

## **Appendix E National Historic Preservation Act Guidance**

### **A. Background**

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 the Small Municipal Separate Storm Sewer System General Permit is a federal undertaking within the meaning of the NHPA regulations and EPA has determined that the activities to be carried out under the small MS4 general permit require review and consideration, in order to be in compliance with the federal historic preservation law and regulations. Although individual applications for coverage under the general permit do not constitute separate federal undertakings, the screening criteria provide an appropriate site-specific means of addressing historic property issues in connection with EPA’s issuance of the permit. To address any issues relating to historic properties in connection with the issuance of this permit, EPA has included criteria for applicants to identify whether properties listed or eligible for listing on the National Register of Historic Places are within the path of their stormwater discharges or discharge-related activities (including treatment systems or any BMPs relating to the discharge or treatment process) covered by this permit.

MS4s seeking coverage under the Small MS4 general permit must comply with applicable, State, Tribal, and local laws concerning the protection of historic properties and places and may be required to coordinate with the State Historic Preservation Officer and/or Tribal Historic Preservation Officer and others regarding effects of their discharges on historic properties.

### **B. Identification of Historic Properties**

MS4s seeking coverage should first determine whether there are any historic properties or places listed on the National Register of Historic Places or if any are eligible for listing on the register which are located in the path of the MS4’s stormwater discharge or in the vicinity of any construction of treatment systems or BMPs related to the discharge that may be affected by the stormwater discharge or associated activities.

For existing dischargers whose stormwater management practices and BMPs do not require construction activities, simple visual inspections may be sufficient to determine whether the historic properties are potentially affected.

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However, for sites which are planning construction activities relative to stormwater management practices or BMPs related to discharges authorized by this permit, facilities should conduct further inquiry to determine whether historic properties may be affected by the discharge, or construction and installation of the stormwater management practice or BMPs to control the discharge.

Electronic listing of National Register of Historic Places is maintained by the National Park Service (<http://www.nps.gov/nr>). Electronic listing of the Massachusetts Register of Historic Places is maintained by the Massachusetts Historical Commission (<http://www.sec.state.ma.us/MHC>). The addresses for the Massachusetts Historic Preservation Officer is listed in Section D of this appendix. MS4s seeking authorization may also contact city, county or other local historical societies for assistance, especially when determining if a place or property is eligible for listing on the register.

### **C. Permit Eligibility Criteria**

An MS4 seeking coverage under this permit must document that one of more of the following criteria has been met:

- Criterion A: The project does not involve new construction or the demolition or rehabilitation of existing buildings or other structures or facilities and historic properties are not affected by the discharge or identified in the path of the discharges regulated by this permit.
- Criterion B: The project does involve new construction and/or the demolition or rehabilitation of existing buildings or other structures or facilities and historic properties are not affected by the discharge or identified in the path of the discharges regulated by this permit and are not identified where installation or construction of BMPs to control such discharges.
- Criterion C: Historic properties are either (a) affected by your discharge or (b) identified in the path of a discharge or where the construction of stormwater management systems or BMPs are planned. In this case the applicant must evaluate the effects, at a minimum through a Section 106 project review the State Historic Preservation Office or with the Tribal Historic Preservation Officer and include documentation of all written correspondence with the Notice of Intent. The Notice of Intent also must include any terms and conditions resulting from this evaluation and interaction that the applicant must follow to mitigate or prevent adverse effects due to activities regulated by this permit.

### **D. Eligibility Process**

Applicants need to answer the following question and follow the procedures below to assist EPA in compliance with 36 CFR 800.

*Does the project involve new construction, or the demolition or rehabilitation of existing buildings or other structures or facilities?*

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**NO:** The applicant should certify that fact in writing and file the statement with the NOI.

**YES:** The applicant should initiate a request for project review by following the instructions and using the forms available at <http://www.sec.state.ma.us/MHC/mhcrevcom/revcomidx.htm> .

The applicant should prepare a complete information submittal to the Massachusetts State Historic Preservation Officer (SHPO) that consists of the following:

- Completed Project Notification Form available at: <http://www.sec.state.ma.us/mhc/mhcform/formidx.htm>
- USGS map section with the actual project location and boundaries clearly indicated.
- Scaled project plans showing existing and proposed conditions; and
- Current photographs of the project area keyed to the plans.

(1) Mail or deliver your submittal to: State Historic Preservation Officer, Massachusetts Historical Commission, 220 Morrissey Blvd., Boston, MA 02125

(2) Provide a copy of your submittal to your town or city government historical commission, and for projects within “local historical districts”, also provide a copy of your submittal to your town or city government local historic district commission. The contact address for you local historical and historic district commission are at you town or city hall.

The Massachusetts SHPO will comment within thirty days of receipt of complete submittals, and may ask for additional information. The EPA will consult with the Massachusetts SHPO and other consulting parties (which includes the applicant) and EPA will proceed with the steps in the federal regulations (36 CFR 800.2 to 800.6, etc) as may be necessary for the undertaking.

### **E. Internet Information on the National Register of Historic Places**

The National Register of Historic Places is that nation’s official list of cultural resources worthy of preservation. Authorized under the nation historic Preservation Act of 1966, the national Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archeological resources. Properties listed in the Register include districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, engineering, and culture. The National Register is administered by the National Park Service, which is part of the U.S. Department of the Interior.

An electronic listing of the National Register of Historic Places, as maintained by the National Park Service, can be accessed at: <http://www.nps.gov/nr>

### **F. Addresses for SHPO and THPO**

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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 eligibility condition.

The Massachusetts Historic Commission website is:  
<http://www.sec.state.ma.us/MHC/mhcidx.htm>

### **G. Advisory Council on Historic Preservation**

The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and productive use of our nation's historic resources, and advises the President and Congress on the national historic preservation policy.

The goal of the NHPA, which established the ACHP in 1966, is to have federal agencies act as responsible stewards of our nation's resources when their actions affect historic properties. ACHP is the only entity with the legal responsibility to encourage federal agencies to factor historic preservation into federal project requirements.

As directed by NHPA, ACHP serves as the primary federal policy advisor to the President and Congress; recommends administrative and legislative improvements for protecting our nation's heritage; advocates full consideration of historic values in federal decision making; and reviews federal programs and policies to promote effectiveness, coordination, and consistency with national preservation policies.

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