

Preserving America's Heritage

June 25, 2014

Caroline M. Blanco
Assistant General Counsel
National Science Foundation
4201 Wilson Boulevard, Suite 1265
Arlington, VA 22230

Ref: NSF Cooperative Agreement with Thirty Meter Telescope (TMT)
NSF Award 0443999
Mauna Kea, Hawaii

Dear Ms. Blanco:

The Advisory Council on Historic Preservation (ACHP) has received your response to our letter of June 4, 2014, regarding the National Science Foundation's (NSF's) funding of a cooperative agreement (NSF Award 0443999) with the Thirty-Meter Telescope (TMT) Project and its compliance with Section 106 of the National Historic Preservation Act (NHPA) [16 U.S.C. § 470f] and its implementing regulations, "Protection of Historic Properties" (36 C.F.R. Part 800 (2004)). NSF has concluded, based on 36 C.F.R. § 800.3(a), that the activities supported by this cooperative agreement are not activities that have the potential to cause effects on historic properties. As such, NSF has concluded that it has no further review obligations under Section 106. Further, it is NSF's conclusion that the NSF funding of this Cooperative Agreement does not convert the TMT Project into an undertaking for the purposes of Section 106. The ACHP does not find NSF's conclusions to be unreasonable in this instance for the reasons outlined in this letter.

According to the information you provided, the activities being funded are limited to governance planning focused on development of a partnership model for the TMT Observatory. The partnership model will include: a US astronomy community science plan, an integrated science and education plan, proposals for US groups to collaborate in TMT science instruments, a US operations plan, and a US TMT data management plan. The partnership model will be focused on the TMT, but is intended to serve as a model for other similar projects at other locations in the future. You have clarified that the funding made available by NSF is not for construction or planning related to construction. You also note that there is express language in the Cooperative Agreement stating that the use of award funds "for pre-construction design and development operations, or to support reviews such as Cost, Readiness, or Conceptual-, Preliminary-, Final-Design" is prohibited.

As we understand, NSF may consider joining the TMT partnership in the future, and may consider future requests for assistance related to the construction of the facility. However, you acknowledge the language in the Cooperative Agreement which expressly states that the Cooperative Agreement shall have no bearing on future commitments of NSF and that the Cooperative Agreement "does not obligate the NSF to future funding for the preconstruction, construction, or operations phases of the TMT Observatory."

ADVISORY COUNCIL ON HISTORIC PRESERVATION

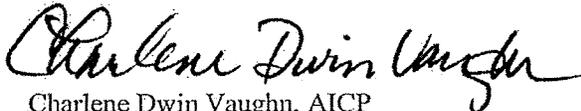
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Based on the information you have provided, the ACHP does not find NSF's position on this undertaking to be unreasonable since the federal assistance it is providing does not make the larger TMT project an activity subject to review under Section 106. Nevertheless, there does appear to be some expectation that NSF may, in the future, receive and approve applications for support related to construction of the facility. We therefore recommend that NSF consider consulting with the project proponents early on so that any required Section 106 review related to the construction and operation of the TMT facility on Mauna Kea can be carried out when a full range of alternatives are still available for review. In addition, NSF should take measures to avoid the potential for the applicant to trigger Section 110(k) of the NHPA (16 U.S.C. § 470h-2(k)) by initiating any type of construction activities that may result in adverse effects to historic properties with the intention of requesting federal assistance or authorization at subsequent stages of project implementation. As you know, Section 110(k) prohibits a federal agency from granting a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid Section 106 of the NHPA, has intentionally significantly adversely affected an historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur. Since the NSF is uniquely situated to monitor the ongoing activities related to the TMT Project, we urge you to inform the TMT Partnership that its actions should avoid compromising NSF's and other federal agencies' ability to meet the intent and spirit of Section 106.

In closing, pursuant to 36 C.F.R. § 800.3(a), the federal agency is responsible for making the determination of whether a federal action relates to an undertaking that has the potential to cause effects to historic properties and is thus subject to Section 106 review. We see no basis for objecting to NSF's conclusion, but think that it would be prudent to involve the TMT Partnership in discussions related to historic preservation at this time. The ACHP has provided these advisory comments regarding NSF's determination in accordance with 36 CFR § 800.2(b)(2). Should you have any questions or wish to discuss this matter further, please contact John T. Eddins, PhD, at 202-517-0211, or by e-mail at jeddins@achp.gov.

Sincerely,



Charlene Dwin Vaughn, AICP
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Federal Permitting, Licensing, and Assistance Section
Office of Federal Agency Programs