

**MEMORANDUM OF AGREEMENT
AMONG
THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND
THE MINNESOTA HISTORIC PRESERVATION OFFICE
REGARDING
CONSTRUCTION OF THE ZVAGO SAINT ANTHONY PARK
SENIOR COOPERATIVE DEVELOPMENT
SAINT PAUL, RAMSEY COUNTY, MINNESOTA
DRAFT 043-260-2017**

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) is considering providing mortgage insurance under the 213 21(d)(4) program to Zvago Cooperative at St. Anthony Park, a Minnesota cooperative corporation (Developer), for the construction of the Zvago Saint Anthony Park Senior Cooperative Development (Project), located at 2251 Luther Place in Saint Paul; and

WHEREAS, the Project is a federal undertaking and therefore subject to Section 106 of the National Historic Preservation Act (NHPA) [54 U.S.C. § 300101 et seq] and it's implementing regulations 36 CFR 800, and 24 CFR Part 50 of HUD's environmental regulations; and

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~~**WHEREAS**, HUD has consulted with the Minnesota Historic Preservation Officer (MnHPO) pursuant to 36 CFR § 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 USC § 470f); and~~

~~**WHEREAS**, the Area of Potential Effects (APE) for the Project includes properties listed in, or eligible for listing in, the National Register of Historic Places (NRHP) that would be directly or indirectly affected by the Project, and includes the Luther Seminary Campus and the face of several adjoining blocks; specifically the United Church Seminary (NRHP, also known as Bockman Hall); Norway Lutheran Church (NRHP, also known as Muskego Church), which is also locally designated by the Saint Paul Heritage Preservation Commission (SPHPC); and the Luther Seminary Upper Campus Historic District (Upper Campus) (NRHP-eligible). The APE is shown on Attachment A; and~~

~~**WHEREAS**, HUD has consulted with the Minnesota State Historic Preservation Officer (MnSHPO) pursuant to 36 CFR § 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 USC § 470f); and determined that the APE contains the following historic properties: the United Church Seminary (NRHP, also known as Bockman Hall); Norway Lutheran Church (NRHP, also known as Muskego Church), which is also locally designated by the Saint Paul Heritage Preservation Commission (SPHPC); and the Luther Seminary Upper Campus Historic District (Upper Campus) (NRHP-eligible); and~~

~~**WHEREAS**, HUD has determined in consultation with SHPO that there is little potential for significant pre-contact archaeological resources within the APE, but archeological resources related to the historic context of the Upper Campus may exist; and~~

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WHEREAS, the Project includes the demolition of three contributing residential buildings in the NRHP-eligible Luther Seminary Upper Campus Historic District (Upper Campus): 2375 Como Avenue West, known as House 18; 2375 Como Avenue West, known as House 19; and, 2375 Como Avenue West, known as House 21; and

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WHEREAS, these demolitions and other potential direct and indirect effects on the Upper Campus Historic District and Muskego Church and Bockman Hall constitute an Adverse Effect; and

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WHEREAS, HUD has notified the Advisory Council on Historic Preservation (ACHP) of the Project's Adverse Effect adverse effect in accordance with 36 CFR § 800.6(a)(1), and has provided the documentation specified in 36 CFR § 800.11(e) and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, HUD consulted with the SHPO regarding evaluation and resolution of Adverse Effects; and

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WHEREAS, HUD invited the following federally-recognized Indian tribes to consult on the Project, [add list of tribes], and none responded or expressed any concerns; and

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WHEREAS, HUD consulted with the Preservation Alliance of Minnesota, Minnesota Chapter of the Society of Architectural Historians, SPHPC, Saint Anthony Park Community Council, Historic Saint Paul, and Luther Seminary regarding the identification of historic properties and evaluation of effects of the undertaking on historic properties and has invited them to sign this Agreement as concurring parties; and

WHEREAS, the Developer has responsibilities under this Memorandum of Agreement (Agreement) and is an Invited Signatory to this Agreement; and

WHEREAS, the Developer modified the design of the Project to respond to community concerns about the compatibility of the Project with the neighborhood in meetings held prior to initiation of the Section 106 review and review of those modifications during the Section 106 review did not identify additional potential design changes that would further minimize the effects of the Project; and

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WHEREAS, HUD has determined that there is little potential for significant pre-contact archaeological resources to be affected by the Project. The potential for significant historic archaeological resources is also small and can be addressed by monitoring during construction; and

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WHEREAS, the evaluation of the possible relocation of Houses 18, 19, and 21 in the report entitled _____ concluded that relocation was not feasible; and

Developer has evaluated the possibility of relocating WHEREAS, Project design plans dated _____ have been reviewed by SHPO for compatibility with the Upper Campus, to the extent feasible given the Adverse Effect of the new construction, and SHPO has provided comments to the Developer regarding possible further design changes; ~~three buildings that contribute to the Upper Campus and will be demolished by the Project, and concluded that it is not reasonable to require the Developer to relocate the buildings; and~~

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~~WHEREAS, HUD has determined that the Project will adversely affect the Upper Campus; and~~

~~WHEREAS, HUD and the MnHPO agree that there is no practicable alternative that would avoid adverse effects on the Upper Campus; and~~

~~WHEREAS, HUD has notified the Advisory Council on Historic Preservation (ACHP) of this adverse effect in accordance with 36 CFR § 800.6(a)(1), and has provided the documentation specified in 36 CFR § 800.11(e) and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and~~

~~WHEREAS, the Developer has responsibilities under this Memorandum of Agreement (Agreement) and is an invited signatory to this Agreement; and~~

~~WHEREAS, HUD has consulted with the Preservation Alliance of Minnesota, Minnesota Chapter of the Society of Architectural Historians, SPHPC, Saint Anthony Park Community Council, Historic Saint Paul, and Luther Seminary regarding the effects of the undertaking on historic properties and has invited them to sign this Agreement as concurring parties; and~~

NOW THEREFORE, HUD and the ~~SM~~MnHPO agree that the following stipulations are appropriate mitigation and ~~take into account~~consider the effects of the undertaking on historic properties.

STIPULATIONS

HUD shall ensure that the following stipulations are satisfactorily completed.

I. MITIGATION

As mitigation for the adverse effect on the Upper Campus, the Developer shall, at its own expense, complete Level II Historic American Building Survey (HABS) and Historic American Landscapes Survey (HALS) documentation of the three buildings that will be demolished and the landscape that will be affected by the Project, ~~and~~ develop and implement a plan for public interpretation of the historic property, allow for salvage of important architectural features, monitor certain Project aspects during construction, support the preservation of Muskego Church, and prepare a National Register nomination for the Upper Campus. As appropriate, these mitigation deliverables shall be completed by an architectural historian or archeologist meeting the *Professional Qualification Standards* in the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (36 CFR Part 61). ~~The Developer shall also allow Luther Seminary to salvage materials from the three buildings that will be demolished.~~

A.

1. HABS/HALS Documentation

- a. The Developer shall complete Level II HABS/HALS photographic documentation in accordance with the *Secretary of the Interior's Standards and Guidelines for*

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Architectural and Engineering Documentation. One archival documentation set for each of the three buildings and for the landscape will be prepared, each containing a Historical Report, an Index to Photographs, and 4" x 5" prints of large-format photographs on mount cards. TIFF and JPEG copies of the photographs and a PDF copy of each documentation set will be also be provided.

- b. The Developer shall submit the archival prints on mount cards and two complete non-archival copies and one digital copy of the documentation to HUD for review and coordination with the SMnHPO.
- c. HUD shall submit the archival prints and one photocopy of the documentation to the SMnHPO for review and the SMnHPO shall determine if the documentation is complete and notify HUD of its acceptance or outline any additional documentation or edits needed to finalize this portion of the mitigation.
- d. HUD shall then notify the Developer in writing that the above requirements for the Level II HABS/HALS have been satisfied or outline any additional documentation needed to complete the mitigation as outlined above.
- e. HUD shall ensure that a digital and/or photocopy of the final version of the documentation be offered to the Ramsey County Historical Society, pursuant to the Society's established acquisition policies, and the Saint Paul Public Library.
- f. The Developer shall not proceed with any work affecting the Upper Campus or its setting until HUD has determined that there are no unresolved issues pertaining to the photographic requirements for the Level II HABS/HALS and HUD has issued a written notice to proceed.

g. HABS/HALS photography will be completed before the Project begins.

2. Interpretation

a. The Developer shall develop and implement a plan for public interpretation of the Upper Campus, particularly the buildings and landscape features affected by the Project. The Developer will submit the plan to HUD for review and coordination with the SHPO. The plan shall address not only the content of the interpretation, but also the proposed location and format of interpretation.

b. An interpretation plan will be submitted within six (6) months of beginning the Project. The plan will be implemented and the interpretation completed within six (6) months after the completion of the Project.

3. Design Review

a. The Developer shall revise the Project design plans referenced in the last WHEREAS clause above in response to the comments provided by SHPO.

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b. The Developer will provide the revised plans to SHPO for a 15-day review period. If SHPO approves the revised plans, the Project may proceed per that design. If SHPO does not respond within 15 days, concurrence can be assumed and the Project may proceed per that design. If SHPO has further comments, the Developer will address them and resubmit design plans for SHPO approval.

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4. Salvage

2. Prior to commencement of the Project, the Developer shall identify and carefully remove

a. The Developer shall allow Luther Seminary a period of fifteen (15) calendar days (Salvage Period) to salvage materials of historical and architectural value from Houses 18, 19, and 21 the three buildings that will be demolished by the Project prior to commencing any Project activities. These materials shall include features that are attributed to master woodcarver Erik Kristian Johnsen in House 21. The Johnsen artifacts shall be offered for curation and display purposes to the Luther Seminary and/or Vesterheim, the Norwegian American Museum in Decorah, Iowa. The Developer will inform Luther Seminary in writing seven (7) calendar days in advance of the beginning of the Salvage Period.

a. The Salvage Period will be completed before the Project begins.

3. Interpretation

a. The Developer shall develop and implement a plan for public interpretation of the Upper Campus, particularly the buildings and landscape features affected by the Project. The Developer will submit the plan to HUD for review and coordination with the MnHPO. The plan shall address not only the content of the interpretation, but also the proposed location and format of interpretation.

b. An interpretation plan will be submitted within six (6) months of beginning the Project. The plan will be implemented following the completion of the Project.

5. Vibration Monitoring

a. Prior to the commencement of any construction, demolition or site disturbance, the Developer will establish, in consultation with the SHPO, a Vibration Tolerance and Monitoring Program (Program) to safeguard historic properties within the Upper Campus from inadvertent damage from vibration due to ground disturbing activities. Special attention will be paid to protecting Muskego Church. A structural engineer experienced in traditional materials will develop this program and will take into consideration current soils conditions, strength and duration of disturbance.

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cumulative effects of ongoing vibration, construction type and current condition of the buildings. The Program will reference the Bureau of Mines' and Federal Transit Administration's vibration standards and justify any discrepancies with these authorities due to site or location specific conditions. The Program will include stop work protocols.

6. Archaeological Monitoring

a.

II. MONITORING AND REPORTING

A. Noise and Vibration: The Developer will monitor noise and vibration levels during demolition and construction to avoid damaging Norway Lutheran Church. The Developer shall respond to any complaints about noise and vibration that are received during demolition or construction related to the Project, and shall notify HUD and MnHPO about such complaints in a timely manner.

B. Archaeological Monitoring: Prior to commencement of ground-disturbing construction activities, a Monitoring Plan (Plan) shall be completed by an archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards for historic archaeology (as per 36 CFR § 61) under contract with the Developer. The Developer shall submit the Plan to the MnHPO for review and approval, and implement the approved Plan.

activities, a Monitoring Plan (Plan) shall be completed by an archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards for historic archaeology (as per 36 CFR § 61) under contract with the Developer. The Developer shall submit the Plan to the SHPO for review and approval, and implement the approved Plan. If any potentially significant resources are observed, the Developer will follow the protocol in stipulation II to evaluate and resolve any adverse effects to historic properties.

7. Preservation of Muskego Church

a. The Developer will contribute \$ _____ to the Luther Seminary to fund implementation of the top preservation priorities identified in the Historic Structures Report for the Muskego Church, in conformance with "Preservation Brief #26: The Preservation and Repair of Historic Log Buildings," and under the supervision of a person experienced in the preservation of historic log structures. The SHPO may assist in identifying a person with the necessary skills.

8. National Register Nomination

a. The Developer will contract with an architectural historian who meets the Secretary of the Interior's Professional Qualifications Standards to prepare a National Register nomination form, including archival photographs, for the Luther Seminary Upper Campus Historic District and encourage Luther Seminary to request that the SHPO nominate it to the National Register of Historic Places. The Developer will place a

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copy of the nomination form at the Ramsey County Historical Society and the Saint Paul Public Library.

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III-II. INADVERTENT DISCOVERIES

- A. If previously unidentified historic properties (including archaeological sites) or unanticipated effects to historic properties (including exceptionally significant finds) are discovered during Project activities, the Developer shall immediately halt all Project activities within a one hundred (100) foot radius of the discovery, notify HUD of the discovery and implement interim measures to protect the discovery from looting and vandalism.
- B. Immediately upon receipt of the notification required in Stipulation III.A above, the Developer and HUD shall inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted, clearly mark the area of discovery, implement additional measures, as appropriate, to protect the discovery from looting and vandalism, and notify the SMHHPO.
- C. HUD, in consultation with SMHHPO, will design a plan for avoiding, minimizing, or mitigating any further adverse effects prior to resuming Project activities in the area of discovery.
- D. Treatment of Human Remains
 - 1. If an inadvertent discovery contains human remains, the Developer shall immediately notify the Ramsey County Sheriff, Office of the State Archaeologist (OSA), and HUD, and descendant communities including Indian tribes to comply with provisions of Stipulation III.A above and Minnesota Statute 307.08.
 - 2. Suspected human remains shall not be further disturbed or removed until disposition has been determined by the OSA consistent with the *Procedures for Implementing Minnesota's Private Cemeteries Act* (Anfinson 2008).
 - 3. At all time the human remains must be treated with the utmost dignity and respect, and in a manner consistent with the ACHP's *Policy Statement on the Treatment of Human Remains, Burial Sites, and Funerary Objects* (February 23, 2007).
- E. The Developer shall ensure that the requirements established in Stipulation III are incorporated into all appropriate construction contracts.

IV-III. DISPUTE RESOLUTION

- A. Should any party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, HUD shall consult with

such party to resolve the objection. If HUD determines that such objection cannot be resolved, HUD will:

1. Forward all documentation relevant to the dispute, including HUD's proposed resolution, to the ACHP. The ACHP shall provide HUD with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, HUD shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and concurring parties, and provide them with a copy of this written response. HUD will then proceed according to its final decision.
2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, HUD may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, HUD shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement, and provide them and the ACHP with a copy of such written response.
3. The responsibility of the parties to this Agreement to carry out all actions under this Agreement that are not the subjects of the dispute will remain unchanged.

VI. IV. REVIEW OF PUBLIC OBJECTIONS

At any time during the implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, HUD shall take the objection into account and consult as needed with the objecting party and the ~~SM~~HPO, or the ACHP to resolve the objection.

VI. V. AMENDMENTS

Any Signatory party to this Agreement may propose that the Agreement be amended, whereupon the parties to this Agreement shall consider such an amendment. The regulations at 36 CFR § 800 shall govern the execution of the amendment.

VII. TERMINATION

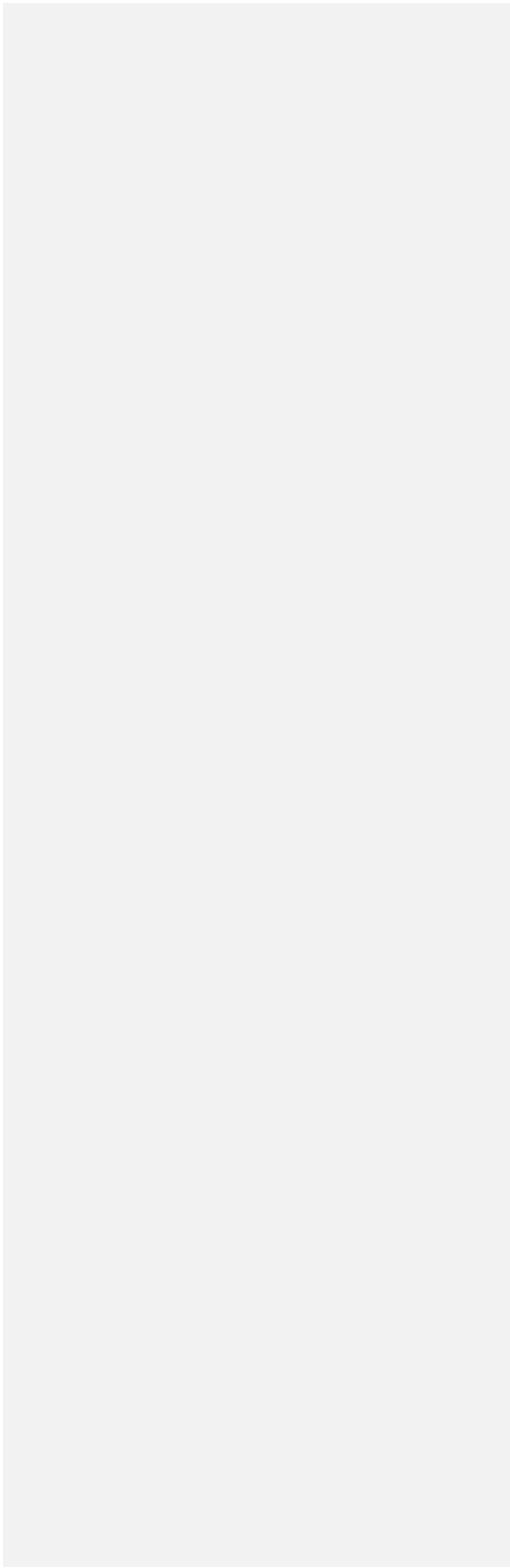
Any Signatory party to this Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

VIII. DURATION

This Agreement will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, HUD may consult with the other signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation VI. above.

Execution of this Agreement by HUD, ~~and the SMHPO~~ and the Developer and satisfaction of its terms evidence that HUD has taken into account the effects of the undertaking on historic properties pursuant to Section 106 of the National Historic Preservation Act.

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[In the final version, each signature will be on a separate page]

SIGNATORIES

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: _____ Date _____
[Name and title]

MINNESOTA HISTORIC PRESERVATION OFFICE

By: _____ Date _____
Ms. Amy Spong, Deputy State Historic Preservation Officer

INVITED SIGNATORIES

ZVAGO COOPERATIVE AT ST. ANTHONY PARK

By: _____ Date _____
[Name and title]

CONCURRING PARTIES

LUTHER SEMINARY

By: _____ Date _____
[Name and title]

PRESERVATION ALLIANCE OF MINNESOTA

By: _____ Date _____
[Name and title]

MINNESOTA CHAPTER OF THE SOCIETY OF ARCHITECTURAL HISTORIANS

By: _____ Date _____
[Name and title]

SAINT PAUL HERITAGE PRESERVATION COMMISSION

By: _____ Date _____
[Name and title]

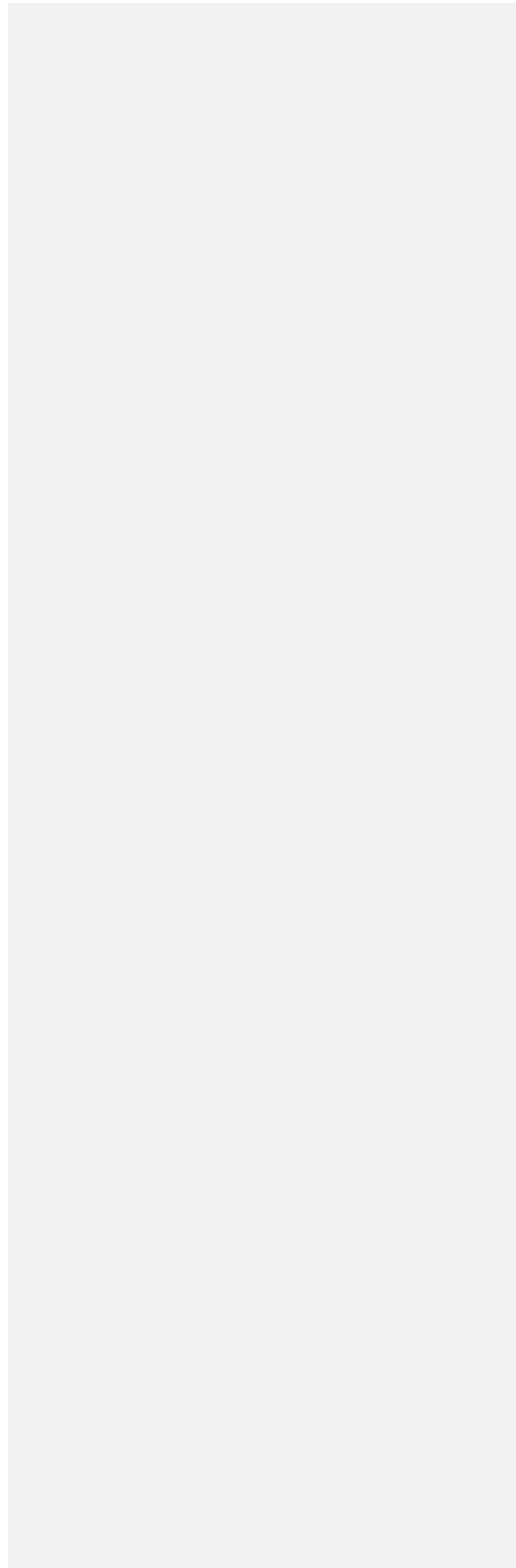
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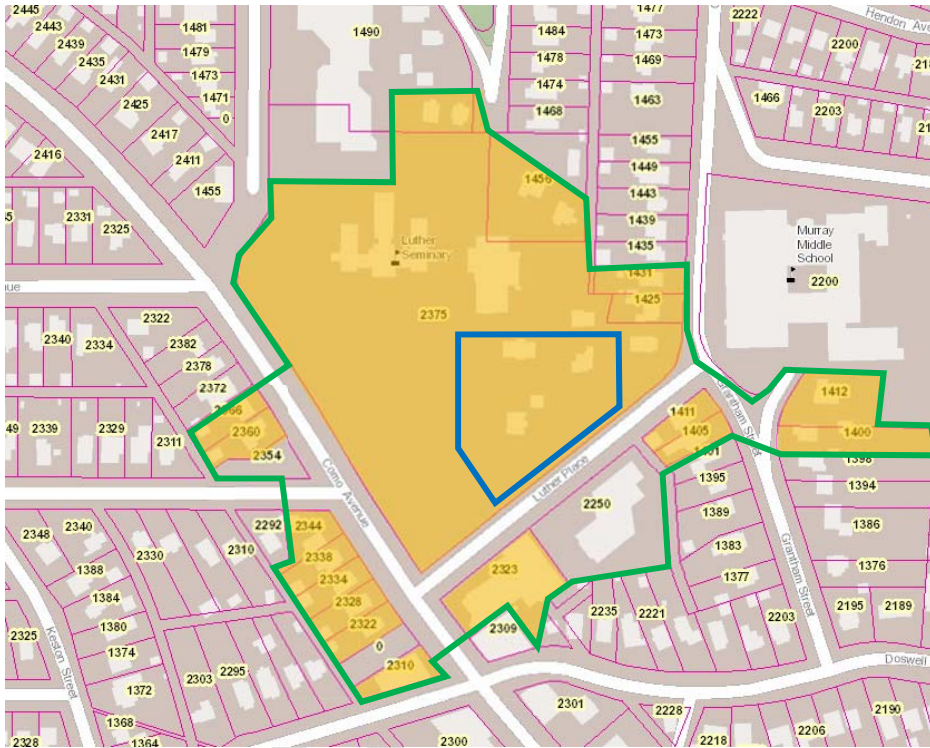
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ATTACHMENT A

Area of Potential Effects for the Zvago Saint Anthony Park Senior Cooperative



Area of direct impact

Area of indirect impact



Property at least 45 years old