ["carry out" or "fund" or "approve"/"license"/"permit" or other appropriate verb] the [insert project name] (undertaking) pursuant to the [insert name of the substantive statute authorizing the federal agency involvement in the undertaking], [insert legal cite for that statute]; and

**WHEREAS**, the undertaking consists of [insert a brief explanation of the undertaking];

**WHEREAS**, [Agency abbreviation] has defined the undertaking's area of potential effects (APE) as [insert written description and/or "described in Attachment XXX"]; and

**WHEREAS**, [Agency abbreviation] has determined that the undertaking may have an adverse effect on [insert name of historic property(ies)], which ["is" or "are"] ["listed in" or "eligible for listing in"] the National Register of Historic Places, and has consulted with the [insert name of State or Tribe] ["State" or "Tribal"] Historic Preservation Officer (["SHPO" or "THPO"]) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

**WHEREAS**, [Agency abbreviation] has consulted with the [insert name of Indian tribe(s) or Native Hawaiian organization(s)], for which [insert name of historic property(ies)] ["has" or "have"] religious and cultural significance, [Insert this whereas clause if appropriate]; and

**WHEREAS**, [Agency abbreviation] has consulted with [insert names of other consulting parties, if any] regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as a ["invited signatory(ies)" or "concurring party(ies)"]; and

**WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), [Agency abbreviation] has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

**NOW, THEREFORE, [Agency abbreviation] and the ["SHPO" or "THPO"]** agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

#### **STIPULATIONS**

[Agency abbreviation] shall ensure that the following measures are carried out:

**[1.-111. (Or whatever number of stipulations is necessary) Insert negotiated measures to avoid, minimize, or mitigate the adverse effects on historic properties.]**

#### **VI. DURATION**

This MOA will expire if its terms are not carried out within five (5) years **[or specify other appropriate time period]** from the date of its execution. Prior to such time, [Agency abbreviation] may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

#### **VII. POST-REVIEW DISCOVERIES**

If properties are discovered that may be historically significant or unanticipated effects on historic properties found, the [Agency abbreviation] shall implement the discovery plan included as attachment **[insert number of attachment]** of this MOA. **[Insert this stipulation if there is an indication that historic properties are likely to be discovered during implementation of the undertaking.]**

#### **VIII. MONITORING AND REPORTING**

Each **[insert a specific time period]** following the execution of this MOA until it expires or is terminated, [Agency abbreviation] shall provide all parties to this MOA **["and the ACHP" if appropriate]** a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in [Agency abbreviation]'s efforts to carry out the terms of this MOA.

#### **IX. DISPUTE RESOLUTION**

Should any signatory \* or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, [Agency abbreviation] shall consult with such party to resolve the objection. If [Agency abbreviation] determines that such objection cannot be resolved, [Agency abbreviation] will:

A. Forward all documentation relevant to the dispute, including the [Agency abbreviation]'s proposed resolution, to the ACHP. The ACHP shall provide [Agency abbreviation] with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, [Agency abbreviation] shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. [Agency abbreviation] will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, **[Agency abbreviation]** may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, **[Agency abbreviation]** shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. **[Agency abbreviation]**'s responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

## VIII. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

## IX. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days (**or another time period agreed to by all signatories**) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, **[Agency Abbreviation]** must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. **[Agency abbreviation]** shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by the **[Agency abbreviation]** and **["S" or "T"]HPO** and implementation of its terms evidence that **[Agency abbreviation]** has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.\*\*

## SIGNATORIES:

**[Insert Agency name]**

\_\_\_\_\_ Date  
**[Insert agency official name and title]**

**[Insert name of State or Tribe) ["State" or "Tribal"] Historic Preservation Officer**

\_\_\_\_\_ Date  
**[Insert name and title]**

## INVITED SIGNATORIES:

**[Insert invited signatory name]**

\_\_\_\_\_ Date

**[Insert name and title]**

**CONCURRING PARTIES:**

**[Insert name of concurring party]**

\_\_\_\_\_ Date

**[Insert name and title]**

*\* This document assumes that the term "signatory" has been defined in the agreement to include both signatories and invited signatories.*

*\*\* Remember that the agency must submit a copy of the executed MOA, along with the documentation specified in 36 CFR § 800.11(f), to the ACHP prior to approving the undertaking in order to meet the requirements of Section 106. 36 CFR § 800.6(b)(1)(iv).*

**Instructions on how to turn the Two-Party MOA template (above) into a Three-Party MOA Template**

If the ACHP is participating in the consultation to resolve adverse effects, the two-party MOA template can be revised to create a three-party agreement by inclusion of the following (*in italics*):

1. Revise the Title to read:

**MEMORANDUM OF AGREEMENT  
AMONG [insert Agency], THE  
[Insert name of State or Tribe] ["STATE" or "TRIBAL"] HISTORIC PRESERVATION  
OFFICER,  
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE [insert project name and location]**

2. Revise the 7th WHEREAS clause to read:

**WHEREAS**, in accordance with 36 C.F.R. § 800.6(a)(1), [Agency abbreviation] has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

3. At the end of the Whereas clauses add "ACHP" to the 'Now, therefore' clause to read: NOW, THEREFORE, [Agency abbreviation], the ["SHPO" or "THPO"], and the ACHP agree....
4. Add the "ACHP" to all relevant stipulations as needed.
5. Include "ACHP" in the paragraph immediately above the signature lines:

Execution of this MOA by the [Agency abbreviation], the ["S" or "T"]HPO, and the ACHP, and implementation of its terms evidence that [Agency abbreviation] has taken into account....

6. Add the following line to the signatory page:

**Advisory Council on Historic Preservation**

\_\_\_\_\_  
Date

\_\_\_\_\_, Executive Director

**Model MOA/Project PA Template Amendment**

AMENDMENT TO  
**[INSERT FULLNAME OF THE AGREEMENT]**  
(AGREEMENT)

**WHEREAS**, the Agreement was executed on **[insert month and year of execution]**;

**WHEREAS**, **[insert a concise explanation of the reasons for the amendment]**;

**WHEREAS**, **[insert the name of the federal agency]** will send a copy of this executed amendment to the ACHP **[Only use this whereas clause if the ACHP is not a signatory to the Agreement]**;

**NOW, THEREFORE**, in accordance with Stipulation **[insert the number of the amendment stipulation]** of the Agreement, **[insert the Signatories of the Agreement]** agree to amend the Agreement as follows:

1. Amend Stipulation **[insert the number of the stipulation to be amended]** so it reads as follows:  
**[Insert the amended text of the stipulation]**

**[AND/OR, if the amendment involves adding a new stipulation to the Agreement]**

2. Add new Stipulation **[insert the number of the new stipulation]**: **[Insert the text of the new stipulation]**

**[AND/OR, if the amendment involves deleting a stipulation of the Agreement]**

3. Delete Stipulation **[insert the number of the stipulation to be deleted]** .

**[Repeat #1, 2, and 3 as necessary]**

**[OR, if the amendments are so pervasive that it is easier to cut/paste a copy of the entire, amended Agreement]**

1. Amend the Agreement so it reads as follows:  
**[Attach the text of the entire, amended agreement]**

**[Insert signature and date lines for all Signatories. If the amendments add duties to a party that did not sign the Agreement, add a signature line for that party.]**



## **Appendix G: Secretary of the Interior's Standards and Guidelines**

*This Appendix may be amended in accordance with Stipulation XIV, Amendments*

The NPS has developed standards and guidelines that guide preservation work at the national, Tribal, State, and local levels, collectively referred to in this Agreement as *The Secretary of the Interior's Standards and Guidelines*. Depending on the type of activity, proposals may utilize one or more of these standards and guidelines to carry out projects funded through the NPS Cultural Resources Financial Assistance Programs. These standards and guidelines include:

The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation

The Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation

The Secretary of the Interior's Standards for Historic Vessel Preservation Projects, with Guidelines for Applying the Standards

The Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR § 68) with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings

- Guidelines on Flood Adaptation for Rehabilitating Historic Buildings
- Guidelines on Sustainability for Rehabilitating Historic Buildings
- Guidelines for the Treatment of Cultural Landscapes

## **Appendix H: Definitions**

*This Appendix may be amended in accordance with Stipulation XIV, Amendments*

The following definitions are utilized throughout this Agreement:

ACHP: Advisory Council on Historic Preservation

Authorized Recipients: Those recipients of Federal financial assistance working on NPS assisted undertakings that are authorized to carry out a portion of the Section 106 review process.

Certified Local Government: a local government whose local historic preservation program is certified pursuant to chapter 3025 of Title 54.

Congressionally Directed Spending: Congress may direct the NPS to award Federal financial assistance to carry out activities associated with one or more NPS Cultural Resources Financial Assistance Programs under this Agreement.

Contract: a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a Federal award.

Contractors: entities that receive a contract from a recipient or subrecipient under a Federal award.

Director: Director of the National Park Service (NPS)

Federal financial assistance: Assistance non-Federal entities receive or administer in the form of grants or cooperative agreements from a Federal awarding agency.

Financial assistance instrument: A legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity.

Financial assistance technical review process: In addition to compliance with Section 106, this review includes, but is not limited to, compliance with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*; compliance with 110(f) of the NHPA; compliance with the National Environmental Policy Act (NEPA); review and approval of project signage to notify the public of federal involvement; and any other reviews as determined by the NPS based on program needs or financial/programmatic risk factors.

MOA: Memorandum of Agreement

NAGPRA: Native American Graves Protection and Repatriation Act

National Heritage Areas: a component of the National Heritage Area System as authorized in 54 U.S.C. §§ 120101-104.

Native Hawaiian organization (54 U.S.C. § 300214): any organization that (1) serves and represents the interests of Native Hawaiians; (2) has as a primary and stated purpose the provision of services to Native Hawaiians; and (3) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians. The term "Native Hawaiian organization" includes the Office of Hawaiian Affairs of Hawaii and Hui Malama I Na Kupuna O Hawai'i Nei, an organization incorporated under the laws of the State of Hawaii.

NCSHPO: National Conference of State Historic Preservation Officers

NHL: National Historic Landmark

NHPA: National Historic Preservation Act

NPS: National Park Service

NPS Cultural Resources Financial Assistance Programs: The financial assistance programs listed in Appendix A.

PA: Programmatic Agreement

Programmatic Allowances: The activities and associated processes listed in Appendix C.

Recipient: an entity, usually but not limited to non-Federal entities, that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.

Secretary: Secretary of the Interior

*The Secretary of the Interior's Standards and Guidelines*: The Standards and Guidelines listed in Appendix G.

SHPO: State Historic Preservation Offices

State (54 U.S.C. § 300317): a State, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands; and the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Subrecipient: entities that receive a subaward from a recipient to carry out part of a Federal award; subrecipients may also be the recipient of other Federal awards from the NPS.

THPO: Tribal Historic Preservation Office

THPO Agreement: A federally recognized Tribe may assume all or any part of the responsibilities that would otherwise be performed by a State Historic Preservation Officer with respect to its Tribal land (54 U.S.C. § 300319), through an agreement with the NPS.

Tribe (54 U.S.C. § 300309): Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation (as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.