

**PROGRAMMATIC AGREEMENT
BETWEEN REGION IX OF
THE U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICE
FOR THE REVIEW OF HUD-FUNDED ACTIVITIES
SUBJECT TO 24 CFR PART 50**

WHEREAS, the U.S. Department of Housing and Urban Development (“HUD”) through various offices, including the Offices of the Assistant Secretaries for Housing—Federal Housing Commissioner, Public and Indian Housing, and Community Planning and Development, provides grant funding, mortgage insurance and other assistance, subject to environmental review under 24 CFR Part 50, “Protection and Enhancement of Environmental Quality”, to entities within the State of California;

WHEREAS, some HUD programs reviewed under 24 CFR Part 50, including but not limited to mortgage insurance per Sections 203(b), 207, 211, 220, 221(d)(3), 223(a), 223(f), 207 and 221(d)(4) of the National Housing Act of 1934, Section 202 of the Housing Act of 1959, Section 811 of the Cranston-Gonzalez National Affordable Housing Act of 1990, and HUD administered programs under the American Recovery and Investment Act of 2009 require accelerated processing timelines;

WHEREAS, HUD is responsible for complying with Section 106 of the National Historic Preservation Act of 1966, as amended, (NHPA, 16 U.S.C. Sec. 470f), implemented pursuant to 36 C.F.R. 800 (“Section 106”) whenever HUD conducts an environmental review under 24 C.F.R. Part 50;

WHEREAS, through its field offices, HUD undertakes many activities that include the acquisition, leasing, repair, minor rehabilitation, disposition of properties, most of which are affordable housing, as well as other activities that include the substantial rehabilitation, demolition, conversion and new construction of residential and non-residential properties, each of which is an undertaking (“Undertaking”) as defined pursuant to 36 C.F.R. 800.16(y),

WHEREAS, the Advisory Council on Historic Preservation issued in 1995 and revised in 2006 a “Policy Statement on Affordable Housing and Historic Preservation” that addresses implementation principles for Section 106 compliance, and those principles have been utilized in developing this Agreement;

WHEREAS, HUD Region IX Environmental staffs are well trained in standards of historic preservation and particularly in Section 106 of the National Historic Preservation Act and its implementing regulations at 36 CFR Part 800, the National Register of Historic Places Criteria for Evaluation and the Secretary of Interior’s Standards for the Treatment of Historic Properties at 36 CFR Part 68;

WHEREAS, HUD has determined that some of the Undertakings funded by its programs have limited potential to affect properties included in or eligible for inclusion in the National Register of Historic Places and have consulted with the California State Historic Preservation Officer (“SHPO”) pursuant to 36 C.F.R. 800.14 of the regulations implementing Section 106;

WHEREAS, HUD has invited the Native American Heritage Commission (“NAHC”) and one hundred eleven federally-recognized American Indian tribes to comment and/or consult in the development of this Agreement, in recognition of the unique government-to-government relationship between the Federal government and federally-recognized American Indian tribes and all those Tribes who commented are invited to participate in this agreement as consulting parties;

WHEREAS, Tribal Historic Preservation Officers have Section 106 consultation authority where an Indian tribe has assumed Section 106 responsibilities of the SHPO on tribal lands pursuant to Section 101(d)(2)(D)(iii) of the Act, this agreement is not applicable to undertakings located in tribal lands subject to the purview of a Tribal Historic Preservation Officer;

WHEREAS, HUD has invited the California Preservation Foundation, the National Trust for Historic Preservation, Los Angeles Conservancy, San Francisco Architectural Heritage, Save Our Heritage Organization and the Society for California Archeological Business Office to comment and consult in the development of this Agreement, and none of these institutions has objected or commented;

WHEREAS, in accordance with 36 C.F.R. § 800.14(b)(2), HUD has notified the Advisory Council on Historic Preservation (Council) and invited the Council to participate in the development of this Programmatic Agreement;

NOW, THEREFORE, HUD and the SHPO agree that all HUD Programs subject to 24 CFR Part 50 in the State of California shall be administered in accordance with the following stipulations in order to take into account the effects of these undertakings on historic properties and satisfy Section 106 responsibilities.

STIPULATIONS

HUD will ensure that the following measures are carried out.

I. UNDERTAKINGS NOT REQUIRING REVIEW BY SHPO OR COUNCIL

All Undertakings **not** identified under either Section (A) or Section (B) must be fully reviewed in accordance with 36 C.F.R. Part 800.

The following types of Undertakings listed in Sections (A) and (B) have limited potential to affect historic properties and may be approved by HUD under 24 C.F.R. Part 50 without further consultation with SHPO or Council.

A. General Exclusions

The list of excluded undertakings below is based on existing exemptions listed in HUD regulations, in program requirements or in existing SHPO letters of agreement.

1. Maintenance and interior rehabilitation activities on existing buildings, structures and facilities, not including construction, demolition or substantial rehabilitation* activities.
2. Financing and refinancing of buildings, structures and facilities, including repair, maintenance and minor rehabilitation activities, not including construction, demolition or substantial rehabilitation* activities.
3. Acquisition, leasing or disposition of properties, provided that any properties to be disposed of are documented in the Environmental Review Record to be less than fifty years old and not listed on the National Register of Historic Places individually or as a contributor to a historic district.
4. Demolition of properties less than fifty years old, provided a) that the properties are documented in the Environmental Review Record not to be listed or eligible to be listed on the National Register of Historic Places individually or as a contributor to a historic district, b) that the HUD Environmental Officer concurs and c) that there is no substantial earth moving.
5. Undertakings where SHPO has already concurred on a finding of “no historic properties affected,” “no historic properties present” or “no adverse effect” on historic properties within the previous five years and where the scope and magnitude of the undertaking are not changing, provided that HUD must document its Environmental Review Record with a copy of the prior SHPO concurrence letter or Memorandum of Agreement, as applicable.
6. Protection, repair and restoration activities necessary to control or arrest the effects of disasters or of imminent threats to public safety.

* Undertakings involving Substantial Rehabilitation are not eligible for this exclusion but may be eligible under exclusion B. An undertaking involves substantial rehabilitation when it meets one of the following criteria:

- a) The cost of repairs, replacements and improvements exceeds the *greater* of 15% of the estimated property replacement cost after completion of all repairs, replacements and improvements, or \$6500 (or regionally adjusted amount) per unit in repairs, replacements and improvements, *or*
- b) Two or more major building components are proposed to be substantially replaced.

B. Substantial Rehabilitation Exclusions

The following types of excluded Undertakings require HUD to document that the subject buildings, structures and/or facilities are less than fifty years old and not listed on the National Register of Historic Places individually or as a contributor to a historic district, and to obtain the concurrence from a HUD Environmental Officer. For purposes of this Agreement, the term “in-kind replacement” is defined as installation of a substitute

element that duplicates the material, dimensions, configuration and detailing of the original element.

1. Site Work

- a) Streets, driveways, alleys, and parking areas. In-kind repair, repaving, sealing, striping and coating of existing concrete or asphalt surfaces and parking areas as long as they do not involve substantial earth moving, such as footing/foundation trenching or general excavation.
- b) Curbs, gutters, sidewalks, retaining walls. In-kind repair of existing concrete or asphalt surfaces or in-kind repair/replacement of concrete, brick, or stone materials for curbs, gutters, sidewalks, and retaining walls.
- c) Site improvements. In-kind repair or replacement of site improvements, including, but not limited to fences, landscaping, gazebos, breezeways, carports, pathways and steps, provided that they do not involve substantial earth moving, such as footing/foundation trenching or excavation.
- d) Below Ground Utilities. Modifications to existing water, sewer, natural gas distribution, electric or telecommunication facilities where work will occur in or directly adjacent to the existing utility trench and provided there is no substantial earth moving.
- e) Above Ground Utilities. Repair or replacement of existing wires, anchors, crossarms, and other miscellaneous hardware on existing overhead lines; not including the replacement or installation of poles or water towers.
- f) Park and playground equipment. Installation, repair or replacement of park and playground equipment and sheds, excluding buildings.
- g) Temporary structures. Installation or replacement of temporary structures including scaffolding, barriers, screening, fences, protective walkways, signage, office trailers or restrooms, provided that there is no substantial earth moving.

2. Exterior Rehabilitation

- a) Foundations. Below-grade repair and reinforcement of foundations, where work will occur in or immediately adjacent to the existing foundation provided there is no substantial earth moving.
- b) Windows and doors. In-kind repair and in-kind replacement of windows and doors, including caulking and weather stripping.
- c) Storm windows and storm doors. Installation of exterior storm windows and doors provided they conform to the shape and size of the existing windows and doors.
- d) Walls and Siding. Repair and in-kind replacement of wall or siding material.
- e) Painted surfaces.
 1. Removal and abatement of exterior paint by non-destructive means, limited to hand scraping, low pressure water wash (less than 200 p.s.i.), heat guns, or paint-removal chemicals, provided that the removal method is consistent with the provisions of 24 C.F.R. Part 35, "Lead-Based Poisoning Prevention in Certain Residential Structures," and that the abatement does not involve the removal or alteration of exterior decorative features.

2. Application of exterior paint, pointing and caulking.

- f) Porch, balcony elements and bridge connections between buildings. Repair or in-kind replacement of deteriorated porch, bridge and balcony elements that match existing materials and dimensions, such as columns, flooring, floor joists, ceilings, railing, lattice and balustrades.
- g) Roofing. Repair or in-kind replacement of roof cladding and sheeting, flashing, gutters, soffits, cupolas, chimneys, parapets, skylights and downspouts.
- h) Awnings. Repair or replacement of awnings.
- i) Mechanical systems. Placement and installation of exterior HVAC mechanical units, solar panels, equipment and vents not on the front elevation of the property.
- j) Basement bulkhead doors. Replacement or repair of basement bulkhead doors and installation of basement bulkhead doors not on the front elevation.
- k) Lighting. Repair or in-kind replacement of existing light fixtures and installation of additional decorative or security lights.
- l) Mothballing. Securing or mothballing a property by boarding over window and door openings, making temporary roof repairs, and/or ventilating the structure.
- m) Accessibility Ramps. Temporary ramps that do not irreversibly impact porches or railings.
 - n) Seismic and structural repairs. Seismic and structural repairs of buildings and parking facilities, provided that there is no substantial earth moving, such as new footings, foundation-trenching or excavation.

3. Interior Rehabilitation

- a) Mechanical systems. Installation, replacement or repair of plumbing, HVAC systems and units, electrical wiring and fire protection systems. Included are restroom improvements and fixture replacements, provided the work is contained within the existing restroom walls, and installation of photovoltaic systems provided they are not visible on the front elevation of the building seen from the street. Also included are kitchen cabinet and fixture replacements or rehabilitation, provided the work is contained within the existing kitchen walls.
- b) Insulation. Installation of insulation in ceiling and attic spaces.
- c) Floors. Rehabilitation or replacement of floors and stairs, in-kind replacement of stair treads, replacement of carpets.
- d) Asbestos abatement. Abatement or control of asbestos or other toxic materials.
- e) Surfaces. Repair or in-kind replacement of interior surface treatment, such as floors, walls, ceilings, plaster and woodwork.
- f) Painted surfaces.
Removal of interior paint by non-destructive means, limited to hand scraping, heat plates or heat guns, or paint-removal chemicals, provided that the removal method is consistent with the provisions of 24 C.F.R. Part 35, "Lead-Based Poisoning Prevention in Certain Residential Structures."
- g) Fixtures. Repair or replacement of bathroom and kitchen equipment and fixtures.

II. DISCOVERIES AND UNFORESEEN EFFECTS

If, during the implementation of these programs, a previously unidentified property that may be found eligible for inclusion in the National Register is encountered, or a known National Register historic property may be affected in an unanticipated manner, HUD will assume its responsibilities pursuant to 36 C.F.R. Part 800.13(b).

III. DISPUTE RESOLUTION

At any time during the implementation of the measures stipulated in this Agreement, should an objection to any measure or manner of implementation be raised by a signatory, HUD shall take the objection into account and consult with the objecting party and the SHPO to resolve the issue.

- A. HUD shall represent itself in all matters of dispute resolution that pertain specifically to this Agreement.
- B. The responsibilities of the signatories to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute shall remain in effect.
- C. There will be no binding mediation or arbitration with any party.

IV. NOTIFICATION

Notification or other communication between parties to this Agreement should be made in care of the addresses provided in Exhibit B.

V. AMENDMENT

Any party may request that this Agreement be amended, whereupon HUD and the SHPO will consult with the other parties in accordance with 36 C.F.R. Part 800.14(b) to consider an amendment. Amendments will only be considered if made in writing and must be approved in writing by all parties to this Agreement to go in effect.

VI. TERMINATION

Any party to this Agreement may terminate its participation by providing thirty (30) days written notice to all other parties. In the event of termination, the terminating party will comply with 36 C.F.R. 800.3 through 800.6 with respect to individual Undertakings covered by this Agreement.

VII. TERM OF THE AGREEMENT

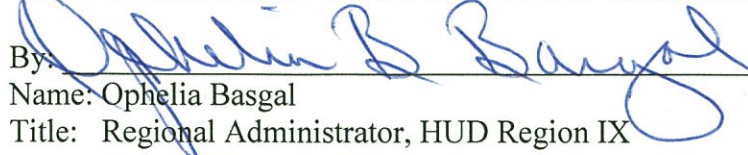
This Agreement shall continue in force and effect for ten (10) years from the date the last signatory has signed the Agreement. The Agreement may be extended for five (5) additional years, provided that there are no substantial modifications, that HUD and the SHPO agree, and that any other signatory wishing to remain party to the Agreement also agrees. HUD may initiate the extension request from SHPO and other signatories in writing via confirmed mail delivery at any time in the six-month period prior to the

expiration of the Agreement. Should a party to this Agreement, other than HUD or the SHPO, choose not to extend its participation in the Agreement, the Agreement will not be nullified for the other parties.


EXECUTION AND IMPLEMENTATION of this Agreement evidences that HUD has satisfied its responsibilities under Section 106 of the NHPA for the Undertakings as described in this Agreement and funded by the HUD Programs. This Agreement may be executed in counterparts.

Signed:

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By:  Date: 3/1/2013
Name: Ophelia Basgal
Title: Regional Administrator, HUD Region IX

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By:  Date: 4/12/13
Name: Carol Roland-Nawi
Title: State Historic Preservation Officer, State of California

Consulting Parties:

Pit River Tribe

By: _____ Date: _____
Name: Juan Venegas
Title: Tribal Chairman, Pit River Tribe

Karuk Tribe

By: _____ Date: _____
Name: Helene Rouvier
Title: Karuk Tribal Historic Preservation Officer

Temecula Band of Luiseno Mission Indians

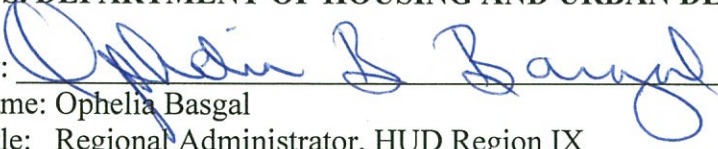
By: _____ Date: _____
Name: Mark Macarro
Title: Tribal Chairman, Temecula Band of Luiseno Mission Indians

Rincon Band of Luiseno Indians

By: _____ Date: _____
Name: Rose Duro
Title: Rincon Culture Committee Chair

Signed:

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By:  Date: 3/1/2013
Name: Ophelia Basgal
Title: Regional Administrator, HUD Region IX

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Name: Carol Roland-Nawi
Title: State Historic Preservation Officer, State of California

Consulting Parties:

Pit River Tribe

By: _____ Date: _____
Name: Juan Venegas
Title: Tribal Chairman, Pit River Tribe

Karuk Tribe

By:  Date: 3/15/2013
Name: Julie Burcell
Title: Karuk Tribal Historic Preservation Officer

Temecula Band of Luiseno Mission Indians

By: _____ Date: _____
Name: Mark Macarro
Title: Tribal Chairman, Temecula Band of Luiseno Mission Indians

Rincon Band of Luiseno Indians

By: _____ Date: _____
Name: Rose Duro
Title: Rincon Culture Committee Chair

Signed:

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: _____ Date: _____
Name: Ophelia Basgal
Title: Regional Administrator, HUD Region IX

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Name: Carol Roland-Nawi
Title: State Historic Preservation Officer, State of California

Consulting Parties:

Pit River Tribe

By: _____ Date: _____
Name: Juan Venegas
Title: Tribal Chairman, Pit River Tribe

Karuk Tribe

By: _____ Date: _____
Name: Helene Rouvier
Title: Karuk Tribal Historic Preservation Officer

Temecula Band of Luiseno Mission Indians

By: _____ Date: _____
Name: Mark Macarro
Title: Tribal Chairman, Temecula Band of Luiseno Mission Indians

Rincon Band of Luiseno Indians

By:  Date: 5-16-13
Name: Bo Mazzetti
Title: Tribal Chairman

EXHIBIT A
MAILING ADDRESSES OF SIGNATORIES

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

U.S. Dept. Housing & Urban Development
Pacific I- Hawaii – Region IX
600 Harrison Street, Third Floor
San Francisco, CA 94107

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER:

Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

PIT RIVER TRIBE:

36970 Park Avenue
Burney, CA 96013

KARUK TRIBE:

Post Office Box 1016
Happy Camp, CA 96039

RINCON BAND OF LUISENO INDIANS:

Post Office Box 68
Valley Center, CA 92082

TEMECULA BAND OF LUISENO MISSION INDIANS:

Post Office Box 2183
Temecula, CA 92592