Section 106 and Affordable Housing

Joseph Alan King
University of Pennsylvania

Follow this and additional works at: http://repository.upenn.edu/hp_theses
Part of the Historic Preservation and Conservation Commons

http://repository.upenn.edu/hp_theses/426

Copyright note: Penn School of Design permits distribution and display of this student work by University of Pennsylvania Libraries.
Suggested Citation:

This paper is posted at ScholarlyCommons. http://repository.upenn.edu/hp_theses/426
For more information, please contact libraryrepository@pobox.upenn.edu.
Section 106 and Affordable Housing

Disciplines
Historic Preservation and Conservation

Comments
Copyright note: Penn School of Design permits distribution and display of this student work by University of Pennsylvania Libraries.

Suggested Citation:

This thesis or dissertation is available at ScholarlyCommons: http://repository.upenn.edu/hp_theses/426
SECTION 106 AND AFFORDABLE HOUSING

Joseph Alan King

A THESIS

in

Historic Preservation

Presented to the Faculties of the University of Pennsylvania in Partial Fulfillment of the Requirement for the Degree of

MASTER OF SCIENCE

1995

Supervisor
David A. Hollenberg.
Lecturer in Historic Preservation

Reader
John C. Keene.
Professor of City and Regional Planning

Graduate Group Chair
David G. De Long
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>List of Illustrations</td>
<td>iv</td>
</tr>
<tr>
<td>Acknowledgements</td>
<td>v</td>
</tr>
<tr>
<td><strong>Chapter I: Introduction</strong></td>
<td>1</td>
</tr>
<tr>
<td><strong>Chapter II: An Overview of the Section 106 Review Process</strong></td>
<td>6</td>
</tr>
<tr>
<td>A. Background</td>
<td>6</td>
</tr>
<tr>
<td>B. Participants in the Section 106 Review Process</td>
<td>9</td>
</tr>
<tr>
<td>C. The Section 106 Review Process</td>
<td>12</td>
</tr>
<tr>
<td>D. Programmatic Agreements</td>
<td>27</td>
</tr>
<tr>
<td><strong>Chapter III: Affordable Housing and the Section 106 Review Process</strong></td>
<td>30</td>
</tr>
<tr>
<td>A. Background</td>
<td>30</td>
</tr>
<tr>
<td>B. Delegation of Authority for Section 106</td>
<td>33</td>
</tr>
<tr>
<td>C. Programmatic Agreements with Affordable Housing Projects</td>
<td>37</td>
</tr>
<tr>
<td>D. Analysis of the Section 106 Review Process</td>
<td>46</td>
</tr>
<tr>
<td><strong>Chapter IV: Affordable Housing and Historic Preservation:</strong></td>
<td>72</td>
</tr>
<tr>
<td><strong>A New Policy Statement</strong></td>
<td>72</td>
</tr>
<tr>
<td>A. Background</td>
<td>72</td>
</tr>
<tr>
<td>B. General Comments about the Statement of Policy</td>
<td>74</td>
</tr>
<tr>
<td>C. Community Involvement and Long Range Planning</td>
<td>77</td>
</tr>
<tr>
<td>D. Flexibility in Applying Section 106</td>
<td>83</td>
</tr>
<tr>
<td>E. Streamlining Procedure and Decentralization</td>
<td>90</td>
</tr>
<tr>
<td>F. Benefit of the New Policy Statement</td>
<td>94</td>
</tr>
</tbody>
</table>
### LIST OF ILLUSTRATIONS

<table>
<thead>
<tr>
<th>Figure</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Figure 1</td>
<td>Section 106, Step 1</td>
<td>16</td>
</tr>
<tr>
<td>Figure 2</td>
<td>Section 106, Step 2</td>
<td>19</td>
</tr>
<tr>
<td>Figure 3</td>
<td>Section 106, Steps 3-5</td>
<td>24</td>
</tr>
</tbody>
</table>
ACKNOWLEDGEMENTS

I would like to thank all those people who took the time to share their knowledge of the Section 106 process with me, both in and out of Philadelphia. In particular, I would like to acknowledge my advisors, David Hollenberg and John Keene for their patience, encouragement, and good advice. Finally, I would like to thank my family, and especially my father, Julius A. King, for their unquestioning support and love. Without them, this thesis would never have been written.
One of the most important means, on the federal level, for the protection of historic sites and buildings is the Section 106 review process, mandated by the National Historic Preservation Act of 1966, as amended. The act requires any federal or federally assisted project to undergo a review to determine its possible impact on historic resources. The act applies to all projects receiving federal funding or assistance, either directly or indirectly. Section 106 is administered by the Advisory Council on Historic Preservation, an organization also created by the 1966 Act.

Sometimes, the laudable goal of preserving historic resources, as embodied by Section 106 review, comes into an apparent conflict with other equally worthwhile goals. One particular area where Section 106 review has been criticized is in its application to affordable housing projects. Section 106 reviews are almost always necessary for affordable housing projects because there is either a direct federal subsidy through CDBG or other programs, or a federal loan or insurance guarantee. Many affordable housing
developers claim that the Section 106 process itself is time consuming and costly, and the final recommendations often add thousands of dollars to the finished product. These developers see historic preservation as a barrier to the creation of affordable housing rather than as a positive value that will benefit their projects.

This negative conception of historic preservation by affordable housing developers is something that some preservationists are trying to overcome. Although often seen as being elitist, there is a growing consensus within the historic preservation community that it must open up to a more diverse array of cultures and income groups. This goal is especially important given the fact that more and more historic resources are being identified in predominantly minority and lower income residential areas of cities. There is, also, a growing interest within minority and low income areas in preserving their cultural and architectural heritage. Yet, as a result of the Section 106 review process, many neighborhood activists regard preservation in a negative light, as another regulatory obstacle that must be overcome.

The solution to this dilemma lies in the ability of each group to broaden its perspective and look at all facets of a project, rather than focusing on a narrow viewpoint. Housing activists in low income communities should learn more about the benefits that can be derived from historic preservation. Conversely, preservationists need to adopt much
more flexible approaches to dealing with the rehabilitation of housing in these areas in order to keep them affordable. Neither side can lose sight of the fact that their ultimate shared aim is to reuse existing buildings and create revitalized, viable communities.

Recently, an important step has been made by preservationists to forge a better relationship with community housing groups. The Advisory Council on Historic Preservation, in conjunction with other interested parties, has developed a new set of policy guidelines for section 106 review as it is applied to affordable housing projects. The new policy statement promotes a more streamlined and flexible process that places more weight on the economic issues related to historic preservation. The guidelines cover a number of areas including involving the local community more in decision-making, being more flexible with the Secretary of the Interior’s Standards, and promoting a greater use of local programmatic agreements. The new guidelines are meant to forge a stronger alliance between the historic preservation and affordable housing communities by allowing them to work together toward the unified goal of rehabilitating the deteriorating building stock of our cities.

The purpose of this thesis is to look at the issue of Section 106 review as it affects affordable housing. It seeks to understand what the perceived problems are in its present
form, and tries to offer some insight into whether the new policy guidelines issued by the Advisory Council will be a significant step toward making a better process.

The main body of the thesis is divided into four chapters. After the introduction, the first chapter is a brief overview of the Section 106 review process as it applies to all federal agencies. It examines what constitutes a federal undertaking, who the important actors are in the process, how determinations are made as to what constitutes a historic resource, and how the process proceeds once that determination has been made.

The next chapter looks at the Section 106 review process as it specifically applies to the production of affordable housing. It explores the differences in the process peculiar to its application to affordable housing, and discusses the particular difficulties that affordable housing developers encounter when going through the review process.

The fourth chapter examines the new policy guidelines enacted by the Advisory Council on Historic Preservation. It analyses the specific provisions of the guidelines along with the positive and negative comments that they have received from preservationists.

A case study of the Section 106 review process as it is applied in the city of Philadelphia then follows. In Philadelphia, many, although not all, of the new guidelines have already
been in practice for several years. By looking at the process as it is carried out in this
city, an assessment can be made as to the possibility of success for the guidelines.
Finally, the concluding chapter will offer a summary, as well as possible directions for
future research on the topic.
A. Background

The National Historic Preservation Act (NHPA) of 1966, as amended, is the primary federal legislation that serves to identify and safeguard historic properties at the national level.\(^1\) It was passed, in part, as a response to the loss of a great number of significant historical sites in the wake of large scale federal building projects beginning after the Second World War.\(^2\) NHPA established a number of important tools for preservationists to use in their fight to save historic resources. These tools include the creation and maintenance of the National Register of Historic Places and the designation of National Historic Landmarks, the creation of the Advisory Council for Historic Preservation as the federal agency most responsible for historic preservation, the approval of state historic
preservation programs including the designation of State Historic Preservation Officers (SHPO), and the ability to give technical guidance and grants for historic projects.\textsuperscript{3}

An additional tool that the act gives preservationists is the ability to comment on any undertaking proposed or assisted by the federal government. Section 106 of NHPA states:

\begin{quote}
The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.\textsuperscript{4}
\end{quote}

According to the act, agencies must identify any historic properties that could potentially be affected by a federal project, and explore methods of mitigating the impacts of that project.

It is important to note, however, that the act does not force government agencies into doing historic preservation work. It merely asks them to take historic preservation "into account" when planning and implementing a project. Section 106 also asks agencies to give the

\begin{footnotes}
\item[3] Section 106, Step-by-Step, p. 5.
\end{footnotes}
Advisory Council, “a reasonable opportunity to comment” on the action. Nowhere in the section is there any language that forces an agency to follow the Council’s advice. The act makes it clear that historic preservation should not be the preeminent force in determining whether and how a project should proceed. Rather, it is one of many things that an agency should be aware of as a project is planned. According to the Advisory Council, the principle behind Section 106 is to ensure that agencies treat historic properties in a way that gives, “meaningful consideration” to “historic values and of options available to protect the properties.”

In order to have a standard procedure for carrying out the Section 106 review, the Advisory Council created a set of federal regulations governing the process. These guidelines control who participates in the Section 106 review, the process used to determine if there are historic resources present, and the steps that the agency must go through to determine what effects the proposed action will have. Finally, they set up the mechanism through which the SHPO and the Council can comment on the proposed action and negotiate with the agency to mitigate negative effects.

---

5 Section 106 Step-by-Step, pp. 8-9.
B. Participants in the Section 106 Review Process

There are three primary actors in the Section 106 review process. The first is the federal agency undertaking an action. The agency is legally responsible for initiating and complying with the Section 106 review process. The process can be carried out by an official at the departmental level, or can be delegated to officials at constituent bureaus or field offices. The agency official, in consultation with preservation officials, is involved in every step of the 106 process. He or she is first responsible for determining if an action is an undertaking. If it is deemed so, the official must identify and evaluate any potential historic resources and determine whether the action will have an effect on those resources. Finally, the official must send the findings to the Advisory Council for its comments.

The second participant in the Section 106 review is the SHPO. Created by NHPA, the SHPO is a state official who is charged with protecting the historic resources of that state. The SHPO nominates properties to the National Register, conducts state wide inventories of historic properties, and gives technical assistance to government officials of all levels. In regard to Section 106, the SHPO is the preservation official most likely to act as the

---

8 36 CFR 800.1(c)(1)(i).
consultant to the federal agency official during the review process. He or she is responsible for helping the agency official identify historic properties, assess impacts, and assist in developing alternatives for actions that may have an adverse effect on those properties.\textsuperscript{10}

The third participant in the Section 106 review process is the Advisory Council on Historic Preservation. Set up by the NHPA, the Council is an independent federal agency that acts as an advisor to the federal government on matters related to historic preservation.\textsuperscript{11} The Council has authorship and overall responsibility for the entire Section 106 review process. Its direct role in individual reviews, however, can be limited to commenting on decisions and agreements made during the consultation phase of the process. If it wishes, the Council can also become a consulting party, along with the SHPO and agency, and take a more active role in negotiations.\textsuperscript{12}

In addition to the three main actors, there are other individuals or agencies that can become involved in the Section 106 review process. The first of these is the National Park Service. The Park Service plays a role as the keeper of the National Register of Historic Places. As such, it has the final authority to make a determination as to whether a resource is, in fact,
eligible for the National Register. In addition to this function, the Park Service administers the Secretary of the Interior's Standards for Rehabilitation and plays a role when the project in question is seeking historic preservation tax credits. In that case, the Park Service is the agency that is responsible for certifying the project eligible for those credits.

There can also be other actors in the process as determined by the SHPO, the agency, or the Council. They include the local government in the area in which the project is to take place, the applicant for the permit or license in question, the recipient of federal funding, and other interested parties such as a local preservation organization or the National Trust for Historic Preservation. The role of these actors will vary according to the specific situation, but it is generally limited to assisting in identifying eligible sites and giving views on the effects of a project.

One area where a local government can have a greater impact is when it becomes a Certified Local Government (CLG). A CLG is a local government with a preservation

13 36 CFR 800.4(c)(4).
program that meets certain requirements laid out by the Secretary of the Interior (acting through the National Park Service) and the SHPO. In agreement with the Council and the SHPO, a CLG is authorized to act in place of the SHPO in all or some of its duties related to Section 106 review. As such, the local preservation program of a CLG must have a structure that guarantees independence even when another agency of the local government is a party to the review.\(^{16}\)

Participation by the public in Section 106 review is usually very limited. The process itself is not designed to make public participation one of its main components. The consultations that are required are primarily designed to be between the federal agency, the SHPO, and the Advisory Council, if it desires. Other parties may participate only if invited. The public may become involved if the consulting parties request information about historic resources. They also may be informed of decisions and be allowed to view documentation related to the Section 106 review.\(^{17}\)

C. The Section 106 Review Process

The process for Section 106 review, as laid out in the federal regulations, can be divided into five basic steps: identification and evaluation of historic properties, assessment of

\(^{16}\) "Section 106 Participation by Local Governments," pp. 5-7.
\(^{17}\) Dworsky, "Federal Law," pp. 262-263.
effects, consultation, Advisory Council comment, and authorization to proceed. Before this process can begin, however, a determination must be made as to whether or not a federal action constitutes an undertaking under the meaning of NHPA. 36 CFR 800.2(o) defines an undertaking as:

...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 a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.

Over time, it has been established that activities as varied as bridge construction, the preparation of land use plans, and approval of surface mining projects all constitute undertakings because they could result in changes to the character of historic properties. Other actions that establish undertakings include federal permitting or licensing, approval of loan guarantees, transfers of federal property, and construction or demolition of any structure. (An example of a program that would not constitute an undertaking is one that provides medical counseling for federal employees as long as it entails no changes to an

18 Section 106: Step-by-Step, p. 16.
19 36 CFR 800.2(o).
existing building. At this point in the process, there need be no identification of any actual historic properties. There must only be a determination that there is a potential to affect historic properties if they are found.

If the agency official determines that there is no undertaking, then there is no need to begin the Section 106 review process. An agency can, however, be sued by parties with standing that feel it has not properly determined that an action does constitute an undertaking. A body of case law has developed over time which establishes the extent of the definition of an undertaking.

Once a determination has been made that a particular action constitutes an undertaking, the agency official must determine the Area of Potential Effect (APE). The APE is defined as, "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." The APE may be limited to the boundaries of the property undergoing an action, or it may include surrounding areas or neighborhoods that may be affected by the project.

---

24 36 CFR 800.2(c).
Step 1: Identification and Evaluation of Historic Properties

Once it has been determined that an action is an undertaking, and an APE has been established, the Section 106 review process can begin. The first step in the process is to identify and evaluate sites for National Register status. (See figure 1.) Section 106 covers all sites that are either included in or eligible for inclusion in the National Register of Historic Places. The National Register, as defined by National Park Service regulations, includes districts, sites, buildings, structures, and objects. These items must be associated with either events or people important to past, must be architecturally significant in some way, or must be likely to yield important information about the history or prehistory of the country.25

Identification of properties included in the National Register is a relatively simple matter and can be done by obtaining a copy of the National Register and its updates from the Department of the Interior.26 The SHPO will also have this information.

Those properties that have not had a determination of eligibility will be more complicated to identify and evaluate. The regulations ask that the agency official make a "reasonable

26 Section 106 Step-by-Step. p. 19.
Figure 1: Section 106, Step 1

**Step 1: Identification/Evaluation of Historic Properties**

Agency Assesses Information Needs; Agency/SHPO Locate and Evaluate National Register Eligibility of Possible Historic Properties

- Disagreement About Eligibility; Agency Seeks Determination from Secretary of the Interior

  - No Historic Property Found
  - Historic Property Found

    - Agency Notifies SHPO and Interested Parties; Makes Documentation Public
    - Continue to Step 2

**Step 5: Proceed**

Adapted from Section 106, Step-by-Step, p. 16.
and good faith effort to identify historic properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register." The reasoning behind this rule is that there are many sites and buildings that are of significant historical value, but that have not yet been identified and inventoried. By including eligible properties in the process, the act ensures that those properties will not be compromised unknowingly.

The Advisory Council publishes a booklet, Identification of Historic Properties: A Decisionmaking Guide for Managers, for agency officials to help them make these determinations. The guide asks that agency officials consult with SHPOs, look at previous historical surveys, seek information from local governments and interested parties, and look at other available existing information. If no information exists, the agency may need to conduct its own survey or use a predictive model to determine if there are possible historic properties. If the agency finds any historic properties, it must then apply the criteria of eligibility for the National Register.

27 36 CFR 800.4(b)
The finding of the agency is then passed onto the SHPO for his or her views. If the agency official finds that there are no eligible properties and the SHPO concurs, then the agency is allowed to skip to step 5 and proceed with the project. In this case, the official must present all documentation to the SHPO and notify any known, interested parties about the decision. If there is agreement that there is an eligible property, then the Section 106 review process continues. If there is disagreement between the agency official and the SHPO as to the eligibility of a property, the National Park Service makes the final determination. If the SHPO does not provide his views, he or she is presumed to agree with the agency official’s determination.30

Step 2: Assessment of Effects

If properties listed in or eligible for the National Register are found within the APE, then the Section 106 review must proceed to the next step, an assessment of the effects that the undertaking will have on those historic resources. (See figure 2.) The assessment of effects has two tiers. The first tests if the action will have any effect at all on the resource, and the second tests what type of effect it will have.

30 36 CFR 800.4(c)-(e)
Figure 2: Section 106, Step 2

**Step 2: Assessment of Effects**

Agency/SHPO Apply Criteria of Effect and Adverse Effect

- **No Effect**
  - **Agency Notifies SHPO/Others**
    - **SHPO Does Not Object**
    - **SHPO Objects**
      - **Council Does Not Object**
      - **Council Proposes Changes**
        - **Agency Agrees**
        - **Agency Disagrees**
          - **Council Objects**
          - **Council Proposes Changes**
            - **Agency Agrees**
            - **Agency Disagrees**
              - **Council Objects**
              - **Continue to Step 3**

- **No Adverse Effect**
  - **SHPO Concurs; Documentation to Council**
  - **SHPO Does Not Concur; Council Reviews Finding**
    - **Council Objects**
    - **Continue to Step 3**

- **Adverse Effect**
  - **Agency/SHPO Notifies SHPO/Others**
    - **SHPO Does Not Object**
    - **SHPO Objects**
      - **Continue to Step 3**

Adapted from Section 106, Step-by-Step, p. 16.
In consultation with the SHPO, the agency official must first apply the criteria of effect to the undertaking. This criteria states:

An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of the property’s location, setting, or use may be relevant depending on a property’s significant characteristics and should be considered.\(^{31}\)

This regulation looks for any change that may occur to the resource as a result of the undertaking, whether damaging or not. An example of no effect might be a curb cut in a historic district where the curbs and streets have already been changed to concrete and asphalt. Conversely, those same curb cuts may be deemed to have an effect, if the curbs and streets are in their original materials. This is not to say that there is a negative effect, only that there is some type of effect.

Effects need not occur immediately at the time of the undertaking. They can be elements that will change the resource at another time. For example, an undertaking that will accelerate the growth rate of an area and cause later stresses to the historic environment may be considered effects.\(^{32}\)

---

\(^{31}\) 36 CFR 800.9(a)

If the agency official finds that the undertaking will have no effect, he must notify and forward documentation to the SHPO and any party that has expressed interest in the issue. The SHPO has fifteen days in which to respond. If the SHPO agrees, the agency may move to step 5 and proceed with the undertaking. If the SHPO objects, or there is a finding of effect, the Section 106 review process continues to the second tier of assessment of effects.33

In the second tier, a determination is made as to whether the undertaking will have an adverse effect on the historic resource. An action is considered adverse if it, "may diminish the integrity of the property's location, design setting, materials, workmanship, feeling, or association."34 Demolition or major alteration of a resource would be considered adverse, as would a new building out of scale with its surroundings in a historic district. Other changes that might be considered adverse would be the removal of a porch, or the replacement of certain types of wooden windows with vinyl replacements. It should be pointed out that the regulations consider as adverse any, "destruction, damage, or alteration of all or part of the property."35 This language has been interpreted as including interiors of structures as well as exteriors. Therefore, the removal of a badly damaged,  

33 36 CFR 800.5(b)  
34 36 CFR 800.9(b)  
35 36 CFR 800.9(b)(1)
ornate, plaster molding from the front room of a house could be determined to have an adverse effect on that property.

There are certain cases in which changes may not be considered adverse. The most important of these exceptions would be when an undertaking rehabilitates a resource using the Secretary of the Interior’s Standards for Rehabilitation. The Secretary’s Standards, published by the National Park Service, are meant to be used as guidelines for the sensitive reuse of historic resources. They are meant to ensure that the rehabilitation of historic properties for contemporary use, does not, “damage or destroy materials, features or finishes that are important in defining the building’s historic character.” (A copy of the Secretary of the Interior’s Standards for Rehabilitation can be found in Appendix A.)

When an agency official makes a determination that there is no adverse effect, he or she may use one of two options. First, the official may obtain the concurrence of the SHPO, and then notify the Advisory Council of the decision, sending only a summary of the information used to come to the decision. Alternatively, the agency official may go directly to the Advisory Council without the SHPO’s concurrence. In this case, the documentation

36 36 CFR 800.9(c)(2)
sent to the Council is more extensive. In either case, the Council may object to the finding of no adverse effect within 30 days. The Council may also propose changes to or conditions on the agency’s undertaking. If the agency agrees, or if the Council does not object, the agency may move to step five and proceed with the undertaking, as long as they follow through with any changes proposed by the Council. 38

Step 3: Consultation

If an undertaking is found to have an adverse effect on a historic resource, the agency official must notify the Advisory Council and initiate a consultation with the SHPO. (See figure 3.) The purpose of the consultation is to bring the parties together to discuss alternatives that may mitigate the finding of adverse effect. Ideally, this consultation will result in a solution that both meets the goals of the agency in regard to the undertaking, and at the same time, protects the historic resource. 39

The consultation takes place between the agency official and the SHPO, and either side can invite the Advisory Council into the consultation. The Advisory Council may also participate of its own volition. Others can also be involved in the consultation process at

39 Section 106: Step-by-Step, p. 36.
Figure 3: Section 106, Steps 3-5

**Step 3: Consultation**
Agency/SHPO (others) Consult; Agency Notifies Council; Council Participation is Optional

- Memorandum of Agreement (MOA) Developed and Executed
- No MOA Consultation Terminated

**Step 4: Council Comment**

<table>
<thead>
<tr>
<th>With MOA</th>
<th>Without MOA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council Signs or Accepts MOA</td>
<td>Council Proposes Changes</td>
</tr>
<tr>
<td>Agency Agrees</td>
<td>Agency Disagrees</td>
</tr>
<tr>
<td>Agency Carries out MOA Terms</td>
<td>Council Issues Written Comments</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Step 5: Proceed**

Adapted from Section 106, Step-by-Step, p. 16.
the agreement of the parties. They include, a representative of a local government or Indian tribe where the project will take place, the applicant for a grant, permit, or license, or other interested parties as determined by the SHPO, agency official or the Advisory Council. If the consultation between the parties leads to an agreement, a Memorandum of Agreement (MOA) is drawn up and signed by the consulting parties. This document is legally binding and states specifically how the undertaking will proceed in accordance with the agreement reached in consultation. The MOA can be amended later as necessary through further consultation. When an agreement cannot be reached, the consultation process is terminated, and the Council is then given an opportunity to comment on the undertaking.

Step 4: Council Comment

The regulations provide the Advisory Council with a chance to comment on all MOAs. (See figure 3.) If the Council is a party to the consultation and signs the MOA, that is considered its comment, and the project may proceed. If the Council is not part of the consultation, the MOA along with proper documentation is forwarded to the Council which then has 30 days to either accept the agreement or suggest changes that would make

---

40 36 CFR 800.5(e)(1)
the agreement acceptable. Alternatively, the Council may choose to make final comments on the undertaking within 60 days.\textsuperscript{41}

If no MOA is reached between the consulting parties, the agency official must request written comments from the Advisory Council. In order to facilitate these comments, the agency official must submit complete documentation of the Section 106 review process to the Council. The Council then has 60 days in which to comment.\textsuperscript{42}

\textbf{Step 5: Authorization to Proceed}

Once the process has reached this final step, the agency may proceed with the undertaking whether or not there is any type of agreement with the SHPO or the Advisory Council. If an MOA has been executed, the agency is able to proceed with the project as long as it carries out the terms of the agreement. If there is no MOA, the agency must take into account the Council’s written comments, but is under no obligation to follow them.\textsuperscript{43} At this time, the Section 106 review process is completed.

\begin{flushright}
\textsuperscript{41} \textit{36 CFR 800.6(a)(1)}.  \\
\textsuperscript{42} \textit{36 CFR 800.6(b)(1)}.  \\
\textsuperscript{43} \textit{Section 106: Step-by-Step}, p. 42.
\end{flushright}
D. Programmatic Agreements

In certain instances, the Advisory Council has developed an alternative process by which an agency can execute its mandate for Section 106 review. This process is called a programmatic agreement (PA). The PA originally developed out of a realization that there were certain undertakings that generated similar effects on a vast number of historic resources. It was felt that a single agreement could be reached which would be able to cover all of these activities rather than repetitively reviewing projects on a case by case basis. A second use for the PA is in situations where the effects of an undertaking cannot be assessed before the undertaking begins. By using a PA, funds can be disbursed and work can begin, with an agreement to review effects as the project is further developed. PAs may also be used in cases where major responsibility for an undertaking lies with parties other than an agency of the federal government, and when federal installations are carrying out regional or land management planning or routine maintenance. 44

A PA is usually executed after consultation between the Advisory Council and the agency official. When it affects one state, the SHPO may be included in the consultations. Where the PA is national in scope, the National Conference of State Historic Preservation Officers

(NCSHPO) may be involved. Examples of each kind of agreement can be found in Appendix B. The first, a PA between the town of Franklin, Massachusetts, the Advisory Council and the Massachusetts SHPO, covers CDBG projects within the area covered by the local government of Franklin, Massachusetts. The second PA is national in scope and involves the Farmers Home Administration (FmHA), the Advisory Council, and the National Conference of State Historic Preservation Officers. It covers an entire program of grants entitled Housing Preservation Grants. Because PAs are common in Section 106 reviews of affordable housing, they will be discussed more in depth in the following chapter.

The process laid out in this chapter is an outline of the way Section 106 review is meant to function. In an effort to streamline, the Advisory Council is currently trying to revise the regulations governing the Section 106 review process. After going through several drafts.

---

36 CFR 800.13(b)


however, the Council still seems to have quite a distance to go before completing the task.\textsuperscript{48}

The process outlined above, therefore, is still the one that must be followed. It can be assumed, however, that at some point in the future, some of the procedures outlined above may be revised. The following chapter will look more in depth at the Section 106 process as it specifically relates to affordable housing projects.

CHAPTER III

AFFORDABLE HOUSING AND THE SECTION 106 REVIEW PROCESS

A. Background

Advocates for affordable housing and for historic preservation have many goals in common. Both are interested in reversing the fortunes of some our city’s most depressed areas. Both want to help recreate clean, safe neighborhoods with the buildings rehabilitated and kept in good repair. The term, neighborhood revitalization, is one that both groups would feel comfortable in using to describe their work. Yet, to a certain extent, members of each group view the other as rivals for control of the building stock of our cities. Affordable housing advocates see themselves, first and foremost, as agents acting on behalf of lower income people. They see the rehabilitation of buildings as a means to the end of creating housing. In their view, programs such as the Section 106 review process are obstacles to obtaining their goals. Preservationists, on the other hand, see themselves as stewards of our historic built environment. Their concern lies more in making sure that a building retains its historic integrity than in finding low cost housing solutions for neighborhood residents. Preservationists, spurred on by the urban renewal projects of the
1960s. see affordable housing activists as poor stewards for the country’s historic building stock.

In many ways, this dichotomy is false. There are those on each side that have always recognized the value of the other. Smart affordable housing advocates have long recognized that the quality of life in lower income neighborhoods can be greatly enhanced if the historic, built environment is taken care of. Conversely, smart preservationists understand that if residents cannot afford to buy and maintain their houses, the building stock will not survive. Fortunately, these views, which used to be in the minority, are beginning to get some attention from the mainstream of each side.

Chances for a better relationship have grown in the recent past with the appointment of Henry Cisneros as Secretary of the U.S. Department of Housing and Urban Development (HUD). Secretary Cisneros, as mayor of San Antonio, Texas, clearly understood the benefits of historic preservation as a tool for revitalizing that city. He confirmed that attitude in a memo to HUD staff dated 5 May 1995. In it, he reiterated his support for historic preservation and listed several HUD programs that could be used to support preservation activities. At the same time, he acknowledged the problems that exist between

1 Henry G. Cisneros, Memorandum to Assistant Secretaries, Secretary's Representatives, State Coordinators, Headquarters Division Directors, and Field Office Program Division Directors, 5 May 1995, Files of Jeff Barr, Philadelphia Historical Commission, Philadelphia, Pennsylvania.
preservation and affordable housing, and promised to work with the relevant preservation authorities to solve those problems.

Change can also be seen from the preservation side. In 1994, the Advisory Council formed a task force to look at issues related to both affordable housing and historic preservation. This task force includes representatives from the Council, the National Trust, HUD, and NCSHPO as well as a mayor and a private citizen. Over the past year, this task force has developed a new policy statement for the Advisory Council, which deals with the issue of affordable housing and the Section 106 review process. It tries to deal in a sensitive manner with the concerns of each side. This new policy statement will be examined in Chapter IV of this thesis.

First, however, it will be useful to look at the Section 106 review process as it currently works in affordable housing cases. This chapter will examine the issues associated with local delegation of Section 106 review responsibility and the use of programmatic agreements for affordable housing projects. As a means of illustration, there will be three case studies of the process of Section 106 review in different jurisdictions. The chapter

---

will then look at the concerns of affordable housing activists and preservationist in relation to the current functioning of the process.

B. Delegation of Authority for Section 106

HUD is the primary federal agency that has responsibility for the creation of affordable housing for low and moderate income individuals. HUD funds a variety of programs aimed at accomplishing this task. Among these include Community Development Block Grants (CDBG), which are grants to localities for economic development and neighborhood revitalization, HOME Investment Partnerships, which were created in 1990 to expand the nation’s housing supply, and the Empowerment Zone and Enterprise Community Program, which was created in the wake of the Los Angeles riots to help revitalize communities and empower their residents. Other HUD programs include Supportive Housing for Persons with Disabilities (Section 811 Housing), Supportive Housing for the Elderly (Section 202 Housing), Section 8 Moderate Rehabilitation Programs, Housing Opportunities for Persons with AIDS (HOPWA), and Homeless and Emergency Shelter Grant Programs. Although by no means exhaustive, this list is meant to give a sense of the types of programs that HUD funds.

---

For the purposes of Section 106 review, these programs can be divided into two groups. The first, which include CDBG and HOME, are allocated by formula to local governments.\(^4\) Most of the others are distributed on a competitive bidding basis. This distinction is very significant in relationship to the Section 106 review process. For those programs that are funded on a competitive basis, HUD must carry out its Section 106 review responsibilities in the same manner as any other federal agency. For CDBG and HOME funding, as well as for a few smaller programs, HUD delegates its responsibility to the local government for Section 106. In these cases, the local government must stand in for HUD and must comply with all the requirements of the process.\(^5\)

This system has been in place since the passage of the Housing and Community Development Act of 1974.\(^6\) Originally, only CDBG funding, which was contained in Title I of the act, was subject to local government compliance of Section 106 review. The reasoning given for this local delegation was that, unlike most federal projects in which the agency has close control, the use of CDBG funding was at the discretion of the local government. It was argued that only officials at the local level would have enough information about a project to be able to carry out a meaningful review. Urban

---


\(^5\) "Fact Sheet: Section 106 Participation by Local Governments," p. 4.

Development Action Grants (UDAG) were added to Title I in 1977. Although site specific in nature, HUD interpreted that to mean that they too should be subject to local compliance of Section 106.\(^7\) (Currently, UDAG grants no longer exist.) With the passage of the National Affordable Housing Act of 1990, HOME funds were also put into this category.\(^8\)

A question that arose out of the delegation to local government of Section 106 compliance was HUD’s duty to perform follow-up monitoring. Did HUD need to evaluate the content of the reviews carried out locally, or did it merely have to make sure that all procedures were followed? In 1980, courts in both South Carolina and Pennsylvania ruled that HUD only need make sure that procedural requirements were met.\(^9\)

The benefits of delegation seem clear. Local government is usually more familiar with the building stock and the particular history of an area. It is, therefore, probably better equipped to identify any potential historic sites and assess the impact of a project on them. As the recipient of the funding, local officials are also more knowledgeable about the particulars of any given project, and will be more diligent in carrying out the process in a timely manner that will allow for the quick release of their funding.

---

There are, however, problems that are associated with local delegation of Section 106 responsibility. Rather than HUD creating a standard procedure that members of its trained staff will carry out in various localities, there are hundreds of local governments, all with their own standards, methods, and levels of expertise at dealing with Section 106 review. The problem can be compounded because many of the projects that use CDBG funding are executed, not by the local government, but by a non-profit developer, usually a Community Development Corporation. These groups may not be well prepared to help the local government carry out Section 106 review. In some cases, they may not even be aware of the requirement, or that it will apply to their project. The result can be an uneven application of the review process and delays in compliance.

To understand the magnitude of the issue, it should be pointed out that locally conducted Section 106 reviews account for over 40% of all the reviews done by the Advisory Council. Furthermore, it is believed that up to 40% of local grant recipients are not complying correctly with the review process.\(^\text{10}\)

Another issue related to local delegation is the subject of multiple funding for affordable housing projects. Most projects are not funded by one single program. It is not unusual to

\(^{10}\) "White Paper,” p. 8.
have five or six sources of money, including several federal programs, a state program, funding from a charitable institution, and sometimes private investment. As an example, it is possible for a project to have funds both from CDBG and from the Section 202, elderly housing program. These two areas of funding would both require their own Section 106 review, one to be carried out by the local government and one by the HUD office. In some states, there may also be a state Section 106 process. Sometimes, it is possible for those responsible for preparing the reviews to use the same information and documentation, but even in the best cases, another layer of bureaucracy is added to an already heavily bureaucratic system.

C. Programmatic Agreements with Affordable Housing Projects

Because of the way that affordable housing projects are carried out, they make excellent candidates for programmatic agreements. As stated in the previous chapter, there are four primary reasons for using a PA: when there are repetitive actions and effects; when the effects of a project cannot be determined in advance; when a major part of the undertaking is done by a non-federal agency; or when doing planning or maintenance work on a federal installation. Affordable housing projects generally meet at least one, and sometimes as

---

11 "Section 106 Review Process and Affordable Housing."
many as three of the four. Only the last would never describe an affordable housing project.

The most frequent types of repetitive work that are covered by a programmatic agreement are maintenance and upgrading of mechanical systems. Because these types of projects would usually be found to have either no effect or no adverse effect on the historic site, it is often possible to write the PA to exempt this type of work from individual review. An example of this type of exemption can be found in Section III of the PA for Franklin, Massachusetts found in Appendix B. This PA exempts activities such as electrical work, plumbing work, installation of a new furnace, painting, caulking, and repair of roofing material, porches, and cornices when they are done with in-kind materials and form.12

Programmatic agreements can also be written to take into account the fact that rehabilitation plans are often not worked out by the start of the project. Affordable housing projects often need to be funded before final plans are drawn up for them. In this case, the PA would state that the project will have no adverse effect pending review of the final plans which would have to conform to the Secretary of the Interior’s Standards for

12 “Programmatic Agreement, Town of Franklin, Massachusetts, Community Development Block Grant Program.” pp. VII-E-3:2-3.
Rehabilitation. When those plans are completed, they can be reviewed and individual elements can be negotiated and changed as necessary.

As regards non-federal parties, a PA can be useful in that it can spell out clearly who is responsible for the review and exactly what the responsibilities will be. An example of this type of agreement can be found in the PA in Appendix B for the FmHA Housing Preservation Grant Program. Stipulation III specifies that the applicant for the grant will be treated as if it were the federal agency, and therefore, will be responsible for preparing the review. The applicant must abide by the process set out in the agreement. It goes on to say that if agreement cannot be reached on a particular project between the applicant and the Advisory Council, FmHA must resume its responsibility for compliance with Section 106 for that project.13

Programmatic agreements can also give varying amounts of autonomy to the local authorities that are subject to them. Those local governments with strong preservation programs are allowed more leeway for self governance in the process. In order to illustrate this point and give a sense of the variations within the Section 106 review process at the local level, three programs will be described.

Delaware County, Pennsylvania

Delaware County, Pennsylvania, exercises little autonomy when it participates in the Section 106 review process. They do have an agreement similar to the one for Franklin, Massachusetts, which exempts certain activities from review, but most of the decisions regarding the Section 106 process must be made at the state level by the SHPO.14 Delaware County employs four full time historic preservation staff. The Section 106 review process for CDBG funds begins when these preservation planners receive the list of projects from the county’s Office of Housing and Community Development.

As in all counties in Pennsylvania, the preservation planners must prepare documentation for the SHPO in order to determine if the sites are eligible for the National Register of Historic Places. Any structure in or near the project area that is 40 years or older must have a survey form, photograph, street map, U.S.G.S. Quadrangle map, and cover letter outlining the project and all sources of funding.15 These forms (which can be found in Appendix C) contain much of the same information necessary to nominate a building to

---

14 Linda Hill, Chief Planner, Office of Housing and Community Development, Delaware County, Pennsylvania. Telephone Interview, 5 October 1995.
the National Register. When doing an individual rowhouse rehabilitation, a survey form is not necessary for every house in the area. Rather, photographs of the block the house is on, as well as the adjoining blocks are sufficient. For projects involving new construction, archaeological test digs may be required to determine if there are any potential underground sites. The need for these tests is based on a county wide survey completed in 1990.

Once the historical research has been completed, the planners make a preliminary recommendation as to whether or not the building is a eligible for the National Register. If it is, they go on to the next step and try to assess what type of effect the project will have on that resource. This determination is based on incomplete information because it comes so early in the process. But, it is made with the stipulation that the decision is dependent on the final review of the plans.

The amount of time necessary to carry out this first phase is not great. Beverly Barnes, a preservation planner with the county, estimated that for the approximately 35 CDBG

---

18 Beverly Barnes, Interview, 29 September 1995.
projects that were funded last year, it took two planners about two weeks to prepare the documentation for the SHPO.¹⁹

Once all of the documentation has been filled out and the preliminary recommendations have been made, the planners send the information to the SHPO for its final determination. The SHPO then has 30 days to either agree or disagree. If the SHPO takes longer than 30 days for its decision, the county has the right to assume concurrence and continue with the project. Linda Hill, Chief Planner at the Office of Housing and Community Development, said that at the beginning of the funding year when a large number of projects have been sent to the SHPO at one time, her office will sometimes wait longer than the 30 days in order to keep a good relationship with the SHPO. For individual projects later in the year, however, she said she tries to keep the SHPO to 30 days, in order to ensure a timely continuation of the project.²⁰

After the SHPO has made a final decision, the preservation planners pass the project back to the Office of Housing and Community Development. That office then informs the grant recipient that they have received funding and will have to submit their plans and specifications for review when they are ready. Once the plans and specifications are

¹⁹ Beverly Barnes, Interview, 29 September 1995.
²⁰ Linda Hill, Interview, 5 October 1995.
completed and submitted to the preservation office, a preliminary decision as to effect is made based on compliance with the Secretary of the Interior’s Standards for Rehabilitation. The documentation and the recommendation are then forwarded to the SHPO for concurrence. The SHPO has 30 days in which to respond. The county must then submit the documentation, along with the SHPOs concurrence to the Advisory Council for a 30 day period, for its comment. Once all parties are in agreement, work can actually begin on the project.21

Chester County, Pennsylvania22

Unlike in Delaware County, the programmatic agreement in force in Chester County, Pennsylvania, allows for a greater degree of autonomy for the local government. The process begins in much the same way, with an environmental review officer preparing documentation regarding the potential eligibility of resources for the National Register. Once the documentation has been gathered, a preliminary decision is made and then sent to the SHPO for concurrence.

22 Pat Bokovitz, Environmental Review Officer, Chester County, Pennsylvania, Telephone Interview, 3 October 1995.
From this point on, however, the processes diverge. While in Delaware County, each and every subsequent decision must still be sent to the SHPO and eventually, the Advisory Council, the PA in Chester County allows for subsequent decisions to be made at the local level. Oversight for these local decisions comes in the form of a twice yearly report to the SHPO documenting each project and the findings that were made regarding it. This arrangement only applies to rehabilitation of existing structures. Review for new construction must still be done at the state level.

In order to facilitate this local decision making, Chester County set up a committee made up of three members to make decisions related to Section 106. Membership includes the environmental review officer, a preservation planner, and the county's construction manager. It is felt that with their varied expertise, these three individuals are able to make well balanced judgments related to affordable housing and historic preservation.

The committee meets once a month, but has the capability of meeting at any time to discuss a project that may need to move ahead quickly. After reviewing the photographs of the project site and plans and specifications of the proposed rehabilitation, the committee comes together to determine whether the project will have an effect on the historic resource and if so, what kind. If there are adverse effects found, the committee can then meet with the project developer to negotiate changes. If an agreement cannot be reached, the SHPO
would become involved. That situation has yet to happen, however, because the developers know that the involvement of the SHPO would add a significant amount of time to the approval process.

**City of Macon, Georgia**

Section 106 review in the city of Macon, Georgia, takes on a slightly different tone. In that city, the local government does not carry out the review within its own offices. Instead, it contracts out to a non-profit historic preservation organization to handle all of its Section 106 reviews. The organization, Macon Heritage Foundation, headed by Maryel Battin, has been doing this work for approximately 10 years. As in Chester County, decisions regarding the effects of projects on historic resources are made by Macon Heritage at the local level. Oversight in Macon’s case takes place via a report to the SHPO, once a year.

One major difference between Macon and the two Pennsylvania counties is that its building stock has already been extensively surveyed for historic resources, yielding 10 National Register historic districts. This fact is significant, because it means that there is little ambiguity as to what is or is not eligible for the Register. It allows the developers a degree

---

23 Maryel Battin, Executive Director. Macon Heritage Foundation, Macon, Georgia, Telephone Interview, 3 October 1995.
of certainty from the beginning as to which properties will have to be rehabilitated to the Secretary of the Interior's Standards and which will not.

Most affordable housing projects done in Macon are for the rehabilitation and upgrading of small houses. Where the needs of the project permit it, a streamlined approach has been developed that involves doing computerized work write-ups instead of more complex plans and specifications. In the case of buildings that are on the National Register or contributing to a historic district, the computer will not allow certain options to be specified. For example, when doing a work write-up for a contributing building in a historic district, the construction manager will not be able to enter vinyl siding on the list of finishing materials for the exterior. In cases where the project manager does make a change to the building that is deemed to be against the Secretary of the Interior's Standards, Battin is able to call him or her on the phone and quickly ask for a change. Battin estimates that she is able to turn projects around in approximately five days, as opposed to the 60 to 90 days it would take to go through the SHPO and the Advisory Council.

D. Analysis of the Section 106 Review Process

The preceding examples are but three of the variations that local governments use to carry out their responsibility for Section 106 review, as defined in those government's respective
PAs. They represent a spectrum of processes that, although following the basic ideas outlined in Chapter II, differ in the specific execution of those ideas and in the autonomy they afford the local governments. Of course, each different process has its own set of problems and positive aspects. There are, however, certain generalizations that can be made about Section 106 as it is carried out in most jurisdictions. This section will attempt to lay out some of the concerns that have been expressed about Section 106. Certain problems will have a greater or lesser significance for a particular program, but conversations with affordable housing activists, HUD officials, and preservationists have shown that they have at least some significance to most programs.

Analysis of these conversations about Section 106 shows six major areas of concern:

- a lack of knowledge about the specifics of the process on the part of the local governments and non-profits that must comply with it;
- the uncertainty involved in the identification and evaluation of the potential historic resources;
- the time factors in the process;
- the flexibility of preservation officials responsible for making decisions about the process:
- the costs involved in meeting the Secretary of the Interior's Standards; negative attitudes by both affordable housing activists and preservationists toward each other's positions.

Each of these problems will be explored in the following sections.

Lack of Knowledge

The problem of lack of knowledge can be found both with local government officials and with non-profit CDCs. People within local government are usually aware that there is a review process that they must follow for historic preservation, but they do not always understand the specifics of it. Commonly, there is misunderstanding of the Secretary of the Interior's Standards for Rehabilitation, and the criteria for eligibility for the National Register. A greater understanding of both issues would help local government officials to become better advocates for their projects, and might avoid certain frustrations by giving a better understanding of why and how certain decisions are made.

This type of understanding is also crucial to non-governmental groups such as CDCs involved in the process. They often do not understand why their buildings have been declared eligible or why certain treatments are necessary. As long as the process remains a mystery, there is no chance that they will see any benefit to it. But, the problem with
CDCs starts even before the discussion of particular treatments. Sometimes, there is a breakdown in communication so that a CDC does not even realize it must go through the Section 106 review process. If the local government does not make it clear, or if the CDC misunderstands, the project can move through a variety of planning stages before it is realized that all of the work must be reviewed. Occasionally, a CDC will get all the way to the bidding process, or may have hired a contractor. Whole projects may have to be redeveloped in order to meet with the Secretary of the Interior's Standards. This situation can lead to costly delays and other expenses for a project that may not be able to afford them.

Better communication and working relationships between the government officials, CDCs, and the preservationists would go a long way toward alleviating this problem. In locations where everyone understands the process, this type of problem is more rare. In the city of Macon, for example, Maryel Battin has developed relationships with the city housing officials and CDCs so that aspects of the process do not take them by surprise. Unfortunately, however, these types of relationships are not always possible. Because of frequent changes in personnel, particularly at CDCs, new people are constantly coming into

---


25 Maryel Battin, Interview, 3 October 1995.
a process that they may not understand. An example of this can be found at Greater Germantown Housing Development Corporation, a CDC in Philadelphia. Although this CDC has done a number of projects in the past that have required Section 106 review, their executive director has now moved on to the Redevelopment Authority of Philadelphia. Currently, there is no one on the development staff who has ever been through the Section 106 review process.

**Identification and Evaluation of Potential Historic Resources**

The problems associated with the identification and evaluation of potential historic resources can be found in the fact that sites eligible for the National Register must be reviewed in addition to those properties already on it. For those on the Register, it is easy to know ahead of time which will and will not have to go through review. Including eligible properties lends a large degree of uncertainty to any project with regard to whether a review should be planned for. Added to the problem is the fact that properties must be checked in the APE, not just on the project site. Roy Gonnella, Chief of Environmental Review at the Office of Community Viability at HUD, estimated that for one program that

HUD did in Philadelphia that rehabilitated 1,500 units, between 4,000 and 5,000 units needed to be examined for Section 106 review.²⁸

There are, of course, good reasons for including review of eligible sites in addition to those already on the National Register. First, there would never be enough money or manpower to survey every building and site for possible National Register status. It, therefore, makes sense to focus resources on identification of sites where it is known that there will be work done in the immediate future. In addition, perceptions of historical and architectural merit change over time, thus making it impossible to make a fixed identification that will last forever. Finally, each year, structures become older, making them newly eligible where they were not in the past. If the “eligible” rule were to be abandoned, it would ultimately mean the loss of a great number of important historical and architectural resources.

This uncertainty over National Register status, however, often causes a great deal of controversy and frustration for affordable housing activists. It leaves agency officials with the job of making preliminary identifications of historical merit for a large number of sites. The agencies must have staff with the ability and time to do historical research, windshield surveys, and other predictive tasks. It has been argued that this phase takes time and money that could be better spent elsewhere in the affordable housing process. In

²⁸ Roy Gonnella, Interview, Interview, 3 October 1995.
Pennsylvania, for example, a look at the information required for submission for Section 106 review makes it clear that the Pennsylvania Historical and Museum Commission uses the Section 106 process to add to its inventory of historic properties in the state. Some affordable housing advocates argue that that it is unfair to place this burden on affordable housing programs. They argue that costs should come out of a historic preservation budget.

Looking at the three case studies, one could argue that this burden is somewhat exaggerated. Macon avoids the problem completely because it has already carried out a comprehensive historical survey of the city’s neighborhoods. Even in the two Pennsylvania counties, however, the identification process lasts no more than a few weeks for the entire year’s CDBG funding. Larger jurisdictions with more projects would certainly take more time, but, it seems unlikely that the process is prohibitive. The argument is much stronger when identification of archaeological resources is the issue. Because it usually involves digging, the costs both in dollars and time are more significant.

---

30 Linda Hill, Interview, 5 October 1995.
31 Beverly Barnes, Interview, 29 September 1995, and Linda Hill, Interview, 5 October 1995. 52
A second issue that disturbs affordable housing activists is what they see as the arbitrariness of some determinations of eligibility. Historic and architectural qualities can sometime be elusive, especially to an untrained eye. What can look architecturally significant to one person may not to another, particularly when the site in question is vernacular architecture rather than in a "high style." Even preservationists agree that this can be a problem. Sally Elk, who at one time oversaw Section 106 review in Philadelphia, related that on a cloudy day, a building may look less eligible than on a sunny one. She said that her state of mind also played a role on any given day. The fact is that identification and evaluation are not exact sciences. They call for judgments that can be affected by any number of variables on a given day.

An illustrative example of the dilemma of identification is the problem of what to do with the public housing stock that was built in the decades around World War II. Some preservationists see this building type as a significant architectural style of the period. They argue that in some cases, these public housing projects may be associated with the Works Progress Administration, significant architects, or could be historic because they were the first of their type in a given city. Housing people argue that these buildings are not particularly significant and pose public health and safety concerns. This issue is currently

---

confronting HUD and the Advisory Council and they are trying to work out a more systematic method of assessing the importance of these structures on a national basis rather than relying on the normal case-by-case local method of assessment.\textsuperscript{33}

\textbf{Time Factors in Section 106 Review}

The amount of time needed to complete Section 106 review can vary significantly depending on the procedures in a particular locality. This variety is due to such factors as whether an area has already been surveyed, how complicated the project is, and how quickly officials are able to prepare paperwork. Probably the most important factor, however, is whether or not there is a PA in place, and if so, how much autonomy it gives the local government.

On the short end of the time spectrum for review is Macon which, barring serious problems, takes approximately five days (one working week) to be completed. As discussed, the reasons for this speed are that there has already been extensive surveying, and the PA for that city gives the Section 106 review officer a great deal of autonomy to review and negotiate with developers.\textsuperscript{34} In Chester County, the process takes a bit longer

\begin{flushright}
\textsuperscript{34} Maryel Battin. Interview. 3 October 1995.
\end{flushright}
because identification and evaluation must still be approved at the state level. Assuming several weeks to do the original historical research, the process will probably take approximately 1 1/2 months for the first phase, and then up to another month for the historic review committee to make a determination about the effect. This last month can be shortened considerably, however, if the project needs a quick approval. The committee can literally be called at any time to discuss a particular project. Again, the autonomy given by the PA allows for this quick turn around.\(^{35}\)

For a typical Section 106 process without a PA. or for one that gives very little autonomy, the review has the potential to take many months. Assuming, as in the case study in Delaware County, that it takes two to three weeks to complete the research and preliminary assessment, it then goes to the SHPO for a final determination as to eligibility. This step adds one month. If it is determined to be a resource, it has to be reviewed again locally for a preliminary assessment of effect which takes another few weeks, after which it is sent back to the SHPO for an additional month. Finally, any agreements have to be forwarded to the Advisory Council for comment which takes one more month. The total minimum time, therefore, is four months assuming that there are no delays at any point in the process.

\(^{35}\) Pat Bokovitz. Interview. 3 October 1995.
Often, however, there will be additional delays, either formal or informal. On the informal level, the local preservation planner or environmental review officer may call up the project manager and initiate a negotiation that will eventually result in a local finding of no effect. This negotiation would then have to go on to the SHPO for approval. If a project makes it to the SHPO, who finds an adverse effect, formal negotiations would then have to take place. Again, depending on how complicated the project is, this phase could take months to complete. Even at the Advisory Council comment level, the Council can ask for more documentation, or for a public hearing or site visit which would cause even longer delays.\footnote{Roy Gonnella. Interview, 3 October 1995.}

The Advisory Council itself admits that project delays can be a serious issue. In a speech at a recent National Trust for Historic Preservation conference, Charlene Dwinn Vaughn from the Council described projects that had been undergoing Section 106 review for over two years.\footnote{“Section 106 Review Process and Affordable Housing.”} While these are probably extreme cases, it seems as if affordable housing developers do have ample grounds to stand on in their complaints.

It can be argued that time is really the only thing that preservationists have to bargain with in the Section 106 process.\footnote{Roy Gonnella. Interview, 3 October 1995.} Because the wording of the statute only asks that the agency, “take into account,” historic preservation, there is no mechanism to force compliance with
historic preservation concerns. Threatened delays becomes the easiest way to ensure that preservation concerns are given weight. Maryel Battin, for example, explains that developers may not complain about the cost of some of her recommendations because they know that if they object, her five day turn around time may become a several month delay while the SHPO reviews the project.39 Roy Gonnella also gives an example of where HUD may not fight a designation of a site as eligible for the National Register simply because of the time it would take for the National Park Service to return with a ruling on the matter.40 While it is understandable why preservationists have seized upon using the time factor as a way of protecting historic buildings, it would serve everyone better, in the long run, if the process was able to move along at a quicker rate, and preservation issues were resolved on merit rather than by time default.

Flexibility in Applying the Secretary of the Interior’s Standards

In addition to concerns about time, another issue that troubles affordable housing developers is how much flexibility they have in meeting the Secretary of the Interior’s Standards for Rehabilitation. In their introduction, the Standards state that they, “are to be

39 Maryel Battin, Interview, 3 October 1995.
40 Roy Gonnella, Interview, 3 October 1995.
applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.**

In the introduction to the Illustrated Guidelines for Rehabilitating Historic Buildings that accompany the Standards, a more specific approach is given in regard to the rehabilitation of buildings. Here, the text talks about maintaining and repairing elements, but does allow for the replacement of features that are too heavily deteriorated. The replacement is recommended to be with in-kind materials where possible, or other, compatible materials when necessary. It goes on to state that for missing features, the preferred method of action is to determine what was originally there, and recreate it. A second, valid option, however, is to replace the feature with a new design that is compatible with the character defining elements of the building.**

The above paragraphs show that the Secretary of the Interior’s Standards do contain a certain amount of flexibility within them. Economic concerns can be taken into account when determining what the best treatments for a building may be. In addition, while there is a preference for repair and replacement with in-kind elements, the Standards do allow for more simple alternatives as long as they fit in within the overall context of the historic

** The Secretary of the Interior’s Standards, p. vi.

Secretary of the Interior’s Standards, pp. ix-xi.
structure. Indeed, some Section 106 review officials are willing to give a broad interpretation to the guidelines, allowing for work on affordable housing projects that follow the rhythms and textures of the original without the costly work that exact duplication might bring. In other cases, however, preservation officials develop reputations for inflexibility: calling for costly work that ultimately may doom a project to being economically infeasible.

The most common features that cause arguments on the exterior include windows, doors and cornices. Windows are probably the most difficult to work with. Preservation officials will often ask for new windows that exactly match the originals of the building whether or not any of those windows still exist. In particular, they are looking for the material to be wood, the same number of lights, and the munton and mullion profiles to match the old ones exactly. Preservationists say that, often, windows are the only distinguishing feature on the exterior of the building, and therefore, play a large part in defining its particular character. Developers argue that this exact matching is too expensive, and they would prefer to use windows that they can buy off the shelf. They cite cost, as well as energy efficiency and ease of maintenance for their position.

---

43 Bill Skwersky, Interview. 25 September 1995.
Preservationists tend to be slightly more flexible with doors and cornices. In these cases, exact matches may not be required as long as the material is matched and the character is similar. On cornices that are in extremely bad condition, for example, it is not unusual for a replacement to be a simple box cornice made of wood rather than an intricately carved one. The important thing for preservationists is to avoid having vinyl siding replace the cornice.

Another area where preservationists and affordable housing developers often disagree is in the saving of interior spaces. The Secretary of the Interior’s Standards include the interiors of buildings as part of their concern. As a result, preservationists will often call for the repair of damaged plaster moldings, mantels, and other interior features. They may also object to the removal of interior walls in order to change the plan. Developers claim that this ties their hands, and sometimes makes the project infeasible; either because of the cost or because without changing the plan, the building will not be suited to reuse. John Leith-Tetrault, the head of the Community Partners Program at the National Trust cites a case where a CDC in New York wanted to turn a historic hotel building into a catering business that would serve as a job training center for local youth. Because the SHPO insisted on leaving the interiors intact, the CDC walked away saying that the interior space, as it was configured, was not usable for their plans.\footnote{John Leith-Tetrault, Interview, 30 March 1995.}
There are times, when the inflexibility of preservationists, while in the short term saving a feature, may in the long run, harm the overall character of a building. Herb Wetzel, director of the Redevelopment Authority of Philadelphia, tells of a case where the Section 106 review officer insisted on the restoration of glass front doors and porticos on some houses. Once the new owners moved into the houses, however, they immediately replaced the doors due to security concerns. The new doors that the owners used tended to be steel replacement doors, totally out of character with the rest of the house. The alternative would have been to allow the developer at the time of renovation to replace the glass doors with something more secure, but more compatible. The project would have saved some money and the character of the building would have been less compromised. Ultimately, preservationists have to balance the desire to maintain as much of the historic fabric as possible, with the needs and economic constraints of these types of projects. It does no good to be inflexible on issues that will cause a developer to walk away from a project. In that case, the building will remain vacant, a negative outcome both for the preservationists and the community.

---

Costs of Meeting the Secretary of the Interior's Standards

The problem of cost is probably the most important concern voiced by affordable housing advocates when they discuss compliance with the Section 106 review process. Yet, it is surprising to note, there have been no formal studies done to systematically determine on a national level what the actual cost of compliance with Section 106 is. Herb Wetzel explains this curious oversight by saying that everyone knows that it costs more, but they do not bother to count exactly how much. He says that it is part of the regulatory environment that they must live with.47

There are certain difficulties involved in doing this type of study. Projects vary considerably in their scope, in the building types being rehabilitated, and whether or not the interiors are being included in the review. It also depends on the flexibility of the SHPO. The additional costs may be quite considerable at the beginning of a negotiation, but might come down by the end. Another problem with looking at costs is that the negotiations take place before the project is ultimately put out for bid. It may be impossible to know how much more the changes cost, without something to compare them to. In fact, if preservation officials enter the process early enough (as they should), some cheaper, non-preservation treatments might never even be discussed. Despite all of these problems.

47 Herb Wetzel. Interview, 5 October 1995.
however, it seems somewhat disingenuous for affordable housing activists to be complaining without knowing the actual facts. This is one area where they, along with preservationists, should invest some time and money in order to separate fact from impression. The results may be surprising.

Given that it is not possible to look at broad statistical studies detailing the cost of complying with Section 106, it is still possible, on the anecdotal level, to draw an idea of what effect the review has on the prices of projects. According to Roy Gonnella, the majority of affordable housing projects funded by HUD are rehabilitations of rowhouses and single family houses.\textsuperscript{45} In those jurisdictions where only the exteriors are reviewed, the cost per unit for this type of rehabilitation may be relatively modest. Estimates vary, but the additional cost per window of putting in non-standard windows may come to $250 to $300 more than buying them off the shelf. On a typical rowhouse with five windows, the additional cost would be $1,250 to $1,500. When costs are added for cornice and door repair, and other expenses such as repointing, the total can jump to $3,000 to $4,000 per unit.\textsuperscript{49} If interiors are included, the costs can go up considerably. It was estimated at a roundtable sponsored by the National Trust in July of 1993, that the costs of meeting the

\textsuperscript{45} Roy Gonnella. Interview, 3 October 1995.

\textsuperscript{49} These are rough estimates based on conversations with all of the informants.
Secretary of the Interior's Standards ranged from $4,000 to $15,000. The larger figure was for projects that had special problems or many interior spaces to rehabilitate.\textsuperscript{50}

Even in larger projects, the costs are not always overwhelmingly large per unit. In the Germantown Section of Philadelphia, Greater Germantown Housing Development Corporation (GGHDC) did a 40 unit rehabilitation of an old mill building. According to Herb Wetzel, the changes that the Section 106 official originally asked for would had cost $7,500 per unit, but after negotiation, the costs came down to $3,000 per unit, in line with the estimates for smaller projects.\textsuperscript{51}

In some cases, it is possible to be creative in containing costs. Techniques such as using the good parts of a damaged element to repair another section can help save at least some of the historic features in a house without too much cost. As an example, in Macon, it will sometimes be agreed to take usable pieces of a badly deteriorated beaded ceiling, and use them to repair the ceiling in a different room.\textsuperscript{52} In that way, at least the ceiling in one room has been saved, and the developer is then able to put a new ceiling into the second room.

\textsuperscript{51} Herb Wetzel, Interview, 5 October 1995.
\textsuperscript{52} Maryel Battin, Interview, 3 October 1995.
A second issue that a variety of people mentioned was the long term costs of maintenance and energy usage that historic features force on the owner after the project is completed. This problem was one of the things brought out in the National Trust roundtable, and is something that others also mentioned. In particular, the costs of painting and maintaining wood windows instead of using vinyl ones was one thing cited as being unaffordable to some families. The same is true for wood siding vs. vinyl siding. In terms of energy usage, it is possible to bring up the quality of conservation of a historic window through weather-stripping, caulking and using storm windows, but again, the costs of doing so are sometimes greater than low income tenants can bear.

It should be pointed out that not everyone believes that following the Secretary of the Interior’s Standards adds prohibitive costs to a project. Bob Thomas, an architect who works both in Philadelphia and the surrounding counties of Pennsylvania, stated that he felt that most of the things that are necessary for meeting the Standards are things that make good sense anyway. He said that most of the decisions he makes for a given project would meet the Standards, whether or not the project was ultimately being reviewed for Section 106 compliance.⁵³

As a final consideration of cost, it needs to be understood that one’s perspective on the costliness of Section 106 can be related in large part to what level within the process one
views it from. A per unit cost of $3,000 may not seem very much for a single unit, but on a ten unit project, it could be the difference between being able to rehabilitate an extra unit or not. In the case of the GGHDC project in Philadelphia, the unit cost was $3,000, but over the 40 units, it meant that the CDC had to come up with an additional $120,000; not a small amount to raise. Finally, if looked at from HUD’s perspective over thousands and thousands of units, the costs can add up significantly.

Negative Attitudes

In order to improve Section 106 review, it can be argued that the process should be streamlined, costs should be contained, and the SHPO should be more flexible. Ultimately, these are all elements of the process that can be adjusted one way or another, if the will exists. A more difficult task, by far, is in changing people’s attitudes and perceptions about need for any type of consideration for the historic environment. One of the biggest problem that Section 106 faces is that some affordable housing activists do not see any value in preserving the built environment, and many preservationists are not interested in the social dimensions of neighborhood revitalization. This dichotomy by no means applies to every person or organization in each camp, but it is prevalent enough that it can cause serious problems.

On the affordable housing side, there is sometimes a feeling that any money spent on doing historic preservation is a waste of resources. This notion comes from the idea that the one and only goal of affordable housing programs should be in building as many units as possible for the lowest amount of money. Steve Culbertson, Director of the Philadelphia Association of CDCs typifies this position by saying, “it isn’t a good use of our resources to have to restore back to seventeenth century standards...we have to make allowances in low income communities to build as much housing, as fast as possible. We have a real need.”

The argument is that historic preservation is fine for rich people, because they can afford it, but poor people cannot, and therefore, should not be made to pay for it.

A problem with this type of attitude is that it excludes any sense of aesthetic importance from the idea of neighborhood rehabilitation, and ignores quality of life issues that may be important to residents. The irony is that the projects that only consider cost are much less likely to lead to a revitalized community. Housing that is not built well will deteriorate more rapidly leading, once again, to neighborhood decline. This point was conceded by John Carpenter, a very outspoken critic of historic preservation, at a Philadelphia CDC. He acknowledged that those projects that his group had carried out that had been integrated into

---

54 Steve Culbertson, Interview. 22 March 1995.
the historic fabric probably worked better than those where the CDC had ignored all historic preservation concerns.\(^\text{55}\) Although he remained unconvinced that the benefits of historic preservation outweighed the costs, he, at least, has come to realize that there is some benefit to be derived from it.

Another reason for hostility from the affordable housing side is a misconception of what preservation has become in the past 30 years. The lack of understanding can be seen in Culbertson’s comment about doing work to seventeenth century standards, and also in the comments of Ceane Rabada, who heads Philadelphia Neighborhood Housing Services. She feels that there can be no compromise between affordable housing and historic preservation because the preservationists are only interested in, “making something look in 1995, the way it did in 1795.”\(^\text{56}\) This attitude ignores much of the work in neighborhood revitalization and adaptive reuse that preservationists have been doing for many years. In particular, in the wake of the Los Angeles riots, there has been a strong emphasis on themes and issues concerning urban revitalization within the preservation community.

Unfortunately, there are some preservationists who do give affordable housing activists a reason for perceiving a certain lack of concern toward low income housing projects. These

preservationists represent the opposite viewpoint to that outlined above. For them, the goal is to save as much of the building fabric as possible, regardless of the costs to the CDC trying to get the money together to do the rehabilitation. This viewpoint is exemplified by the deputy SHPO of the state of Maryland, who declared at the most recent National Trust Conference that he wanted to save as much fabric as possible because, "people of low and moderate income should not be deprived of the opportunity to enjoy and live with historic craftsmanship." As a result, by his own admission, the Maryland SHPO has a reputation for being extremely strict in its interpretation of the Secretary of the Interior's Standards. In fairness, Maryland does have a number of programs that help fund low income affordable housing initiatives, including both state income and property tax provisions. Still, there is a certain amount of arrogance that can be found in the statement. It purports to speak for low income people without asking them what their views actually are. There are, no doubt, many people, rich and poor, who would like to own a home with restored decorative plaster moldings and mantels. But, if the preservation work brings up the price of the unit up by $10,000, making it unaffordable, most would choose the house without the historic fabric rather than no house at all.

---


57 "Section 106 Review Process and Affordable Housing."
The problem for many preservationists is that they have never had to secure the financing for an affordable housing project. They may not understand the difficulty of coming up with the last dollars needed to fund a project. It is easy to say that the extra cost is only $4,000 per unit. When that means having to close a financing gap of $80,000 by finding one more grant or loan, it causes more than a little frustration to the developer. Until preservationists begin to better understand the financing mechanisms associated with putting together an affordable housing deal, this type of attitude will continue to exist.

It is important to note that these views represent the extreme positions of both sides. There are groups that have been working for many years to meld historic preservation to the cause of creating affordable housing. Successful programs have been developed on the local level in Pittsburgh, Cincinnati, and other cities around the country. Nationally, the National Trust has also been working toward this goal. It created the Inner-City Venture Fund to make grants to deserving preservation projects in low income areas. More recently, it created the Community Partners for Revitalization program which was developed specifically to address a variety of needs of housing rehabilitation in low income urban neighborhoods.58 Despite these projects, the message still needs to get out to a wider audience. Even more importantly, the affordable housing community needs to

feel as if some of its concerns are being addressed. The following chapter will highlight one very important effort to bridge that gap. It will discuss an effort by the Advisory Council, the National Trust, and HUD meet together and come up with new guidelines to streamline the Section 106 review process.
CHAPTER IV

AFFORDABLE HOUSING AND HISTORIC PRESERVATION: A NEW POLICY STATEMENT

A. Background

In June of 1994, the Advisory Council on Historic Preservation set up a task force to look at issues related to affordable housing and historic preservation. The stated objective of the Affordable Housing and Historic Preservation Task Force is to remove obstructions to the affordable housing process caused by historic preservation, while at the same time, determining the best ways to remove HUD-created obstacles to using preservation as a means of achieving its goals.1 The members of the Task Force are made up of representatives from the Advisory Council, the U.S. Department of Housing and Urban Development, and National Conference of State Historic Preservation Officers, and also include the Mayor of Kansas City, Missouri and a citizen member. It was felt that this diverse group would be able to represent all of the various interests associated with the

1 Bob Bush, Executive Director, Advisory Council on Historic Preservation, Memorandum to Chairman and Affordable Housing and Historic Preservation Task Force Members, 3 August 1994, Files of John Leith-Tetrault, Community Partners Program, National Trust for Historic Preservation, Washington D.C.
problems under review. In addition, the task force sought out a wide variety of professionals and citizens at a series of forums in order to get a broad a spectrum of opinion on the subject.2

The initial framework under which the Task Force was to operate consisted of five principles. They were:

- to put preservation into a broader context as it relates to affordable housing, looking at the ways that it can be used to achieve goals such as improved quality of life, safety, health, and job opportunities;
- to improve the regulatory framework for preservation and low income housing development;
- to look at the neighborhood as a whole when identifying historic resources, and to look not only at architectural significance, but also at the cultural values of the neighborhood;
- to develop comprehensive training programs for HUD staff, government officials, and other affordable housing professionals in order to help educate them as to the benefits of historic preservation;

• to develop technical assistance programs for those entities that are carrying out preservation work in low income areas.³

The primary work of the task force, to date, has been to develop the “Advisory Council on Historic Preservation Policy Statement: Affordable Housing and Historic Preservation” which was adopted by the Council on June 26, 1995.⁴ This document lays out a basic strategy for carrying out Section 106 review for low income housing projects. It includes a statement of policy followed by ten principles for its implementation. The complete text of the policy statement can be found in Appendix D.

B. General Comments about the Statement of Policy

The Statement of Policy calls for a new spirit of flexibility and cooperation when dealing with Section 106 review of affordable housing projects. In accord with the framework outlined above, it encourages development of comprehensive historic preservation training programs for those involved in the creation of affordable housing: improvement of coordination in the review process; improvements in the evaluation of National Register eligibility; flexibility in applying the Secretary’s Standards; provision of technical

assistance: development of better financial packages; and better integration of preservation into HUD’s consolidated planning process.\textsuperscript{5}

At the core of the new policy statement are ten principles for implementation. The principles can be divided into three broad categories. The first category focuses on the need to bring the community and long range planning into the Section 106 process. It talks about looking at the community as a whole, getting more local input, and building broader consensus rather than wielding Section 106 regulations like a stick. The second group of principles focus on flexibility in what to include in Section 106 review and in adherence to the Secretary of the Interior’s Standards. The third area concerns ways to streamline the process and decentralize decisionmaking as much as possible.

Each of these areas will be discussed more in depth in the following sections. First, however, it will be useful to make some general comments about the policy statement and the reaction to it. The principles are meant to be used as a guide for SHPOs and local housing advocates to come to a better understanding about the process and its operation, taking the concerns of each into account. They are not, however, a rigid set of specific regulations with set procedures attached to them. They seem designed more to get people on both sides of the table to think about the process as a whole, and where they fit into it.

\textsuperscript{5} “Policy Statement: Affordable Housing and Historic Preservation,” p. 1.
As time goes on, specific procedures will have to be adopted to clarify ambiguous points. In the meantime, however, the policy statement should be read both by preservationists and affordable housing advocates as a starting point to begin towards improved mutual understanding. (It should be pointed out that concurrent with its effort to improve Section 106 for affordable housing projects, the Advisory Council is also in the process of revising the regulations for the entire Section 106 process. The new regulations are not available yet to the public, but they will, undoubtedly, raise new complexities for affordable housing projects.)

Unfortunately, at least in its earliest stages, the statement has met with something less than wide acceptance. Based on a series of memorandums to the Advisory Council by the SHPOs and other interested parties, reaction to the policy statement has been, generally, more negative than positive. SHPOs in particular seem to feel threatened by the new policy, fearing that it would lead to a relaxation of Section 106 standards and wholesale demolition of large numbers of historic structures in low income neighborhoods. A close look at the document, however, reveals that these fears are unfounded. The biggest changes are in citizen participation. Most of the other provisions only reiterate certain

---

*The reactions that will be cited in this chapter come from a series of memorandums that were sent by various SHPOs and other interested parties to the Advisory Council as part of their drafting process. They can be found in the files of John Leith-Tetrault at the Community Partners Program at the National Trust for Historic Preservation in Washington D.C. By agreement, the memorandums will not be quoted or cited individually. Only trends found in the memoranda will be discussed.*
practices that are common at the more progressive SHPOs, or voice common sense practices on other issues.

C. Community Involvement and Long Range Planning

The following is the text of the first three Principles for Implementation as found in the policy statement. These three issues are being examined together, because they are each part of an effort to bring more community involvement and long term planning into the Section 106 review process.

I. **Emphasize Consensus-building:** Section 106 reviews for affordable housing projects should place principal emphasis on broad-based consensus reflecting the interests, desires, and values of affected communities, neighborhoods, and residents. Consensus-building should be facilitated through training, education, and consultation focused on historic preservation values, collaborative planning, and dispute resolution.

II. **Elicit Local Views:** Identification of historic properties and evaluation of their eligibility for the National Register for Historic Places should include discussions with the local community and neighborhood residents to ensure that their views concerning architectural and historic significance and traditional and cultural values receive full consideration by the Federal agency, State, county, or local government, and the SHPO.

III. **Focus on the Broader Community:** When assessing the effects of affordable housing projects on historic properties, consultation should focus not just on individual buildings which may contribute to a historic district but on the overall historic preservation potentials of the broader context.
community, neighborhood, or "target area." This practice will ensure proper consideration is given to the cumulative impacts of projects within a designated area. Historic preservation issues should be related to social and economic development, housing, safety, and programmatic issues integral to community viability.7

On the surface these three items seem to be typical of language calling for citizen participation and long range planning that is found in many planning documents. If they are enacted, however, they will significantly alter the way that Section 106 reviews are carried out. As outlined in Chapter II, Section 106 review, as it is currently practiced, is not typically aimed at bringing the public into the process. Rather, it is meant as a means for the federal agency and the SHPO to determine whether National Register resources exist, and if so, how they should be dealt with. Public participation generally is limited, largely, to supplying information when asked.

A look at the time frame for the process will bear out this fact. The agency makes its determinations as to eligibility, and passes it onto the SHPO for 30 days. Then it makes determinations as to effect, which it sends to the SHPO and then the Advisory Council for 30 days each. There really is no place in the process for lengthy community debates about eligibility or effect. In fact, adding more time to the review runs counter to one of the largest arguments that affordable housing developers use against Section 106.

Given that one of the purposes for the Task Force was to try to streamline the regulatory framework, what are these three provisions trying to accomplish? The point of the three principles is to try to bring preservation into the process at a much earlier point. Successfully engaging the community as to its values and desires, and building a consensus between all of the parties involved, means that preservation concerns will have to be addressed at a much earlier level of the process -- hopefully in the initial neighborhood planning stages. These principles anticipate that by educating developers, city officials, and the public early, as to potential resources, a meaningful dialog will be able to be carried out. By doing so, it is hoped that preservation will begin to be seen as a positive value by affordable housing activists and residents of the community rather than as a negative regulatory barrier.

Unfortunately, preservation is not seen in a positive light at the present time. Projects are decided on, and political and financial capital are used before preservation concerns are discussed, forcing preservationists into an opposing role. The fact is that preservationists cannot successfully fight against affordable housing activists for control of a neighborhood's building stock. It is counter-productive and a battle that preservationists

---

9 “Section 106 and Affordable Housing.”
cannot win. Either developers will walk away from projects and they will not get done, or residents will not work to keep their buildings up to the historical standard that has been set. Instead, preservationists must go into these neighborhoods early and with an aim toward working with local groups. These three principles seem to be trying to move the preservation community in that direction.

A good illustration of the need for this type of early intervention can be found in a situation that was discussed at the "Section 106 and Affordable Housing" panel at the National Trust Conference in Fort Worth, Texas. The Deputy SHPO of Maryland argued that enacting the new policy statement would be dangerous for preservation. In order to illustrate his point, he talked about a project near Johns Hopkins University in Baltimore. This area had been made an enterprise zone, and a plan had been developed in consultation with many groups, but without benefit of participation from preservationists. The plan called for the demolition of a large number of houses, and the unsympathetic rehabilitation of others. He said that he shuddered to think what would become of the neighborhood if a weakened Section 106 review were to be instituted.\textsuperscript{10} His example works against him, however. The problems that he exposed will be very difficult to fix using the current Section 106 review process because it will occur after the fact, when so many hours have already gone into the planning of this neighborhood. Instead, it would have made more

\textsuperscript{10} "Section 106 and Affordable Housing."
sense for preservationists to be part of the original project planning. Then, preservation issues could have been dealt with during the earliest phases. Had that happened, the plan might have looked very different. Successful implementation of the first three principles could have ensured early participation.

On a more practical level, there were several issues that SHPOs brought up about the first three principles. In particular, there was concern that the determination of National Register eligibility is not something that is designed to be made by majority vote. SHPOs felt that residents and others who were not trained in architectural history or preservation might not understand or appreciate the value of a given building or district, especially if it was vernacular. They argued that Register eligibility needs to be decided by professionals and should not be open to debate. In response, it must be remembered that determination of eligibility is not a science. Even preservation professionals will disagree about particular buildings or sites. Determinations depend on the individual carrying out the review, the particular politics of a situation, as well as many other factors. There is nothing wrong with taking the views of community into account as one of those factors. It should also be pointed out that the language of the principles does not say that determinations will be made by majority vote. It only says that the views of local residents will be given full

---

11 Memorandums in Response to the Draft Policy.
consideration in any determination. There seems to be ample flexibility to declare deserving resources, historic, as long as all viewpoints are considered.

There were also several concerns about the third principle, looking at the broader effects of an undertaking. One issue voiced was that focusing on a larger target area would dilute the importance of any single building. Further, it was argued that it would take even more time to look at a larger area. It must be remembered, however, that if carried out earlier in the process, there would be time to make considerations as to the effect both on the singular site and on the area as a whole. In addition, the current process does include provision for determining a larger area of potential effect. This provision only expands and clarifies the notion of an Area of Potential Effect.

Curiously, none of the responses to these three principles made by the SHPOs discussed the scope of change that they would have, or the difficulties in achieving them under the umbrella of Section 106. It could be argued that while all three of the goals are worthwhile, Section 106 is not the proper place to enforce them. These issues are all planning concerns rather than regulatory ones. Perhaps, a better place to address them would be at local planning commissions and housing and community development offices found in most municipalities. Unfortunately, at the present time, Section 106 review is the only preservation regulation that must be applied across the board to all federally funded
projects. For lack of a better way, Section 106 may be the only place to address these issues at the present time.

The other major problem with these three principles as they are written is the cost in both money and manpower that it would impose on the SHPOs and local review authorities. Under the new principles, a preservation planner would need to be going into the community to work with the affordable housing developers, CDCs and local governments. This would mean either expanding state historic preservation offices to include a significant staff of planners or relying on some outside party such as a local preservation non-profit group, or a university historic preservation program. The goal of community involvement is a very important one to embrace, but preservationists must be willing to pay the added costs to carry it out effectively.

D. Flexibility in Applying Section 106

The second grouping of principles deals with the need for flexibility in determining what should and should not be subject to review, and in the application of the Secretary of the Interior’s Standards for Rehabilitation. This section drew the largest and most passionate comment from the SHPOs. In particular, Principle IV, “Adhere to the Secretary’s
Standards When Feasible", drew many concerns. As a result, this principle will be dealt with separately.

IV. Adhere to Secretary’s Standards When Feasible: Plans and specifications for rehabilitation, new construction, and abatement of hazardous conditions associated with affordable housing projects should adhere to the recommended approaches in the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, when feasible. Where economic or design constraints preclude application of the Standards, consulting parties may develop alternative design guideline tailored to the district or neighborhood to preserve historic materials and spaces. Alternative guidelines shall be incorporated into executed Memoranda of Agreement or Programmatic Agreements.12

This principle has drawn two major areas of criticism. The first regards, what is seen as, the creation of an escape clause from compliance with the Secretary of the Interior’s Standards through a declaration of economic hardship.13 Most of the SHPOs cited the wording of the introduction to the Standards that say they “are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.”14 This statement, they felt, gives SHPOs enough flexibility in regard to affordable housing projects. They were concerned that there was a lack of clarity in the terms, “economic viability” and “livability,” and that the terms would be used by

13 Memorandums in Response to the Draft Policy.
14 The Secretary of the Interiors Standards, p. vi.
affordable housing developers to try to get out of even the smallest amount of preservation work. One SHPO argued that, by their very nature, affordable housing projects do not make economic sense, and would, therefore, be able to bypass preservationists. It was also felt by some that Principle IV sets up a new class of projects (affordable housing) that are to be exempt from regular Section 106 consideration. It was felt that federal agencies might soon try to include other types of projects within the exemption.\textsuperscript{15}

The second stated problem with this principle is an objection to the notion of alternative design guidelines. Again, there was a sense that these are not really necessary; that the Standards already are sufficiently flexible. They felt that this provision would add another layer of decisionmaking, and would cause confusion. Another concern was that the development of alternative standards may take a substantial amount of time.\textsuperscript{16}

Despite these fears, a close examination of Principle IV shows that it reinforces the existing provisions of flexibility in the Standards rather than supplanting them. It asks the SHPO and the affordable housing developer to be aware of the specific issues of economic viability and livability when considering the project. It can be argued that these are already implied in the “economic and technical feasibility” provision. Further, Section 106 itself.

\textsuperscript{15} Memorandums in Response to the Draft Policy, and “Section 106 and Affordable Housing.”
\textsuperscript{16} Memorandums in Response to the Draft Policy.
only asks that historic preservation be, “taken into account.” Clearly this leaves room for other project considerations to enter into the decisionmaking process. The idea behind this principle is, “to remove the stigma associated with economic considerations,” from Section 106 review. A few of the more progressive SHPOs even commented that these issues are already being considered in many of the projects that they review. Unfortunately, flexibility is not common with some SHPOs, who offer only, “all or nothing” solutions to affordable housing developers. It is for this reason that the Task Force apparently believed that Principle IV was necessary.

As for the alternative design guidelines, they grow out of the flexibility mentioned above. In economically stressed neighborhoods, they could be used as a means of saving at least some of the historic features of a structure where it is not economically feasible to preserve everything. They could also be focused on the cultural needs of the community by concentrating on those features that are most important to its residents. While it may take a certain amount of time to develop them initially, it is hoped that they would apply to a large enough area that they would wind up saving time in the long run. Once developed for a

---

18 Memorandums in Response to the Draft Policy.
19 “Section 106 and Affordable Housing.”
particular neighborhood, they could even be used as a baseline for other areas, with changes where necessary to meet particular needs.

Finally, it should be remembered that the wording of Principle IV leaves the final decisionmaking in regard to both flexibility of the Standards and alternative design guidelines to consultation between the interested parties. It is not the unilateral decision of the developer or the local housing authority. SHPOs will not be forced to enter into any agreements that they deem unacceptable in relation to a particular historic resource.

The other three principles in this area generated less comment from the SHPOs, although not everyone was happy with the provisions. They are:

V. Include Adequate Background Documentation: Proposals for non-emergency demolitions of historic properties should include adequate background documentation to demonstrate to the SHPO and/or the Council that rehabilitation is not economically or structurally feasible, or that retention of such properties would jeopardize the implementation of an affordable housing project.

VI. Emphasize Exterior Treatments: The Section 106 review process for affordable housing rehabilitation projects and abatement of hazardous conditions should emphasize the treatment of exteriors and be limited to significant interior features and spaces that contribute to the property’s eligibility for the National Register, unless otherwise agreed to by all consulting parties.
VIII. Avoid Archeological Investigation: Archeological investigations should not be required for affordable housing projects which are limited to rehabilitation and require minimal ground disturbance activities.20

Principle V was not actually present at the draft stage of the policy document.21 It was included in the final draft, primarily, to ensure that alternatives are explored before a particular building is determined to be not economically or structurally feasible to rehabilitate.22 It comes in answer to some of the critics of Principle IV who argued that developers would use it to carry out wholesale demolitions. By including Principle V, these developers must, first, explore and document a variety of possibilities before demolishing a building.

Principle VI generated a mixed reaction from the SHPOs. Many prefer to look at the structure under review in its totality. They find it difficult to distinguish between those things on the exterior and interior that make the building eligible for the Register. For them, the historic nature of the building does not stop at its front door.23

---

22 “Section 106 and Affordable Housing.”
23 Memorandums in Response to the Draft Policy.
Others disagree. They feel that the focus of Section 106 review should be on those areas of a building that can be seen by the public: the exterior and any interior public spaces. This position is well stated by Richard Moe and John Leith-Tetrault of the National Trust who argue that the configurations of many older houses do not match the needs of today’s families. In some cases, rooms are too small or awkward, or the house may not have adequate infrastructure. On the other extreme, some houses, particularly corner rowhouses, often are too large to make their rehabilitation as a single family residence feasible.²⁴

Perhaps the strongest argument for limiting Section 106 to exteriors is to ensure that it is not more strict than local historic district reviews. Most local historic district regulations allow residents to renovate their interiors in any way that they wish. Only federal projects are held to a stricter standard in regard to interior restoration. Some feel that this difference unfairly targets affordable housing projects for stricter accountability, given the fact that almost all of housing reviewed under Section 106 is for a low income clientele.²⁵

Unfortunately, the final wording of Principle VI is not as strong on the subject as it was in the draft. The draft statement included the words, “will be limited to the treatment of exteriors and to interior public spaces.”²⁶ In its current state, it allows the SHPO to

---

²⁴ Richard Moe and John Leith-Tetrault, Memorandum to Task Force on Affordable Housing.
²⁵ Richard Moe and John Leith-Tetrault, Memorandum to Task Force on Affordable Housing.
review anything that has, "significant interior features and spaces that contribute to the
property’s eligibility for the National Register." 27 This wording gives the SHPO a great
deal (perhaps too much) flexibility to include any features he or she deems significant. It
does, however, at least call attention to the issue in a fashion that will cause all parties to
make a more careful consideration as to which interiors are really important to Register
eligibility.

As for Principle VIII, most SHPOs recognized the value of avoiding unnecessary
archaeological excavations. Many said that they already had a policy similar to that stated
in the principle. 28

E. Streamlining Procedure and Decentralization

The final area covered by the Principles of Implementation is concerned with streamlining
procedures and decentralizing decisionmaking as much as possible.

VII. Coordinate with Other Reviews: Where appropriate, Section 106 for
affordable housing projects would be conducted in conjunction with the
Historic Rehabilitation Tax Credits and other State and local
administrative reviews to ensure consistency of review and to minimize
delays. When Section 106 reviews for affordable housing projects

28 Memorandums in Response to the Draft Policy.
precede other related reviews, applicant who are seeking Historic Tax Credits are encouraged to seek the advice of the SHPO and to obtain early review by the National Park Service to assure final eligibility for the Historic Rehabilitation Tax Credit.

IX. Develop Programmatic Approaches: State, county, and local governments are encouraged to develop Programmatic Agreements that promote creative solutions to implement affordable housing projects and to streamline Section 106 reviews through the exemption of categories of routine activities; the adoption of “treatment and design protocols” for rehabilitation and infill new construction; and the delegation of Section 106 reviews to qualified preservation professionals employed by the local community.

X. Empower Local Officials: Certified local governments and/or communities that employ qualified preservation professionals, as set forth in the Secretary of the Interior’s Professional Qualification Standards should be allowed to conduct Section 106 reviews on behalf of the Council and/or the SHPO for affordable housing projects when the local government and/or community has executed a Programmatic Agreement with the Council and the SHPO.29

Implementation of Principle VII will necessitate negotiation between the Advisory Council, NCSHPO, and the National Park Service which is responsible for historic tax credit reviews. The major issue of concern, in light of Principle IV, would be how to coordinate tax credit reviews with projects that make use of alternative guidelines, or in some other way, do less to meet the Secretary of the Interior’s Standards than usual. Some preservationists felt that setting a lower standard for Section 106, would discourage the use of the historic tax credits.

29 “Policy Statement: Affordable Housing and Historic Preservation, p. 3.
These preservationists, however, overlook the fact that there is already a *de facto* alternative, more strict, set of standards for tax act reviews. Although both Section 106 and the tax act use the Secretary of the Interior’s Standards as their base, almost every respondent said that SHPOs are much less willing to be as flexible with tax act reviews. The feeling is that if money is actually going into the project from a historic preservation source, it should adhere to a stricter standard for rehabilitation. In the past, this shifting standard sometimes has caused confusion and frustration for developers. But, it makes intuitive sense, and should remain normal practice even with the new policy statement. There should be no problem asking for stricter preservation standards in return for tax incentives. For this reason, those projects using alternative or lower standards should not be eligible for tax credits. Misunderstandings will be minimized, as long as the distinctions are made clear from the beginning of the process when the possibility of tax credits are first discussed.

Principles IX and X are aimed at streamlining Section 106 and decentralizing it. This is an area where SHPOs and the Council have already made a certain amount of progress in the recent past. As demonstrated in the previous chapter, programmatic agreements are already being used at various levels and with varying amounts of local government control. The provision for exemption from review for certain categories of work is already a
common practice. More innovative are the calls for treatment and design protocols. These protocols would develop common treatments and design guidelines for a particular problem or geographical area, which if followed, would reduce or eliminate the need for individual review.

An example of this type of agreement can be found in a program in Baltimore for lead based paint abatement. In recent years, the problem of lead based paint has become serious in the rehabilitation of older housing. A vast majority of older houses have lead paint, and the costs of removing it can be quite costly, especially if doing it to preservation standards. The agreement being used in Baltimore calls for three tiers of abatement actions. Projects which use treatments from the first tier would eliminate review altogether. Treatments drawn from the second tier would require an expedited 15 day review, and those in the third tier would still require a full review. Currently, the Advisory Council and HUD are trying to work out a similar model programmatic agreement that could be used in all localities.

As for decentralization, there do not seem to be any major objections from the SHPOs to this idea. The one concern is that those taking control of local reviews be qualified to do

---

30 Memorandum on Lead Based Paint Abatement, Files of John Leith-Tetrault, Community Partners Program, National Trust for Historic Preservation, Washington D.C.
31 Roy Gonnella, Interview, 3 October 1995.
the job. There is a certain amount of feeling that not all Certified Local Governments have people that are up to the task of having control over Section 106. This concern is well founded, and the Council and SHPOs must make a strong effort at training, continuing education, and some sort of certification procedure for preservation officials that would be charged with carrying out Section 106 review on the local level.

F. Benefit of the New Policy Statement

The very existence of the Policy Statement and Principles for Implementation signals a renewed effort by the preservation community to try to meet the needs of affordable housing without destroying the historic character of city neighborhoods. Each of the principles, in some way, is crafted to be responsive to the complaints of affordable housing activists outlined in the previous chapter. The second group of principles is designed to make the Section 106 more flexible and less costly. The third group will also provide flexibility and will help to reduce the time needed for reviews. It is in the first group stressing community involvement and long range planning, however, that the most benefit will be seen. Including preservation in the planning process earlier will force local governments and communities to confront the issues of preservation while there is still time for thoughtful discussion. More local input will give a better understanding of why

\[32\] Memorandums in Response to the Draft Policy.
decisions are made, and will give communities more of a sense that their viewpoints do matter. Early planning will also remove much of the uncertainty associated with Section 106. The biggest benefit of all, however, might be that attitudes will begin to change toward preservation. Once it is no longer seen as the enemy and its true value understood, more communities may be willing, and indeed, excited about the prospect of preservation in their neighborhoods.

In the next chapter, Section 106 as it is carried out in Philadelphia will be examined. Philadelphia already adheres to a majority of the principles outlined above, although they are lacking in some important ones from the first group. By looking at Philadelphia, it is hoped that the value of adopting the principles as a whole can be understood.
CHAPTER V

SECTION 106 REVIEW OF AFFORDABLE HOUSING IN THE CITY OF PHILADELPHIA

A. Background

The City of Philadelphia, as befits the important role it has played in the history of the United States, is the site of numerous historic resources. Important buildings ranging from colonial times up to the modern era can be found in many sections of the city. By the early part of this decade, the City could count 50 National Historic Landmark properties, 12,000 locally designated historic properties, one locally designated historic district (recently a second local district has been designated), and most importantly to this study, 55 National Register Historic Districts.¹

The city agency whose primary charge is administering the City’s preservation ordinance is the Philadelphia Historical Commission. Its primary responsibilities are regulatory --

looking after all facets of locally designated historic properties. The Historical Commission handles all local designations of buildings and districts, and also reviews any requests for alterations or demolitions to them.²

In addition to these tasks, the Historical Commission acts as the Section 106 reviewing agency for certain affordable housing programs. The Philadelphia Office of Housing and Community Development (OHCD) funds a position, Historical Research Technician, with the responsibility of carrying out the City’s duties in regard to Section 106. Although funded by OHCD, the Research Technician is primarily accountable to the head of the Historical Commission.³ The reason that OHCD is willing to fund a position in this way is that it allows for a quicker and more flexible processing of the Section 106 reviews that it is mandated to conduct.⁴

B. The Programmatic Agreements

The ability of the Research Technician to carry out Section 106 reviews is based in two programmatic agreements that the Pennsylvania SHPO has adopted, one with the City and

---

⁴ Scott Wilds, Interview, 25 September 1995.
one with the Philadelphia Housing Authority (PHA). The first covers all rehabilitation work funded by the CDBG, HOPE, and HOME programs. The second covers maintenance and rehabilitation activities that PHA carries out both on its public housing projects and on its scattered site units. (Both Programmatic Agreements can be found in Appendix E.) The PA covering CDBG, HOME, and HOPE was first adopted for the program years 1982 to 1984, and originally only included CDBG funding. The most recent amendment extended the agreement up to the year 1995, and added both the HOME and HOPE programs. The PA governing PHA was adopted in 1990.

The PA for the CDBG, HOME, and HOPE programs is divided into four stipulations covering identification, evaluation, and treatment of above ground resources, and identification of archaeological resources. The first stipulation asks the City, in consultation with the SHPO, to continue its survey work identifying resources in the CDBG target areas, in accordance with various standard guidelines. The second stipulation states that the

---


7 Memorandum of Agreement (CDBG), p. 4.

8 Programmatic Agreement (PHA), p. 4.
City will, again in consultation with the SHPO, evaluate properties effected by CDBG projects to determine their eligibility for the National Register. The City is instructed to retain written records of each property examined. The third stipulation covers the treatment of resources determined to be historic. It says that the City will use the Secretary of the Interior's Standards when making any improvements to these properties. It also asks that documentation be kept regarding each project, and that it be available to the SHPO, upon his or her request. There is, however, no set mechanism for reporting to the SHPO. Finally, it states that if no adequate resolution can be made for a given project, it will be turned over to the SHPO and Advisory Council for consultation and comment. The final stipulation asks that any project activity that will result in ground disturbance be surveyed for archaeological resources.⁹

The PA for PHA projects is divided into five sections. Its first provision calls on the PHA to survey and identify any historical resources among its housing projects and scattered site units. The second section, treatment, lists a number of maintenance activities that are exempt from review, and then states that any other work will done in accordance with the Secretary's Standards. Review for these projects can be carried out either by the Historical Commission or the SHPO (although in practice, only the Historical Commission is used). Any disagreements as to treatment must be resolved by HUD and the SHPO. The third

⁹ Memorandum of Agreement (CDBG).
provision calls for PHA to prepare two reports per year documenting its project activity and to retain documentation for a minimum of three years for each project. Provision four calls on the SHPO to provide whatever technical training is necessary for PHA to carry out the PA, and provision five gives the terms for renewal or amendment to the PA.¹⁰

C. The Section 106 Process

Despite their differences on paper, the Historical Commission treats projects falling under both agreements in much the same way. The Commission assumes more leeway in working with Section 106 than is evident in either document. In particular, the major differences between the documents and actual practice are the fact that determinations of eligibility are done locally and not in consultation with the SHPO, nor is archaeology done for any project.¹¹ The latter, can be explained in part by the fact that, as an urban area, most project work in Philadelphia would be done on ground that has already been disturbed. In addition, the PAs are limited to rehabilitation work, so there could be little expectation of major ground disturbance. The second reason for not doing archaeology is that the Historical Commission tries to be as flexible as possible in keeping costs down for these projects.¹²

¹⁰ Programmatic Agreement (PHA).
¹² Richard Tyler, Interview, 14 September 1995.
A third area where the City is not currently following the PA is in surveying potential target areas for resources. The reason is simply that the Historical Commission lacks sufficient staff to handle both review of upcoming projects and general surveying. As a result, only those properties that have already been identified as potential project sites (and their surroundings) undergo survey and evaluation for eligibility for the Register.\textsuperscript{13} Because it does not do the mandated surveying, the work of the Commission is purely reactive rather than proactive. Jeff Barr, the current Historical Research Technician, acknowledges the problem and concedes that the process would work much better if he were able to do more survey work; placing more districts on the National Register, and letting CDCs know which areas are more sensitive historically.\textsuperscript{14}

The Section 106 review process essentially starts when OHCD and the Redevelopment Authority of Philadelphia (RDA) decide on which projects they want to fund. Under the present system in Philadelphia, the RDA is responsible for implementation of these projects. They receive money from OHCD and then contract out to a CDC or other developer to do the project. As part of that process, an environmental review of the project must be carried out which includes Section 106. Information about the proposed project is

\textsuperscript{13} Jeff Barr. Interview, 24 March 1995, and Sally Elk, Interview, 28 September 1995.

\textsuperscript{14} Jeff Barr. Interview, 24 March 1995.
forwarded to the Philadelphia City Planning Commission (PCPC), the organization responsible for carrying out the overall environmental review. The PCPC then forwards the street addresses of the proposed sites to the Historical Commission for determination of eligibility for the National Register.\textsuperscript{15}

In order to determine eligibility, the Historical Research Technician first checks a database which contains information about existing National Register districts, and other areas and buildings that have already been surveyed. If the property shows up as being in a National Register historic district or already on the National Register, it is labeled as “treat sensitive.” If the property is listed as eligible or if it is not in the database at all, the technician will do a “windshield survey” of the site. Based on the database information and the survey, the technician will make a determination as to whether to label the building “treat sensitive.” The PCPC is then informed of the decision.\textsuperscript{16} For those properties not listed “treat sensitive” the Section 106 review is finished. For those buildings on or eligible for the Register, a letter is then sent to the RDA and to the developer informing them of the decision and asking that plans and work write-ups be forwarded to the Historical Commission before work begins on the project. Barr estimates that it takes about two weeks to complete this part of the process.\textsuperscript{17}

\footnotesize
\textsuperscript{15} Scott Wilds. Interview. 25 September 1995.  
\textsuperscript{16} Jeff Barr. Interview. 24 March 1995.  
\textsuperscript{17} Jeff Barr. Interview. 24 March 1995.

102
One of the problems with the process is that, occasionally, a CDC or developer is either not informed or does not understand that his project must be reviewed. Barr said that, sometimes, he will have to go out to a site as work is starting to get underway, and negotiate with the developer and the contractor on the job. Assuming that everything is understood, however, the developer will then, through the RDA, submit plans or work write-ups, when they are ready, to the Commission. The technician reviews the plans for compliance with the Secretary of the Interior’s Standards. It has been decided by the Commission that it will only review exteriors in order both to save projects money and to focus on those areas of the structure that are viewed by the public. A letter outlining what changes will be needed is then sent out. (An example of this type of letter can be found in Appendix F.) The problem in Philadelphia is, that unlike in Macon, Georgia (discussed in Chapter III), developers do not always have a sense of what acceptable treatments are. This unfamiliarity often leads to an extensive list of changes that must be made, leaving the developers angry and frustrated. The initial letter from the Commission tends to be a

---

20 Jeff Barr. Memorandum Outlining Items Needed for Compliance with the Secretary of the Interior’s Standards. Files of Jeff Barr, Historical Research Technician, Philadelphia Historical Commission, Philadelphia, Pennsylvania.
fairly strict interpretation of the Standards, because they view it as a starting place for negotiations. Unfortunately, developers do not always understand this fact.\textsuperscript{22}

At this point, a negotiation phase will follow in which the Commission targets those items that they consider most important and those on which they are willing to be more flexible. The differences can sometimes be significant. In negotiations for the project discussed in Chapter 3 in the Germantown section of Philadelphia, the change in the cost of compliance before and after negotiation was a $180,000 savings.\textsuperscript{23} John Carpenter, of New Kensington Community Development Corporation, estimated that on his rowhouse projects, compliance costs of approximately $6,000 per unit can sometimes be brought down to between $1,000 and $2,000.\textsuperscript{24} Once agreement has been reached, the Commission will give its go ahead and work can proceed.

Jeff Barr estimates that evaluation of plans and negotiations can take as little as two to three weeks, as long as there are no serious disagreements. Of course, any protracted disagreements can take much longer to negotiate and solve. Agreements that cannot be

\textsuperscript{22} Richard Tyler, Interview, 14 September 1995.
\textsuperscript{23} Herb Wetzel, Interview, 5 October 1995.
\textsuperscript{24} John Carpenter, Interview, 18 September 1995.
reached are turned over to the SHPO. This action is in neither party's interests, however, so agreement will usually be reached before the SHPO must become involved.25

D. The Process in Relation to the New Policy Statement

As can be seen in the above description, parts of the Section 106 process as it is carried out in Philadelphia match some of the principles laid out in the Advisory Council's new policy statement. The most obvious areas where they are in agreement are in their focus on exteriors and their call to minimize archaeological work. In addition, they are obviously already operating under a programmatic agreement which gives a great degree of autonomy to the qualified preservation professionals that work at the Philadelphia Historical Commission.

Philadelphia also does a good job of, informally, coordinating the various preservation reviews that a project might need. For those projects that have several sources of funding that force both the City and HUD to do reviews, the two organizations will usually carry out the reviews together, submitting to the SHPO the same information with the same recommendations that the City uses. Even for those projects that do not use City controlled funding, HUD will still seek an opinion from the Historical Commission.

25 Herb Wetzel. Interview. 5 October 1995..
order to ensure a certain standardization of opinion.²⁶ As for tax credit reviews, Tyler said that the Commission will usually defer to the National Park Service because their requirements are more stringent.²⁷ Barr added that he will meet directly with the Park Service Representative to coordinate reviews and ensure that they are both asking for the same types of actions from developers.²⁸

Another way in which the Commission meets the spirit of the new policy statement is in its ability to be flexible with developers. Discussions with Tyler, Barr, and Sally Elk, the former Historical Research Technician, brought out the fact that everyone associated with Section 106 review in Philadelphia is, and has been, extremely concerned about the economic consequences of meeting the Standards. They all see Section 106 as a delicate balancing act between the needs of preservation and the need to provide safe, affordable housing. In the process of negotiating with developers they try to offer alternative manufacturers, discuss ways of doing things more cheaply, and as a last resort, sacrifice an element if necessary.²⁹ Tyler, for example, cited a project in which on an exterior wall repair, matching the brick with its very narrow mortar joints would have required a costly, highly skilled mason. He discussed the situation with the developer, a CDC in North

Philadelphia, and it was decided to get a smaller, common, sewer brick, which would create a slightly wider mortar joint, but which would allow a regular mason to do the work. In order to maintain the monochromatic effect of the narrower joint, the mortar was colored to match the brick. These types of creative solutions are very important in showing developers that they can work with preservationists who are willing to listen to their concerns. The results of this flexibility can be seen in the numbers cited in the previous section, savings of $180,000 over 40 units in the Germantown case, and the savings of $4,000 to $5,000 per rowhouse in New Kensington.

Where the Section 106 process in Philadelphia strongly differs from the new policy statement is in the area of community involvement and long range planning. The problem with carrying out systematic surveying has been discussed above. But even beyond that, there seems to be somewhat of a reluctance to involve the community in the decisionmaking process. The reasons given mirror those of preservation professionals in other jurisdictions: the lack of understanding about preservation by community members, and a fear that only "high style" buildings will be considered historic, meaning the loss of many vernacular buildings. It is felt that these decisions are best left to professionals. What this attitude does not take into account, however, is that, ultimately, it is the residents

---

of these neighborhoods and the active community groups located within them that will have the long term responsibility for the care and upkeep of the building stock. Their desires and concerns must be addressed if preservation efforts are to have any long term effect. The community's perception of preservation is as important as streamlining the process.

In spite of the progress made toward greater flexibility and reduction of costs, there is still a feeling among many CDCs that these two issues are not being addressed adequately.32 There are also problems with a lack of knowledge about the process by many affordable housing developers. Relationships are built over time, but there is often confusion and frustration the first few times through the process. Many times a CDC will not be aware of the Commission's flexibility, and may take their initial letter, outlining the changes they would like to see, as the final word.33 A better process must be developed to explain how the system works, even for first time applicants.

There are still many problems that need to be overcome. There is a lack of knowledge about the process by many affordable housing developers. Relationships are built over time, but there is often confusion and frustration the first few times through the process.

33 John Carpenter. Interview. 18 September 1995.
Many times a CDC will not be aware of the Commission’s flexibility, and may take their initial letter, outlining the changes they would like to see, as the final word. A better understanding needs to be developed, even for first time applicants.

There have also been complaints about the uncertainty of the process, both in determinations of eligibility and treatment evaluations. Overcoming this criticism would involve doing earlier planning and evaluation, educating the developers and architects as to acceptable treatments, and experimenting with new concepts such as the idea of design protocols for a given area.

E. Improvements to the Process

The experience of Philadelphia shows that while flexibility with the Standards and the process are definitely a step in the right direction, they will not, by themselves, be able to create the understanding that is necessary for preservationists and affordable housing activists to work together on a city wide basis. What is needed is more and better contact between the two. An emphasis must be placed on earlier identification of historic resources, and earlier preservation planning in those neighborhoods which are most

---

34 John Carpenter. Interview. 18 September 1995.
35 Herb Wetzel. Interview. 5 October 1995.
affected by Section 106 review. Included in this planning must be educational efforts for both the public at large and the non-profit and for profit developers carrying out these projects.

It is doubtful that the City of Philadelphia will have the resources to place more historic preservation planners at the Historical Commission to meet these needs. It is, therefore, incumbent on other preservation related organizations in the city, such as the, The Preservation Coalition of Greater Philadelphia and the Historic Preservation Program at the University of Pennsylvania, to aid in the supply of needed manpower to carry this responsibility out. Other groups, such as the Foundation for Architecture, the AIA, and its Community Design Collaborative, might also provide professionals capable of carrying out some of these tasks. However, as the regulatory agency with ultimate responsibility, the Historical Commission would have to closely coordinate the process, in order to ensure that there was a degree of uniformity from neighborhood to neighborhood.

The Preservation Coalition is already familiar with this type of work. It does preservation planning in some lower income neighborhoods that request it, and has developed a proposal for “conservation districts” which would bring preservation planning to certain qualified neighborhoods. It also sponsors a monthly neighborhood roundtable for those
groups that are interested. Perhaps, in conjunction with the Historical Commission, it can expand its work into some of the low income areas that are important historically, but which do not currently place a value on preservation. In addition, the roundtable could be expanded to include those groups less inclined toward preservation. The forum could then be used as a means of addressing the problems of both sides, and coming to a better understanding as to the value of preservation and the trade-offs that are necessary to accommodate both interests.

It might also be of interest to the preservation program at University of Pennsylvania to involve their students in this effort. Each year, a small group of students could work with a neighborhood identifying historical resources and discussing options for dealing with them. It would familiarize students with the issues facing planning in low income areas, would expose them to the workings of the Historical Commission, and would force a disciplined concentration on solutions to real world problems. Similar approaches already exist within the preservation program in other areas of study (conservation in particular). Overall, it would strengthen the preservation program while providing a much needed service to the lower income neighborhoods of Philadelphia.

---

Other programs should also be developed that are not focused specifically on Section 106. Promotion of minority heritage, block clean-ups, streetscape improvements, and safety programs done in conjunction with preservation activities would help to show residents that preservation is a positive value. Instituting these types of programs will help to break down the barriers that exist between those advocating for affordable housing and preservation in Philadelphia.
CHAPTER VI

CONCLUSION

This thesis has looked at the broad issues related to Section 106 review and its effects on affordable housing projects. Section 106 of the National Historic Preservation Act asks all agencies of the federal government to take into account the effects on historic resources of any undertakings in which they are involved. For each project that receives federal assistance, historic resources must be identified, and the effect of the undertaking must be evaluated. If a negative impact is found, negotiations are carried out to determine ways to mitigate that impact and ensure that the project meets the Secretary of the Interior’s Standards for Rehabilitation.

As a regulatory system that imposes certain costs, the Section 106 review process is often seen by proponents of affordable housing projects as a barrier to achieving their goal of providing the greatest number of units for the lowest possible price. They argue that the cost of meeting the Standards can add thousands of dollars to a project, and the amount of time necessary to complete the review can cause harmful delays. Other problems with Section 106 review include a lack of understanding as to exactly how the process works, the uncertainty in the identification and evaluation of resources, and the lack of flexibility by
some preservation officials. In addition, there are some affordable housing activists who just have a negative view of preservation, believing it to be of no particular benefit to their communities.

In an attempt to overcome some of these problems and forge a better bond with the affordable housing community, the Advisory Council on Historic Preservation, in conjunction with HUD and the National Conference of State Historic Preservation Officers, adopted a new policy statement on Section 106 and affordable housing. The policy statement is meant to be a framework in which the concerns of each side are addressed. The document tries to balance the need to produce safe, affordable housing, with the need to protect and preserve the historic built environment.

The new policy statement contains ten Principles of Implementation that are designed to be the guiding force behind the document. The principles cover three broad areas of concern, better community involvement and long range planning, more flexibility in setting standards, and streamlining and decentralization of the process as much as possible. The implementation of any of the principles by itself, could have a positive impact on the Section 106 process. The case studies have shown, for example, that decentralizing decisionmaking often leads to a much faster turn-around time for the review. In addition,
in those jurisdictions with a more flexible application of the standards, projects are less likely to undergo large cost increases and expensive delays as a result of the review.

It is important for preservationists, however, to work toward the implementation of all of the principles in the policy statement. Pressure from affordable housing activists will probably be applied towards implementing the last two thirds of the document which focuses on shortening the regulatory process and making it easier to navigate through. The first third, involvement of the community and long range planning, is just as important, however.

As it currently exists, the scope of Section 106 is in a reactive, regulatory mode. In keeping with this frame of reference, some preservationists have argued that by creating more flexible standards and streamlining the process, the potential exists for losing or compromising a large number of historic resources. If, however, preservationists become more proactive, entering the planning process at a much earlier point, they will be able to make the case to residents and developers that preservation is a positive value for the community. By introducing preservation early in the long range planning process for a neighborhood, there should be less of a need for last minute negotiations about the fate of a specific building. The emphasis will shift from preservation being a regulatory barrier to it becoming an important tool used in helping to revitalize distressed communities.
This change of focus will place new burdens on the preservation community. Going into areas early to work with neighborhood groups will take a great deal of time, money, and manpower: a far greater amount than is currently used in reviewing documents at a state historic preservation office or at a local review authority. But, the benefits that can be derived from this new approach would far outweigh the costs.

It is interesting to note, that some preservationists are worried about too much involvement from the local community. They feel that preservation decisions are best left up to the judgment of impartial professionals. In the long term, however, it is the people of the community who will be responsible for maintaining the neighborhood and continuing the preservation ethic after the Section 106 review process has been carried out and the project completed. If they do not feel a part of the process from the beginning, there will be no incentive for them to maintain their buildings up to any sort of preservation standard. Preservation must be seen as a positive force by residents, not something that has been imposed from outside.

Unfortunately, the process of changing people’s minds and getting them to embrace preservation will be slow. The new policy statement is a good first step in that direction, however. It shows affordable housing activists that preservationists are serious about
trying to make Section 106 review better and easier to use. It also makes a commitment on behalf of preservation to go into communities and deal directly with the issues that concern residents the most.

The policy statement must be followed up by action, however. Both the preservation and affordable housing bureaucracies must make sure that the professionals in the field understand and are willing to seek creative solutions that fit into the framework of the policy statement. In addition, detailed regional studies should be carried out on the true financial costs of the Secretary’s Standards, in order to give everyone involved a clearer picture of the extent of change necessary. Finally, it is imperative that the people on both sides communicate with each other. By understanding each other and the problems that each side faces, the barriers will be broken down and a process developed that truly meets the needs of both constituencies.
BIBLIOGRAPHY

Written Material


National Trust for Historic Preservation. "Community Partners for Revitalization: A New Urban Initiative of the National Trust." Audio Tape of a Session from the National


Not in My Back Yard: Removing Barriers to Affordable Housing. Report to President Bush and Secretary Kemp by the Advisory Commission on Regulatory Barriers to Affordable Housing. Washington D.C.: 1991.


**Interviews**


Battin, Maryel. Executive Director, Macon Heritage Foundation, Macon, Georgia. Telephone Interview, 3 October 1995.


The Standards (Department of Interior Regulations, 36 CFR 67) pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior, related landscape features and the building’s site and environment as well as attached, adjacent, or related new construction. The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal changes to the defining characteristics of the building and its site and environment.

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historical significance in their own right shall be retained and preserved.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

7. Chemical or physical treatments such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.
APPENDIX B

SAMPLE PROGRAMMATIC AGREEMENTS

PROGRAMMATIC AGREEMENT
TOWN OF FRANKLIN, MASSACHUSETTS
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

WHEREAS, the Town of Franklin, Massachusetts (Town) proposes to administer its Community Development Block Grant (CDBG) Program with funds from the Department of Housing and Urban Development under Title I of the Housing and Community Development Act of 1974, and

WHEREAS, for purposes of this Agreement, the Town's CDBG program consists of the Housing Rehabilitation and Commercial Rehabilitation Programs, and

WHEREAS, the Town has determined that the administration of its CDBG program may have an effect upon properties included in or eligible for the National Register of Historic Places and has consulted with the Massachusetts State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR Part 800.13 of the Council's regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f),

NOW, THEREFORE, the Town, the Massachusetts SHPO, and the Council agree that the program shall be administered in accordance with the following stipulations to satisfy the Town's Section 106 responsibilities for all individual undertakings of the program.

Stipulations

The Town of Franklin will ensure that the following measures are carried out.

I. Identification

A) The Town will notify the Massachusetts SHPO of each proposed housing rehabilitation or commercial rehabilitation project which affects a property that is forty (40) years old or
older. The Town is encouraged to seek assistance from a qualified preservation consultant and/or the Franklin Historical Commission in dating the properties and providing some historical context, preferably by completing an inventory form, and submit this information along with a current photograph and location map to the Massachusetts SHPO.

B) In consultation with the Massachusetts SHPO, the Town will apply the National Register criteria (36 CFR 60.4) to each property that is forty (40) years old or older that will be affected by CDBG-funded activities. Properties that appear to meet the National Register criteria will be considered and treated as eligible for the National Register.

C) When the Town's inventory of historic properties has been accepted by the Massachusetts SHPO as complete, the Town need only notify the Massachusetts SHPO of each CDBG-funded project which affects an inventoried property.

D) If the Massachusetts SHPO and the Town do not agree as to whether a property meets the National Register criteria, the Town will request a formal determination of eligibility from the Secretary of the Interior in accordance with 36 CFR Part 63 prior to the initiation of any work on the property.

II. Treatment

Properties that are listed on the National Register or are considered eligible for the National Register, either individually or as part of a district, will be treated in the following manner.

A) Properties that are to be rehabilitated will be rehabilitated in accordance with the recommended approaches in "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" (Standards).

B) Prior to undertaking any activities that are not exempt under Stipulation III below, the Town will forward information on the rehabilitation projects (including work write-ups and photographs, as necessary) to the Massachusetts SHPO for review and concurrence to ensure that the Standards are being met.

C) If the Standards cannot be met, or if demolition is proposed, or if the proposed activity may have an indirect effect on such properties, prior to taking any action, the Town will consult with the Massachusetts SHPO and initiate the procedures set forth at 36 CFR 800.5(e).

III. Activities Exempt From Further Review

The following rehabilitation activities do not require further consultation with the Massachusetts SHPO.
(1) Electrical work (upgrading or in-kind replacement)
(2) Plumbing work (upgrading or in-kind replacement)
(3) Installation of new furnace
(4) Painting in a complementary or in-kind color
(5) Repair of porches or cornices when the repair is done in-kind to match existing material and form
(6) Caulking
(7) Repair of roofing material when the repair is done in-kind to matching existing materials and form.

IV. Public Involvement

Each year the Town will notify the public of the Town’s current CDBG program, and make available for public inspection documentation on the Town’s CDBG program. Included in this documentation will be general information on the CDBG program; information on the type(s) of activities undertaken with CDBG funds; information on identified historic properties which might be affected by these activities; the amount of CDBG funds available in the current program year; and how interested persons can receive further information on the program.

V. Renewal

This Programmatic Agreement will continue in force for the 1987 Fiscal Year. At the end of the 1987 Fiscal Year, this Agreement will be reviewed for possible modifications, termination, or extension. At the request of any of the parties, this Agreement may be reviewed for possible modification or termination at any time.

Execution of this Programmatic Agreement and carrying out its terms evidences that the Town has afforded the Council a reasonable opportunity to comment on this undertaking and has satisfied its Section 106 responsibilities for all individual undertakings of the program.

ADVISORY COUNCIL ON HISTORIC PRESERVATION:

By: [Signature] Date: 7/7/88
Executive Director

TOWN OF FRANKLIN:

By: [Signature] Date: 6/17/88
Title: Director, Small Cities Program

MASSACHUSETTS HISTORIC PRESERVATION OFFICER:

By: [Signature] Date: 7/11/88
State Historic Preservation Officer
Advisory Council On Historic Preservation

Programmatic Memorandum of Agreement Between
The Farmers Home Administration,
The National Conference of State Historic Preservation Officers,
And
The Advisory Council on Historic Preservation Regarding Implementation of The Housing Preservation Grant Program

Whereas the Farmers Home Administration (FmHA) 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 FmHA 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(1) of the Act sets forth specific requirements pertaining to historic preservation, and

Whereas FmHA 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 FmHA, the Council, and the National Conference of State Historic Preservation Officers have consulted in accordance with 36 CFR § 80u.8 of the regulations,

Now, therefore, it is mutually agreed that FmHA will administer the HPG program in accordance with the following provisions in order to take into account its effects on historic properties.

Stipulations

1. FmHA 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 FmHA, a brief description of the applicant's program to meet the requirements of Section 533(1) of the Act. FmHA 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-l(1), (4), and (5) (Attachment 04), 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 mechanism 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 the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (G.F.P.O. 1983 0-416-888), 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. FmHA 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, FmHA, 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, FmHA will assume responsibility for completing compliance with 36 CFR Part 800. Such assumption of responsibility by FmHA 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. FmHA 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 FmHA has afforded the Council a reasonable opportunity to comment on FmHA's implementation of the HPG program.

 Farmers Home Administration

Executive Director
Advisory Council on Historic Preservation

President
National Conference of State Historic Preservation Officers

135
APPENDIX C

PENNSYLVANIA HISTORIC RESOURCE SURVEY FORM

Source: Bureau for Historic Preservation, Pennsylvania Historical and Museum Commission.
<table>
<thead>
<tr>
<th>Survey Code/Parcel/Other No.:</th>
<th>Address:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipality:</td>
<td>Historic Name/Other Name:</td>
</tr>
</tbody>
</table>

**PHOTO INFORMATION**

**Attach Photo Here**

<table>
<thead>
<tr>
<th>Number</th>
<th>Description of View</th>
<th>Direction of Camera</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Photographer Name:**

**Negative Location:**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Note: The image contains a form with fields for survey details and photo information, but the specific content is not legible.*
**Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation**

### IDENTIFICATION AND LOCATION

<table>
<thead>
<tr>
<th>Survey Code:</th>
<th>Tax Parcel/Other No.:</th>
</tr>
</thead>
<tbody>
<tr>
<td>County:</td>
<td>1.</td>
</tr>
<tr>
<td>Municipality:</td>
<td>1.</td>
</tr>
<tr>
<td>Address:</td>
<td>2.</td>
</tr>
<tr>
<td>Historic Name:</td>
<td></td>
</tr>
<tr>
<td>Other Name:</td>
<td></td>
</tr>
</tbody>
</table>

**Owner Name/Address:**

**Owner Category:**
- [ ] Private
- [ ] Public-local
- [ ] Public-state
- [ ] Public-federal

**Resource Category:**
- [ ] Building
- [ ] District
- [ ] Site
- [ ] Structure
- [ ] Object

**USGS Quad:**
- 1.
- 2.

**UTM References:**
- A.
- B.
- C.

### HISTORIC AND CURRENT FUNCTIONS

<table>
<thead>
<tr>
<th>Historic Function Category:</th>
<th>Subcategory:</th>
<th>Code:</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>D.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Particular Type:**
- A.
- B.
- C.
- D.

### CURRENT FUNCTION CATEGORY

<table>
<thead>
<tr>
<th>Current Function Category:</th>
<th>Subcategory:</th>
<th>Code:</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>D.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### PHYSICAL DESCRIPTION

<table>
<thead>
<tr>
<th>Architectural Classification:</th>
<th>A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>B.</td>
<td></td>
</tr>
<tr>
<td>D.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Exteror Materials:</th>
<th>Foundation</th>
<th>Roof</th>
</tr>
</thead>
<tbody>
<tr>
<td>Walls</td>
<td></td>
<td>Walls</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td>Other</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Structural System:</th>
<th>1.</th>
<th>2.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Width</th>
<th>Depth</th>
<th>Stones/Height:</th>
</tr>
</thead>
</table>
### HISTORICAL INFORMATION

| Year Built: | C._______ to C._______ | Additions/Alterations Dates: | C._______: C._______ |
| Basis for Dating: | Documentary: Physical |

**Explain:**

| Cultural/Ethnic Affiliation: | 1. _______________ | 2. _______________ |
| Associated Individuals: | 1. _______________ | 2. _______________ |
| Associated Events: | 1. _______________ | 2. _______________ |
| Architects/Engineers: | 1. _______________ | 2. _______________ |
| Builders: | 1. _______________ | 2. _______________ |

### MAJOR BIBLIOGRAPHICAL REFERENCES

**PREVIOUS SURVEY, DETERMINATIONS**

**EVALUATION** *(Survey Director/Consultants Only)*

| Individual NR Potential: | Yes | No |
| Context(s): | _______________ |
| Contributes to Potential District: | Yes | No |
| District Name/Status: | _______________ |

**Explain:**

### THREATS


**Explain:**

### SURVEYOR INFORMATION

<p>| Surveyor Name/Title: | _______________ | Date: _______________ |
| Project Name: | _______________ |
| Organization: | _______________ | Telephone: _______________ |
| Street and No.: | _______________ |
| City, State: | _______________ | Zip Code: _______________ |
| Additional Survey Documentation: | _______________ |
| Associated Survey Codes | _______________ |</p>
<table>
<thead>
<tr>
<th>Survey Code:</th>
<th>Tax Parcel/Other No.:</th>
</tr>
</thead>
<tbody>
<tr>
<td>County:</td>
<td>Municipality:</td>
</tr>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>Historic/Other Name:</td>
<td></td>
</tr>
</tbody>
</table>

**PHYSICAL DESCRIPTION:**
APPENDIX D

ADVISORY COUNCIL ON HISTORIC PRESERVATION POLICY STATEMENT: AFFORDABLE HOUSING AND HISTORIC PRESERVATION

Source: Advisory Council on Historic Preservation.
Advisory Council on Historic Preservation Policy Statement:

Affordable Housing and Historic Preservation

(adopted June 26, 1995)

Developed by the Council's Affordable Housing and Historic Preservation Task Force:

Stephen B. Hand, New Orleans, Louisiana, Chairman
Mayor Emanuel Cleaver, II, Kansas City, Missouri
Richard Moe, President, National Trust for Historic Preservation
W. Ray Luce, President, National Conference of State Historic Preservation Officers
Thelma J. Moore, Deputy Assistant Secretary, Department of Housing and Urban Development
Council Policy Statement: AFFORDABLE HOUSING AND HISTORIC PRESERVATION

Background

The National Historic Preservation Act of 1966 (NHPA) encourages preservation of the historical and cultural foundations of the Nation as a living part of community life and development in order to provide the American people with a sense of orientation. It further states that increased knowledge about historic resources, establishment of a better means to identify and administer them, and encouragement of their preservation will not only improve planning and execution of Federal and federally assisted projects but also assist economic growth and development. Toward that end, NHPA directs the Federal Government to foster conditions under which modern society and historic and historic resources can exist in productive harmony and "fulfill the social, economic, and other requirements of present and future generations."

Federal agencies that assist in the construction and rehabilitation of housing, most notably the Department of Housing and Urban Development (HUD) and the Department of Agriculture, are tasked with meeting America's basic needs for safe, decent, and affordable housing. Historic properties have played a vital role in fulfilling this objective; this must continue. It is, however, important that Federal and State agencies, local governments, housing providers, and the preservation community in general actively seek ways to reconcile national historic preservation goals with the special economic and social needs associated with affordable housing, given that this is now one of the Nation's most challenging and controversial issues.

Statement of Policy

In issuing this policy statement, the Council seeks to promote a new, flexible approach toward affordable housing and historic preservation which is embodied in the following Principles for Implementation.

State Historic Preservation Officers (SHPOs), Federal and State agencies, and local governments involved in the administration of the Section 106 review process for affordable housing projects funded or assisted by Federal agencies are encouraged to use these principles as a framework for Section 106 consultation and local historic preservation planning.

The Council also encourages HUD, in consultation with the national preservation community, including the National Conference of State Historic Preservation Officers, the National Park Service, and the National Trust for Historic Preservation, to develop comprehensive historic preservation training programs for HUD staff, State, county, and local officials, and housing providers who implement affordable housing projects.

Such training should advance the Principles for Implementation and the Initiatives outlined in the Secretary of HUD's May 5, 1995 Historic Preservation Directive, focusing on:
1) Improving coordination of Section 106 reviews; 2) evaluating the National Register eligibility of historic properties; 3) applying the Secretary’s Standards; 4) providing technical assistance for routine maintenance and repairs to historic buildings; 5) developing financial packages for affordable housing projects; and 6) integrating historic preservation into Consolidated Plan Documents and local comprehensive plans.
Principles for Implementation

The Council will, and other participants in the Section 106 review process for affordable housing projects, should, be guided by the following principles in applying the policy set forth above:

I. Emphasize consensus-building
   Section 106 reviews for affordable housing projects should place principal emphasis on broad-based consensus reflecting the interests, desires, and values of affected communities, neighborhoods, and residents. Consensus-building should be facilitated through training, education, and consultation focused on historic preservation values, collaborative planning, and dispute resolution.

II. Elicit local views
   Identification of historic properties and evaluation of their eligibility for the National Register for Historic Places should include discussions with the local community and neighborhood residents to ensure that their views concerning architectural and historic significance and traditional and cultural values receive full consideration by the Federal agency, State, county, or local government, and the SHPO.

III. Focus on the broader community
   When assessing the effects of affordable housing projects on historic properties, consultation should focus not just on individual buildings which may contribute to a historic district but on the overall historic preservation potentials of the broader community, neighborhood, or "target area." This practice will ensure proper consideration is given to the cumulative impacts of projects within a designated area. Historic preservation issues should be related to social and economic development, housing, safety, and programmatic issues integral to community viability.

IV. Adhere to Secretary's Standards when feasible
   Plans and specifications for rehabilitation, new construction, and abatement of hazardous conditions associated with affordable housing projects should adhere to the recommended approaches in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, when feasible. Where economic or design constraints preclude application of the Standards, consulting parties may develop alternative design guidelines tailored to the district or neighborhood to preserve historic materials and spaces. Alternative guidelines shall be incorporated into executed Memoranda of Agreement or Programmatic Agreements.

V. Include adequate background documentation
   Proposals for non-emergency demolitions of historic properties should include adequate background documentation to demonstrate to the SHPO and/or the Council that rehabilitation is not economically or structurally feasible, or that retention of such properties would jeopardize the implementation of an affordable housing project.

VI. Emphasize exterior treatments
   The Section 106 review process for affordable housing rehabilitation projects and abatement of hazardous conditions should emphasize the treatment of exteriors and be limited to significant interior features and spaces that contribute to the property's eligibility for the National Register, unless otherwise agreed to by all consulting parties.
VII. Coordinate with other reviews
Where appropriate, Section 106 reviews for affordable housing projects should be conducted in conjunction with the Historic Rehabilitation Tax Credits and other State and local administrative reviews to ensure consistency of reviews and to minimize delays. When Section 106 reviews for affordable housing projects precede other related reviews, applicants who are seeking Historic Tax Credits are encouraged to seek the advice of the SHPO and to obtain early review by the National Park Service to assure final eligibility for the Historic Rehabilitation Tax Credit.

VIII. Avoid archeological investigation
Archeological investigations should not be required for affordable housing projects which are limited to rehabilitation and require minimal ground disturbance activities.

IX. Develop programmatic approaches
State, county, and local governments are encouraged to develop Programmatic Agreements that promote creative solutions to implement affordable housing projects and to streamline Section 106 reviews through the exemption of categories of routine activities; the adoption of "treatment and design protocols" for rehabilitation and infill new construction; and the delegation of Section 106 reviews to qualified preservation professionals employed by the local community.

X. Empower local officials
Certified local governments and/or communities that employ qualified preservation professionals, as set forth in the Secretary of the Interior's Professional Qualification Standards should be allowed to conduct Section 106 reviews on behalf of the Council and/or the SHPO for affordable housing projects when the local government and/or community has executed a Programmatic Agreement with the Council and the SHPO.
APPENDIX E

PHILADELPHIA PROGRAMMATIC AGREEMENT

MEMORANDUM OF AGREEMENT

WHEREAS, the Department of Housing and Urban Development (HUD) proposes to approve a Community Development Block Grant (CDBG) for the City of Philadelphia (City), Pennsylvania, for implementation of Community Development projects for Program Years 1982-1984; and,

WHEREAS, pursuant to the Housing and Community Development Act of 1977, as amended, HUD has delegated to the City its responsibility for seeking the comments of the Advisory Council on Historic Preservation (Council) pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. Sec. 470 (f)); and,

WHEREAS, the City in consultation with the Pennsylvania State Historic Preservation Officer (SHPO) has determined that implementation of these projects may adversely affect historic properties included in and eligible for inclusion in the National Register of Historic Places; and,

WHEREAS, pursuant to the regulations of the Council, "Protection of Historic and Cultural Properties" (36 CFR Part 800), the City has requested the comments of the Council; and,

WHEREAS, representatives of the Council, the City and the Pennsylvania SHPO have consulted and reviewed the proposed undertakings to review alternatives to avoid or satisfactorily mitigate adverse effects on the above-mentioned properties; and,

NOW, THEREFORE, it is mutually agreed that implementation of the projects in accordance with the following stipulations will avoid or satisfactorily mitigate the adverse effects on the above-mentioned properties.

STIPULATIONS

The City will insure that the following measures are carried out.

1. The City will continue to survey districts, sites, buildings, structures, and objects within Community Development Block Grant target areas (hereafter "properties") that may meet the Criteria for listing in the National Register of Historic Places (36 CFR Sec. 61-6) (Attachment 1). The survey will be conducted in consultation with the Pennsylvania SHPO and in accordance with the "Guidelines for the Location and Identification of Historic Properties containing Scientific, Prehistoric, Historical, or Archeological Data" (36 CFR Part 66, Appendix B) (Attachment 2), and with reference to "Guidelines for Local Surveys: A Basis for Preservation Planning" (GPO Stock No. 024-016 0089-7) and "The Archeological Survey, Methods and Uses" (GPO Stock No. 024-016-00091-9).
Page 2
Memorandum of Agreement
Department of Housing and 
Urban Development 
City of Philadelphia

2. Properties that may be affected by the Community Development projects will be evaluated by the City, in consultation with the Pennsylvania SHPO, against the National Register Criteria.

   a. Properties that appear to meet the Criteria will be submitted to the Secretary of the Interior for determinations of eligibility for inclusion in the National Register of Historic Places in accordance with 36 CFR Sec. 63.3.

   b. If there is any question as to whether a property may meet the Criteria, the City will request a determination of eligibility from the Secretary of the Interior in accordance with CFR Sec. 63.2.

   c. The City will keep a written record of the reasons why any property does not appear to meet the Criteria.

3. Properties that are determined to be eligible for the National Register, or in the process of being determined eligible for the National Register, or listed in the National Register, will be treated in the following manner:

   a. All rehabilitation of properties and site improvements will be carried out in accordance with the recommended approaches in "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" (Standards) (Attachment 3) based on procedures developed in consultation with the Pennsylvania SHPO.

   b. The City will retain documentation, including work write-ups and photographs, of the properties to be rehabilitated and site improvement projects. The photographs will be taken prior to project implementation and upon completion of the project and will be used as evidence of the City's application of the Standards.

   c. If the Standards cannot be met, or the proposed treatment of the property is not rehabilitation, or demolition is contemplated, or if the contemplated action could have an indirect adverse effect on such properties, prior to taking any action the City will consult with the Pennsylvania SHPO and obtain the comments of the Council in accordance with 36 CFR Sec. 800.6 of the Council's regulations.

   d. The City will provide the Pennsylvania SHPO with an opportunity to inspect the documentation described in Stipulation 3(b) and project sites to verify adherence with the Standards. At the request of the Pennsylvania SHPO, the City will provide the Pennsylvania SHPO with information about, or access to, all records concerning Community Development projects that affect the properties included in or eligible for inclusion in the National Register.

4. Prior to any ground disturbing activities associated with the projects the archaeological portion of the survey for that area will be completed
Memorandum of Agreement
Department of Housing and Urban Development
City of Philadelphia

in accordance with Stipulation 1. If archeological resources are found that meet the National Register Criteria (36 CFR Sec 60.6), they will be avoided or preserved in place whenever feasible. When it is not feasible the Pennsylvania SHPO will be consulted and a treatment consistent with the Council's Handbook, Treatment of Archaeological Properties (Attachment 4) and approved by the Pennsylvania SHPO will be developed and implemented.

Executive Director
Advisory Council on Historic Preservation

(date)
City of Philadelphia, Pennsylvania

(date)
Pennsylvania State Historic Preservation Officer

(date)
Chairman
Advisory Council on Historic Preservation
AMENDMENT AND ADDENDUM TO THE PROGRAMMATIC AGREEMENT FOR THE
CITY OF PHILADELPHIA, PENNSYLVANIA
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

WHEREAS, the city of Philadelphia, Pennsylvania (City), the Pennsylvania State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (Council) executed a Memorandum of Agreement on August 24, 1982, for the implementation of the Community Development Block Grant (CBDG) Program for Program Years 1981-1984; and

WHEREAS, the Memorandum of Agreement was amended on November 20, 1984 to extend the terms of the agreement to cover Program Years 1985-1987, and on September 19, 1987 to extend the terms of the agreement to cover the Program Years 1987-1991 and to add the City's Rental Rehabilitation Program under Section 17 of the United States Housing Act of 1937 and to administer Section 312 Rehabilitation Loan Program of the Housing Act of 1964; and

WHEREAS, pursuant to 36 CFR Sec. 800.5 (e) (5) of the Council's regulations, the City has requested an amendment to the Memorandum of Agreement to extend the terms of the agreement to cover Program Years 1992-1995; and

WHEREAS, the City has requested an addendum to the Memorandum of Agreement to include the administration of the HOME Program of the Cranston-Gonzalez National Affordable Housing Act (Title II of Public Law 101-625, enacted November 28, 1990), in that it replaces Rental Rehabilitation Program and the Section 312 Rehabilitation Loan Program;

WHEREAS, the City has requested an addendum to the Memorandum of Agreement to include the administration of the HOPE Programs of the Gonzalez National Affordable Housing Act (Title IV of Public Law 101-625 enacted November 28, 1990);

WHEREFORE, it is mutually agreed that the City will administer the CBDG, HOME Program and the HOPE Programs for Program Years 1992-1995 in accordance with the stipulations contained in the Memorandum of Agreement of August 24, 1982, amended November 20, 1984, and September 19, 1987, as appended to this document.
PROGRAMMATIC AGREEMENT
AMONG THE PHILADELPHIA HOUSING AUTHORITY,
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
FOR THE
MAINTENANCE AND REHABILITATION OF PUBLIC HOUSING
IN
PHILADELPHIA, PENNSYLVANIA

WHEREAS, the Philadelphia Housing Authority (Authority) proposes to implement an ongoing maintenance and rehabilitation program (Program) for its scattered site public housing units and public housing projects; and

WHEREAS, the Department of Housing and Urban Development (HUD) proposes to provide financial assistance to the Authority to assist in implementation of the Program as authorized by the Public Housing Modernization Program, Section 14, US Housing Act of 1937 (42 U.S.C. 14371); and

WHEREAS, the Authority and HUD have determined that Program activities may have an effect on properties included on or eligible for inclusion in the National Register of Historic Places and have consulted with the Advisory Council (Council), the Pennsylvania 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, the City of Philadelphia participated in the consultation and has authorized the Philadelphia Historical Commission (Commission) to assist the Authority in the review of Program activities included in this Agreement.

NOW, THEREFORE, the Authority, HUD, the Council, and the Pennsylvania SHPO agree that the Program shall be administered in accordance with the following stipulations to satisfy the Authority's and HUD's Section 106 responsibilities for all individual undertakings of the implemented under the Program.

Stipulations

HUD, in coordination with the Authority, will ensure that the following measures are carried out.
I. IDENTIFICATION

A. The Authority shall prepare a thematic nomination form for the public housing complexes constructed in the City since 1920. The history of the development of public housing will be based on John F. Bauman's *Public Housing, Race and Urban Renewal: Urban Planning in Philadelphia, 1920-1974*.

1. The thematic nomination shall be submitted to the Pennsylvania SHPO for review and comment by January 1992.

2. The thematic nomination shall include a detailed description of the significant architectural features of each complex referenced in the nomination.

3. All public housing complexes included in the thematic nomination shall be considered individually eligible for listing on the National Register.

B. Pending the completion of the thematic nomination, the Authority will evaluate the eligibility of public housing complexes in accordance with the following guidelines.

1. Public housing complexes constructed prior to 1945, and not listed on or eligible for listing on the National Register or included in an historic district, will be considered eligible for inclusion in the National Register under this Agreement.

2. Public housing complexes constructed after 1945 will not be considered eligible for inclusion in the National Register unless they are located within an historic district which is potentially eligible, determined eligible, or listed on the National Register.

D. The Authority shall forward documentation to the Philadelphia Historical Commission regarding the identification of scattered site public housing units constructed prior to 1945.

1. Properties which are listed on the National Register or determined to meet the National Register Criteria for Eligibility or are located within an historic district will be treated in accordance with provisions set forth in Stipulation II.

2. The Authority will keep a written record of why the Philadelphia Historical Commission has determined that a scattered site public housing unit does not appear to meet the Criteria of Eligibility.

3. If the Authority and the Philadelphia Historical Commission do not agree regarding the eligibility of a scattered site public housing unit, the Authority shall notify HUD and request the opinion of the Pennsylvania SHPO. Should a
disagreement continue to exist between the Authority and the Pennsylvania SHPO regarding the eligibility of a property, HUD shall request a formal determination of eligibility from the Secretary of the Interior in accordance with Section 800.4(c)(4).

II. TREATMENT

Program activities proposed for historic properties listed on or eligible for listing on the National Register or defined as eligible in Stipulation I. will be carried out as follows.

A. If Program activities are limited solely to those listed as "exempt activities" on Attachment A, further review will not be required under this Agreement.

B. Program activities not included on Attachment A shall be carried out in accordance with the recommended approaches in "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" (Standards).

1. Work write-ups or plans and specifications which describe the maintenance or rehabilitation activities shall be prepared by the Authority and shall be submitted to the Philadelphia Historical Commission or the Pennsylvania SHPO for review and approval. Documentation, including the comments of the Philadelphia Historical Commission or the Pennsylvania SHPO, shall be retained in individual project files. Before and after photographs will be taken of exterior treatments to verify adherence to the Standards.

2. If the proposed Program activities do not conform to the Standards, or will result in the alteration or demolition of historic properties, or will otherwise result in an adverse effect on historic properties, the Authority shall notify HUD. HUD shall consult with the Pennsylvania SHPO regarding alternatives to avoid or mitigate the adverse effect and request the comments of the Council in accordance with 36 CFR Section 800.5(e).

III. MONITORING

A. The Authority shall provide a semi-annual report to the Pennsylvania SHPO and HUD summarizing Program activities carried out under the terms of this Agreement. The first report shall be submitted by January 31, 1991, and subsequent reports every January and June thereafter.

B. Documentation regarding Program activities carried out under the terms of this Agreement will be retained a minimum of three years from the date of completion of the project. Project files shall be made available to HUD and the Pennsylvania SHPO during periodic on-site visits to the Authority.
IV. TRAINING

A. The Pennsylvania SHPO shall provide technical assistance, consultation, and training as requested by the Authority and/or HUD to assist in carrying out the terms of this Agreement.

V. RENEWAL

A. This Agreement shall continue in force through 1995. At the request of any of the parties, this Agreement may be reviewed for possible modification or termination at any time.

B. If it is determined that the Agreement should be modified, the Authority, HUD, or Pennsylvania SHPO should request an amendment in accordance with 36 CFR Section 800.5(e)(5).

C. If the Agreement is terminated, the Authority and HUD shall comply with the requirements of 36 CFR Sections 800.4-800.6 for each individual undertaking.

Execution and implementation of this Programmatic Agreement evidences that the Authority and HUD have afforded the Council a reasonable opportunity to comment on the maintenance and rehabilitation of public housing in the city of Philadelphia, Pennsylvania and that the Authority and HUD have taken into account the effects of the undertakings on historic properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: [Signature] Date: 8/11/88
Executive Director

THE PHILADELPHIA HOUSING AUTHORITY

By: [Signature] Date: 8/11/88
Executive Director

THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: [Signature] Date: 9/27/88
Regional Manager

THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICE

By: [Signature] Date: 9/27/88
State Historic Preservation Officer

Concur:

R.T. [Signature] City of Philadelphia

By: [Signature] Date: 10/3/88
Chairman Mayor
EXEMPT ACTIVITIES

The following Program activities will have "no effect" on the character of historic properties listed on or eligible for listing on the National Register. Therefore, no further review is required by the Authority.

1) Paint removal and painting in a complimentary color.
2) Caulking.
3) All electrical work.
4) All plumbing work.
5) Installation of new furnaces.
6) Minor interior space alterations.
7) Repair or pouring of concrete floors.
8) Repair or replacement of interior wood floors and woodwork.
9) Code enforcement.
10) Repair or replacement of elevators in the existing shafts.
11) Repair or replacement of water, sewer, or gas lines within the same right-of-way.
APPENDIX F

MEMORANDUM OUTLINING COMPLIANCE WITH THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

TO:

FROM: Jeffrey R. Barr
Philadelphia Historical Commission

RE: THE REHABILITATION PLANS AND SPECIFICATIONS FOR

I have made an on-site inspection of [Building Name]. In order to comply with the criteria set forth in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, the following conditions must be included in the rehabilitation write-up before work may begin:

1. Re-open all front window and door openings to their full original dimensions.

2. New, white, vinyl or aluminum, one over one, square-head, double-hung windows are acceptable for the front of this property. New windows must fill entire original opening. Retain and repair existing wood brickmouldings, or install new wood brickmouldings to match, at all openings at front.

3. New basement windows must be wood, three-lite, fixed, awning or hopper type. Units must fill entire original opening and be installed flush with the inside of the wall. Simple, straight (no twist), black metal security bars are acceptable for the basement windows. Bars must be installed within the masonry opening, not on face of wall.

4. Retain and repair, or install new wood doorframe, brickmoulding and rectangular glass transom to match 2003 N. 32nd Street. A new, single or double, flush wood door is acceptable. New door must fill entire original opening. Apply wood mouldings to the face of the door to replicate the appearance of a double door.

5. Remove paint from masonry and clean front facade. Acid cleaning and sandblasting are not permitted. For paint removal, use Pro-So-Co "Sure Clean" 509 Paint Stripper, 859 Heavy Duty Paint Stripper, Dumond "Peel-A-Way" Paint Stripper or approved equivalent. For cleaning, use Pro-So-Co Restoration Cleaner, Heavy Duty Restoration Cleaner, Union Carbide Triton X-100 or approved equivalent. Because natural stone is more sensitive to the chemical cleaning agents, the stone sills, lintels and watertable must be masked and protected during cleaning of the brick wall. Follow all manufacturer's directions. Water pressure must not exceed 500 lbs. per square inch. Contractor must clean a test area and contact this office to obtain approval before cleaning entire wall.

6. Retain existing original steps at front.

7. Retain and repair the existing original metal cornice.

8. Prime and paint all exterior metal and wood trim.

9. Any new flashing that will be visible from the street must match color of trim.