

PROGRAMMATIC AGREEMENT

among

**VERMONT STATE HISTORIC PRESERVATION OFFICER,
VERMONT AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT**

and

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

for the

**ADMINISTRATION OF THE
VERMONT COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS**

2016 Amendment

**COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS
PROGRAMMATIC AGREEMENT**

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VERMONT STATE HISTORIC PRESERVATION OFFICER,

VERMONT AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT

and

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

for the

ADMINISTRATION OF THE

VERMONT COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS

WHEREAS, the U. S. Department of Housing and Urban Development (HUD) has allocated Small Cities Community Development Block Grant (CDBG) funds to the Vermont Agency of Commerce and Community Development (Agency) in accordance with Title I of the Housing and Community Development Act of 1974, as amended; and

WHEREAS, pursuant to 24 CFR Part 58, HUD has delegated the responsibility for compliance with the requirements of Section 106 of the National Historic Preservation Act to recipient State agencies and Participating Jurisdictions receiving funds from the CDBG program; and

WHEREAS, the implementation of the CDBG may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) pursuant to 36 CFR Part 800, implementing 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108); and

WHEREAS, the Agency intends to comply with the principles identified in the Advisory Council on Historic Preservation (Council)'s "Policy Statement on Affordable Housing and Historic Preservation" and other policy statements set forth in this Programmatic Agreement as published in the Federal Register on February 15, 2007 (72 Fed. Reg. 7387); and

WHEREAS, in accordance with 36 CFR 800, the Agency acknowledges and accepts the advice and conditions outlined in the Council's "Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites" published in the Federal Register on May 18, 1999; and

WHEREAS, the Agency, Council, and the State Historic Preservation Officer (SHPO) have determined that the Agency can effectively fulfill its Section 106 review responsibilities for CDBG activities if a programmatic approach is used, pursuant to 36 CFR §800.14, to delegate Section 106 compliance responsibilities to the Recipients of CDBG funds, when they agree to assume this responsibility, and to identify activities which can be excluded from the Section 106 review because they have limited potential to adversely affect historic properties; and

WHEREAS, the recipients of CDBG funds are units of local government (Recipients), identified as Participating Jurisdictions, and may assume responsibility for complying with Section 106; and

WHEREAS, the Agency will continue to conduct outreach and will actively seek and request the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by Undertakings funded under the terms of this Agreement; and

WHEREAS, the Agency acknowledges that Indian tribes possess special expertise in assessing the National Register eligibility of properties with tribal religious and cultural significance; and

WHEREAS, the Agency intends to comply with the Council's *Handbook on Consultation with Indian Tribes in the Section 106 Review Process* (June 2012); and

WHEREAS, the SHPO has delegated certain responsibilities for Section 106 project review to Vermont Division for Historic Preservation (VDHP) staff while retaining ultimate responsibility and signatory authority;

WHEREAS, the parties to this Programmatic Agreement conducted public outreach in the development of this Agreement by publicly posting information on the internet and by sending a draft copy via electronic mail to a broad list of interested parties, and responded to every comment received; and

NOW, THEREFORE, THE AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT, the VERMONT STATE HISTORIC PRESERVATION OFFICER and the ADVISORY COUNCIL ON HISTORIC PRESERVATION do stipulate and agree that the Vermont Community Development Block Grant (CDBG) Programs shall be implemented and administered in accordance with the following stipulations in order to take into account the effects of undertakings on historic properties to satisfy the Agency's Section 106 responsibilities.

STIPULATIONS

The Agency will ensure that the following stipulations are carried out.

I. QUALIFIED PROFESSIONALS

1. Some projects may require that Recipients retain qualified professionals in architectural history/historic preservation or archaeology. The Agency will ensure that Recipients of CDBG funds will contract with qualified professionals who meet the Secretary of the Interior's Professional Qualifications Standards, found in 36 CFR 61 (48 FR 44738-9), and have a clear understanding of how to interpret and apply the Secretary of the Interior's *Standards* and the National Register criteria, and have attended the annual VDHP Consultant Training, in collaboration with the CDBG Environmental Officer, to carry out reviews related to their profession that are required under the terms of this Programmatic Agreement. The Agency, in consultation with the SHPO, shall develop a list of pre-qualified professionals for use in the CDBG Programs. Responsibilities delegated to the qualified professional include:
 - a. identifying and evaluating historic properties;
 - b. reviewing plans and specifications;
 - c. making **recommendations** for determinations of eligibility and effect;
 - d. preparing comment letters and other documents for SHPO concurrence; and

- e. other tasks related to Section 106 compliance under this Programmatic Agreement.
2. The qualified professional shall consult with the VDHP when there is a potential for historic properties to be affected as noted on the §106 Preliminary Review Form (PRF) and will continue throughout the course of consultation for project review.
3. The Agency shall keep resumes of qualified professionals on file and available to the SHPO if requested.
4. If a professional who has been included on the pre-qualified list fails to adhere to the Secretary of the Interior's Standards, the National Register criteria, or the terms of this Programmatic Agreement, the Agency, in consultation with the SHPO, may remove the professional from the pre-qualified list.
5. Should the Agency determine that Recipients cannot contract with qualified historic preservation professionals to carry out the review pursuant to this Programmatic Agreement, the Agency shall consult with the SHPO to determine alternate administrative arrangements for the Agency to complete the reviews required pursuant to this Programmatic Agreement. The Agency shall notify the Council in writing of any alternate procedures approved by the SHPO.

II. EXEMPT PROPERTIES AND ACTIVITIES

1. If a project satisfies all of the following criteria:
 - a. Project does not involve ground disturbance;
 - b. Project is not located in (or adjacent to) a Historic District or Designated Downtown;
 - c. Project does not involve any buildings listed in the National Register of Historic Places; **and**
 - d. Project consists of rehabilitation of buildings or structures less than 50 years old.

Then such properties and activities are considered exempt from this Programmatic Agreement. This determination is made by the Recipient or qualified professional as described above.

2. A project that does not satisfy **all** of the criteria listed in Section II(1), above, will nonetheless be exempt from this Programmatic Agreement if it is limited solely to the exempt activities listed in Appendix A. A Recipient or a qualified professional as described above can make this determination.
3. For projects that are exempt under paragraph (1) or (2) above, the PRF documenting the determination shall be submitted to VDHP and the Agency for recordation purposes only; this notification serves as consultation with Agency staff. No further review is required.
4. In accord with the Council's Policy Statement on Affordable Housing and Historic Preservation, for affordable housing projects that do not involve a building that is listed or considered eligible for listing in the National Register as an individual property or specific interior elements that contribute to maintaining a historic district's character, review under this Programmatic Agreement shall be limited to proposed changes to the exterior of the building or proposed changes that will be visible from the exterior.

III. ROLES OF RECIPIENTS, SHPO, AND AGENCY

1. The Recipient shall retain a qualified professional to: identify and evaluate the project's area of potential effect; identify and evaluate historic properties within the project's area of potential effect; if

the project involves any ground disturbance, evaluate whether the project's area of potential effect falls within or intersects with the ancestral homelands of the Stockbridge Munsee Community, as identified on Exhibit A to this Programmatic Agreement, or any other federally recognized tribe, and if so, initiate consultation with the tribal leadership; make recommendations for a property's determination of eligibility for the National Register of Historic Places, evaluate and make recommendations for determinations of a project's effect on historic properties; develop appropriate treatment or mitigation measures to avoid, minimize, or mitigate any effects; and submit appropriate documentation of these actions for concurrence with the SHPO, and if appropriate, the tribal leadership, as set out in this Programmatic Agreement.

2. The SHPO, through VDHP staff, shall assist the Recipient in this process by providing available information and consulting with the Recipient and its qualified professional when asked or when required under the terms of this Programmatic Agreement.
3. The Agency shall assist the Recipient to comply with Section 106 by providing technical assistance, and organizing and presenting training.
4. The Agency shall maintain project files and report on program activity as required in this Programmatic Agreement.
5. If the project requires a State Land Use (Act 250) permit, the Recipient should consult with VDHP regarding identification and treatment of historic properties within that process and in coordination with Section 106 Review. Although a consultant's report may be used for supporting documentation in the Act 250 process, it is VDHP's responsibility to provide recommendations to the District Environmental Commission, the entity who issues a permit with appropriate conditions. Therefore, it is important for the qualified professional and VDHP to work together in a coordinated effort.
6. Similar coordination is required with VDHP and the National Park Service for projects that will utilize Rehabilitation Investment Tax Credits.

IV. IDENTIFYING AND EVALUATING HISTORIC PROPERTIES

1. Preliminary step in identifying potential historic properties.
 - a. All Projects will require a Preliminary Review Form. During the Preliminary Review stage of the Environmental Review process, the potential Recipient shall consult with VDHP to identify information in existing inventories on historic properties that may be affected by project activities. VDHP shall conduct this background review by checking:
 - i. current listings of the NRHP;
 - ii. Vermont Historic Sites and Structures Survey;
 - iii. Vermont Archaeological Inventory;
 - iv. properties recommended by the qualified professional as meeting the National Register Criteria for Evaluation and determined to be eligible for the NRHP by VDHP; and
 - v. any other readily available information in the SHPO's files.
 - b. VDHP shall also apply the environmental predictive model to determine if the project area contains potential archaeological sites.

- c. VDHP shall provide any applicable information identified in the above background review to the potential Recipient at that time.
- d. In the case of scattered site housing rehabilitation or scattered site economic development projects, where the specific locations of projects are unknown at the Preliminary Review stage, the Recipient and/or qualified professional, if needed, shall conduct the above background review once specific locations are known.
- e. The Agency or Recipient may submit recommendations for eligibility determinations for properties to VDHP concurrently with proposed treatment plans to expedite the Section 106 review. VDHP shall provide written comments to the Agency and Grantee within 30 days following receipt of adequate documentation.
- f. If it is determined that there is a potential for historic architectural or archaeological properties to be affected, a qualified professional must be retained.

2. Identifying and evaluating historic buildings or structures.

- a. For properties not listed in the NRHP and not exempt under Section II of this Agreement, the qualified professional shall evaluate the properties and make recommendations for National Register eligibility based on the NRHP Criteria for Evaluation.
- b. The qualified professional and the Recipient shall submit a preliminary determination of eligibility with VDHP for preliminary concurrence, and for final concurrence prior to any construction activities commencing.
- c. If VDHP concurs with the qualified professional's determination of eligibility, and the Recipient agrees, then proceed to Section IV(3). If there is not agreement regarding a determination of eligibility, then proceed to Section IV(5).
- d. For evaluation of properties in potential historic districts, the qualified professional shall consult with VDHP for guidance on what additional information and materials the professional may need to provide.
- e. Documentation: The qualified professional shall submit the evaluation documentation to VDHP. For eligible buildings or structures not included in the Vermont Historic Sites and Structures Survey, the documentation shall include a completed Survey form and digital photograph. VDHP may specify an alternative documentation format.

3. Identifying and evaluating archaeological resources.

- a. Projects involving ground-disturbing activities that are not listed as exempt activities in Appendix A, and were determined to have a potential for archaeological historic properties to be affected in the Preliminary Review Form, must be reviewed and approved by a qualified archaeological professional. Ground disturbing activities include, but are not limited to:
 - i. new construction;

- ii. construction of roads and parking lots;
- iii. land clearance and tree cutting in preparation for construction;
- iv. excavation for footings and foundations; and
- v. installation or replacement of sewer, water, storm drains, electrical, gas, leach lines, and septic tanks, unless included in Appendix A, exempt activities.

Notwithstanding the above, and in accord with the Council's Policy Statement on Affordable Housing and Historic Preservation, archaeological investigations are not required for affordable housing projects limited to rehabilitation and requiring minimal ground disturbance, which is generally defined as covering an area no more than 10 by 10 feet and no deeper than 6 inches.

- b. Identification and evaluation of archaeological resources must be carried out by the Recipient through the use of a qualified archaeological professional as early as possible during project planning. The qualified professional and the Recipient shall consult with VDHP and any federally recognized tribes that may attach religious and cultural significance to historic properties that may be affected by the project throughout this process.
- c. It is desirable and most cost effective at any stage of study outlined in d, e, and f (below) to avoid sites through appropriate conditions placed on the project design and construction specifications. Such conditions to preserve the site will be negotiated between the Recipient and the qualified professional. The Advisory Council's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" (1999 or most recent version) shall be followed (Appendix B).
- d. If VDHP's background review during the Preliminary Review Form process identifies potential archaeological sites within the project area, the VDHP shall recommend that the Recipient retain a qualified archaeological professional to conduct an Archaeological Resources Assessment (ARA). The purpose of an ARA is to identify areas that have been significantly disturbed in the past; specific areas that are likely to contain archaeological sites; and potential archaeological issues that must be considered during project planning. In some cases, the VDHP may conclude that there is enough information to initiate a Phase I site identification study without completing an ARA. In this case, and if any archaeologically sensitive areas identified in an ARA cannot be avoided, then proceed to Phase I as outlined below.
- e. Phase I Identification study. If the ARA concludes that potential archaeological sites exist within the project area and may be affected by the project, the Recipient shall retain a qualified archaeological professional to conduct a Phase I Identification study. If the potential archaeological site is Native American, and the site falls within or intersects with the ancestral homelands of the Stockbridge Munsee Community, as identified on Exhibit A to this Programmatic Agreement, or any other federally recognized tribe, the tribe shall be contacted. If an archaeological site is identified and cannot be avoided, then proceed to Phase II as outlined below.

- f. Phase II Evaluation Study. The Recipient shall retain a qualified archaeological professional to conduct a Phase II Evaluation study to determine whether the site meets the criteria for inclusion in the National Register of Historic Places. If the site cannot be avoided and will be destroyed in whole or in part by the project, then the Recipient and the qualified archaeological consultant shall develop a mitigation plan in consultation with VDHP and the Stockbridge Munsie Community or any other federally recognized tribe, as applicable (See Section VI (4)).
 - g. Documentation. All archaeological studies must meet the meet the “Guidelines for Conducting Archaeological Studies in Vermont” (most recent version) and the Secretary of the Interior’s *Standards and Guidelines for Archeology*. The Recipient shall provide copies of all reports and any associated Vermont Archaeological Inventory forms in digital formats to the VDHP. The VDHP may specify alternative documentation formats.
4. Public Notification of National Register Determinations:
- a. Prior to making recommendations for a determination of NRHP eligibility for a non-listed property, the qualified professional shall notify the Owner, chief elected local official, Certified Local Government (CLG) representative (where applicable,) in the town where the property is located, and invite them to provide comments to the qualified professional and VDHP concerning the historic, architectural and/or archaeological significance of the property.
 - b. Proof of documentation. The qualified professional will submit correspondence with owner and local officials.
5. Disagreement about NRHP Eligibility.
- a. If the Agency or the Recipient disagree with the qualified professional’s determination that a property meets the NRHP criteria, they shall request the SHPO provide a final determination of eligibility.
 - b. If the Agency or the Recipient disagree with VDHP’s findings, they shall obtain a formal determination of eligibility from the Keeper of the National Register in accordance with 36 CFR §800.4 (c) and 36 CFR 63 and notify VDHP accordingly.
6. Presence of Historic Resource.
- a. If there is a historic resource present, proceed to Section V. If there are no historic properties present, then the qualified professional shall submit this finding in a formal comment letter to VDHP for concurrence and inclusion in VDHP and the Agency project files.

V. TREATMENT OF HISTORIC PROPERTIES

1. Building rehabilitation: VDHP shall ensure that building rehabilitation plans and specifications for non-exempt CDBG activities are developed in accordance with the recommended approaches in the Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitation of Historic Buildings (Standards)* (Appendix C) as follows:

- a. Prior to the initiation of such activities, the Recipient shall submit to the qualified professional work write-ups or plans and specifications which evidence adherence to the Standards. The qualified professional shall review and make recommendations for VDHP approval of the plans and specifications.
 - b. If the qualified professional recommends modifications to the work write-ups or plans and specifications to ensure that the project meets the Standards, the Recipient shall make appropriate modifications and submit revised work write-ups or plans and specifications to the qualified professional.
 - c. If building demolition or other adverse effect is proposed, the qualified professional may ask the Recipient to provide the following information in order for the qualified professional to evaluate the feasibility of the undertaking:
 - i. condition assessments for various historic elements;
 - ii. alternative treatments considered and cost estimates for each;
 - iii. life-cycle maintenance costs related to each alternative;
 - iv. proposed measures to mitigate or minimize adverse effects; and
 - v. available marketing studies.
 - d. After reviewing the project documentation, the qualified professional shall submit a recommendation for finding of effect, with any relevant conditions, if appropriate, to VDHP for SHPO concurrence.
 - e. If the Recipient determines that they cannot make the modifications recommended by the qualified professional to meet the Standards and that the project will therefore have an adverse effect on historic properties, the qualified professional and the Recipient shall consult with VDHP to develop a Standard Mitigation Measures Agreement in accordance with Section VI.
 - f. In lieu of the review process outlined above, for building rehabilitation projects that use the Rehabilitation Investment Tax Credit (RITC), a Recipient may substitute a Part 2 Historic Preservation Certification Application (HPCA), approved and signed by the National Park Service, as evidence of compliance with the Standards. If the project contains work that was not included in and approved in the HPCA, such as new construction or ground disturbance that might affect archaeological sites, the remainder of the project shall be reviewed as outlined in this Agreement.
2. Scattered site projects: In the case of Scattered Sites Revolving Loan Fund Program, managed by the five existing home ownership centers (Rural Edge [Gilman Housing Trust]; Downstreet Housing & Community Development; NeighborWorks of Western Vermont; Champlain Housing Trust; and Windham & Windsor Housing Trust), documentation shall include the Section 106 Scattered Sites Documentation Report (SSDR), which will include a determination of eligibility justification, adequate photographic documentation of existing conditions, clear description of the scope of work and proposed alterations, and determination of effect with qualified professional's justification of recommendation. Each property must be documented and evaluated separately.

3. Designing new construction: Recipients shall ensure that the design of new construction, infill construction or additions to historic buildings is compatible with the historic qualities of the historic district or adjacent historic buildings in terms of size, scale, massing, design, color, features, and materials, and is responsive to the recommended approaches for new construction set forth in the Standards.
 - a. The Recipient shall develop preliminary design plans in consultation with the qualified professional. Final plans and specifications will be submitted to the qualified professional for review and approval prior to the initiation of construction activities.
 - b. If the qualified professional determines that the design of the new construction does not meet the Standards or would otherwise result in an adverse effect to historic properties, the Recipient shall notify VDHP and shall consult with the qualified professional and VDHP to modify the design or to develop a Standard Mitigation Measures Agreement in accordance with Section VI.
 - c. If VDHP determines that the Standard Mitigation Measures do not apply, the Agency shall follow the process outlined in Sections VI. 6 and VI. 7.
4. Protection of archaeological resources: Any project that involve ground disturbance must comply with Sections IV (3), VI (4), VIII, and IX.
5. Planning Grants: Unless activities being planned only involve exempt activities (see Appendix A), the Recipient is required to follow the provisions of this Programmatic Agreement. This provides a chance to identify and resolve issues and opportunities regarding historic and archaeological resources at the planning stage of a project.
6. Relocation of historic and contributing buildings: The Recipient and the qualified professional shall consult further with VDHP prior to the approval of plans when historic properties are proposed for relocation.
 - a. If a historic property proposed for relocation is a contributing structure within a historic district listed on or eligible for listing on the National Register, the Recipient shall make every effort to relocate the historic property within the same historic district. The Recipient shall forward documentation to the qualified professional explaining why relocation is required; the basis for selection of the new site; and a summary of the alternatives to relocation that were considered. The qualified professional shall forward documentation to VDHP regarding the location of the proposed new site for VDHP's review and comment. If VDHP objects to the proposed new site, all parties shall consult further with VDHP to evaluate alternate locations.
 - b. A qualified archaeological professional shall determine whether there are any potential archaeological sites at the new location. If such potential exists, a qualified archaeological professional shall follow the process set out in Section IV(c) of this agreement.
 - c. Upon approval of an alternative site by VDHP, the Recipient shall ensure that all historic properties are moved in accordance with the recommended approaches in Moving Historic Buildings (John Obed Curtis) by a professional mover who has the capability to move

historic properties properly. A relocation plan shall be submitted to the qualified professional for review and approval.

- d. If the Recipient determines that they cannot identify an alternate site acceptable to VDHP, the qualified professional shall consult with VDHP to develop a Standard Mitigation Measures Agreement or otherwise resolve the adverse effect in accordance with Section VI.
7. Demolition: The Recipient shall not proceed with the demolition of contributing buildings or portions of contributing buildings (i.e. ells, wings, attached sheds and barns, porches) within an historic district or properties listed or eligible for listing on the National Register if the demolition will result in an adverse effect as determined by the qualified professional or VDHP until the procedures set forth in this section are completed.
- a. The Recipient's qualified professional shall forward documentation to VDHP for each historic property or portion of property proposed for demolition, to include a reason for demolition, a recent structural analysis, a summary of alternatives considered, future plans for the site, and the proposed mitigation plan and the views of the public.
 - b. If VDHP determines that the proposed demolition is the most feasible alternative, the qualified professional shall develop a Standard Mitigation Measures Agreement in accordance with Section VI.
 - c. If VDHP determines that the Standard Mitigation Measures do not apply, the Agency shall follow the process outlined in Sections VI (6) and VI (7).
 - d. If new construction or a new use is proposed for this property, the qualified archaeological professional shall determine whether there are any potential archaeological sites on the property. If such potential exists, a qualified archaeological professional shall follow the process set out in section IV (4) of this agreement.
8. Disaster Response: A disaster or emergency under Section 106 is one declared by the President of the United States, tribal government, or the governor of the state of other immediate threat to life or property. Procedures addressing emergency situations are outlined in the section. These procedures apply only to those undertakings that will be implemented in response to the disaster or emergency within 30 days after the disaster or emergency has been formally declared by the appropriate authority or, in the case of an immediate threat to life or property, within 30 days after such an event occurs.
- a. Immediate rescues and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 (36 CFR § 800.12(d)). This exemption applies regardless of whether there has been a declared disaster or emergency. If the Agency determines that its undertaking meets the criteria for this exemption, the Agency may take necessary actions in a timely manner to address public health and safety.
 - b. Undertakings that will be implemented in response to a formally declared emergency within 30 days of the declaration shall be reviewed in accord with the project review process described elsewhere in this Programmatic Agreement, including paragraphs V(1), V(3), V(4), V(6), and V(7) but with an expedited timeframe to at least allow notification and some opportunity for consultation to the extent that such notice and consultation can be

conducted without endangering people's lives or property. This includes consideration of appropriate mitigation measures in the event of an adverse effect. Written notification of the emergency action being considered shall be provided to the SHPO, including information on the proposed action, the potential effects to historic properties, a description of the avoidance, minimization, or mitigation measures, if any, for the effects of the undertaking on historic properties and the timeframe available for comment.

VI. RESOLVING ADVERSE EFFECTS

1. If an undertaking may adversely affect a National Historic Landmark, the Agency shall request the SHPO, the Council, and the Secretary of the Interior to participate in consultation to resolve any adverse effects, as outlined in 36 CFR 800.10.
2. When the qualified professional determines that a proposed project will result in an adverse effect to an historic property, the qualified professional shall consult with VDHP on whether it is appropriate to execute a Standard Mitigation Measures Agreement as outlined in Appendix B. If VDHP determines that executing a Standard Mitigation Measures Agreement is appropriate to mitigate the proposed adverse effect, the qualified professional shall prepare an Agreement and submit it to VDHP for review. VDHP shall advise the Recipient and the Agency of its decision to execute the Agreement within thirty (30) days following its receipt with adequate documentation. The SHPO may consult with the Secretary of the Agency of Commerce and Community Development to resolve project conflicts.
3. When the SHPO determines that it is appropriate to execute a Standard Mitigation Measures Agreement, the Agreement shall be signed by the Agency, the SHPO, and the Recipient, and the Agency shall ensure that the terms of the Agreement are carried out.
4. In the case of an adverse effect to a National Register-eligible archaeological site, the qualified archaeological professional shall develop an Archaeological Data Recovery Plan as part of the Standard Mitigation Measures Agreement that meets applicable federal and state guidelines, including the Council's Treatment of Archaeological Properties and Recommended Approach for Consultation on Recovery of Significant Information From Archaeological Sites (1999), and the Guidelines for Conducting Archaeological Studies in Vermont (most recent and updated version). Data Recovery projects shall include a significant public education and interpretation component whenever appropriate. Materials recovered shall be curated and stored in accordance with 36 CFR 79 and VDHP curation standards.
5. If the qualified professional or VDHP determine that the Standard Mitigation Measures are not appropriate for a project, they shall consult with the Recipient and the Agency to seek ways to minimize or mitigate the adverse effects. If consensus is reached, the qualified professional shall prepare a Memorandum of Agreement, as outlined in 36 CFR §800.6 (b)(1), and the Agency, the Recipient, and the SHPO shall sign it.
6. The Recipient shall notify the Agency, VDHP and the Stockbridge Munsee Community or any other federally recognized tribe, as applicable when all the stipulations in the Standard Mitigation Measures Agreement have been successfully completed in the form of a letter or email describing how the measures have been achieved.

7. If the Agency and VDHP cannot reach consensus, the parties shall notify the Council and initiate the consultation process set forth in 36 CFR §800.6(b)(2). In addition, the Agency shall submit to the Council the background documentation outlined in Section V (1)(c).
8. If agreement is not reached, the parties shall follow the process set forth in 36 CFR §800.7, Failure to Resolve Adverse Effects.

VII. PUBLIC INVOLVEMENT

1. The Recipient shall determine the public interest in the proposed project and its potential to affect historic properties by informing the public about historic properties while meeting its public participation requirements as set forth in the regulations for CDBG and in complying with 24 CFR Part 58, which includes a requirement for a public notice. Recipients shall seek and consider the views of the public on their projects, in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking. Contact should be made with local historic preservation commissions where they exist and with other groups or individuals interested in the type(s) of historic resource or area affected by the undertaking. Recipients shall notify the Agency and VDHP of the public interest in any project activities covered under the terms of this Programmatic Agreement.
2. The Recipient, Agency, or VDHP may invite interested persons to participate as consulting parties in the Section 106 process in accordance with 36 CFR 800.3.
3. At any time during the implementation of the measures stipulated in this Programmatic Agreement, should the public raise an objection pertaining to the treatment of an historic property, the Agency shall notify VDHP and take the objection into account. The Agency and VDHP, when requested by the objector, shall consult to resolve the objection. The Recipient is not required to cease work while the objections are being reviewed.
4. Consulting parties and/or the public may request that the Council enter the consultation process. The Council will review 36 CFR 800 Appendix A, "Criteria for Council Involvement in Reviewing Individual Section 106 Cases" to determine if it is appropriate for the Council to enter consultation on a particular project.

VIII. DISCOVERY OF HISTORIC PROPERTIES OR ARCHAEOLOGICAL SITES DURING CONSTRUCTION

If previously unidentified archeological sites or unanticipated effects on historic properties are discovered during project construction, that portion of the project will stop immediately. The Recipient's qualified professional or qualified archeological professional shall determine actions that the Recipient can take to resolve potential adverse effects and the Recipient shall notify the Agency and the SHPO of the discovery and the possible actions within 48 hours of the discovery. The SHPO shall respond within two business days of the notification. The Agency shall take into account VDHP's recommendations and consult with the Recipient to carry out appropriate actions. When the actions are completed, CDBG shall provide a report on the actions to VDHP.

Whenever previously unknown belowground historic properties of religious and cultural significance are discovered during construction, excavation in the areas of the resources must immediately stop until tribal consultation can occur. The Recipient shall notify the Agency and the SHPO, which will notify the tribe(s), Tribal Historic Preservation Officer (THPO), and the Council within 48 hours of the discovery. A site visit with the Recipient, tribe(s), THPO (as appropriate), Agency, and SHPO (as appropriate) is recommended to resolve any potential adverse effect(s) to the historic property of religious and cultural significance.

IX. TREATMENT OF HUMAN REMAINS

If human remains are discovered during any phase of archaeological study or during construction, the study or that portion of the project will stop immediately. The Recipient shall immediately report the discovery to local police and the Office of the Chief Medical Examiner and follow applicable state laws and procedures, including 18 V.S.A. §5212b(f). The remains shall be respectfully covered over and secured. If the human remains are determined to be archaeological, the Recipient shall immediately contact VDHP. If the human remains are determined to be Indian burials, the Recipient should follow the guidance in the "Advisory Council on Historic Preservation Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects." A treatment and reburial plan shall be developed by the Recipient's qualified archaeological professional, in consultation with VDHP and appropriate Native Americans and THPO, if applicable. The Agency shall ensure that the treatment and reburial plan is fully implemented. Avoidance and preservation in place is the preferred option for treating human remains.

X. COORDINATION WITH OTHER FEDERAL SECTION 106 REVIEWS

If a project has been previously reviewed and approved under Section 106 in another federal program, such as HOME Investment Partnerships or Rural Development, no further review is required, as long as the project is the same one that was reviewed under the other program(s). A Recipient shall certify to Agency staff that a project has not changed (i.e. that the project plans have not changed as those referenced in the previous comment letter) when submitting a previous comment letter for compliance with Section 106 requirements under the HUD Environmental Review.

XI. ADMINISTRATIVE COORDINATION

1. VDHP shall provide comments within 30 days for reviews required under the terms of this Programmatic Agreement. In the event that VDHP fails to comment within the 30-day period, the Recipient and the Agency can assume that VDHP concurs.
2. The Agency shall develop, in consultation with VDHP and qualified professional, procedures for the implementation of the terms of this Programmatic Agreement.
3. The Agency and/or the qualified professional shall document in individual project files all program activities which involved historic properties and were subject to the terms of this Programmatic Agreement in individual project files. Each file shall include as appropriate:
 - i. documentation why the exemption from review is applicable;
 - ii. for non-exempt properties, documentation on the National Register eligibility of the property;
 - iii. copies of field inspection letters, archaeological scopes of work, and study reports;
 - iv. written comments on project effects;
 - v. a copy of the Standard Mitigation Measures Agreement;
 - vi. description of work or dated project plans and specifications;

- vii. photographs of the project before rehabilitation; and
- viii. date the project was completed.

This information shall be available for review by VDHP or Council following reasonable notice.

XII. MISCELLANEOUS PROVISIONS

1. Modifications. The qualified professional may make recommendations for modifications to previously approved specifications or Standard Mitigation Measures Agreements for VDHP concurrence, according to the procedures outlined in Section VI.
2. Dispute Resolution. Should VDHP object within a reasonable period to any specifications or actions covered by this Programmatic Agreement, the Agency shall consult further with VDHP to seek resolution. If the Agency determines that the objection cannot be resolved, the Agency shall forward all documentation relevant to the dispute to the Council. Within 45 calendar days after receipt of all pertinent documentation, the Council will provide the Agency with recommendations or comment in accordance with 36 CFR 800.7(c). The Agency will take into account the Council's recommendations or formal comments in reaching a final decision regarding the dispute. Any Council comment provided to the Agency in response to such a request will be taken into account by the Agency with reference to the subject of the dispute. Any recommendation or comment provided by the Council will be interpreted to relate only to the subject of the dispute, and the responsibility of the Agency to carry out all actions under this agreement that are not the subject of the dispute will remain unchanged.
3. Training Workshops. VDHP shall conduct program specific training workshops for qualified professionals in collaboration with the Agency. Attendance at one of these annual workshops will be mandatory for qualified professionals to be eligible to work under this Programmatic Agreement. Upon written request from the Agency, VDHP will provide training to assist Agency staff and Recipients to understand the technical requirements of the Programmatic Agreement.
4. Monitoring. VDHP and the Council may monitor any activities carried out pursuant to this Agreement. The Agency will cooperate with VDHP and Council should they request to monitor or to review project files for activities at specific project sites.
5. Reporting Requirements. The Agency shall provide VDHP with an Annual Report at the end of the federal fiscal year summarizing all projects reviewed under this Programmatic Agreement, and shall schedule a meeting with VDHP to discuss the Report by November 1st and report to be submitted to VDHP for review by December 1st.

This Annual Report shall include:

- i. a list of projects, categorized by name, town, exempt status, whether or not a historic property was involved, determination of effect, and whether an archaeologist or architectural historian (or both) was contracted to carry out reviews under the terms of this Programmatic Agreement;
- ii. the number of properties added to the Vermont Historic Sites and Structures Survey (VHSS) and the Vermont Archaeological Inventory (VAI);
- iii. a summary of mitigation measures undertaken, including the use of Standard Mitigation Measures Agreements;
- iv. a summary of archaeological activities conducted under the program;

- v. a summary of staff and consultant training held;
- vi. staff and consultant training proposed for the following year;
- vii. the views of the Agency regarding the effectiveness of the Programmatic Agreement.; and
- viii. suggestions for additional actions that could be considered for inclusion in the Exempt Activities list.

The signatories to the Programmatic Agreement shall review this information to determine what, if any, amendments are necessary. Any VHSSS and VAI forms, archaeological study reports, or other documentation not previously submitted to VDHP during the year should be enclosed with the Annual Report when it is submitted to VDHP.

XIII. EFFECTIVE DATE AND DURATION

This Programmatic Agreement shall take effect on the date it is signed by the last signatory. The Programmatic Agreement will remain in effect for 5 years, unless terminated pursuant to this Programmatic Agreement.

XIV. AMENDMENTS

Any party to this Programmatic Agreement may request that it be amended or modified, whereupon the Agency, the SHPO, and the Council will consult in accordance with 36 CFR 800.14 (b) to consider such revisions. Any resulting amendments or addenda shall be developed and executed among the Agency, SHPO, and Council in the same manner as the original Programmatic Agreement.

XV. TERMINATION

Any party to this Programmatic Agreement may terminate the Agreement by providing thirty (30) calendar days notice to the other parties, if the parties will make every reasonable effort to consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

XVI. FAILURE TO COMPLY WITH AGREEMENT

In the event that the Agency does not carry out the terms of this Programmatic Agreement, the Agency will comply with 36 CFR 800 with regard to each individual project for which Agency has awarded funding to the Recipient.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that the Agency has satisfied its Section 106 responsibilities for CDBG activities funded in whole or in part under the CDBG Program.

VERMONT AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT

Patricia M Date 1/26/16

By:

Date

PATRICIA MOULTON, SECRETARY

VERMONT STATE HISTORIC PRESERVATION OFFICER

Laura V. Trieschmann *January 25, 2016*
By: _____ Date _____
LAURA V. TRIESCHMANN

APPENDIX A

HUD-FUNDED CDBG PROGRAMS EXEMPT ACTIVITIES

As noted in Section II (1)(c): If activities are limited solely to those activities listed in Appendix A then such activities are considered exempt from this Programmatic Agreement. This determination is made in consultation with the Recipient and VDHP through submittal of the Preliminary Review Form to VDHP for concurrence and for VDHP and Agency files. No further review is required.

The following activities will not require review by the SHPO or Council:

1. **Non-Historic Buildings and Structures.** Rehabilitation of non-historic buildings and structures, (i.e. those less than 50 years old), except when alteration to the existing building or structure may impact a surrounding historic district. **New construction is not an exempt activity.**
2. **Mechanical, Electrical, Plumbing (MEP) Systems.** Repair, replacement and installation of MEP systems provided that such work does not involve ground disturbance, alter or permanently change the appearance of the interior or the exterior of the building, affect character-defining features of the building, or require the installation of new ducts through the interior: electrical work; plumbing pipes and fixtures; heating system improvements; installation of fire and smoke detectors; ventilation systems; and bathroom improvements where work is contained within the existing bathroom. Please refer to Preservation Briefs 24: *Heating, Ventilating, and Cooling Historic Buildings: Problems & Recommended Approaches*, and other technical briefs, as appropriate, for guidance.
3. **Exterior painting.** Repainting of exterior surfaces provided that destructive surface preparation treatments, including, but not limited to waterblasting, sandblasting, destructive sanding and chemical cleaning are not used. Please refer to Preservation Briefs 10: *Exterior Paint Problems on Historic Woodwork*, and other technical briefs, as appropriate, for guidance.
4. **Exterior Repairs.** Repair or partial replacement of deteriorated porches, cornices, exterior siding, doors, balustrades, stairs, or other trim when the repair or replacement is done in-kind to closely match existing material and form and does not involve ground disturbance. The removal of distinctive materials or alterations of features, spaces, and spatial relationships that characterize a property will be avoided. Please refer to Preservation Briefs 47: *Maintaining the Exterior of Small & Medium Size Historic Buildings*, and other technical briefs, as appropriate, for guidance.
5. **Windows.** Caulking; weatherstripping; reglazing and repainting of windows; installation of new window jambs or jamb liners; repair, replacement or installation of storm windows (exterior, interior, metal or wood) provided they match the historic shape and size of the historic prime windows and that the meeting rail coincides with that of the prime window. Color should match trim, if possible.

Replacement windows is not an exempt activity. If replacement windows are being proposed, the Consultant must provide a statement as to the condition of existing windows, why the existing windows cannot be retained, and/or cost considerations of retaining existing windows vs. installing replacements, and rationale for the design and selection of new windows, along with how these will meet the Secretary of the Interior's *Standards for Rehabilitation*.

6. **Roof Repair.** Roof repair of historic roofing with material that closely matches the existing design and form. When repairing existing roofing, corrugated fiberglass roofing is not appropriate.

Replacement of non-historic roofing is not an exempt activity. Preservation Briefs 4: *Roofing for Historic Buildings*, and other technical briefs, as appropriate, for guidance.

7. **Gutters.** Repair, replacement or installation of gutters and above ground downspouts.
8. **Insulation.** Insulation in ceilings, attic, and basement spaces provided it is installed with appropriate vapor barriers, such as the following:
 - a) Air sealing of the building shell, including caulking, weather-stripping, and other air infiltration control measures on windows and doors, and installing thresholds in a manner that does not harm or obscure historic windows or trim.
 - b) Thermal insulation, such as non-toxic fiberglass and foil-wrapped, in walls, floors, ceilings, attics, and foundations of wood-framed structures in a manner that does not harm or damage historic fabric and a mechanical ventilation system is present to direct moisture out of the building.
 - c) Dense-pack cellulose wall insulation in wood frame structures where no holes are drilled through exterior siding or where holes have no permanent visible alteration to the structure, and a mechanical ventilation system is present to direct moisture out of the building.
9. **Interior Surfaces (floors, walls, ceilings).** Repainting, refinishing, repapering, replacing sheetrock with sheetrock, replacing failing asbestos-containing plaster with traditional plaster system or veneer plaster on gypsum board, laying carpet or sheet flooring, or replacement of suspended ceiling tile.
10. **Interior Trim.** Repairing and retaining interior historic trim and features including doors, baseboards, chair rails, wainscoting, paneling, cornice trim, fireplace mantels, stair balusters, newel posts, window and door casings and other decorative features or replacement of flat stock trim.
11. **Site Improvements.** Repair of existing roads, driveways, sidewalks, parking lots and curbs, if repairs are done with like material, and there are no changes in dimension or configuration of these features. Repair of fencing when work is done in-kind to closely match existing material and form.
12. **Interior Floor Plan.** Removal or alteration of non-historic interior walls.
13. **Underground Utilities.** Emergency repair of water, gas, electric, storm and waste water systems if it occurs within the original trench or footprint.
14. **Lead Paint Abatement.** Interior lead paint abatement when it is limited to washing, scraping and repainting, wallpapering, and chemical stripping of lead-painted surfaces, installation of new window jambs or jamb liners, installation of metal panning in window wells, and replacement of flat stock trim. Exterior Lead Paint Abatement that includes scraping and repainting of exterior wood and masonry surfaces, so long as treatments follow established protocols and best practices as established by EPA Renovation, Repair & Painting Program (RRP Rule) and Vermont Essential Maintenance Practices – Lead Law Compliance. Please refer to Preservation Briefs 37: *Appropriate Methods of Reducing Lead-Paint Hazards in Historic Housing*, and other technical briefs, as appropriate, for guidance.

15. **Asbestos Abatement.** Necessary removal of asbestos found in MEP and ventilation pipe joints provided it does not involve the removal of contributing historic elements.

Removal of Asbestos is not an exempt activity.

16. **Minor Ground Disturbance due to Maintenance Activity.** Soil disturbance to a depth of six (6) inches or less within an area of 100 square feet or less is permissible.
17. **Plantings.** Planting of grass, flowers, shrubs, or bushes in existing gardens or landscaped areas.
18. **Test Holes and Wells.** Structural test borings, well drilling and monitoring activities that do not require a temporary or permanent new access road to a site.

APPENDIX B

RECOMMENDED APPROACH FOR CONSULTATION ON RECOVERY OF SIGNIFICANT INFORMATION FROM ARCHAEOLOGICAL SITES

FR Doc No: 99-12055]

Federal Register / Vol. 64, No. 95 / Tuesday, May 18, 1999 /

Sections 800.5 and 800.6 of the Council's revised regulations, "Protection of Historic Properties" (36 CFR part 800) detail the process by which Federal agencies determine whether their undertakings will adversely affect historic properties, and if they will, how they are to consult to avoid, minimize, or mitigate the adverse effects in order to meet the requirements of Section 106 to "take into account" the effects of their undertakings on historic properties. One such category of historic properties is comprised of prehistoric or historic archaeological resources. The National Register of Historic Places defines an archaeological site as "the place or places where the remnants of a past culture survive in a physical context that allows for the interpretation of these remains" (National Register Bulletin 36, "Guidelines for Evaluating and Registering Historical Archaeological Sites and Districts," 1993, p. 2). Such properties may meet criteria for inclusion in the National Register of Historic Places for a variety of reasons, not the least of which may be because "they have yielded, or may be likely to yield, information important to prehistory or history" (National Register Criteria for Evaluation, 36 CFR 60.4).

In the context of taking into account the effects of a proposed Federal or federally assisted undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register, potential impacts to archaeological sites often need to be considered. Appropriate treatments for affected archaeological sites, or portions of archaeological sites, may include active preservation in place for future study or other use, recovery or partial recovery of archaeological data, public interpretive display, or any combination of these and other measures.

Archaeological Sites and Their Treatment

The nature and scope of treatments for such properties should be determined in consultation with other parties, but in the Council's experience they generally need to be guided by certain basic principles: The pursuit of knowledge about the past is in the public interest.

An archaeological site may have important values for living communities and cultural descendants in addition to its significance as a resource for learning about the past; its appropriate treatment depends on its research significance, weighed against these other public values.

Not all information about the past is equally important; therefore, not all archaeological sites are equally important for research purposes.

Methods for recovering information from archaeological sites, particularly large-scale excavation, are by their nature destructive. The site is destroyed as it is excavated. Therefore, management of archaeological sites should be conducted in a spirit of stewardship for future generations, with full recognition of their non-renewable nature and their potential multiple uses and public values.

Given the non-renewable nature of archaeological sites, it follows that if an archaeological site can be practically preserved in place for future study or other use, it usually should be (although

there are exceptions). However, simple avoidance of a site is not the same as preservation.

Recovery of significant archaeological information through controlled excavation and other scientific recording methods, as well as destruction without data recovery, may both be appropriate treatments for certain archaeological sites.

Once a decision has been made to recover archaeological information through the naturally destructive methods of excavation, a research design and data recovery plan based on firm background data, sound planning, and accepted archaeological methods should be formulated and implemented. Data recovery and analysis should be accomplished in a thorough, efficient manner, using the most cost-effective techniques practicable. A responsible archaeological data recovery plan should provide for reporting and dissemination of results, as well as interpretation of what has been learned so that it is understandable and accessible to the public. Appropriate arrangements for curation of archaeological materials and records should be made. Adequate time and funds should be budgeted for fulfillment of the overall plan.

Archaeological data recovery plans and their research designs should be grounded in and related to the priorities established in regional, state, and local historic preservation plans, the needs of land and resource managers, academic research interests, and other legitimate public interests.

Human remains and funerary objects deserve respect and should be treated appropriately. The presence of human remains in an archaeological site usually gives the site an added importance as a burial site or cemetery, and the values associated with burial sites need to be fully considered in the consultation process.

Large-scale, long-term archaeological identification and management programs require careful consideration of management needs, appreciation for the range of archaeological values represented, periodic synthesis of research and other program results, and professional peer review and oversight.

Resolving Adverse Effects Through Recovery of Significant Information From Archaeological Sites

Under 36 CFR 800.5, archaeological sites may be “adversely affected” when they are threatened with unavoidable physical destruction or damage. Based on the principles articulated above, the Council recommends that the following issues be considered and addressed when archaeological sites are so affected, and recovery of significant information from them through excavation and other scientific means is the most appropriate preservation outcome.

If this guidance is followed, it is highly unlikely that the Council would decide to enter the consultation process under 36 CFR 800.6 or raise objections to the proposed resolution of adverse effects in a given case, unless it is informed of serious problems by a consulting party or a member of the public.

1. The archaeological site should be significant and of value chiefly for the information on prehistory or history they are likely to yield through archaeological, historical, and scientific methods of information recovery, including archaeological excavation.
2. The archaeological site should not contain or be likely to contain human remains, associated or unassociated funerary objects, sacred objects, or items of cultural patrimony as those terms are defined by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001).
3. The archaeological site should not have long-term preservation value, such as traditional cultural and religious importance to an Indian tribe or a Native Hawaiian organization.

4. The archaeological site should not possess special significance to another ethnic group or community that historically ascribes cultural or symbolic value to the site and would object to the site's excavation and removal of its contents.
5. The archaeological site should not be valuable for potential permanent in-situ display or public interpretation, although temporary public display and interpretation during the course of any excavations may be highly appropriate.
6. The Federal Agency Official should have prepared a data recovery plan with a research design in consultation with the SHPO/THPO and other stakeholders that is consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, and the Advisory Council on Historic Preservation's Treatment of Archaeological Properties: A Handbook. The plan should specify: (a) The results of previous research relevant to the project; (b) research problems or questions to be addressed with an explanation of their relevance and importance; (c) the field and laboratory analysis methods to be used with a justification of their cost-effectiveness and how they apply to this particular property and these research needs; (d) the methods to be used in artifact, data, and other records management; (e) explicit provisions for disseminating the research findings to professional peers in a timely manner; (f) arrangements for presenting what has been found and learned to the public, focusing particularly on the community or communities that may have interests in the results; (g) the curation of recovered materials and records resulting from the data recovery in accordance with 36 CFR part 79 (except in the case of unexpected discoveries that may need to be considered for repatriation pursuant to NAGPRA); and (h) procedures for evaluating and treating discoveries of unexpected remains or newly identified historic properties during the course of the project, including necessary consultation with other parties.
7. The Federal Agency Official should ensure that the data recovery plan is developed and will be implemented by or under the direct supervision of a person, or persons, meeting at a minimum the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739).
8. The Federal Agency Official should ensure that adequate time and money to carry out all aspects of the plan are provided, and should ensure that all parties consulted in the development of the plan are kept informed of the status of its implementation.
9. The Federal Agency Official should ensure that a final archaeological report resulting from the data recovery will be provided to the SHPO/THPO. The Federal Agency Official should ensure that the final report is responsive to professional standards, and to the Department of the Interior's Format Standards for Final Reports of Data Recovery Programs (42 FR 5377-79).
10. Large, unusual, or complex projects should provide for special oversight, including professional peer review.
11. The Federal Agency Official should determine that there are no unresolved issues concerning the recovery of significant information with any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to the affected property.
12. Federal Agency Officials should incorporate the terms and conditions of this recommended approach into a Memorandum of Agreement or Programmatic Agreement, file a copy with the Council per Sec. 800.6(b)(iv), and implement the agreed plan. The agency should retain a copy of the agreement and supporting documentation in the project files.

APPENDIX C

SECRETARY OF THE INTERIOR'S *STANDARDS FOR REHABILITATION*

Rehabilitation projects must meet the following Standards, as interpreted by the National Park Service, to qualify as "certified rehabilitations" eligible for the 20% rehabilitation tax credit. The Standards are applied to projects in a reasonable manner, taking into consideration economic and technical feasibility.

The Standards apply to historic buildings of all periods, styles, types, materials, and sizes. They apply to both the exterior and the interior of historic buildings. The Standards also encompass related landscape features and the building's site and environment as well as attached, adjacent, or related new construction.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

APPENDIX D

STANDARD MITIGATION MEASURES AGREEMENTS

The Agency, the Recipient, and the SHPO may develop and execute an agreement that includes one or more of the following Standard Mitigation Measures, as modified by the SHPO, when the SHPO deems it appropriate. The Council will not be a party to these agreements.

1. **Photographic Documentation.** The Recipient shall ensure that the historic property is recorded prior to its demolition, alteration or relocation in accordance with Historic American Buildings Survey (HABS) standards or the Photographic Documentation Standards for Historic Structures adopted by the SHPO. The qualified professional shall identify an appropriate archive for the deposit and the Recipient shall be responsible for submitting such materials. The SHPO may waive the recordation requirement as it deems appropriate.
2. **Marketing and Sale.** The Grantee shall ensure that the marketing plan proposed by the Grantee, in consultation with the SHPO, is implemented for a mutually agreed upon period prior to the demolition or relocation of historic properties. The applicant shall review all purchase offers with the qualified professional, who may consult with the SHPO. If a successful purchaser is selected, the applicant may include preservation covenants in the transfer deed, upon recommendation of the qualified professional and concurrence by the SHPO. If no successful purchaser is identified, the applicant may either convey the property without covenants or proceed with the demolition or relocation after the historic properties have been recorded pursuant to HABS standards or SHPO guidelines.
3. **Relocation.** In relocating the building, every effort shall be made to reestablish the historic orientation, immediate setting, and general environment in the new location, in accordance with 36 CFR 60. The qualified professional shall evaluate the continued eligibility of the moved building for the National Register of Historic Places, and provide a written evaluation to the SHPO. The SHPO may request that the qualified professional prepare a National Register nomination form for the property, or amend an existing nomination form.
4. **Future Work on Buildings.** Future work on the exterior and/or interior of the building shall meet the Secretary of the Interior's Standards for Rehabilitation.
5. **Public Education.** The Recipient and a qualified professional shall consult with the SHPO to develop a public education program or project that enhances public understanding and appreciation of resources similar in location or type to the resources adversely affected by the project. The Recipient shall ensure that the program or project is carried out and shall report the results to the SHPO and the Agency.
6. **Popular Publications.** The Recipient and a qualified professional, through the use of consultants as appropriate, shall produce and distribute a popular version of a technical report and/or, a booklet, pamphlet, or brochure that illustrates the work on a property, its history, or its historic context.
7. **Interpretive Signage.** The Recipient and a qualified professional, through the use of research, design and fabrication consultants as appropriate, shall produce one or more signs to describe the

work on a property, its history, or its historic context. They shall consult with local interested entities to plan the sign(s) and to address maintenance and long-term care of permanent sign(s).

8. **Exhibits.** The Recipient and a qualified professional, in conjunction with appropriate consultants, shall develop and install a professional quality exhibit that describes the work on a property, its history, or its historic context. Local installations or exhibits that travel to local schools are encouraged.
9. **Lectures/Tours.** The Recipient shall ensure that a qualified professional organize public lectures and tours of ongoing projects and excavations. Involvement of local school groups is encouraged.
10. **Development of Historic Contexts.** The Recipient shall ensure that a qualified professional research and prepare a written historic context statement for the class of resources affected by the project. The format of the context statement shall be determined in conjunction with the SHPO.
11. **Data Recovery of Archaeological Information.** The Recipient and the qualified professional shall develop an Archaeological Data Recovery Plan that meets the Council's *Treatment of Archaeological Properties and Recommended Approach for Consultation on Recovery of Significant Information From Archaeological Sites (1999)*, and the *Guidelines for Conducting Archaeological Studies in Vermont*. Data Recovery projects shall include a significant public education and interpretation component whenever appropriate. Materials recovered shall be curated and stored in accordance with 36 CFR 79 and VDHP curation standards.

APPENDIX E

WHEN TO CONSULT WITH TRIBES UNDER SECTION 106

Section 106 requires consultation with federally recognized Indian tribes when a project may affect a historic property of religious and cultural significance to the tribe. Historic properties of religious and cultural significance include: archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, traditional cultural places, traditional cultural landscapes, plant and animal communities, and buildings and structures with significant tribal association.

The types of activities that may affect historic properties of religious and cultural significance include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible, or atmospheric changes, work on a building with significant tribal association, and transfer, lease or sale of properties of the types listed above.

If a project includes any of the types of activities below, invite tribes to consult:

- **significant ground disturbance (digging)**
Examples: new sewer lines, utility lines (above and belowground), foundations, footings, grading, access roads
- **new construction in undeveloped natural areas**
Examples: industrial-scale energy facilities, transmission lines, pipelines, or new recreational facilities, in undeveloped natural areas like mountaintops, canyons, islands, forests, native grasslands, etc., and housing, commercial, and industrial facilities in such areas
- **incongruent visual changes**
Examples: construction of a focal point that is out of character with the surrounding natural area, impairment of the vista or viewshed from an observation point in the natural landscape, or impairment of the recognized historic scenic qualities of an area
- **incongruent audible changes**
Examples: increase in noise levels above an acceptable standard in areas known for their quiet, contemplative experience
- **incongruent atmospheric changes**
Examples: introduction of lights that create skyglow in an area with a dark night sky
- **work on a building with significant tribal association**
Examples: rehabilitation, demolition or removal of a surviving ancient tribal structure or village, or a building or structure that there is reason to believe was the location of a significant tribal event, home of an important person, or that served as a tribal school or community hall
- **transfer, lease or sale of a historic property of religious and cultural significance**
Example: transfer, lease or sale of properties that contain archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, plant and animal communities, or buildings and structures with significant tribal association
- **None of the above apply**

APPENDIX F

MOHICAN TERRITORY OF THE STOCKBRIDGE-MUNSEE COMMUNITY MAP

