PROGRAMMATIC AGREEMENT AMONG
THE U.S. DEPARTMENT OF AGRICULTURE RURAL UTILITIES SERVICE,
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION,
NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
FOR THE BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM AND
BROADBAND INITIATIVES PROGRAM

WHEREAS, the American Recovery and Reinvestment Act (ARRA) appropriated $7.2 billion in loans and grants for the Department of Agriculture's Rural Utilities Service (RUS) and the Department of Commerce's National Telecommunications and Information Administration (NTIA) to bring broadband service to un-served and underserved communities across America; and

WHEREAS, NTIA, in implementing the Broadband Technology Opportunities Program (BTOP), will award $4.7 billion in grants to expand public computer capacity, encourage sustainable adoption of broadband service and deploy broadband infrastructure to unserved and underserved areas; and

WHEREAS, RUS, in implementing the Broadband Initiatives Program (BIP), will award $2.7 billion in loan and loan-grant combinations to support broadband deployment in rural communities; and

WHEREAS, RUS and NTIA have determined that projects receiving financial assistance under BIP or BTOP (BIP/BTOP undertakings) are undertakings subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, and its implementing regulations under 36 CFR part 800 (Section 106); and

WHEREAS, given the schedule for obligation, RUS and NTIA will make awards prior to the conclusion of Section 106 review; and

WHEREAS, as a consequence, the BIP/BTOP undertakings submitted to State Historic Preservation Officers (SHPOs), Indian tribes, and other consulting parties for Section 106 review will be limited to those that have been awarded BIP/BTOP funding, rather than more speculative undertakings;

WHEREAS, the timing of awards and completion of Section 106 review is a departure from the normal Section 106 process as set forth in 36 CFR §§ 800.3 through 800.7; and

WHEREAS, RUS and NTIA have delegated authority to their applicants to initiate consultation in accordance with 36 CFR § 800.2(c)(4); and

WHEREAS, RUS and NTIA have consulted to execute this Programmatic Agreement (PA) pursuant to 36 CFR § 800.14(b); and

WHEREAS, RUS and NTIA initiated government-to-government consultation with Indian tribes for BIP and BTOP undertakings by letter dated September 23, 2009; and

NOW, THEREFORE, RUS, NTIA, the National Conference of State Historic Preservation Officers (NCSHPO), and the Advisory Council on Historic Preservation (ACHP) agree that RUS and NTIA will comply with the provisions of this PA in order to take into account the effects of these undertakings on historic properties and afford the ACHP an opportunity to comment.

STIPULATIONS

RUS and NTIA will ensure that the following stipulations are carried out:

I. AWARD CONDITIONS

RUS and NTIA may make awards for BIP/BTOP undertakings prior to completion of Section 106 review so long as RUS and NTIA:

A. Condition financial assistance awarded under BIP/BTOP on completion of the Section 106 review in accordance with 36 CFR Part 800. RUS and NTIA will attach special award conditions to such awards to ensure that federal funds are not released, and ground disturbing activities are not commenced, for BIP/BTOP undertakings prior to the completion of Section 106 review by RUS and NTIA in accordance with 36 CFR §§ 800.3 through 800.7, or 36 CFR § 800.8(c), or an applicable alternative under 36 CFR § 800.14;

B. Retain the ability to withdraw BIP/BTOP awards for an undertaking until completion of its Section 106 review;

C. Require applicants to initiate Section 106 consultation no later than ninety (90) calendar days after the announcement of their awards;

D. Encourage the applicants to design their projects to avoid historic properties;

E. As part of the condition to not commence ground disturbing activities until completion of Section 106 review, advise the applicants in writing about the applicability of Section 110(k) of the National Historic Preservation Act. For purposes of this PA, "ground disturbing activities" are defined as project-related site preparation or construction actions that affect the surface and/or subsurface, including, but not limited to, tree stump grinding or stump pulling, grading, excavation, filling, soil or rock removal, or blasting; and

F. Within ninety (90) calendar days of the execution of this PA, provide applicants with guidance on Section 106 compliance and the name and contact information to people at their respective agencies who will be responsible for answering their questions on Section 106 compliance.

II. ACHP INVOLVEMENT IN REGULAR SECTION 106 REVIEWS

If RUS/NTIA decide to comply with Section 106 for a BIP/BTOP undertaking by using the regular process under 36 CFR §§ 800.3 through 800.7, RUS/NTIA will not need

to notify the ACHP about adverse effects findings under 36 CFR § 800.6(a)(1). The ACHP will still retain the ability to join consultation under 36 CFR § 800.6 at its own initiative, including in response to a request for ACHP participation by SHPO/Tribal Historic Preservation Office (THPO), Indian tribe, Native Hawaiian organizations, NTIA or RUS.

III. BIP/BTOP UNDERTAKINGS NOT SUBJECT TO SECTION 106 REVIEW

RUS and NTIA do not need to take into account the effects of the following components of BIP/BTOP undertakings on historic properties:

A. Broadband over existing power lines[1]; and

B. Sustainable broadband adoption[2] projects such as educational efforts, awareness, training, equipment purchase, or support.

If a BIP/BTOP undertaking is made up solely of these components, then the entire undertaking will be exempt from Section 106 review.

IV. AMENDMENT

This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date it is executed by all of the signatories.

V. TERMINATION

If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment in accordance with Stipulation IV. If within thirty (30) calendar days an amendment has not been executed, any signatory may terminate this PA upon written notification to the other signatories.

Once the PA is terminated, RUS and NTIA must either (a) execute another PA pursuant to 36 CFR § 800.14(b) or (b) proceed in accordance with 36 CFR §§ 800.3 through 800.7, or an applicable alternate process under 36 CFR § 800.14. The RUS and NTIA shall notify the signatories as to the course of action they will pursue.

VI. DURATION

This PA will be considered in full force and effect until September 30, 2013.

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[1] Please see the FCC's information available regarding Broadband Over Powerlines (BPL): http://wireless.fcc.gov/outreach/index.htm?job=bpl

[2] Sustainable Broadband Adoption (SBA) is a component of the BTOP grant program, please see references at: http://www.ntia.doc.gov/frnotices/2009/FR_BBNOFA_090709.pdf, page 33114, and http://www.broadbandusa.gov/presentations/SustainableAdoption0721.pdf for further information. Exemptions would not extend to any projects that would engage in construction or any ground-disturbing activities.

Execution of this PA and implementation of its terms evidence that RUS and NTIA have taken into account the effects of BIP/BTOP undertakings on historic properties and afforded the ACHP an opportunity to comment on them.

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SIGNATURES

U.S. Department of Agriculture, Rural Utilities Service

Mark S. Plank 11/25/09

Mark S. Plank, Director
Engineering and Environmental Staff
Water and Environmental Programs

Date

U.S. Department of Commerce, National Telecommunications and Information Administration

11/25/09

Cynthia Schultz, Director
Compliance and Audits
Broadband Technology Opportunities Program

Date

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National Conference of State Historic Preservation Officers

Ruth L. Pierpont 11/25/09

Ruth Pierpont, President Date

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Advisory Council on Historic Preservation

John M. Fowler 11/25/09

John M. Fowler, Executive Director Date