

**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**

**2021**

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**among**

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**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 State 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, CDBG funds may be used for projects that include, but are not limited to, repair, rehabilitation, construction, demolition, acquisition and disposition activities related to housing, commercial, industrial and public properties, structures or facilities, each of which is an undertaking (Undertaking) as defined pursuant to 36 CFR Part 800.16(y), and require compliance with Section 106; and

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WHEREAS, these undertakings may have an adverse 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 (ACHP)'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 ACHP'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, ACHP, 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



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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 ACHP'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; and

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

WHEREAS, this Agreement supersedes the previous *Programmatic Agreement Among the 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*, and previous agreements related to these programs; and

NOW, THEREFORE, the Agency, SHPO, and ACHP 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.

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**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 VDHP Consultant Training (in person or via webinar) within the last three (3) years, to carry out reviews related to their profession that are required under the terms of this Programmatic Agreement. Training(s) shall be coordinated and presented in collaboration with the CDBG Environmental Officer. 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 VDHP when there is a potential for historic properties to be affected as noted on the Section 106 Preliminary Review

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Form (PRF) and will continue throughout the course of consultation for project review. Contact with VDHP is encouraged early and often in the project planning and implementation stages.

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, according to the following procedures:
  - a. If work is deemed unsatisfactory, the Agency, in consultation with SHPO, will notify the qualified professional in writing of the specific concerns, expectations for correcting concerns, and related timeline;
  - b. If the qualified professional does not rectify the issues per the written notification and continues to fail to adhere to the *Standards*, the Agency, in consultation with SHPO, may remove the professional from the pre-qualified list; and
  - c. Further guidance related to the pre-qualified list and criteria for eligibility on the pre-qualified list is provided in the CDBG Section 106 Project Review Manual.
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 ACHP in writing of any alternate procedures approved by the SHPO.

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**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 ACHP'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

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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 Appendix G 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 Recipient shall provide the Agency's Environmental Review Officer with documentation of project completion, noting if conditions have been met.
3. 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.
4. The Agency shall assist the Recipient to comply with Section 106 by providing technical assistance and organizing and presenting training(s)/webinar(s).

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5. The Agency shall maintain project files and report on program activity as required in this Programmatic Agreement.
6. 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.
7. Similar coordination is required with SHPO 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 PRF. 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 Architectural Resource Inventory Form (VARI);
    - iii. Vermont Archaeological Inventory (VAI);

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- 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 twenty-one (21) 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.

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- 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 PRF, must be



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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 ACHP'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. Scopes of work shall be submitted prior to the commencement of the Undertaking.
- 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

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professional. The ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" (1999 or most recent version) shall be followed (Appendix C).

- d. If VDHP's background review during the PRF process identifies potential archaeological sites within the project area, 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, 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 Appendix G to this Programmatic Agreement, or any other federally recognized tribe, the tribe shall be contacted by the Qualified Professional in coordination with ACCD. 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

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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 Munsee 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 Historic Preservation and Archeology*. The Recipient shall provide copies of all reports and any associated Vermont Archaeological Inventory forms in digital formats to VDHP. 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.

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- 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 D) 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,

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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

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disturbance that might affect archaeological sites, the remainder of the project shall be reviewed as outlined in this Agreement.

- i. A Memorandum of Agreement may be executed amongst project parties recording that the pending Part 2 HPCA shall substitute for the Section 106 review process. (See Appendix H for template); and
  - ii. If it is determined the project shall not use RITC, the review process outlined above shall be implemented and the agreement terminated.
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.

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- 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

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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



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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 thirty (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 thirty (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

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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 thirty (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 ACHP, 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 E. 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

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the Agreement within twenty-one 21 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 ACHP'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 SHPO shall sign it. The Recipient shall be responsible for notifying the Agency and SHPO when the conditions of the Memorandum of Agreement have been met.
6. The Recipient shall notify the Agency, VDHP and the Stockbridge Munsee Community or any other federally recognized tribe, as applicable when all the

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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 ACHP and initiate the consultation process set forth in 36 CFR § 800.6(b)(2). In addition, the Agency shall submit to the ACHP 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 SHPO of the public interest in any project activities covered under the terms of this Programmatic Agreement.

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2. The Recipient, Agency, or SHPO 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 SHPO and take the objection into account. The Agency and SHPO, 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 ACHP enter the consultation process. The ACHP will review 36 CFR 800 Appendix A, "Criteria for ACHP Involvement in Reviewing Individual Section 106 Cases" to determine if it is appropriate for the ACHP 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 shall determine actions that the Recipient can take to resolve potential adverse effects and the Recipient shall notify the Agency and SHPO of the discovery and the possible actions within forty-eight (48) hours of the discovery. SHPO shall respond within two (2) 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

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Agency and the SHPO, which will notify the tribe(s), Tribal Historic Preservation Officer (THPO), and the ACHP 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 of 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 SHPO. 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 SHPO 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 are the preferred options 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.

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**XI. ADMINISTRATIVE COORDINATION**

1. SHPO shall provide comments within twenty-one (21) days for reviews required under the terms of this Programmatic Agreement. In the event that SHPO fails to comment within the twenty-one (21)-day period, the Recipient and the Agency can assume that SHPO concurs.
2. The Agency shall develop, in consultation with SHPO and the 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 ACHP following reasonable notice.

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4. The Recipient, or its qualified professional, shall notify the Agency's Environmental Review Officer upon completion of the project, noting if all conditions have been met.

**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 ACHP. Within forty-five (45) calendar days after receipt of all pertinent documentation, the ACHP will provide the Agency with recommendations or comment in accordance with 36 CFR 800.7(c). The Agency will take into account the ACHP's recommendations or formal comments in reaching a final decision regarding the dispute. Any ACHP 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 ACHP 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/Webinars. VDHP shall conduct program specific training workshops/webinars for qualified professionals in collaboration with the Agency. Participation, in person or through webinars, at one of these trainings will be mandatory for qualified professionals working under this Programmatic Agreement for the first time. Interim workshops will be provided in person or through webinars



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as determined by the Agency and SHPO. A CDBG Section 106 Project Review Manual with performance evaluation criteria and samples of adequate documentation for determinations of eligibility and effect shall be prepared by VDHP in consultation with the Agency. 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 ACHP may monitor any activities carried out pursuant to this Agreement. The Agency will cooperate with VDHP and ACHP 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 1<sup>st</sup> and report to be submitted to VDHP for review by December 1<sup>st</sup>.

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 Architectural Resource Inventory Form (VARI) and the Vermont Archaeological Inventory (VAI);
- iii. a summary of mitigation measures undertaken, including the use of Standard Mitigation Measures Agreements;
- iv. list of projects for which Memorandums of Agreement have been executed, and the status of those projects;
- v. a summary of archaeological activities conducted under the program;
- vi. a summary of staff and consultant training(s) held;

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- vii. staff and consultant training(s) proposed;
- viii. documentation for inclusion/removal in the CDBG Section 106 Project Review Manual;
- ix. the views of the Agency regarding the effectiveness of the Programmatic Agreement.; and
- x. 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 VARI 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**

1. If any signatory determines that an amendment to the terms of this Programmatic Agreement must be made, the signatories shall consult for no more than sixty (60) days to seek amendment of the Agreement.
2. An amendment to this Programmatic Agreement, exclusive of the appendices, shall be effective only when it has been signed by all the signatories.
3. Amendments to the Appendix A (Exempt Activities) and Appendix E (Standard Mitigation Measures) shall be requested by any signatory in the following manner:

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- a. The requesting signatory shall notify all the signatories of the intent to modify the Appendix or Appendices and shall provide a draft of the updated Appendix or Appendices to all signatory parties.
  
- b. If no other signatory objects in writing within thirty (30) days of receipt of the proposed modification, the Agency shall date and sign the amended Appendix and provide a copy of the amended Appendix to the signatories. Such an amendment shall go into effect on the date the amendment is transmitted to the other signatories.

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**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**

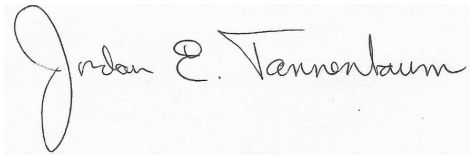
In the event that the Agency does not carry out the terms of this Programmatic Agreement, the Agency will comply with 36 CFR 800 with regard to each individual project for which Agency has awarded funding to the Recipient.

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.

**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**  
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**SIGNATORY**

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

A rectangular box containing a handwritten signature in black ink that reads "Jordan E. Tannenbaum".

9.28.2021

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By: Jordan Tannenbaum, Vice Chairman

Date

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**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  
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**SIGNATORY**

**VERMONT AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT**

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By: Lindsay Kurrle, Secretary

Date

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**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  
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**SIGNATORY**

**VERMONT STATE HISTORIC PRESERVATION OFFICER**

---

By: Laura V. Trieschmann, SHPO

Date

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**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 ACCD through submittal of the Preliminary Review Form (PRF) and approval by ACCD. No further review is required.

The following activities will **NOT** require review by the SHPO or ACHP:

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.
  - a. New construction is **not** an exempt activity.
2. **Refinancing.** With no associated work on historic buildings and structures or ground disturbance.
3. **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.
  - a. Please refer to Preservation Briefs 24: *Heating, Ventilating, and Cooling Historic Buildings: Problems & Recommended Approaches*, and other technical briefs, as appropriate, for guidance.

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4. **Exterior painting.** Repainting of exterior surfaces if (and only if) destructive surface preparation treatments, including, but not limited to water blasting, sandblasting, destructive sanding, and chemical cleaning are not used.
  - a. Please refer to Preservation Briefs 10: *Exterior Paint Problems on Historic Woodwork*, and other technical briefs, as appropriate, for guidance.
  
5. **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. Exterior repairs shall not involve ground disturbance.
  - a. Removal of distinctive materials or alterations of features, spaces, and spatial relationships that characterize a property must be avoided and are **not** exempt.
  - b. Please refer to Preservation Briefs 47: *Maintaining the Exterior of Small & Medium Size Historic Buildings*, and other technical briefs, as appropriate, for guidance.
  
6. **Windows.** Caulking; weatherstripping; reglazing and repainting of windows; 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.
  - a. Replacement of windows is **not** an exempt activity. If replacement windows are being proposed, the qualified professional must provide a statement to VDHP of the condition of existing windows, why the existing windows cannot be retained, safety considerations such as the presence of lead-based paint hazards; cost considerations of retaining existing windows vs. installing replacements including ongoing maintenance; and rationale for the design and selection of new windows, along with how the replacement windows will meet the Secretary of the Interior's

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*Standards for Rehabilitation.* Energy efficiency shall be considered as part of the evaluation of the proposed replacement windows.

7. **Roof Repair.** Repair of historic roofing with **in-kind** material that closely matches the existing design and form.
  - a. Replacement of non-historic roofing with a different roofing material is **not** an exempt activity.
  - b. Please refer to Preservation Briefs 4: *Roofing for Historic Buildings*, and other technical briefs, as appropriate, for guidance.
  
8. **Gutters.** Repair, replacement, or installation of gutters and above-ground downspouts.
  
9. **Insulation.** Insulation in ceilings, attic, and basement spaces provided it is installed with appropriate vapor barriers, such as the following:
  - i. 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.
  - ii. Thermal insulation, such as non-toxic fiberglass and foil-wrapped or spray foam, 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.
  - a. Installation of insulation from the exterior of the structure, which requires removal/replacement of exterior materials and/or alterations to trim, is **not** an exempt activity unless completed in the following manner:
    - i. 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

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ventilation system is present to direct moisture out of the building.

b. Please refer to *Preservation Briefs 3: Improving Energy Efficiency in Historic Buildings*, and other technical briefs, as appropriate, for guidance.

10. **Interior Surfaces (floors, walls, ceilings).** Repainting, refinishing, repapering, replacing sheetrock with sheetrock, laying carpet or sheet flooring, or replacement/removal of suspended ceiling tile.
  
11. **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.
  
12. **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.
  - a. Please refer to *Preservation Briefs 37: Appropriate Methods of Reducing Lead-Paint Hazards in Historic Housing*, and other technical briefs, as appropriate, for guidance.
  
13. **Asbestos Abatement.** Necessary removal of asbestos found in Mechanical, Electrical, and Plumbing Systems and ventilation pipe joints provided it does not involve the removal of contributing historic elements.
  - a. All other asbestos removal is **not** an exempt activity.

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14. **Site Improvements:** Repair of existing feature of roads, driveways, sidewalks, and curbs, if repairs are done with like material, and there are no changes in dimension or configuration of these features. Repair does not include partial or complete replacement of features, the use of alternate materials, expansion of features, or ground disturbance. Repair of fencing when work is done in-kind to closely match existing material and form; work must be done with no new ground disturbance.
  
15. **Underground Utilities.** Emergency repair of water, gas, electric, storm and waste water systems if it occurs within the original trench or footprint.
  
16. **Generators.** Temporary or permanent installation of generators that are placed inside existing buildings or that occupy an area under fifty (50) square feet behind the building they serve.
  
17. **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.
  
18. **Plantings.** Planting of grass, flowers, shrubs, or bushes in existing gardens or landscaped areas.

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**APPENDIX B**

**Final Advisory Council on Historic Preservation  
*Policy Statement on Affordable Housing and Historic Preservation***

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice of Final Policy Statement on Affordable Housing and Historic Preservation.

**SUMMARY:** The Advisory Council on Historic Preservation (ACHP) adopted a “Policy Statement on Affordable Housing and Historic Preservation,” on November 9, 2006.

**DATES:** The final policy went into effect upon adoption on November 9, 2006.

**SUPPLEMENTARY INFORMATION:** The Advisory Council on Historic Preservation (ACHP) is an independent Federal agency, created by the National Historic Preservation Act, that promotes the preservation, enhancement, and productive use of our Nation’s historic resources, and advises the President and Congress on national historic preservation policy. Section 106 of the National Historic Preservation Act (Section 106), 16 U.S.C. 470f, requires Federal agencies to consider the effects of their undertakings on historic properties and provide the ACHP a reasonable opportunity to comment with regard to such undertakings. ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR Part 800.

**I. Background:** In 1995, the ACHP adopted its first “Policy Statement on Affordable Housing and Historic Preservation” (1995 Policy) to serve as a guide for federal agencies and State Historic Preservation Offices (SHPOs) when making decisions about affordable housing projects during review of federal undertakings under Section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. 470f (Section 106), and its implementing regulations, “Protection of Historic Properties” (36 CFR Part 800). The ACHP adopted the policy to guide federal agencies and SHPOs at a time when conflicts between the dual goals of providing affordable housing and preserving historic properties was making the achievement either more difficult. After a decade, the provision of affordable housing has developed into an even more pressing national concern, prompting a reconsideration of the principles in the policy

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statement. In 2005, the ACHP Chairman convened an Affordable Housing Task Force to review this policy statement in light of changes to the Section 106 regulations in 2001 and 2004 and other ACHP initiatives. Members of the Task Force included the U.S. Department of Agriculture, U.S. Department of the Interior, the National Conference of State Historic Preservation Officers (NCSHPO), the National Trust for Historic Preservation, citizen member, Emily Summers, and expert member, John G. Williams, III, Chair. The U.S. Department of Housing and Urban Development (HUD) participated as an ACHP observer. The Task Force developed the Policy Statement with input from the public. An online survey of state and local government officials and affordable housing providers about their awareness of and use of the 1995 Policy was conducted in August-September 2005. Links to the survey were distributed to approximately 12,000 individuals representing State and Tribal Historic Preservation Officers, local historic preservation commission members, Certified Local Government staff, HUD staff and grantees, state community development agency staffs, and affordable housing providers.

Following development of a draft, the ACHP posted the proposed revised draft policy statement in the Federal Register on July 17, 2006 (71 FR 40522), and comments from the public were accepted through August 16, 2006. Information about the July 17, 2006, Federal Register notice was distributed by members of the Task Force to their respective constituencies through electronic LISTSERVs including communities receiving HOME program and Community Development Block Grant funds from HUD, members of the National Trust for Historic Preservation's Forum, and members of the NCSHPO. Additionally, the ACHP provided information about the comment period directly to Tribal Historic Preservation Officers, the National Alliance of Tribal Historic Preservation Officers, and over a dozen organizations with an interest in local community development activities and the provision of affordable housing, as well as on the ACHP Web site. Comments on the new policy statement generally supported the revision effort. Specific comments frequently requested detailed guidance on applying the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Secretary's Standards) to affordable housing projects. While the Task Force recognized that specific comments on the application of the

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Secretary's Standards were outside the scope of its mandate, additional language highlighting the distinction between review for the Historic Rehabilitation Tax Credit and Section 106 compliance was included in the policy statement. Commenters further requested the development of case studies that would illustrate the successful integration of historic preservation and affordable housing on a variety of topics including accessibility, use of modern building materials, and lead paint abatement requirements. It is anticipated that such case studies will become an important component of materials developed by the ACHP and Task Force in implementing the revised policy statement. Responsiveness to local conditions emerged as a recurring theme in the Task Force's deliberations. Members recognized that affordable housing can include housing for a specific constituency, such as Native American housing programs. Federal assistance for affordable housing can also be directed to specific geographic areas with distinctive physical characteristics. Just as affordable housing programs serve unique local needs, so should historical preservation reviews, since "one-size fits- all" approaches are unlikely to produce a successful balance for these projects. Given our national diversity, the majority of Task Force members embraced and encouraged creativity in local solutions while federal agency members emphasized the value of consistency and predictability. The importance of developing and utilizing tailored guidance also shaped the Task Force's deliberations and its preparation of a set of recommendations for how the policy statement can be put into practice. Direction from both the ACHP and federal agencies was seen as critical to achieving the goals of the Task Force, but members recognized that private and non-profit partners with experience piecing together the resources required for planning and funding affordable housing projects could provide examples of success stories and best practices.

The policy statement, which represents the conclusion of the research and public outreach efforts of the Affordable Housing Task Force and the deliberation of its members, was adopted by the ACHP on November 9, 2006. The final text of the policy statement is provided in Section II of this notice.

**II. Text of the Policy:** The following is the text of the final policy statement:



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Advisory Council on Historic Preservation (ACHP) Policy Statement on Affordable Housing and Historic Preservation

Historic buildings provide affordable housing to many American families. Affordable housing rehabilitation can contribute to the ongoing vitality of historic neighborhoods as well as of the businesses and institutions that serve them. Rehabilitation can be an important historic preservation strategy. Federal agencies that help America meet its need for safe, decent, and affordable housing, most notably the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture's (USDA's) Rural Development agency, often work with or near historic properties. The ACHP considers affordable housing for the purposes of this policy to be Federally-subsidized, single- and multi-family housing for individuals and families that make less than 80% of the area median income. It includes, but is not limited to, Federal assistance for new construction, rehabilitation, mortgage insurance, and loan guarantees.

National policy encompasses both preserving historic resources and providing affordable housing. The National Historic Preservation Act (NHPA) of 1966, as amended, directs the Federal government to foster conditions under which modern society and prehistoric and historic resources can exist in productive harmony and "fulfill the social, economic, and other requirements of present and future generations." Similarly, affordable housing legislation like the Cranston-Gonzalez Act of 1990, which aims to "expand the supply of decent, safe, sanitary, and affordable housing," anticipates historic preservation as a tool for meeting its goals. Actively seeking ways to reconcile historic preservation goals with the special economic and social needs associated with affordable housing is critical in addressing one of the nation's most pressing challenges. Providing affordable housing is a growing national need that continues to challenge housing providers and preservationists.

In issuing this policy statement, the ACHP, consistent with Section 202 of the NHPA, offers a flexible approach for affordable housing projects involving historic properties. Section 106 of the National Historic Preservation Act Section 106 requires Federal agencies to take into

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account the effects of their actions on historic properties and afford the ACHP a reasonable opportunity to comment. This policy provides a framework for meeting these requirements for affordable housing. Federal tax incentives provide opportunities for historic preservation and affordable housing to work together, including the Low-Income Housing Tax Credit and the Historic Rehabilitation Tax Credit. Projects taking advantage of the Historic Rehabilitation Tax Credit must be reviewed by the National Park Service (NPS) for adherence to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Secretary's Standards) in a separate and distinct process. Review of these projects is more comprehensive than Section 106 review and necessitates early coordination with NPS and the State Historic Preservation Officer (SHPO) since work must adhere to the Secretary's Standards to obtain the tax credit. Nonetheless, coordination with Section 106 consultation and these reviews frequently occurs. In an effort to better focus Section 106 reviews for affordable housing, the ACHP encourages Federal and State agencies, SHPOs, Tribal Historic Preservation Officers (THPOs), local governments, housing providers, and other consulting parties to use the following principles in Section 106 consultation.

**Implementation Principles**

- I. Rehabilitating historic properties to provide affordable housing is a sound historic preservation strategy.**
- II. Federal agencies and State and local government entities assuming HUD's environmental review requirements are responsible for ensuring compliance with Section 106.**
- III. Review of effects in historic districts should focus on exterior features.**
- IV. Consultation should consider the overall preservation goals of the community.**
- V. Plans and specifications should adhere to the Secretary's Standards when possible and practical.**
- VI. Section 106 consultation should emphasize consensus building.**
- VII. The ACHP encourages streamlining the Section 106 process to respond to local conditions.**

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**VIII. The need for archeological investigations should be avoided.**

**I. Rehabilitating Historic Properties to Provide Affordable is a Sound Historic Preservation Strategy.**

Continued investment in historic buildings through rehabilitation and repair for affordable housing purposes and stabilization of historic districts through the construction of infill housing should be recognized as contributing to the broad historic preservation goals of neighborhood revitalization and retention.

**II. Federal Agencies and State and Local Government Entities Assuming HUD's Environmental Review Requirements Are Responsible for Ensuring Compliance With Section 106.**

Federal agencies, notably USDA Rural Development and HUD, provide important funding for affordable housing. These Federal agencies, and funding recipients assuming HUD's environmental review requirements, must comply with Section 106. SHPOs, THPOs, and local historic preservation commissions provide expert opinions and advice during consultation. Consultation should be concluded and outcomes recorded prior to the expenditure of funds.

**III. Review of Effects in Historic Districts Should Focus on Exterior Features.**

Section 106 review of effects focuses on the characteristics that qualify a property for listing in the National Register of Historic Places. The significance of historic districts is typically associated with exterior features. Accordingly, unless a building is listed or considered eligible for listing in the National Register as an individual property or specific interior elements contribute to maintaining a district's character, review under Section 106 should focus on proposed changes to the exterior. In all cases, identifying the features that qualify a property for inclusion in the National Register defines the scope of Section 106 review.

**IV. Consultation Should Consider the Overall Preservation Goals of the Community.**

When assessing, and negotiating the resolution of, the effects of affordable housing projects on historic properties, consultation should focus not simply on individual buildings but on the

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historic preservation goals of the broader neighborhood or community. If the affected historic property is a historic district, the agency official should assess effects on the historic district as a whole. Proposals to demolish historic properties for new replacement housing should be based on background documentation that addresses the broader context of the historic district and evaluates the economic and structural feasibility of rehabilitation that advances affordable housing.

**V. Plans and Specifications Should Adhere to the Secretary's Standards When Possible and Practical.**

Secretary's Standards outline a consistent national approach to the treatment of historic properties that can be applied flexibly in a way that relates to local character and needs. Plans and specifications for rehabilitation, new construction, and abatement of hazardous conditions in affordable housing projects associated with historic properties should adhere to the recommended approaches in the Secretary's Standards when possible and practical. Projects taking advantage of the Historic Rehabilitation Tax Credit must be reviewed by the National Park Service for adherence to the Secretary's Standards in a separate and distinct process that benefits from early coordination. The ACHP recognizes that there are instances when the Secretary's Standards cannot be followed and that Section 106 allows for the negotiation of other outcomes.

**VI. Section 106 Consultation Should Emphasize Consensus Building.**

Section 106 review strives to build consensus with affected communities in all phases of the process. Consultation with affected communities should be on a scale appropriate to that of the undertaking. Various stakeholders, including community members and neighborhood residents, should be included in the Section 106 review process as consulting parties so that the full range of issues can be addressed in developing a balance between historic preservation and affordable housing goals.

**VII. The ACHP Encourages Streamlining the Section 106 Process To Respond to Local Conditions.**

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The ACHP encourages participants to seek innovative and practical ways to streamline the Section 106 process that respond to unique local conditions related to the delivery of affordable housing. Programmatic Agreements often delegate the Section 106 review role of the SHPO to local governments, particularly where local preservation ordinances exist and/or where qualified preservation professionals are employed to improve the efficiency of historic preservation reviews. Such agreements may also target the Section 106 review process to local circumstances that warrant the creation of exempt categories for routine activities, the adoption of “treatment and design protocols” for rehabilitation and new infill construction, and the development of design guidelines tailored to a specific historic district and/or neighborhood.

**VIII. The Need for Archaeological Investigations Should Be Avoided.**

Archaeological investigations should be avoided for affordable housing projects limited to rehabilitation and requiring minimal ground disturbance.

Authority: 16 U.S.C. 470j Dated: February 12, 2007. Ralston Cox, Acting Executive Director. [FR Doc. 07-703 Filed 2-14-07; 8:45 am]

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**APPENDIX C**

**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,

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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.

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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.



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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.

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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

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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.

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**APPENDIX D**

**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.

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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.

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**APPENDIX E**

**STANDARD MITIGATION MEASURES AGREEMENTS**

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

The mitigation products shall be prepared by qualified professionals meeting the Professional Qualifications for Architectural History, History, Architecture, Historic Preservation, Folklore, Archaeology, or Historic Architecture, as appropriate.

All materials shall be digitally submitted to the Agency, SHPO, and participating Tribe(s) (if applicable).

**1. Historic Resource Documentation Package (HRDP)**

Prior to the start of any alteration or demolition of above-ground resource(s), a Historic Resource Documentation Package (HRDP) shall be prepared by professional consultants meeting the Professional Qualifications for Architectural History, History, Architecture, Historic Preservation, or Historic Architecture, as appropriate. The HRDP shall meet VDHP's most current guidance, which can be found in such documents as the "*VDHP's Photographic Documentation Requirements for Historic Resources*." The HRDP shall fully convey, in both text and photographs, the significant/character-defining features, context, and history of the historic resource.

**2. Geo-Referencing of Maps, Photographs, and Plans.**

Prior to project implementation, relevant historic maps, aerial photographs, surveyor maps, blueprints, archaeological site maps, and other relevant historic materials shall be identified for scanning and geo-referencing. The final deliverable shall

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include a digital geo-referenced copy of each scanned image and the metadata relating to both the original creation of the paper maps and the digitization process.

**3. Historic Above-Ground Property Inventory**

Prior to project implementation, affected resources must be documented on Vermont Architectural Resource Inventory (VARI) forms. Efforts may be directed toward the resurvey of previously designated historic properties and/or districts that have undergone change or lack sufficient documentation, or the survey of new historic properties and/or districts that lack formal designation. The survey shall be conducted using VDHP's *VAR*/standards and the appropriate form(s).

**4. Historic Context Statements and Narratives**

Prior to project implementation, the topic and framework of a historic context statement or narrative shall be identified. The statement or narrative may focus on an individual property, a historic district, a set of related properties, or update a relevant historic context/themes as identified in the statewide preservation plan.

**5. Oral History Documentation**

Prior to project implementation, oral history documentation needs, including a topic and list of interview candidates as appropriate, shall be identified. The oral histories shall be transcribed and include photographs and biographies of the candidates interviewed. Release forms must be signed by all candidates interviewed.

**6. National Register or National Historic Landmark Nominations**

Prior to project implementation, individual properties that would benefit from a completed National Register or National Historic Landmark nomination form(s) shall be identified. Coordination with SHPO and/or participating Indian tribe(s) must be undertaken through the drafting of the nomination form. SHPO and/or participating Indian tribe(s) shall provide adequate guidance during the preparation of the nomination form. The Vermont Advisory Council on Historic Preservation shall review

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the nomination and make a recommendation for SHPO to formally submit the final nomination to the Keeper for inclusion in the National Register.

**7. Digital Documentation and Interpretation**

Prior to project implementation, new and emerging digital and remote sensing technologies such as aerial and terrestrial LiDAR imagery, aerial drone photomosaics, photogrammetry and other derived products, terrestrial photogrammetry, ground penetrating radar, electric resistivity, magnetometer, and/or other applicable technologies to record the affected historic resource shall be identified. The digital documentation shall be interpreted for public access on a website, exhibit, lecture, presentation, and/or publication.

**8. Sale/Relocation.**

Prior to project implementation, a good faith and reasonable effort shall be made to identify a party or parties willing to take ownership and relocate the historic resource(s). A good faith and reasonable effort should include publicizing and advertising the property in newspapers, magazines, and/or websites of record for a specific period. The resource(s) must be relocated by a professional house mover following the recommendations in *Moving Historic Buildings* by John Obed Curtis (1975, reprinted 1991 by W. Patram for the International Association of Structural Movers) or another similar updated brochure. The marketing plan will be used in conjunction with a Historic Resource Documentation Package (HRDP) to be completed prior to relocation. If the good faith and reasonable effort does not result in the identification of a party or parties willing to relocate the resource(s), it may be demolished following the completion of the HRDP.

**9. Public Interpretation.**

Prior to project implementation, the appropriate level of educational interpretive plan shall be identified. The plan may include signs, displays, educational pamphlets, websites, webinars, videos, workshops, lectures, tours, and other similar



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mechanisms to educate the public on historic properties within the local community, state, or region.

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**APPENDIX F**

**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 tribe shall be contacted by the Qualified Professional in coordination with ACCD.*

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**

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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

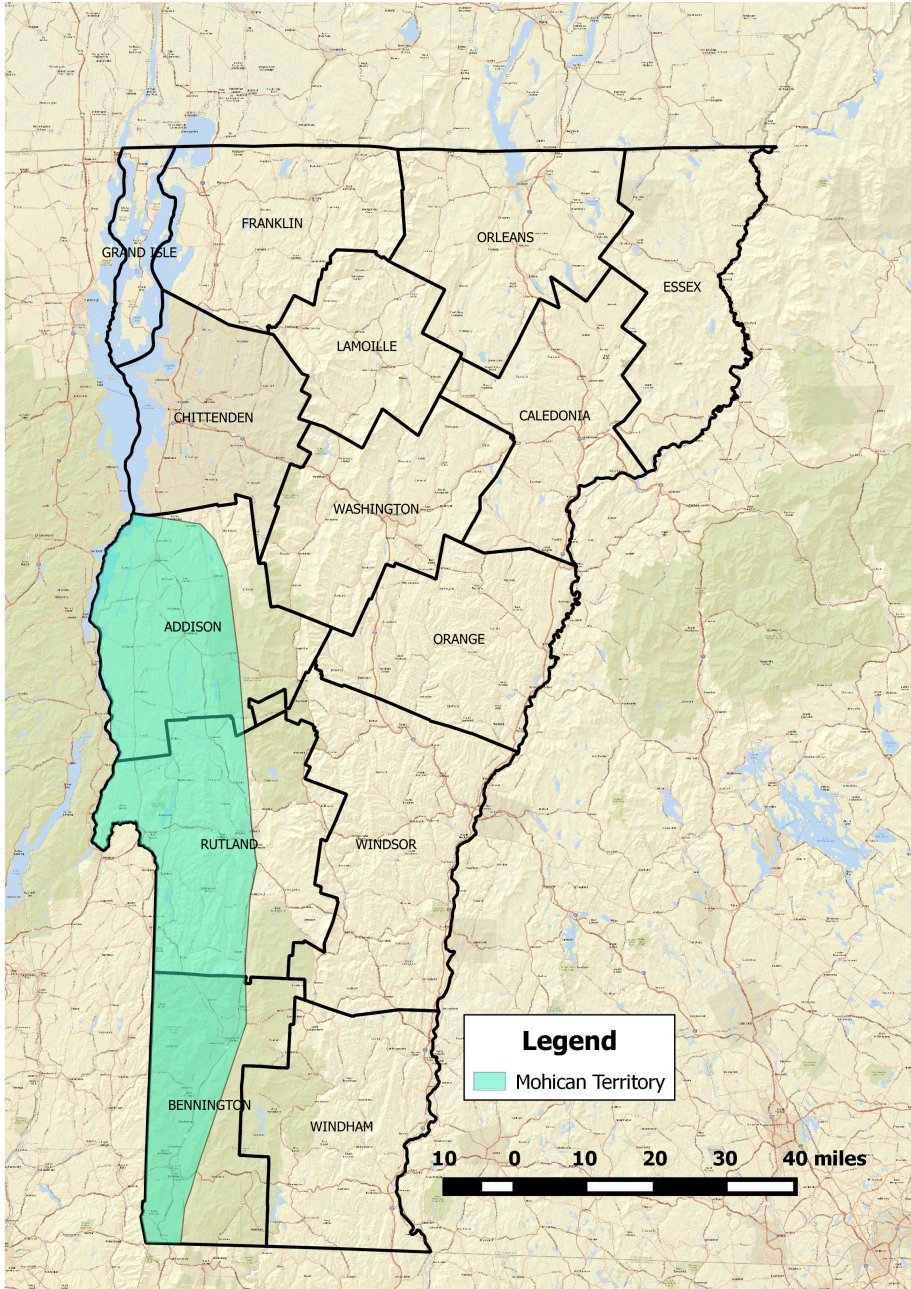
○ **None of the above apply**

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**APPENDIX G**

**MOHICAN TERRITORY OF THE STOCKBRIDGE-MUNSEE COMMUNITY MAP**

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**APPENDIX H**

**TEMPLATE FOR SECTION 106 MEMORADUM OF AGREEMENT FOR PROJECTS  
SEEKING REHABILTIATION TAX CREDITS**

**MEMORANDUM OF AGREEMENT  
AMONGST  
THE VERMONT AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT,  
THE VERMONT STATE HISTORIC PRESERVATION OFFICER, AND  
[MUNICIPALITY]  
REGARDING [PROJECT NAME]  
IN [LOCATION], VERMONT**

**WHEREAS**, the Vermont Agency of Commerce and Community Development (ACCD) plans to grant funds to the [MUNICIPALITY] for the [PROJECT NAME] (Undertaking) pursuant to the Vermont Community Development Program (VCDP), which is funded by the Small Cities Community Development Block Grant Program through the United States Department of Housing and Urban Development, in accordance with Title I of the Housing and Community Development Act of 1972, as amended, and

**WHEREAS**, the Undertaking consists of a grant to the [MUNICIPALITY] (Grantee) in VCDP funds to be subgranted to the [DEVELOPER] (Developer) to assist in the [PROJECT NAME] at [ADDRESS], Vermont, creating a [PROJECT SCOPE, i.e.: total of seven (7) one-bedroom and twelve (12) micro units of affordable housing along with community gathering and activity spaces]; and

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**WHEREAS**, the [STATEMENT OF SIGNIFICANCE FOR RESOURCE, INCLUDING WHEN LISTED IN THE NATIONAL REGISTER OF HISTORIC PLACES]; and

**WHEREAS**, Vermont State Historic Preservation Officer (SHPO) has determined that the Undertaking may have an adverse effect on properties that are listed in the National Register of Historic Places; and

**WHEREAS**, in 2016, ACCD, SHPO, and the Advisory Council on Historic Preservation (ACHP) entered into a Programmatic Agreement to more effectively fulfill the review responsibilities for CDBG activities under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. sec. 306108); and

**WHEREAS**, Article V.1.f of the Programmatic Agreement provides that: “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.” and

**WHEREAS**, Developer intends to use the RITC as a source of funds for the project; and

**WHEREAS**, ACCD has consulted with the Grantee regarding the effects of the Undertaking on historic properties and has invited them to sign this Memorandum of Agreement (MOA) as an invited signatory; and ACCD has consulted with the Developer regarding the effects of the Undertaking on historic properties and has invited them to sign this MOA as a concurring party; and

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WHEREAS, in accordance with 36 CRR § 800.6(a)(1), ACCD has notified the ACHP of the adverse effect determination with specified documentation, and the ACHP has chosen [NOT] to participate in consultation pursuant to 36 CFR § 800.6(a)(1)(iii).

**NOW, THEREFORE**, ACCD, SHPO, Grantee, and Developer agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties.

**STIPULATIONS**

The parties shall ensure that the following measures are carried out:

**I. HISTORIC PRESERVATION CERTIFICATION APPLICATION**

A. In lieu of the Section 106 review process set forth in the Programmatic Agreement, the Part 2 Historic Preservation Certification Application, approved and signed by the National Park Service, shall serve as evidence of compliance with the *Secretary of the Interior's Standards for Rehabilitation*. Conditional approval is acceptable.

B. Developer shall provide a copy of the National Park Service approval or conditional approval, and all amendments, to Grantee and ACCD.

**II. ADDITIONAL WORK**

A. If the project includes any work not included in and approved by the Part 2 Historic Preservation Certification Application, it shall be reviewed as required by the Programmatic Agreement. Any determination that the *Secretary of the Interior's Standards for Rehabilitation* cannot be met shall be treated as a post-review discovery



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under 36 CFR Section 800.13(b). In such an event, the parties shall consult regarding minimization and mitigation.

**III. QUALIFIED CONSULTANT**

Developer has retained, and will continue to retain, the professional services of [CONSULTANT NAME] (Consultant), to act as a Qualified Professional as described in the Programmatic Agreement and to assist in developing appropriate treatment or mitigation measures to avoid, minimize, or mitigate any adverse effects on historic properties. The Consultant will continue to monitor the project through completion to assure compliance with the approved plan and will promptly notify all parties to this MOA of any concerns or deviations from the approved plan.

**IV. MONITORING AND REPORTING**

Each [insert time period] following the execution of this MOA until it expires or is terminated, Developer, through its Consultant, shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the course of carrying out this MOA.

**V. DISPUTE RESOLUTION**

Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, ACCD shall consult with such party to resolve the objection. If ACCD determines that such objection cannot be resolved, ACCD will:

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A. Forward all documentation relevant to the dispute, including the ACCD's proposed resolution, to the ACHP. The ACHP shall provide ACCD 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, ACCD 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. ACCD will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, ACCD may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, ACCD shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. ACCD's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

**VI. AMENDMENTS**

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

**VII. TERMINATION**

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This MOA shall terminate upon receipt by SHPO and Developer of the National Park Service approval or conditional approval of the Part 2 Historic Preservation Certification Application.

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the Undertaking, the parties must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. **ACCD** shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by ACCD and **SHPO** and implementation of its terms evidence that ACCD has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment. The Agency shall provide a copy of the executed MOA, along with the documentation specified in Sec. 800.11(f), to the ACHP prior to approving the Undertaking in order to meet the requirements of section 106. 36 CFR § 800.6(b)(1)(iv).

SIGNATORIES:

VERMONT AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT

\_\_\_\_\_ Date \_\_\_\_\_

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[NAME OF SECRETARY], Secretary of Commerce and Community Development

VERMONT STATE HISTORIC PRESERVATION OFFICER

\_\_\_\_\_ Date \_\_\_\_\_  
[NAME OF SHPO], State Historic Preservation Officer

INVITED SIGNATORY:

[MUNICIPALITY]

\_\_\_\_\_ Date \_\_\_\_\_  
[INSERT NAME AND TITLE]

CONCURRING PARTY:

[NAME OF DEVELOPER]

\_\_\_\_\_ Date \_\_\_\_\_  
[INSERT NAME AND TITLE]