

PART 2000 - General

Subpart FF - Programmatic Memorandum of Agreement between Rural Development, The National Conference of State Historic Preservation Officers, and the Advisory Council on Historic Preservation Regarding Implementation of the Housing Preservation Grant Program

§2000.1551 General

Rural Development has entered into a Programmatic Memorandum of Agreement (PMOA) with the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation regarding the processes Rural Development and applicants for Housing Preservation Grant (HPG) assistance will use in meeting the objectives of the National Historic Preservation Act (16 U.S.C. 470-1[1], [4], and [5]) and the specific historic preservation requirements of Section 533(i) of the HPG enabling legislation (P.L. 98-181). The PMOA is implemented through the regulations for the HPG program, Subpart N of Part 1944 of this chapter. The PMOA is attached as Exhibit A.

§§2000.1552 - 2000.1600 [Reserved]

Attachment: Exhibit A

DISTRIBUTION: W,S,D

Administration
General

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(6-13-86) SPECIAL PN

(Letterhead for Advisory Council
on Historic Preservation)

PROGRAMMATIC
MEMORANDUM OF AGREEMENT
BETWEEN
RURAL DEVELOPMENT,
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS,
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING IMPLEMENTATION OF
THE HOUSING PRESERVATION GRANT PROGRAM

WHEREAS Rural Development proposes to administer the Housing Preservation Grant (HPG) program authorized by Section 533 of the Housing Act of 1949, as amended by Section 522 of Title V of the Housing Urban-Rural Recovery Act of 1983 (Pub. L. 98-181)(Act) and

WHEREAS Rural Development has determined that the HPG program may have effects on properties included in or eligible for inclusion in the National Register of Historic Places (historic properties), and

WHEREAS Section 533(i) of the Act sets forth specific requirements pertaining to historic preservation, and

WHEREAS Rural Development has sought the comments of the Advisory Council on Historic Preservation (Council) pursuant to Section 106 of the National Historic Preservation Act and the Council's regulations (36 CFR Part 800), and

WHEREAS Rural Development, the Council, and the National Conference of State Historic Preservation Officers have consulted in accordance with 36 CFR §800.8 of the regulations,

NOW, THEREFORE, it is mutually agreed that Rural Development will administer the HPG program in accordance with the following provisions in order to take into account its effects on historic properties.

Stipulations

I. Rural Development will by regulation require that each applicant for an HPG grant provide, as part of its statement of activities in the preapplication documentation submitted to Rural Development, a brief description of the applicant's program to meet the requirements of Section 533(i) of the Act. Rural Development will require each applicant to develop a program that shall:

A. be developed in consultation with the appropriate State Historic Preservation Officer (SHPO);

B. take into account the National historic preservation objectives set forth at 16 U.S.C. 470-1(1), (4), and (5) (Attachment #1), and specifically be designed to encourage the rehabilitation of historic buildings in a manner that realistically meets the needs of low and very low income homeowners while preserving the historic and architectural character of such buildings;

C. establish a mechanism for determining whether buildings proposed for rehabilitation are "historic properties" and whether rehabilitation may affect historic properties. Such mechanisms must be consistent with the guidance contained in Attachment #2.

D. establish mechanisms, as feasible, for coordination with other public and private organizations and programs that provide assistance in the rehabilitation and preservation of historic properties;

E. establish a system to ensure that the rehabilitation of properties included in or eligible for inclusion in the National Register of Historic Places is reasonably consistent with the recommended approaches in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (G.P.O. 1983 0-416-688), except as provided in stipulation F below, and that the SHPO is afforded the opportunity to comment on each such rehabilitation;

F. establish a system by which the applicant will furnish all necessary information and initiate the consultation steps set forth in 36 CFR Part 800 to afford the Advisory Council on Historic Preservation an opportunity to comment on any rehabilitation that the applicant, in consultation with the SHPO, determines cannot reasonably meet the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings or would adversely affect historic properties (See Attachment #3), and

G. be accompanied by the SHPO's concurrence in the program, or in the event of non-concurrence, be accompanied by the SHPO's comments together with evidence that the applicant has sought the Council's advice as to how the disagreement might be resolved, and any advice provided by the Council.

II. Rural Development will review the program description provided by the applicant, together with the comments of the SHPO and the Council where applicable, in determining whether to approve a grant or condition authorization of an application upon insertion of additional procedures into the statement of activities, and may request additional advice from the Council.

III. For the purposes of stipulation I.F. above, the Council will treat applicants as though they were Federal agencies in the process prescribed in the Council's regulations implementing Section 106 of the National Historic Preservation Act (36 CFR Part 800), except that, should the Council be unable to concur in an applicant's proposal or reach agreement with the applicant on measures to avoid or mitigate effects on a historic property, the Council will notify the applicant, Rural Development, and the SHPO that the applicant cannot be treated as though it were a Federal agency with respect to the specific property under consideration. Upon receipt of such

notification from the Council, Rural Development will assume responsibility for completing compliance with 36 CFR Part 800. Such assumption of responsibility by Rural Development with respect to a particular property shall not preclude an applicant from carrying out the requirements of 36 CFR Part 800 with respect to other properties as though it were a Federal agency.

IV. Rural Development and the Council may from time to time jointly issue non-binding guidance to applicants and SHPOs concerning the development of programs pursuant to Stipulation I above.

Execution of this Programmatic Memorandum of Agreement evidences that Rural Development has afforded the Council a reasonable opportunity to comment on Rural Development's implementation of the HPG program.

Vance L. Clark /s/ 4-15-86

Farmers Home Administration

John W. Fowler /s/ 3/31/86

Executive Director
Advisory Council on Historic Preservation

Charles G. Lee /s/ 4/1/86

President
National Conference of State Historic
Preservation Officers

/s/ 4/30/86

Chairman
Advisory Council on Historic Preservation

ATTACHMENT #1
NATIONAL HISTORIC PRESERVATION OBJECTIVES
FOR THE
HOUSING PRESERVATION GRANT PROGRAM

Introduction

Section 533(i) of the Housing Act, as amended, requires that the Secretary of Agriculture establish procedures which support national historic preservation objectives in the administration of the HPG program. The Secretary has determined that the following objectives, established as national objectives by Sections 2(1), (4) and (5) of the National Historic Preservation Act (16 U.S.C. 470-1[1], [4] and [5]) will be supported by implementation of the HPG program, and are to be taken into account by applicants in their development of programs to meet the requirements of Section 533(i).

Objectives

To foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations (16 U.S.C. 470-1[1]);

To contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means (16 U.S.C. 470-1[4]), and

To encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment (16 U.S.C. 470-1[5]).

ATTACHMENT #2
PROCEDURES FOR
THE IDENTIFICATION OF HISTORIC BUILDINGS
IN THE
HOUSING PRESERVATION GRANTS PROGRAM

Introduction

Generally speaking, it is anticipated that the Housing Preservation Grants (HPG) program will have beneficial effects on historic houses and other historic buildings, because it will provide for their rehabilitation and extend their lives. Adverse effects on such buildings are possible, however, if rehabilitation is done without full consideration of the historic and architectural significance of the building involved. It is also possible to do damage to Archaeological sites lying in the ground underneath a building.

Section 533(i) of the Housing Act, as amended, and Sections 106 and 110 of the National Historic Preservation Act, as amended, require that the HPG program be carried out with consideration for the historic (including architectural and Archaeological) importance of properties included in, and properties eligible for inclusion in, the National Register of Historic Places. Obviously, one cannot consider the historic importance of a building if one does not know that it is historic. Only a small percentage of the historically, architecturally, and archaeologically important properties in the nation have been formally identified and registered, and still fewer have been formally included in the National Register. Therefore, it is necessary that applicants for HPG funds establish ways to consider whether buildings that may be rehabilitated have such aspects of importance, even if they have not been registered as such. Under Section 533(i) and a Programmatic Memorandum of Agreement executed by Rural Development with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers, rehabilitation of historic buildings should be done in accordance with the recommendations of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (SOI Standards), and in consultation with the State Historic Preservation Officer (SHPO) of the State in which the rehabilitation occurs. The purpose of these guidelines is to assist applicants in determining which rehabilitations require application of the SOI Standards, by determining which involve properties of historical, architectural, or Archaeological value.

Procedures for identifying historic properties can be complex; a number of Federal, state, and local guidelines are available. The process presented here is simplified and reduced to as few steps as possible, recognizing the limited means of many HPG applicants and the relatively limited range of adverse effects that HPG projects are likely to have on historic properties.

Applicants should consult with their State Historic Preservation Officers in applying these guidelines to the development of their own programs.

Initial planning with the SHPO

In the development of an HPG program, an applicant should meet with the State Historic Preservation Officer (SHPO) to establish an efficient, effective way to determine the historical, architectural, and Archaeological significance of buildings subject to rehabilitation and areas that may be affected by rehabilitation activities. Such initial planning should address at least the following issues.

- * In general, is it likely that the types of buildings that the program will rehabilitate are eligible for inclusion in the National Register?
- * Does the SHPO know of specific buildings or other properties, on or eligible for the National Register, that may be affected by the rehabilitation program?
- * Does the SHPO have opinions about the likelihood of encountering historic properties, including Archaeological sites, in areas that the applicant expects to target for rehabilitation?
- * Are there types of buildings that have already been determined not to be eligible for inclusion in the National Register, or that can for other reasons be considered categorically ineligible for purposes of the HPG program? These will be referred to below as "categorically ineligible" properties.
- * Are there types of buildings that should always be considered eligible for the National Register? These might include types representing relatively recent buildings of extraordinary historical or architectural importance, as well as older building types. These will be referred to below as "categorically eligible" properties.
- * Are there any additional standards, guidelines, or criteria that the SHPO recommends? Based on your State's comprehensive State Historic Preservation Plan or the SHPO's experience, the SHPO may be able to provide special guidance with respect to evaluation of particular building types, evaluation of Archaeological sites, considering the historical and architectural integrity of buildings, and other features that contribute to eligibility or ineligibility for the National Register.
- * Does the SHPO have advice on the best ways to apply the SOI Standards to the kinds of buildings that will be subject to rehabilitation?
- * What are the most effective ways to coordinate the applicant's work with the SHPO in the review of specific rehabilitation projects?

Evaluation of particular properties: step-by-step

The precise system for evaluating the historic, architectural and Archaeological significance of properties will naturally vary based on the outcome of initial consultation with the SHPO. However, the following steps are recommended.

STEP ONE: Determine whether the property is already registered or otherwise determined to be significant

If the building where rehabilitation is being considered has already been listed in the National Register of Historic Places, or formally determined eligible for the Register, no further identification is needed. Rehabilitation should be done in accordance with the SOI Standards, in consultation with the SHPO.

You can determine whether a particular property has been listed or formally determined eligible for the National Register by consulting listings published periodically by the National Park Service, but it is usually more efficient to consult with the SHPO for such information.

If the building has been listed in a state or local register of historic properties, it is very likely to be eligible for the National Register. The steps below can be carried out, but it may be simpler to assume that the building is of historical importance and carry out rehabilitation in accordance with the SOI Standards, in consultation with the SHPO.

Information on state and local registers can be obtained from the SHPO and from local historic preservation organizations.

STEP TWO: Consider the age of the building involved

Buildings that are less than fifty years old are seldom eligible for the National Register.

If the building is more than fifty years old, you should proceed to Step Three.

If the building is less than fifty years old, you should consider whether:

- * the building may be of a type that your initial consultation with the SHPO has indicated may be categorically eligible, or
- * the building otherwise appears to be of extraordinary historical or architectural significance.

If the building is not of a type that is categorically eligible, and is not otherwise of extraordinary historical or architectural significance, no further historic preservation review is required. You should document your determination and rehabilitation can be done without reference to the SOI Standards.

If the building may be of a categorically eligible type, or otherwise of extraordinary significance, you should proceed to Step Four.

STEP THREE: Consideration of properties over fifty years old

If the building is more than fifty years old, you may want to consider rehabilitating it in accordance with the SOI Standards without further evaluation of its historical and architectural significance. The SOI Standards for the most part prescribe commonsense practices that are worth considering for any older house.

If you do not want to apply the SOI Standards without further evaluation, you should consider whether, used on your initial consultation with the SHPO, the building is categorically ineligible for the National Register. If it is, you should document your determination and rehabilitation can be done without reference to the SOI Standards.

If the building does not appear to be categorically ineligible, or if you are uncertain about its eligibility, you should proceed to Step Four.

STEP FOUR: Consultation with the SHPO

At this point you have two options. Either:

(a) assume that the building is eligible for the National Register and apply the SOI Standards to its rehabilitation, in consultation with the SHPO, OR

(b) consult with the SHPO first to determine eligibility. If the SHPO determines that the property is not eligible, then unless someone objects to that determination and the SHPO's opinion is overturned by the Keeper of the National Register (in the National Park Service), you need not apply the SOI Standards to its rehabilitation. If the SHPO determines that the building is eligible, and you do not disagree, you are required by the program regulations to apply the SOI Standards in its rehabilitation. If the SHPO determines that the property is eligible and you disagree, you may refer the disagreement to Rural Development, which will seek a final determination from the Keeper of the National Register. The Keeper's determination is final. If in the end the property is determined eligible, you are required to apply the SOI Standards in its rehabilitation.

Special Consideration: Archaeological Sites

If your rehabilitation project will involve substantial earthmoving, special Consideration should be given to the possibility that historic or prehistoric Archaeological sites, eligible for the National Register, might be disturbed. The SHPO should be consulted with regard to any project involving substantial earthmoving. If an Archaeological site is involved, special provisions may have to be made for carrying out the rehabilitation in a way that minimizes damage to it.

Other Considerations in Evaluation

The general criteria of eligibility for the National Register are set forth at 36 CFR Sec. 60.4 by the National Park Service. Properties may be eligible for the National Register at National, state, and local levels of significance. Eligibility is generally based on association with a historically important person or event, association with important patterns in history, association with a style of architecture, or the potential to yield important information about history or prehistory.

A building normally is eligible only if it retains its historical and architectural integrity. For example, does it retain most of the architectural detailing that it had when it was built, or has this been lost or stripped away? If the building has been added to over the years, can you still tell the difference between the original building and the additions? If there are particular parts of the building that are historically important, for example because they were associated with an important person, are they still relatively intact? If it had particular architectural characteristics that made it important may, a particular kind of porch, or entry hall, or staircase are those characteristics still intact?

A building does not have to be in pristine condition to have integrity. The changes it has undergone over time may actually add to its significance. It is best to be conservative about integrity; if you aren't sure whether the building still has it, it is best to assume that it does.

Although in rehabilitation projects the major concern is the structure to be rehabilitated itself, it is also necessary to consider the environment in which the structure exists. A building may be Part of a district that is eligible for the National Register, for example an urban neighborhood made up of older houses, or a rural landscape that retains its historical integrity. Even if the building to be rehabilitated does not contribute notably to the district, its rehabilitation may have visual or other effects on the district that should be considered. It is anticipated that effects on districts will seldom be a problem in the HPG program, but they could be significant in rare instances.

ATTACHMENT #3
CONTACTING THE ADVISORY COUNCIL
ON HISTORIC PRESERVATION

Where an HPG applicant, pursuant to the terms of its system developed under stipulation I.F. of the Programmatic Memorandum of Agreement between Rural Development, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers, must provide the Advisory Council an opportunity to comment on a project, the applicant shall follow the procedures set forth in the Council's regulations (36 CFR Part 800) as though the applicant were a Federal agency.

To contact the Council:

Applicants in eastern states (see map) should contact:

Chief, Eastern Division of Project Review
Advisory Council on Historic Preservation
Old Post Office Building
1100 Pennsylvania Ave., NW, Suite 809
Washington, DC 20004
(202)786-0505

Applicants in western states (see map) should contact:

Chief, Western Division of Project Review
Advisory Council on Historic Preservation
730 Simms Street, Room 450
Golden, Colorado 80401
(303)236-2682

Exhibit A: Page 11 not automated see manual