

Appendix E: Eligibility Procedures Relating to Historic Properties Preservation

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of federal “undertakings” on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. The term Federal “undertaking” is defined in the NHPA regulations to include a project, activity, or program of a federal agency including those carried out by or on behalf of a federal agency, those carried out with federal financial assistance, and those requiring a federal permit, license or approval. See 36 CFR 800.16(y). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties. See 36 CFR 800.16(1).

EPA’s issuance of this Residual Designation General Permit is a federal undertaking within the meaning of the NHPA regulations. To address any issues relating to historic properties in connection with issuance of the permit, EPA has included criteria for applicants to certify that potential impacts of their covered activities on historic properties have been appropriately considered and addressed. Although individual applications for coverage under the general permit do not constitute separate federal undertakings, the screening criteria and certifications provide an appropriate site-specific means of addressing historic property issues in connection with EPA’s issuance of the permit. Parties seeking coverage under the general permit are thus required to make certain certifications regarding the potential effects of their stormwater discharges, allowable non-stormwater discharges, and discharge-related activities on properties listed or eligible for listing on the National Register of Historic Places.

You must meet one or more of the following four criteria (A-D) to be eligible for coverage under this permit:

- Criterion A. Your stormwater discharges do not have the potential to have an effect on historic properties; or
- Criterion B. Your discharge-related activities (i.e., construction and/or installation of stormwater control measures that involve subsurface disturbance) will not affect historic properties; or
- Criterion C. Your stormwater discharges and discharge-related activities have the potential to have an effect on historic properties, and you have obtained and are in compliance with a written agreement with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), or other tribal representative that outlines all measures you will carry out to mitigate or prevent any adverse effects on historic properties; or

Criterion D. You have contacted the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other tribal representative and EPA in writing informing them that you have the potential to have an effect on historic

properties and you did not receive a response from the SHPO, THPO, or tribal representatives within thirty days of receiving your letter.

You must comply with applicable State, Tribal, and local laws concerning protection of historic properties and include documentation supporting your determination of permit eligibility in your Stormwater Management Program.

Activities with No Potential to Have an Effect on Historic Properties

A determination that a Federal undertaking has no potential to have an effect on historic properties fulfills an agency's obligations under the NHPA. The purpose of this permit is to control pollutants that may be transported in stormwater runoff from impervious surfaces in the Charles River Watershed within the municipalities of Milford, Bellingham and Franklin, Massachusetts. The permit requires permittees to undertake baseline storm water management activities that generally relate to property management activities that reduce the likelihood that storm water runoff will come in contact with and transport pollutants. It is unlikely that storm water controls conducted to meet baseline performance standards will have an effect on Historic Properties. The same is true of most of the enhanced non-structural controls required by Appendix D of the permit.

Activities with Potential to Have an Effect on Historic Properties

EPA believes this permit may have some potential to have an effect on historic properties where the permit has requirements related to the construction and/or installation of stormwater control measures that involve subsurface disturbance. Where you have to disturb the land through the construction and/or installation of control measures, there is a possibility that artifacts, records, or remains associated with historic properties could be impacted. Therefore, if you are establishing new or altering existing control measures to manage your stormwater that will involve subsurface ground disturbance, you will need to ensure (1) that historic properties will not be impacted by your activities or (2) that you are in compliance with a written agreement with the SHPO, THPO, or other tribal representative that outlines all measures you will carry out to mitigate or prevent any adverse effects on historic properties.

Examples of Control Measures Which Involve Subsurface Disturbance

EPA reviewed typical structural BMPs employed to determine which practices involve some level of earth disturbance. The types of control measures that are presumptively expected to cause subsurface ground disturbance include:

- Dikes
- Berms
- Catch Basins
- Ponds
- Ditches
- Trenches
- Culverts
- Land manipulation: contouring, sloping, and grading
- Channels
- Perimeter Drains
- Swales

This list is not all-inclusive. Other control measures not on this list that involve earth disturbing activities must also be examined for the potential to affect historic properties.

Historic Property Screening Process

You should follow the following screening process in order to certify your compliance with historic property eligibility requirements under this permit. The following four steps describe how applicants can meet the permit eligibility criteria for protection of historic properties under this permit:

Step One: *Are you constructing or installing any stormwater control measures that require subsurface disturbance?*

If, as part of your coverage under this permit, you are not building or installing control measures, then your discharge-related activities do not have the potential to have an effect on historic properties. You have no further obligations relating to historic properties. You have met eligibility Criterion A. After you submit your NOI, there is a minimum 30-day public notice period during which the SHPO, THPO, or other tribal representative may review your NOI. The SHPO, THPO, or other tribal representative may request that EPA hold authorization based on concerns about potential adverse impacts to historic properties.

If the answer to the Step One question is yes, then you should proceed to Step Two.

Step Two: *Have prior earth disturbances determined that historic properties do not exist, or have prior disturbances precluded the existence of historic properties?*

If previous construction either revealed the absence of historic properties or prior disturbances preclude the existence of historic properties, then you have no further obligations relating to historic properties. You have met eligibility Criterion B. After you submit your NOI, there is a minimum 30-day public comment period during which the SHPO, THPO, or other tribal representative may review your NOI. The SHPO, THPO, or

other tribal representative may request that EPA hold authorization based on concerns about potential adverse impacts to historic properties.

If the answer to the Step Two question is no, then you should proceed to Step Three.

Step Three: *Contact the appropriate historic preservation authorities*

Where you are building and/or installing control measures control storm water discharges associated with this permit, and the answer to Step Three is no, then you should contact the relevant SHPO, THPO, or other tribal representative to determine the likelihood that artifacts, records, or remains are potentially present on your site. This may involve examining local records to determine if historic artifacts have been found in nearby areas, as well as limited surface and subsurface examination carried out by qualified professionals.

If through this process it is determined that such historic properties potentially exist and may be impacted by your construction or installation of control measures, you should contact the relevant SHPO, THPO, or tribal representative in writing and request to discuss mitigation or prevention of any adverse effects. You should also send a copy of this letter to the appropriate state agency and EPA. The letter should describe the nature and location of subsurface disturbance activities that are contemplated, any known or suspected historic properties in the area, and any anticipated effects on such properties. The letter should state that if the SHPO, THPO, or tribal representative does not respond within 30 days of receiving your letter, you may submit your NOI. EPA encourages applicants to contact the appropriate authorities as soon as possible in the event of a potential adverse effect to a historic property.

If the SHPO, THPO, or tribal representative sent you a response within 30 days of receiving your letter and you enter into, and comply with, a written agreement with the SHPO, THPO, or other tribal representative regarding how to address any adverse impacts on historic properties, you have met eligibility Criterion C. After you submit your NOI, there is a minimum 30-day public comment period during which the SHPO, THPO, or other tribal representative may review your NOI. The SHPO, THPO, or other tribal representative may request that EPA hold authorization based on concerns about potential adverse impacts to historic properties.

If you receive a response within 30 days after the SHPO, THPO, or tribal representative received your letter but an agreement cannot be reached between you and the SHPO, THPO, or other tribal representative, you should contact EPA.

If you have contacted the SHPO, THPO, or tribal representative and EPA in writing regarding your potential to have an effect on historic properties and the SHPO, THPO, or tribal representative did not respond within 30 days of receiving your letter, you have met eligibility Criterion D. After you submit your NOI, there is a minimum 30-day public comment period during which the SHPO, THPO, or other tribal representative may review your NOI. The SHPO, THPO, or other tribal representative may request that EPA

hold authorization based on concerns about potential adverse impacts to historic properties.

Addresses for State Historic Preservation Officers and Tribal Historic Preservation Officers may be found on the Advisory Council on Historic Preservation's website (<http://www.achp.gov/programs.html>). In instances where a Tribe does not have a Tribal Historic Preservation Officer, you should contact the appropriate Tribal government office when responding to this permit requirement.