

PROGRAMMATIC AGREEMENT

**BETWEEN THE COMMUNITY DEVELOPMENT COMMISSION OF MENDOCINO
COUNTY**

AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

**REGARDING PROPERTIES AFFECTED BY THE USE OF FEDERAL FUNDS FOR
HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS**

WHEREAS, the Community Development Commission of Mendocino County (CDC) proposes to administer and fund projects and programs in the County of Mendocino, California with monies from the U. S. Department of Housing and Urban Development (HUD) under programs for which environmental review responsibilities have been delegated to the CDC by statute and which are subject to regulation under 24 CFR Part 58; and

WHEREAS, the CDC administers housing and community development programs with HUD-based funding; and

WHEREAS, the CDC has determined that the implementation of these programs may affect properties included in or eligible for the National Register of Historic Places (Historic Properties) and has consulted with the California State Historic Preservation Officer (SHPO) pursuant 36 CFR §800.14(b) of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f; and

WHEREAS, the CDC has notified the Advisory Council on Historic Preservation (Council) of the development of this Agreement and the Council has elected not to participate in the consultation;

NOW, THEREFORE, the CDC and the California SHPO agree that the program shall be implemented in accordance with the following stipulations in order to take into account the effect of this program on historic properties.

STIPULATIONS

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

I. APPLICABILITY OF AGREEMENT

The CDC shall comply with the stipulations set forth in this Agreement for all undertakings within the County of Mendocino which involve the rehabilitation of buildings that are assisted entirely or in part by funds from HUD. For purposes of this Agreement, the Secretary of the Interior's definition for rehabilitation shall be used:

Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

This Agreement does not include new construction, demolition of existing buildings, or development of vacant land.

The review established by this Agreement shall be completed prior to the CDC's final approval of any application for assistance and prior to the CDC or the property owner altering the property or initiating or making an irrevocable commitment for construction that may affect a property. Any undertaking that does not qualify for review under the terms of this Agreement shall be reviewed in accordance with the procedures outlined in Subpart B of 36 CFR Part 800.

II. DEFINITIONS

The definitions outlined at 36 CFR 800.16 applied to this Agreement.

III. UNDERTAKINGS NOT REQUIRING REVIEW UNDER THE TERMS OF THIS AGREEMENT

- A. Projects affecting only existing structures that are less than 50 years old.
- B. Projects that are limited to the rehabilitation of interior spaces within single-family or duplex residential structures to be retained in the same use where such work will not be visible from the exterior of the structure.
- C. For projects that are not within historic districts which are limited to the repair or replacement of existing utilities, curbs, sidewalks, gutters, street surfaces and attendant structures or the placement of curbs, sidewalks and gutters where they previously have not existed within established rights-of-way.
- D. For projects that are within historic districts which are limited to the repair or replacement of existing utilities, curbs, sidewalks, gutters, street surfaces and attendant structures or the placement of curbs, sidewalks and gutters where they previously have not existed within established rights-of-way, when either
 1. the infrastructure does not contribute to the historic significance of the district.
 2. the projects retains an appearance similar to the current infrastructure, or
 3. the project restores the historic appearance of the infrastructure.

E. Rehabilitation of mobile homes

F. Projects consisting exclusively of activities listed in Attachment "A" do not require review. Projects involving unlisted activities in addition to activities listed in Attachment "A" shall be reviewed pursuant to Stipulations IV and V of this Agreement.

IV. AREA OF POTENTIAL EFFECTS

It is agreed for purposes of this Agreement, with the exception of Stipulation VI.B., that the Area of Potential Effects (APE) will be limited to the individual property when a proposed undertaking is limited to the rehabilitation of the building's existing interior or exterior features.

V. IDENTIFICATION OF HISTORIC PROPERTIES

A. The CDC shall review all existing information on any property within the APE that may be affected by the use of these funds, including the National Register of Historic Places (National Register), lists of historic properties maintained by the CDC, and properties included in the Historical Resources Inventory maintained by the South Central Coastal Information Center.

1. If the property proposed for rehabilitation is listed on the National Register, or has already been determined eligible inclusion in the National Register, the [Abbreviated Name] shall proceed with the review of the undertaking pursuant to Stipulation V., unless exempted under Stipulation II.
2. If the property has been determined by the CDC, in written consultation with the SHPO, within the last five (5) years prior to the current undertaking, to be ineligible for inclusion in the National Register, then the undertaking may proceed without further review under the terms of this Agreement.

B. If the property proposed for rehabilitation is not listed in the National Register, has not been evaluated for National Register eligibility within the last five (5) years, and is at least 50 years old, the CDC shall submit the documentation required pursuant to 36 CFR 800.4 including a completed California Historic Resources Inventory form (DPR 523A and 523B) to the SHPO for review, included as Attachment "B" to this Agreement. The CDC shall seek information, as appropriate from individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area. The SHPO may request other information, if necessary. The CDC shall apply the National Register criteria and notify the SHPO of its determination in this submittal.

1. If the SHPO agrees with the CDC that a property is eligible under the criteria, the property shall be considered eligible for the National Register for purposes of this Agreement, and shall hereinafter be referred to as a Historic Property. The CDC shall continue consultation in accordance with the terms of this Agreement for all such properties.
2. If the SHPO agrees with the CDC that the criteria are not met, the property shall be considered ineligible for inclusion in the National Register for a period of five (5) years from the date of the SHPO's review. Such properties need not be reevaluated during this five (5) year period, unless a party to this Agreement notifies the CDC in writing that it has determined that changing perceptions of significance warrants a property reevaluation. Such properties require no further review under this Agreement.
3. If the SHPO disagrees with the CDC's determination regarding eligibility, the CDC shall consult further with the SHPO to reach agreement. If agreement cannot be reached, the CDC shall obtain a final determination from the Secretary of the Interior pursuant to the applicable National Park Service regulations, 36 CFR Part 63.

VI. ASSESSMENT OF EFFECTS

- A. For properties identified as Historic Properties under Stipulation V and prior to undertaking any activities that are not exempt under Stipulation II, the CDC shall provide the SHPO with clear, unobstructed photographs (no Polaroids) of the Historic Property and a general work description which adequately details the scope of work for each project that may affect a Historic Property, including work write-ups, working drawings, and specifications, as appropriate, and any additional documentation necessary to understand the undertaking. The CDC shall ensure that the California State Historic Building Code (SHBC) will be employed in all rehabilitation projects involving Historic Properties. The CDC shall ensure that *The Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards)* will be employed in all rehabilitation projects. The *Standards* may be found at www2.cr.nps.gov/tps/secstan1.htm. The CDC shall apply the Criteria of Adverse Effect, 36 CFR §800.5, in consultation with the SHPO to any Historic Property that may be affected by a project, and will review the scope of work to determine if the project conforms to the recommended approach contained in the *Standards*.
 1. If the CDC determines that a project conforms to the *Standards* and complies with the SHBC, the CDC shall notify the SHPO in writing of this finding. If the SHPO does not object in writing to this determination within thirty (30) days, the undertaking shall be considered to have "no adverse effect" on Historic Properties, and may proceed as submitted without

further review.

2. If the CDC or the SHPO finds that a project does not conform to the *Standards* the undertaking will be considered to have an "adverse effect" on Historic Properties. The SHPO may recommend modifications to the scope of work or conditions under which the project would be found to conform to the *Standards* in its response to the CDC. If the CDC accepts the recommended modifications, the undertaking will be considered having "no adverse effect" on the Historic Property, and may proceed as modified without further review. If the modifications recommended are not accepted, then the CDC shall consult further with the SHPO to seek ways to avoid, minimize, or mitigate the adverse effect. If all adverse effects cannot be avoided, the CDC shall consult further to minimize or mitigate the adverse effects in accordance with 36 CFR §800.6(b)(1).
 3. The CDC shall notify the SHPO of any changes to an approved scope of work, other than activities exempt under Stipulation II, and shall provide the SHPO with the opportunity to review and approve such changes. If the changes do not conform to the *Standards*, the parties shall consult further to minimize or mitigate the adverse effects in accordance with 36 CFR 800.6(b)(1).
 4. The CDC shall retain documentation of the rehabilitation, including the work write-ups and photographs as part of its permanent records.
- B. Additionally, the CDC shall consult in writing with the SHPO to determine if an undertaking that includes ground-disturbing activities has the potential to affect archeological properties that may be eligible for inclusion in the National Register. The CDC shall investigate historical records and pertinent information available at the Sonoma State University Anthropological Studies Center and shall complete any further studies recommended by the SHPO to determine if the undertaking has the potential to affect either archeological properties that may be eligible for inclusion in the National Register or properties for which Indian tribes may attach religious and cultural significance. It is agreed that the following ground disturbing activities have the potential to affect historic properties: excavation for footings and foundations; installation of utilities such as sewer, water, storm drains, electrical lines, gas lines, leach lines, and septic tanks, except where installation is restricted solely to areas previously disturbed by the installation of these utilities, and installation is restricted to these areas previously disturbed by the installation of such systems.
1. If an undertaking has the potential to affect any archeological property that may be eligible for inclusion in the National Register, the CDC shall redesign the project to avoid the archeological property and shall provide the SHPO with documentation regarding the property and the steps it has

taken to avoid such property.

2. If the undertaking cannot be redesigned to avoid the archeological property, the CDC shall develop a plan in consultation with the SHPO to complete the identification, evaluation and, if necessary, mitigation of the property. If the CDC and the SHPO cannot agree that the potential to affect archeological properties exists or cannot agree on a plan for the consideration of such properties, the CDC will initiate consultation further in accordance with 36 CFR §800.6(b)(1).

VII. POST-REVIEW DISCOVERIES

A. The notification shall describe the CDC's assessment of the National Register eligibility of the property and propose actions to resolve the adverse effects. The SHPO shall respond within 48 hours of the notification. The agency official shall take into account the SHPO's recommendations regarding National Register eligibility and the proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO a report of the actions when they are complete.

1. The CDC, in consultation with the SHPO, may assume a newly-discovered property to be eligible for the National Register for purposes of Section 106, and shall specify the National Register criteria used to assume the property's eligibility.

VIII. EMERGENCY SITUATIONS

A. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 and this Agreement.

B. Notify the SHPO afford the SHPO an opportunity to comment within seven (7) days of notification. If the CDC determines that circumstances do not permit seven days for comment, the agency official shall notify the SHPO and invite comments within the time available. The CDC shall take into account any comments received in reaching a decision on how to proceed with the emergency undertaking.

1. These emergency procedures apply only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. The CDC may request an extension of the period of applicability from the SHPO prior to the expiration of the 30 days.

IX. MONITORING AND REPORTING

On November 1 of each year following the execution of this Agreement until it expires or is terminated, CDC shall provide the SHPO a summary report detailing work undertaken pursuant to its terms, including a list of undertakings that were exempted under Stipulation II and those that were reviewed under the terms of this Agreement. The undertakings will be listed by property address. Such report shall also include any scheduling changes proposed, any problems encountered, and any disputes and objections received in CDC's efforts to carry out the terms of this agreement. The CDC shall provide the Council with a copy of this report upon request. Failure to provide such summary report may be considered noncompliance with the terms of this Agreement pursuant to Stipulation XIV, below.

X. COMBINED REVIEWS OF ELIGIBILITY AND EFFECT

The CDC may elect to submit the documentation set out in Stipulations IV and V above in one package for the SHPO's review. The SHPO will provide comments on the CDC's determinations of eligibility and effect within thirty (30) days after receipt of such submission. The CDC will review any such comment of the SHPO and refer to the detailed procedures set out in Stipulations IV and V to determine if additional review by the SHPO is required to fulfill the terms of this Agreement.

XI. SHPO RESPONSIBILITIES

- A. The SHPO is permitted thirty (30) calendar days after the receipt of any submitted documentation to review and comment on such material, with the exception of other time frames stipulated elsewhere in the Agreement. If the SHPO fails to respond within specified time frames the CDC may assume the SHPO does not object to its determination.
- B. The SHPO will provide technical assistance and training to the CDC to the extent possible.

XII. CDC STAFFING

The CDC will assign staff to assure that rehabilitation work is carried out in accordance with the specifications and work descriptions provided to the SHPO for review in determining effect, including any project modifications recommended by the SHPO which were adopted by the CDC. Such staff will also monitor undertakings limited to work items enumerated in Attachment "A" which are exempted from review by the SHPO to assure that only qualifying work items are properly performed. Responsible CDC staff will certify that work was carried out as planned, and will maintain records for each project which document compliance with the terms of this Agreement.

XIII. DISPUTE RESOLUTION

- A. Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the CDC shall consult with the objecting party(ies) to resolve the objection. If the CDC determines that such objection(s) cannot be resolved, the CDC will:
1. Forward all documentation relevant to the dispute to the Council in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise the CDC on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the Agreement will be taken into account by the [Abbreviated Name] in reaching a final decision regarding the dispute.
 2. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, the CDC may render a decision regarding the dispute. In reaching its decision, the CDC will take into account all comments regarding the dispute from the parties to the Agreement.
 3. The CDC's responsibilities to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged. The CDC will notify all parties of its decision in writing before implementing that portion of the undertaking subject to dispute under this stipulation. The CDC's decision will be final.

XIV. AMENDMENTS AND NONCOMPLIANCE

If any signatory to this Agreement determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other party to develop an amendment. The amendment will be effective on the date a copy signed by all of the original signatories is filed with the Council. If the signatories cannot agree to appropriate terms to amend the Agreement, any signatory may terminate the agreement in accordance with Stipulation XV, below.

XV. TERMINATION

If the Agreement is not amended following the consultation set out in Stipulation XIII, it may be terminated by any signatory. The Council may be asked by any signatory to the Agreement to review the terms of the Agreement and its implementation by the CDC. If the Council determines that the terms of the Agreement are not being carried out, the Agreement will be terminated. If the Agreement is terminated for any reason, the agency official shall comply with Subpart B of 36 CFR Part 800 with regard to individual undertakings of the program covered by the Agreement.

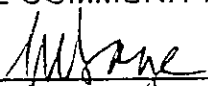
XVI. DURATION.

This agreement will terminate five (5) years from the date of its execution. Prior to such time, the CDC may consult with the other signatories to reconsider the terms of the agreement and revise or amend in accordance with Stipulation XIII, above.

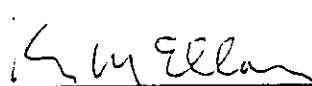
EXECUTION of this Programmatic Agreement by the CDC and California SHPO and implementation of its terms evidence that the CDC has taken into account the effects of this undertaking on Historic Properties and afforded the Council an opportunity to comment.

SIGNATORIES:

THE COMMUNITY DEVELOPMENT COMMISSION OF MENDOCINO COUNTY

 8/14/03 Date
Michael Sage, Interim Executive Director

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

 8/27/03 Date
Dr. Knox Mellon

ATTACHMENT "A"
PROJECT ACTIVITIES NOT REQUIRING REVIEW

1. Undertakings specified in Stipulation II of the Agreement.
2. Mechanical systems when repair, replacement and installation of the following systems does not affect the exterior:
 - a. electrical work
 - b. plumbing pipes and fixtures
 - c. heating, ventilation and air conditioning systems
 - d. fire, smoke, or carbon monoxide detectors
 - e. security systems
3. In lobbies or other publicly accessible interior spaces in multi-family structures:
 - a. repainting of existing painted surfaces if destructive preparation treatments are not used
 - b. repair or replacement of floors, walls, and ceilings (including decorative trim and other features) when the repair or replacement is done in-kind to match the existing materials and form.
4. Exterior painting, irrespective of color, of existing painted surfaces if destructive treatments are not used, including but not limited to waterblasting (above 600 psi), sandblasting and chemical removal.
5. Repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or other trim when the repair or replacement is done in-kind to match materials and form.
6. Replacement of deteriorated window frames when the replacement is done in-kind to match the existing materials and form.
7. Replacement of window panes in-kind or when with double or triple glazing so long as glazing is clear and not colored, and replacement does not alter existing window frame materials and form.
8. Caulking and weather-stripping with compatibly colored materials.
9. Installation of security devices, including dead bolts, door locks, window latches, and door peepholes.
10. Installation of landscaping.
11. Repair or replacement of signs or awnings when work is done in-kind to match existing materials and form.
12. Repair or replacement of roofs when work is done in-kind to match existing materials, except that existing wood shingles or shakes may be replaced with like-colored dimensional composition shingles.
13. Installation of gutters and roof drain systems including enlarging rafter notches to accommodate adequately sized modern gutters.
14. Repair of foundations when work is done in-kind to match existing materials and form, or to restore the original character, and installation of foundation vents, if painted or finished to match the foundation material.
15. Masonry repair including repointing and rebuilding chimneys if the joints are done by hand and the mortar matched as to original composition. Saws are

not an acceptable method of removing deteriorated mortar. Installation of chimney flue liners is allowed.

16. Installation of wheelchair ramps meeting code as long as ramps can be easily removed and are not permanently affixed to the structures. Stairs and railings may not be removed to construct a ramp.
17. Installation of insulation, with the exception of urea formaldehyde foam insulation or any other thermal insulation which contains water in its chemical composition and is installed within wall cavities, provided that decorative woodwork or exterior siding is not altered by this work item.

ATTACHMENT "B"

Primary Record (DPR 523A)

Building, Structure, and Object Record (DPR 523B)

These forms are found at
www.ohp.parks.ca.gov/default.asp?page_id+1069

State of California — The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
PRIMARY RECORD

Primary #
HRI #
Trinomial
NRHP Status Code

Other Listings
Review Code

Reviewer

Date

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*Resource Name or #: S-

P1. Other Identifier:

*P2. Location: Not for Publication Unrestricted

*a. County: -

and (P2b and P2c or P2d. Attach a Location Map as necessary.)

*b. USGS 7.5' Quad:

Date:

T

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1/4 of Sec

; M.D.

B.M.

City:

Zip:

c. Address:

d. UTM: Zone: 10 ; mE: mN (G.P.S.)

e. Other Locational Data: (e.g., parcel #, directions to resource, elevation, etc., as appropriate) Elevation:

*P3a. Description: (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries)

*P3b. Resource Attributes: (List attributes and codes)

*P4. Resources Present:

Building

Structure

Object

Site

District

Element of District

Other (Isolates, etc.)

P5b. Description of Photo: (View, date, accession #)

P5a. Photo or Drawing (Photo required for buildings, structures, and objects.)

*P6. Date Constructed/Age and Sources: Historic Prehistoric Both

*P7. Owner and Address:

*P8. Recorded by: (Name, affiliation and address; i. Michel)

*P9. Date Recorded:

*P10. Survey Type: Describe: General Reconnaissance

*P11. Report Citation: (Cite survey report and other sources, or enter "none.")

*Attachments: NONE Location Map Sketch Map Continuation Sheet Building, Structure, and Object Record Archaeological Record District Record Linear Feature Record Milling Station Record Rock Art Record Artifact Record Photograph Record Other (List):

*Required information

BUILDING, STRUCTURE, AND OBJECT RECORD

Page 2 of

*NRHP Status Code

*Resource Name or # (Assigned by recorder) S-

B1. Historic Name:

B2. Common Name:

B3. Original Use:

B4. Present Use:

*B5. Architectural Style:

*B6. Construction History: (Construction date, alterations, and date of alterations)

*B7. Moved? No Yes Unknown Date:

Original Location:

*B8. Related Features:

B9a. Architect:

b. Builder:

*B10. Significance: Theme:

Area:

Period of Significance:

Property Type:

Applicable Criteria:

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity.)

B11. Additional Resource Attributes: (List attributes and codes) AP

*B12. References:

B13. Remarks:

(Sketch Map with north arrow required.)

*B14. Evaluator:

*Date of Evaluation:

(This space reserved for official comments.)