

## HP FACT SHEET #3: COMPLIANCE OPTIONS FOR THE SECTION 106 REVIEW PROCESS

Per §800.8(c)(5), "Coordination with NEPA," if the undertaking is modified after approval of the environmental review, FONSI, or ROD, in a manner that changes the undertaking or alters its effects on historic properties, or if HUD or the Responsible Entity (RE) fails to ensure that the measures to avoid, minimize, or mitigate adverse effects are carried out, HUD or the RE shall notify the SHPO/THPO, ACHP, and all consulting parties that the historic preservation (and environmental) review needs to be reopened.

There are several findings, agreements, and alternative solutions in the current 36 CFR Part 800 regulations that allow for successful conclusion of the historic preservation review process. To comply with Part 800 requirements, HUD or the RE may use any one of the following options, when justified.

1. Finding of "no undertaking" [800.2(a)].

2. Finding of "no potential to cause effects" [800.2(a)(1)].

- Both #1 & #2 above may relate directly to §50.19, §58.34, or §58.35(b) and do not require consultation with the State/Tribal Historic Preservation Officer (SHPO/THPO). #3-10 below do require consultation.

3. Finding of "no historic properties affected" [800.4(d)(1)]. This allows a project to convert to an exempt activity under §58.34(a)(12) in accordance with previous guidance issued via email on 2/23/04.

4. Finding of "no adverse effect" [800.5(b)-(d)(1)]. This includes a finding of "no adverse effect" with conditions imposed or agreed to by the consulting parties [see 800.5(b)], a.k.a a "conditional no adverse effect" determination.

- A "conditional no adverse effect" determination based, for example, on a HUD applicant agreeing to comply with the Federal and/or State Historic Rehabilitation Tax Credit requirements, is a very appropriate solution to avoid adverse effects and complete the Section 106 process because: 1) the tax credit process is a stricter level of historic review (must meet Secretary of Interior's Standards and thereby avoid adverse effects), and 2) the applicant is very likely relying on the anticipated tax credit(s) as a part of the financing for the undertaking (jeopardizing the historic tax credit(s) may likely render the project economically infeasible).

5. Memorandum of Agreement (MOA), signed and executed per §800.6(c). This covers a project-specific undertaking.

6. Programmatic Agreement (PA), signed and executed per §800.14(b). This covers an entire program or set of programs, like CDBG & HOME, and their full range of undertakings (e.g. eligible activities) over a set period of time (five years is recommended).

7. Alternate Procedures [800.14(a)]. The only agency to utilize this option is the Department of the Army (2002).

8. Exempted Categories [800.14(c)]. The only exempted categories approved by the Advisory Council on Historic Preservation (ACHP) are for historic natural gas pipelines (FERC, 2002) and the Interstate Highway System (DOT, 2005).

9. Standard Treatments [800.14(d)]. The ACHP has not issued any standard treatments to date.

10. Program Comments [800.14(e)]. The only agency to utilize this option is the Department of the Army for its Capehart Wherry housing (2002).

### **NEED ADDITIONAL HELP?**

CONTACT YOUR LOCAL HUD ENVIRONMENTAL OFFICER, **[INSERT CONTACT INFO]**.