

## 5.0 c) SHPO PROGRAMMATIC AGREEMENT

[https://ems-team.usda.gov/sites/RD\\_CA/sec/Shared%20Documents/ERD%20%20\(2017\)/PA%20-sign.pdf](https://ems-team.usda.gov/sites/RD_CA/sec/Shared%20Documents/ERD%20%20(2017)/PA%20-sign.pdf)

NOTE: The Rural Economic and Community Development Services is commonly known as USDA Rural Development.

### PROGRAMMATIC AGREEMENT AMONG

**THE RURAL ECONOMIC AND COMMUNITY DEVELOPMENT SERVICES,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE IMPLEMENTATION OF THE  
RURAL ECONOMIC AND COMMUNITY DEVELOPMENT SERVICES'  
PROGRAMS IN CALIFORNIA**

WHEREAS, the California Offices of the Rural Economic and Community Development Services (RECDs) is authorized under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, as amended) and the Housing Act of 1949 (42 U.S.C. 1471, as amended) to carry out various activities and programs assisting rural development; and

WHEREAS, the RECDs has determined that the implementation of its activities and programs may have an effect on properties that are listed in or eligible for inclusion in the National Register of Historic Places (National Register), and has consulted with the Advisory Council on Historic Preservation (Council) and the California State Historic Preservation Officer (SHPO) pursuant to Section 800.13 of the regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act 16 U.S.C. 470f; and

WHEREAS, many of RECDs' programs and activities subject to compliance with Section 106 of the National Historic Preservation Act have a minimal potential to affect historic properties;

NOW, THEREFORE, the RECDs, the Council, and the SHPO agree that the RECDs shall administer the subject activities and programs in accordance with the following stipulations to satisfy their Section 106 responsibilities for individual undertakings.

### STIPULATIONS

The RECDs shall ensure that the following measures are carried out:

#### I. APPLICABILITY

This Programmatic Agreement (PA) outlines procedures which will substitute for the Section 106 process outlined in the Council's regulations, 36 CFR Part 800, for all RECDs undertakings. This PA does not apply to the Housing Preservation Grants program, that is addressed in a separate agreement between the FmHA, the Council, and the National Conference of State Historic Preservation Officers executed in 1986, and which still applies to the Housing Preservation Grants now administered by the RECDs.

## II. DEFINITIONS

A. The definitions included in the Council's regulations at 36 CFR 800.2 apply to this PA, and selected definitions are set out in this Stipulation for reference:

1. **UNDERTAKING** means any project, activity, or program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of the RECDs; or licensed, or assisted by the RECDs to be covered by this PA. Undertakings include new and continuing projects, activities, or programs, and any of their elements.
2. **AREA OF POTENTIAL EFFECT (APE)** means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.
3. **HISTORIC PROPERTY** means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register.
4. **INDIAN TRIBES** means the governing body of any Indian tribe, band, nation, or other group that is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members.

B. Other selected definitions included for reference have been set out or are implicit in the descriptions of the participants in the Section 106 process included in 36 CFR 800.1(c):

1. **INTERESTED PERSONS** are those organizations and individuals that are concerned with the effects of an undertaking on historic properties. For purposes of this PA, Indian tribes shall be described as interested persons, but retain the rights to participate in the Section 106 review detailed in this PA pursuant to 36 CFR 800.1(c)(ii).
2. **APPLICANTS** for RECDs assistance include private individuals, businesses, not-for-profit groups, and public agencies that are applying for financial assistance or approval actions from the RECDs. The requested assistance or approvals may relate to housing, small rural businesses, or rural community facilities and infrastructure improvements. RECDs may request that the Applicant prepare the necessary information and analyses to fulfill the requirements of this PA, and may permit the Applicant to consult with the STPC to define and perform the RECDs's identification efforts under Stipulation V.A.

## III. IDENTIFICATION OF UNDERTAKINGS AND THE AREA OF POTENTIAL EFFECTS

The RECDs shall determine if the activity it intends to permit, fund, or carry out constitutes an undertaking. If the RECDs determines that an activity is an undertaking, it shall establish the APE for each undertaking. The APE will be redefined, if needed, to include the entire historic structure, site, or object, when any portion of that structure, site, or object, is within an APE.



#### IV. PROGRAM ACTIVITIES AND INDIVIDUAL PROJECTS EXEMPT FROM SHPO OR COUNCIL REVIEW

A. For purposes of this PA, the RECDS has reviewed the current programs, projects, and activities in consultation with the SHPO and the parties have agreed that the undertakings and activities included in Appendix A of this PA will not be reviewed by the SHPO or Council pursuant to Section 106. RECDS will report such activities to the SHPO under the process outlined in Stipulation IX. of this PA. RECDS is not required to determine an APE for programs, projects, or activities listed in Appendix A.

B. If RECDS determines that a proposed undertaking is not exempt from review pursuant to Stipulation IV. A., it will request a records search from the appropriate Information Center of the California Historical Resources File System (Information Center) to identify historic properties that may be located in the APE. If the Information Center does not identify historic properties in the APE and: 1) does not recommend that RECDS perform an archeological survey; or 2) if RECDS performs the archeological survey recommended by the Information Center and does not identify properties that may be eligible for inclusion in the National Register, then RECDS may determine that no historic properties are located in the APE, document the finding, and proceed with the undertaking without review by the SHPO or Council.

#### V. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

A. If the Undertaking is not exempted from review pursuant to Stipulation IV. A. or RECDS determines that historic properties may be located in the APE pursuant to Stipulation IV. B., RECDS or the Applicant acting on RECDS' behalf shall consult with the appropriate Information Center and Interested Persons to identify historic properties within the APE. These identification efforts shall extend to all buildings, structures, objects, archeological sites, and sites that may have special importance to Native Americans or other Interested Persons and that appear to be fifty (50) or more years old. RECDS will assess the recommendations of the Information Center and conduct any surveys that RECDS determines necessary. RECDS will forward the information to the SHPO regarding the basis and results of the RECDS's identification efforts with its determination of National Register eligibility pursuant to Stipulation V.B.

B. The RECDS shall evaluate each property identified pursuant to Stipulation V. A. by applying the National Register Criteria, 36 CFR 60.4, in consultation with the SHPO to each property within the APE. The RECDS shall notify the SHPO in writing of its determination regarding the National Register eligibility, and the SHPO shall, within thirty (30) days, notify the RECDS if it agrees or disagrees with its determination. The SHPO may request that the RECDS reevaluate a previously evaluated property if warranted by the passage of time or changing perceptions of significance.

C. If the RECDS and SHPO do not agree on the National Register eligibility of a property, or if the Council or the Secretary of the Interior request, the RECDS shall obtain a determination from the Secretary of the Interior pursuant to applicable National Park Service regulations.

## VI. ASSESSMENT OF EFFECTS TO HISTORIC PROPERTIES

A. The RECDS shall apply the Criteria of Effect and Adverse Effect, in accordance with 36 CFR 800.9 to all Historic Properties located in the AEA. This consultation with the SHPO should take place as early as possible in the planning stages of the undertaking, when the widest range of project alternatives is open for consideration. The RECDS will provide the SHPO with a full description of the undertaking and its possible effects to Historic Properties, including maps, photographs, drawings, archaeological site records and reports, and the views of the Applicant, affected local governments, Indian tribes, Federal agencies, interested persons, and the public as appropriate:

1. If the RECDS determines that an undertaking will have No Effect on Historic properties, the RECDS will notify the SHPO in writing of this finding. If the SHPO does not object to the finding within fifteen (15) days, the undertaking may proceed without further review.
2. If the RECDS determines that an undertaking will not adversely affect a historic property or the undertaking meets one of the exceptions to the Criteria of Adverse Effect, 36 CFR 800.9(e), the RECDS will notify the SHPO of the finding. If the SHPO does not object to the finding within thirty (30) days, the undertaking may proceed without further review.
3. The RECDS shall consult further with the SHPO or Council, as appropriate, if: (a) any person requests that the Council review RECDS findings in accordance with 36 CFR 800.6(e); (b) the undertaking changes in ways that could affect historic properties; (c) previously undocumented historic properties are discovered during the implementation of the undertaking or if a known historic property will be affected in an unanticipated manner; (d) a historic property that was to be avoided has been inadvertently or otherwise affected; or (e) any condition of the undertaking, such as a delay in implementation or implementation in phases over time, may justify reconsideration of the current National Register status of historic properties within the AEA.
4. If RECDS determines that the project will adversely affect a historic property, it will determine if the property will be treated according to the Standard Mitigation Measures set in Stipulation VII, or if the consultation process set out in 36 CFR 800.5(u) should be followed and will notify the SHPO in writing of its decision. The consultation process set out in 36 CFR 800.5(e) will be followed and RECDS will provide the Council with an adverse effect notice if:
  - a. RECDS determines not to implement the standard mitigation measures;
  - b. the SHPO withdraws from consultation;
  - c. the undertaking will adversely affect a National Historic Landmark;
  - d. the undertaking has known public opposition relating to historic properties;
  - e. the undertaking may affect a historic property containing human remains;
  - f. the SHPO objects in writing within thirty (30) calendar days after receipt of RECDS's notice that it will proceed with the Standard Mitigation Measures; or
  - g. The SHPO determines that the effects of an undertaking cannot be adequately addressed by the Standard Mitigation Measures set out below.



## VII. STANDARD MITIGATION MEASURES

A. A Standard Mitigation Measures Agreement (SMMA) will be developed according to the following procedures:

1. RECDS, SHPO, the Applicant and other interested parties, if appropriate, shall consult to develop a written agreement that establishes the mitigation and recordation measures, such as but not limited to the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished. The Council will not be a party to this agreement. The SMMA shall be signed by RECDS, SHPO, and other consulting parties, including the Applicant, to acknowledge that all specified measures shall be fulfilled as a condition of RECDS assistance. An SMMA shall include one or more of the following measures, modified as necessary, to consider the effects of the specific undertaking:

a. **Recordation:** RECDS shall ensure that the historic property is recorded prior to its demolition or alteration according to a Recordation Plan developed in consultation with the SHPO. At a minimum this plan will establish recordation methods and standards, and designate the appropriate archives for the deposit of this material. RECDS and the SHPO may mutually agree to waive the recordation requirement if the affected historic property will be rehabilitated in substantial, although not complete conformance with the Standards.

b. **Curation:** If the property will be demolished, RECDS, the SHPO, and the property owner will consult to determine if the property contains significant architectural features that could be reused or curated. If such features exist, RECDS, the SHPO, and the property owner will develop measures to ensure that the selected features are removed in a manner that minimizes damage and are delivered to an appropriate party for curation or reuse.

c. **Data Recovery:** If an archeological property will be affected by the undertaking, RECDS, the SHPO, and the property owner will consult to develop a data recovery plan consistent with the Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-17) and take into account the Council's publication, "Treatment of Archeological Properties."

## VIII. DISCOVERIES AND UNFORESEEN EFFECTS

A. The RECDS should plan for discoveries made during project implementation; particularly when an undertaking will take place within an area where buried archaeological deposits may be encountered. Such discovery plans shall be prepared in consultation with the SHPO and interested Native American groups and shall be submitted to the SHPO for review and approval prior to the commencement of the undertaking.

B. If the RECDS completes the review process established by this Programmatic Agreement and finds, after implementing the undertaking, that it will affect a previously unidentified property that may be eligible for inclusion in the National Register or will affect a known historic property in an

unanticipated manner, the RECDS shall direct the Applicant to take all reasonable measures to avoid or minimize harm to the property until the RECDS concludes consultation with the SHPO. If the newly discovered property has not previously been included in or determined eligible for the National Register, the RECDS may assume that the property is eligible for purposes of this PA. The RECDS will notify the SHPO at the earliest possible time of the discovery and will coordinate with the Applicant to develop actions that will take the effects of the undertaking into account. The RECDS will notify the SHPO of any time constraints, and the RECDS and SHPO will mutually agree upon the timeframe for this consultation. The RECDS will provide the SHPO with written recommendations reflecting its consultation with the SHPO. If the SHPO does not object to the RECDS' recommendations within the agreed upon timeframe, the RECDS will ensure that the Applicant modifies the scope of work as necessary to implement the recommendations.

#### IX. REPORTING

A. The RECDS will notify the SHPO of its determinations made under Stipulation IV. A. and B. through its NEPA Finding of No Significant Impact (FONSI) public notification process, as required by RECDS' environmental procedures contained in FmIA Instruction 1940-G. If the SHPO does not notify RECDS within fifteen (15) days that it disagrees with the FONSI, RECDS may proceed with the undertaking.

B. The RECDS shall provide the SHPO and the Council with an initial biannual report on November 30, 1997 that summarizes the actions taken to implement the terms of this PA and recommends any action or revisions that should be considered during the next reporting period. The parties will review this information to determine if amendments to the PA are necessary. Subsequent reports will be developed by RECDS at the request of the Council.

#### X. PUBLIC INVOLVEMENT AND RESOLVING PUBLIC OBJECTIONS

A. The RECDS shall develop a public participation program in accordance with the guidance contained in the Council's publication, "Public Participation in Section 106 Review: A Guide for Agency Officials" (February 1989) to effectively notify and involve the public and interested persons in undertakings that may affect historic properties. The public participation program shall be incorporated into the RECDS' existing public involvement procedures. The RECDS shall consult with the Council and the SHPO to help develop this program, and will provide the Council and the SHPO with an opportunity to review and comment on the program.

B. At any time during the implementation of the measures contained in this PA should an objection to any such measure or the manner in which it is implemented be raised by a member of the public, the RECDS shall consult with the objecting party, the SHPO, and the Council, as to address the objection. If the objection pertains to the RECDS' decision to implement standard mitigation measures pursuant to Stipulation VII, above, the RECDS shall reinitiate the abbreviated consultation process and initiate consultation with the SHPO and the Council pursuant to 36 CFR 800.5(e).



#### XI. DISPUTE RESOLUTION

Should the SHPO or the Council object within the timeframes provided by this PA to any plans, specifications, or other documentation provided for review pursuant to this PA, the RECDS shall consult with the SHPO or the Council to resolve the objection. If the RECDS determines that the objection cannot be resolved, the RECDS shall forward all documentation regarding the dispute to the Council. Within thirty (30) days of receipt of the documentation, the Council will either (1) provide the RECDS with recommendations which the RECDS will take into account in reaching a decision on the dispute, or (2) notify the RECDS that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any Council recommendation or comment will be understood to pertain only to the dispute, and the RECDS's responsibility to carry out all actions under this PA that are not the subject of the dispute will remain unchanged.

#### XII. ANTICIPATORY DEMOLITION

The RECDS agrees that it will not grant assistance to an Applicant who, with the intent to avoid the requirements of this PA or the National Historic Preservation Act, has intentionally significantly adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed such significant adverse effect to occur. The RECDS may, after consultation with the Council, determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the Applicant.

#### XIII. IMPLEMENTATION AND TRAINING

The RECDS will notify all appropriate RECDS staff of the execution of this PA and develop management procedures to ensure that its terms are implemented. The SHPO and the Council may provide occasional basic historic preservation assistance to RECDS staff and representatives. This may include, but not be limited to, the implementation of this PA and the application of the Secretary of the Interior's Standards and Guidelines for Rehabilitation 36 CFR Part 67, and the Secretary of the Interior's Standards and Guidelines for Archeological Documentation.

#### XIV. MONITORING

The SHPO and the Council may monitor any activities carried out pursuant to this PA, and the Council will review such activities as requested. The RECDS will cooperate with the SHPO and the Council in carrying out these monitoring responsibilities.

#### XV. AMENDMENTS

Any party to this PA may request it be amended, whereupon the parties will consult in accordance with 36 CFR 800.13 to consider such an amendment.

**XVI. TERMINATION**

Any party to this PA may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the RECDS will comply with 36 CFR 800.4 through 800.5 with regard to individual undertakings covered by this PA.

**XVII. FAILURE TO COMPLY WITH THIS AGREEMENT**

In the event the RECDS does not carry out the terms of this PA, the RECDS will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this PA.

**EXECUTION AND IMPLEMENTATION** of this PA evidences that the RECDS has affirmed



the Council a reasonable opportunity to comment on the administration of its various programs and further evidence that the RECDs has satisfied its Section 106 responsibilities for all individual undertakings of the programs.

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

By: Robert D. Bush date: 10/06/95  
Robert D. Bush, Executive Director

**RURAL ECONOMIC AND COMMUNITY DEVELOPMENT SERVICES**

By: Michael M. Reyna date: 11-1-95  
Michael M. Reyna, State Director

**CALIFORNIA STATE HISTORIC PRESERVATION OFFICER**

By: Christy Widell date: 11/17/95  
Christy Widell, State Historic Preservation Officer

APPENDIX A  
**LIST OF ACTIVITIES EXCLUDED FROM THE INFORMATION CENTER  
AND SHPO REVIEW**

**A. GENERAL ACTIVITIES**

1. Financial assistance which does not involve structures that appear to be fifty (50) or more years old; and
2. Financial assistance which will not result in changes in the use of land.

**B. HOUSING ASSISTANCE**

1. Financial assistance for the purchase of an existing single or multi-family dwelling;
2. Single or multi-family home construction in existing improved subdivisions that does not require additional ground disturbance;
3. RECDs' approval to build an individual structure on an improved lot within a previously built subdivision;
4. Self-help Technical Assistance Grants;
5. Technical Supervisory Assistance Loans and Grants; and
6. Weatherization of any housing unit that does not appear to be fifty (50) or more years old or otherwise eligible for inclusion in the National Register of Historic Places, either individually or as a contributing member of a historic district.

**C. COMMUNITY AND BUSINESS PROGRAMS**

1. New or replacement utilities within previously disturbed road right-of-way or utility corridors that do not involve extensive ground disturbance;
2. New or replacement water wells and related facilities, provided they do not involve extensive ground disturbance;
3. Modifications to existing water or wastewater treatment plants where the area is disturbed by previous construction, and do not involve extensive ground disturbance;
4. For business and community facility projects:
  - a. Construction on sites where the ground has been extensively disturbed; or
  - b. Construction that does not involve extensive ground disturbance on developed parcels or parcels located within developed industrial or commercial areas.
5. Water storage facilities that do not involve extensive ground disturbance.