

July 2023

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE VERMONT STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE VERMONT AGENCY OF TRANSPORTATION
REGARDING THE FEDERAL-AID HIGHWAY PROGRAM IN VERMONT**

WHEREAS, the Federal Highway Administration (FHWA), under the authority of 23 U.S.C. 101 et seq., implements the Federal-Aid Highway Program (Program) in the State of Vermont by funding and approving state and locally sponsored transportation projects that are administered by the Vermont Agency of Transportation (VTrans); and

WHEREAS, the Vermont FHWA Division Administrator is the “Agency Official” responsible for ensuring that the Program in the State of Vermont complies with Section 106 of the National Historic Preservation Act (NHPA)(54 U.S.C. § 306108), as amended, and codified in its implementing regulations, 36 CFR Part 800, as amended (August 5, 2004); and

WHEREAS, VTrans administers Federal-aid projects throughout the State of Vermont as authorized by Title 23 U.S.C 302; and

WHEREAS, the responsibilities of the Vermont State Historic Preservation Officer (SHPO) under Section 106 of the NHPA and 36 CFR Part 800 are to advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies' requests within a specified period of time; and

WHEREAS, FHWA has determined that Federal Aid Transportation projects in VT may have an effect upon properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with SHPO and the Advisory Council on Historic Preservation (ACHP) pursuant to Section 800.14(b) of the regulations implementing Section 106 of the NHPA; and

WHEREAS, FHWA has consulted with federally recognized Indian tribes (Tribes) with ancestral lands in Vermont about this Programmatic Agreement (Agreement) and has requested their comments. These Tribes include the Stockbridge-Munsee Community, Cayuga Nation of Indians, Passamaquoddy Tribe-Point Pleasant Reservation, Wampanoag Tribe of Gay Head, Mashantucket Pequot Tribe, Narragansett Indian Tribe, Tuscarora Nation, Penobscot Nation, Passamaquoddy Tribe-Indian Township Reservation; and

WHEREAS, numerous attempts have been made to invite the aforementioned Tribes to participate in project level consultation as well as to participate in this Agreement. To date the Stockbridge-Munsee Mohican Tribe, Penobscot Nation, Mashantucket Pequot Tribe, and Narragansett Indian Tribe have responded and desire to participate in project level consultation but, as of the date of this Agreement, none of the Tribes have agreed to join this Agreement as a concurring party; See

Attachment 1 Tribal Consultation Protocol Matrix; and

WHEREAS, FHWA will continue to conduct outreach and will actively seek and request the comments and participation of Tribes that attach religious and cultural significance to historic properties that may be affected by undertakings reviewed under the terms of this Agreement; and

WHEREAS, pursuant to the consultation conducted under 36 CFR § 800.14(b), the signatories have developed this Agreement in order to establish an efficient and effective program alternative for taking into account the effects of the Program on historic properties in Vermont and for affording ACHP a reasonable opportunity to comment on undertakings covered by this agreement; and

WHEREAS, FHWA, VTrans, and SHPO have previously identified specific actions documented in Appendix A (incorporated herein by reference) as actions with minimal potential to cause effect to historic properties that will not require further review under Section 106; and

WHEREAS, VTrans employs cultural resources specialists and consultants who meet the Secretary of the Interior's Professional Qualification Standards (Federal Register 48:44738-44739) in the fields of archaeology and architectural history, to carry out its cultural resource programs and responsibilities; and

WHEREAS, the public has been invited to consult in the development of this Agreement through a Public Input website and social media accounts of VTrans and SHPO, and any comments received have been taken into account; and

WHEREAS, Certified Local Governments (CLGs) and state and federal agencies have been invited to consult in the development of this Agreement through a Public Input website and social media accounts of VTrans and SHPO, and any comments received have been taken into account; and

WHEREAS, VTrans has participated in the consultation and has been invited to be a signatory to this Agreement; and

WHEREAS, this Agreement supersedes the previous *Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Vermont State Historic Preservation Officer, and the Vermont Agency of Transportation Regarding Implementation of the Federal-Aid Highway Program in Vermont*, dated August 2021; and

WHEREAS, this Agreement may be superseded by a new agreement where the signatories agree through the development and execution of the new agreement. If this Agreement is superseded by a new agreement, this Agreement will have no further force or effect upon the execution of the superseding agreement; and

NOW, THEREFORE, FHWA, SHPO, ACHP, and VTrans agree that the Program in Vermont shall be implemented in accordance with the following stipulations in order to take into account

the effects of the Program on historic properties in Vermont, and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires, is terminated, or superseded.

To aid the signatories of this Agreement, the stipulations are organized in the following order:

- I. Applicability and Scope
- II. Definitions
- III. Professional Qualifications Standards
- IV. Responsibilities
- V. Consultation with Tribes
- VI. Participation of Other Consulting Parties and the Public
- VII. Review of Exempt and Screened Projects
- VIII. Review of Other Transportation Projects
- IX. Emergency Situations
- X. Post-Review and Unanticipated Discoveries
- XI. Identification and Treatment of Human Remains
- XII. Transfer of Archaeological Collections to the Vermont Archaeology Heritage Center
- XIII. Administrative Stipulations
- XIV. Resolution to Objections to Implementation
- XV. Amendment
- XVI. Termination
- XVII. Confidentiality
- XVIII. Duration of Agreement
- Appendix A: Exempt Activities
- Appendix B: Screened Activities
- Appendix C: List of Exceptional Culverts and Bridges
- Appendix D: Section 106 Flowchart
- Attachment 1: Tribal Consultation Protocol Matrix
- Attachment 2: Historic 4(f) *De Minimis* Use Clearance Form

STIPULATIONS

FHWA, with the assistance of VTrans, shall ensure that the following stipulations are carried out:

I. APPLICABILITY AND SCOPE

- A. This Agreement sets forth the process by which FHWA will meet its responsibilities under Section 106 of the NHPA, with the assistance of VTrans, for transportation projects in the Federal-Aid Highway Program in the State of Vermont. This Agreement establishes the basis for VTrans' review of individual Federal Aid Transportation Projects and how VTrans will notify and consult with SHPO, FHWA, and individuals and organizations that may be invited to be Section 106 consulting parties. The objective of this Agreement is to make more efficient the methods by which FHWA and VTrans review individual undertakings that may affect historic properties and to establish the process by which FHWA, VTrans, SHPO, and ACHP will be involved in any such review.
- B. Cooperating Federal Agencies that recognize FHWA as the lead Federal agency for an undertaking may fulfill their obligations under Section 106 of NHPA according to 36 CFR § 800.2(a)(2), provided that FHWA and VTrans follow the requirements of this Agreement and the cooperating agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and VTrans.
- C. At any time, VTrans may choose to conduct the Section 106 review for a Federal Aid Transportation Project by following the procedures in 36 CFR Part 800 rather than by following the procedures in this Agreement. VTrans and FHWA will also conduct the Section 106 review for a Federal Aid Transportation Project under the procedures in 36 CFR Part 800 if SHPO, ACHP, or FHWA so requests. Undertakings resulting in Adverse Effects shall follow the procedures in 36 CFR Part 800.
- D. State-funded actions that do not involve FHWA federal funding or permits are not subject to the terms of this Agreement.
- E. Vermont State-owned Historic Sites and properties with historic preservation easements held by the SHPO are not subject to the terms of this Agreement.

II. DEFINITIONS

- A. For purposes of this agreement, the definitions provided in 36 CFR § 800.16(a) through (z) shall apply whenever applicable.
- B. *Exempt Activities*: Undertakings that typically have minimal potential to cause effects to historic properties. Examples include pavement resurfacing, installation of fencing, construction of bicycle/pedestrian lanes, installation of rumble strips, and landscaping in previously disturbed ground. Work is limited to the activities listed in Appendix A. An undertaking will not qualify as exempt from review if conditions must be imposed to ensure that potential historic properties would not be affected.
- C. *Projects with no potential to cause effect* 36 CFR 800.3(a)(1): are defined as those actions that by their nature, will not result in effects to historic properties. FHWA defines these to only non-construction related activities. For example, purchasing equipment, planning, and

design all fall under this portion of the regulation and do not require any further obligations under Section 106. All other construction with a federal nexus must comply with 36 CFR 800 including any maintenance, new construction, and all construction-related actions. Questions about applicability should be referred to the FHWA Federal Preservation Officer (FPO).

- E. *Screened Activities*: Undertakings that have some potential to affect historic properties. Following appropriate screening by qualified professionals, if the project meets the criteria outlined in appendix B, no further Section 106 evaluation is required under this agreement. Screened Activities are limited to the project activities listed in Appendix B.
- F. *Ground disturbance*: Defined as any work or activity that results in a disturbance of the earth, including excavating, digging, trenching, drilling, augering, backfilling, clearing, and grading.

III. PROFESSIONAL QUALIFICATIONS STANDARDS

- A. VTrans shall employ full-time staff members, including an archaeologist and an architectural historian (Qualified Staff). Qualified Staff and qualified professionals (consultants) shall conduct Section 106 work, provide project reviews, and provide quality control on all Section 106 work. Qualified Staff responsible for project reviews and VTrans' contracted consultants who conduct Section 106 work must meet the Secretary of the Interior's Professional Qualifications Standards (Federal Register 48:44738-44739). VTrans will consult with SHPO in the selection of individuals to fill Qualified Staff positions.
- B. If VTrans does not maintain the employment of Qualified Staff or if Qualified Staff are unable to fulfill Program responsibilities due to extended leave or other circumstances, VTrans will notify FHWA and SHPO within thirty (30) days of the staffing shortage. VTrans may, in consultation with SHPO, appoint acting Qualified Staff who meet the Secretary of the Interior's Professional Qualifications Standards (Federal Register 48:44738-44739). If the vacancy is not filled with permanent Qualified Staff within one hundred eighty (180) days of the start of the staffing shortage, this Agreement will be suspended until permanent Qualified Staff are retained.

IV. RESPONSIBILITIES

The following section identifies the responsibilities of FHWA, SHPO, ACHP, and VTrans in complying with the terms of this Agreement.

A. FHWA Responsibilities

1. Consistent with the requirements of 36 CFR §§ 800.2(a) and 800.2(a)(1-4), FHWA remains legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by VTrans under the authority of FHWA. At any point in the Section 106 process, FHWA may inquire as to the status of any undertaking carried out under the authority of this Agreement and may participate directly in any undertaking at its discretion.
2. FHWA retains the responsibility for government-to-government consultation with Tribes as defined in 36 CFR § 800.16(m). FHWA may ask VTrans to assist in consultation

if the individual Tribe(s) agree to alternate procedures.

3. FHWA shall be responsible for resolving disputes and objections pursuant to Stipulation XIV of this Agreement.
4. Upon notification by VTrans that an undertaking may result in an Adverse Effect to historic properties, FHWA will ensure the Section 106 review process is initiated and completed, including notification to ACHP, in accordance with 36 CFR § 800.6.

B. VTrans Responsibilities

Under the authority of FHWA, VTrans may carry out the following steps with respect to undertakings covered by this Agreement. These responsibilities include carrying out the following requirements:

1. Determine under 36 CFR § 800.3(a) whether the undertaking is a type of activity that has the potential to cause effects on historic properties.
2. Solicit public comment and involvement in accordance with 36 CFR § 800.3(e) and VTrans' "Engaging the Public: Outreach Guidelines for Projects, Plans and other Agency Activities."
3. Identify additional consulting parties as described in 36 CFR § 800.3 and invite them to participate in the undertakings covered by this Agreement, as appropriate with project type and complexity.
4. Determine and document the scope of identification efforts and level of efforts as described in 36 CFR § 800.4(a) and (b)(1), including the boundaries of the undertaking's area of potential effects (APE).
5. Determine the eligibility of properties within the APE for listing in the NRHP per 36 CFR § 800.4(c) and (d).
6. Determine whether historic properties may be affected by the undertaking by applying the criteria of Adverse Effect as described in 36 CFR § 800.5(a)(1).
7. When VTrans recommends that an undertaking will have an Adverse Effect on historic properties, it will notify FHWA and initiate consultation with SHPO and other consulting parties to resolve the Adverse Effects in accordance with 36 CFR § 800.6, including alternatives to avoid, minimize, or mitigate Adverse Effects to historic properties resulting from the undertaking. Such alternatives or mitigation will be documented in a Section 106 Memorandum of Agreement or Project Programmatic Agreement executed by FHWA, VTrans, SHPO, and ACHP (if participating in consultation).
8. Provide SHPO copies of documents produced in connection with Items 1. to 8. above.

C. SHPO Responsibilities

1. SHPO is responsible for responding to FHWA and VTrans requests according to the terms of this Agreement.
2. SHPO will participate in site visits and meetings to discuss large or complex undertakings upon request by VTrans or FHWA, as staff time and resources permit.
3. SHPO is responsible for posting the final documentation on the Online Resource

Center for public access.

D. ACHP Responsibilities

1. The ACHP shall be notified of findings of adverse effect by the applicable lead federal agency and shall be invited to participate in resolving the adverse effect of an undertaking in accordance with 36 CFR 800.6(a)(1).
2. The ACHP shall participate, in accordance with Stipulation XIV, in the resolution of disputes that may occur through the implementation of this Agreement.

V. CONSULTATION WITH TRIBES

- A. FHWA shall take the lead in identifying and establishing consultation with federally recognized Indian tribes consistent with the requirements of 36 CFR § 800.2(c)(2) and 36 CFR § 800.3(c)-(f). VTrans may provide general coordination information to Tribes but FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with Tribes.
- B. In accordance with 36 CFR § 800.3(f)(2), any Tribe that might attach religious and cultural significance to historic properties in the APE shall be identified by VTrans and invited, in accordance with 36 CFR § 800.3(f)(2), by FHWA to be consulting parties.
- C. VTrans shall provide FHWA information from which FHWA can initiate consultation with Tribes early in the project planning process to identify cultural, confidentiality, or other concerns, and to allow adequate time for consideration.
- D. FHWA shall ensure that consultation continues with Tribes throughout the Section 106 review process prescribed by this Agreement whenever such Tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.
- E. Attachment 1, Tribal Consultation Protocol Matrix, contains the most current Tribal protocol processes and agreements.

VI. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Other Consulting Parties

1. VTrans shall identify other consulting parties as described in 36 CFR § 800.3 and invite them to participate in the undertakings covered under this Agreement. Written requests by individuals, organizations, and agencies to become consulting parties will be evaluated on a case-by-case basis by VTrans and FHWA. For undertakings determined to have an Adverse Effect on historic properties, SHPO shall be consulted to identify any other parties entitled to be consulting parties.

B. Public Involvement

1. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FHWA's and VTrans' environmental compliance procedures. VTrans' "Engaging the Public: Outreach Guidelines for Projects, Plans and other Agency Activities" provides guidance for identifying, informing, and involving the public. FHWA's Technical Advisory and similar and subsequent guidance documents will also be used. Public involvement and the release of information hereunder shall be consistent with 36 CFR §§ 800.2(d) and 800.3(e).
2. VTrans shall continue to seek and consider the views of the public in a manner that

reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties, to remain consistent with the intent of 36 CFR Part 800, as amended.

3. For those actions that do not routinely require public review and comment (e.g., exempt or screened activities), appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of historic properties, and the undertaking's potential impacts on them.

4. VTrans shall make FHWA and SHPO aware of any and all public controversy as it relates to the historic properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to the Tribes.

VII. REVIEW OF EXEMPT AND SCREENED PROJECTS

Referencing Appendices A, B, and C of this Agreement, VTrans and/or Qualified Staff may make a determination that an undertaking is a type of activity/activities that has minimal potential to affect historic properties. As such, the undertaking will not require additional Section 106 review or consultation with SHPO as long as the undertaking is limited to the activities specified in Appendices A and B, meets all the terms and conditions in Appendices A and B, and is not part of larger undertaking.

- A. **Appendix A** Lists Exempt Activities that shall require no consultation with SHPO. For projects that are limited to the activities listed in Appendix A, VTrans staff will document the finding that the project does not require any further review and maintain that document in the project file. A list of undertakings determined to be exempt activities for the federal fiscal year (October 1 to September 30) shall be provided to SHPO annually by November 15 for inclusion in the annual reporting to the National Park Service by SHPO.
- B. **Appendix B** lists Screened Activities that require review by Qualified Staff to determine whether a project addressing the listed activities meets all the terms and conditions of Appendix B and that no particular circumstances exist that would call for additional review. If no such circumstances exist, Qualified Staff will document the finding that the project does not require any further review and maintain that document in the project file. A list of undertakings determined to be screened activities for the federal fiscal year (October 1 to September 30) shall be provided to SHPO annually by November 15 for inclusion in the annual reporting to the National Park Service by SHPO.
- C. **Appendix C** includes a list of culverts and bridges identified as exceptional. VTrans shall complete a full Section 106 review of a project on the state highway system that has the potential to affect any of the exceptional culverts listed in Appendix C. Culverts on the state highway system that are not on the list in Appendix C are not considered exceptional or historically/architecturally significant. Projects on the state highway system involving non-historic culverts can be cleared using Appendix B Screened Activities.
- D. If Federal Aid Transportation project does not meet the terms and conditions for Appendices A, B, and C or if there are special circumstances, the project shall be reviewed under the provisions of Stipulation VIII.

VIII. REVIEW OF OTHER FEDERAL AID TRANSPORTATION PROJECTS

For Federal Aid Transportation Projects that are not listed in Appendices A and B, Qualified Staff will employ a multi-disciplinary approach that meets the requirements of 36 CFR § 800.3 and 36 CFR § 800.4. Qualified Staff may address multiple steps simultaneously.

A. **VTrans Review:** VTrans will initiate the Section 106 process and identification of historic properties by carrying out the following steps in conformance with the process outlined in the regulations implementing Section 106:

1. Initiate the Section 106 process in accordance with the procedures in 36 CFR § 800.3, including establishing whether there is an undertaking, coordinating with other reviews, planning to involve the public, and identifying and inviting other consulting parties, as appropriate; and
2. Determine the project's APE, as defined in 36 CFR § 800.16(d); and
3. Review existing information on file at Division for Historic Preservation (including the State Register of Historic Places, NRHP, Vermont Archaeological Inventory [VAI], and survey documentation) concerning the APE; and
4. Assess the likelihood that unidentified historic properties exist in the APE; and
5. Determine the degree of existing disturbance within the APE and determine whether an archaeological or historic architectural survey is needed; and
6. Perform archaeological or historic architectural field reconnaissance and/or intensive surveys, as warranted, in conformance with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation: Identification (1983, as revised in the 48 FR 44716) and SHPO's "Guidelines for Conducting Archaeology in Vermont."
 - a. If an archaeological investigation is performed, Archeological Resource Assessment, Phase I Site Identification, and Phase II Site Evaluation reports shall be prepared as appropriate. A VAI site form will be prepared for all identified archaeological sites or districts. Documentation shall be forwarded to SHPO.
 - b. SHPO's Vermont Architectural Resource Inventory Form (VARI) will be prepared for any property that will be affected by a project and that is found eligible for listing in the NRHP by VTrans or SHPO. Documentation shall be forwarded to SHPO.

B. Eligibility Evaluations and Assessments of Effect

1. As part of VTrans' performance under Stipulation VIII.A of this Agreement, Qualified Staff will apply the NRHP criteria in 36 CFR § 60.4 to properties identified within the APE.
 - a. Properties affected by the undertaking, and not previously identified, will be evaluated to determine if such properties are NRHP eligible in accordance with 36 CFR § 800.4(c)(1), and, if so, make the eligibility determination on the VTrans Determination of Eligibility (VTrans DOE) form.
 - i. If properties not previously evaluated are found to not be NRHP eligible in accordance with 36 CFR § 800.4(c)(2), VTrans will document this work as part of their assessment of effect and forward to SHPO as described in Section VIII. D.
 - b. VTrans shall review previous determinations of eligibility to evaluate if the affected

historic property retains sufficient integrity and forward any recommended changes to previous determinations to SHPO.

c. To assist SHPO with the required federal reporting, VTrans shall include in the annual report data about all determinations of eligibility recommendations made during project reviews, including for properties found to be eligible for listing in the NRHP, not eligible for listing in the NRHP, and those properties previously listed in the NRHP but that have been altered to a degree that they may no longer qualify for listing.

C. Notification and Consultation with FHWA, SHPO, and Consulting Parties

1. **Finding of No Historic Properties Affected.** When, as a result of its Stipulation VIII. A review, it is determined that there are no NRHP-listed or -eligible properties within the APE that will be affected, Qualified Staff shall make a finding, pursuant to 36 CFR § 800.4(d)(1) of No Historic Properties Affected. VTrans may consult with SHPO regarding application of the 36 CFR § 800.4 criteria. No further review under Section 106 is required for a finding of No Historic Properties Affected unless the scope of work or APE limits change, thus requiring additional review. Related documentation shall be forwarded to SHPO as described in Section VIII. D.

2. **Finding of No Adverse Effect.** For any Federal Aid Transportation Project that includes, within the APE, NRHP-listed or -eligible properties, Qualified Staff will apply the criteria of Adverse Effect set forth in 36 CFR § 800.5(a) to determine the effects of the undertaking on historic properties. Related documentation shall be forwarded to SHPO as described in Section VIII. D.

a. VTrans shall identify and engage parties per Section VI. A. for consultation as appropriate. If the effects are determined to not be adverse, Qualified Staff shall make a finding of No Adverse Effect.

b. VTrans shall include the following documentation in the project file:

- i. Any records on consultation
- ii. Any records on efforts to identify historic properties
- iii. Any findings of eligibility
- iv. Any findings of effect
- v. Any records on resolving adverse effects.

c. VTrans shall make documentation concerning a finding of No Adverse Effect available for public inspection (subject to confidentiality provisions) prior to approving the undertaking. Contact information and instructions for public inspection of documentation shall be posted on VTrans' website. No further review under Section 106 is required for a finding of No Adverse Effect unless the scope of work or APE limits change, thus requiring additional review. Final documentation shall be forwarded to SHPO as described in Section VIII. D.

3. Recommendation of Adverse Effect.

a. Projects that include, within the APE, NRHP-listed or -eligible properties that will or may be adversely affected by the project, as defined by the criteria of Adverse Effect set forth in 36 CFR § 800.5(a), shall be reviewed in accordance with the procedures of 36 CFR Part 800.

b. National Historic Landmarks. If Qualified Staff determine that an undertaking may

adversely affect a National Historic Landmark, VTrans shall request SHPO, ACHP, and the Secretary of the Interior to participate in consultation to resolve any adverse effects, as outlined in 36 CFR § 800.10.

D. VTrans Submittal and SHPO Consultation.

1. A full documentation package including APE, VTrans DOE, archaeology reports, End of Field (EOF) letters, VAI and VARI forms, and Assessment of Effect shall be submitted to SHPO within 30 days of making a determination of eligibility and finding of effect. The Eligibility Evaluation and Assessment of Effect may be submitted to SHPO separately or as one documentation packet.
2. For projects resulting in No Historic Properties Affected and No Adverse Effects, if SHPO does not object within 14 days of receipt of an adequately documented APE, Eligibility Evaluation, and Assessment of Effect, the agency official's responsibilities under Section 106 are fulfilled under 36 CFR § 800.4 and § 800.5. Consultation review periods for emergency situations may be less than 14 days; see Section IX.
3. Documentation for Adverse Effect projects shall be reviewed in accordance with the procedures of 36 CFR Part 800.

E. Project Re-evaluation

1. At any time, if an undertaking changes in the lead federal agency designation, scope, funding, or APE, the VTrans Qualified Staff shall re-assess the previous findings issued by their respective specialties to determine if the findings remain valid or if additional survey, eligibility evaluation, or effects assessment are required. All determinations shall be provided to the new lead federal agency for review and comment.
2. Should SHPO or a member of the public provide new information regarding an undertaking that would alter the re-evaluation determination made above, FHWA, VTrans, SHPO, and consulting parties shall consult pursuant to 36 CFR 800.4-6 and 800.13. Such information shall be provided to VTrans in a timely manner.
3. Additional Section 106 consultation shall not be required if less than ten (10) years have passed since the full project survey and evaluation for historic properties, not including archaeological resources, was completed, and concurred with by SHPO, or Right of Way (ROW) has been authorized.

IX. EMERGENCY SITUATIONS For the purposes of this Agreement, emergencies are defined as occurrences that require emergency action on the highway system and/or facility repairs that are necessary to 1) protect the life, safety, or health of the public; 2) minimize the extent of damage to the highway system and facilities; 3) protect remaining highway facilities; or 4) restore essential traffic. The following stipulations apply to emergency situations:

- A. Activities that consist of immediate rescue and salvage operations conducted to preserve life or property from death or destruction such as necessitate by a natural disaster or other catastrophic event are exempt from Section 106 review, in accordance with 36 CFR § 800.12(d). Actions to address emergency situations as defined above can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies.
- B. Written notification of an emergency action shall be provided to the SHPO directly. The notice shall be clearly and prominently marked as an emergency notification and shall

include an explanation of how the action meets the requirements for emergency as defined herein.

- C. If VTrans Qualified Staff anticipate, or have determined, the emergency action will adversely affect historic properties, VTrans' Qualified Staff shall notify SHPO, FHWA, Tribes, and ACHP prior to any resolution or mitigation of Adverse Effects. SHPO, FHWA, ACHP, and any Tribe that may attach religious and cultural significance to historic properties likely to be affected will have seventy-two (72) hours to respond.

For projects where the repair must be made within the first thirty (30) days of the declaration of the emergency by an appropriate authority, in response to immediate threats to life and property, the processing of environmental documentation will happen concurrently or after the fact. In these cases, VTrans will comply with the procedures in this Stipulation to the extent possible, but the reviews may be conducted after the emergency work is completed. For projects taking longer than thirty (30) days for repair after the declaration of the emergency by an appropriate authority, VTrans, will comply with the procedures in Stipulation VIII. VTrans, however, may request an extension of the period for the repair project from FHWA prior to the expiration of the thirty (30) days.

X. POST-REVIEW AND UNANTICIPATED DISCOVERIES

A. Planning for Subsequent Discoveries.

1. When VTrans' identification efforts indicate that historic properties are likely to be discovered during implementation of an undertaking, VTrans shall include in any environmental document, contract, and specifications a plan for discovery of such properties. Implementation of the plan as originally proposed or modified as necessary owing to the nature and extent of the properties discovered, will be in accordance with 36 CFR § 800.4 through 36 CFR §800.6.

B. Unanticipated Discoveries.

1. If previously unidentified archaeological or historic properties, or unanticipated effects, are discovered after VTrans has completed its review under this Agreement, that portion of the project will stop immediately.
2. No further construction in the area of discovery will proceed until the requirements of 36 CFR § 800.13 and NAGPRA implementing regulations at 43 CFR § 10, if applicable, have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property.
3. VTrans will consult with SHPO and Tribes, as appropriate, to record, document, and evaluate NRHP eligibility of the property and the project's effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property.
4. If neither SHPO nor a Tribe file an objection within seventy-two (72) hours of VTrans' plan for addressing the discovery, VTrans may carry out the requirements of 36 CFR § 800.13 on behalf of FHWA and ACHP does not need to be notified.

XI. IDENTIFICATION AND TREATMENT OF HUMAN REMAINS

- A. In the event that human remains are identified prior to, during, or after project construction, that portion of the project will stop immediately. The remains will be respectfully covered, and the Resident Engineer will immediately contact the local police and the Office of the Chief Medical Examiner. VTrans will also notify FHWA, SHPO, and the State Archaeologist. VTrans will develop a treatment plan in consultation with FHWA and SHPO. If it is determined that the human remains are associated with a Native American occupation, VTrans and FHWA will consult with the Tribes prior to the development or execution of a treatment plan. Please refer to the following State of Vermont Statutes:
1. Title 13, Chapter 81: §3761. Unauthorized removal of human remains.
 2. Title 13, Chapter 81: §3764. Cemeteries and Monuments-Grave markers and historical tablets.
 3. Title 18, Chapter 107, § 5212b. Unmarked burial sites special fund.
- B. When applicable, FHWA will follow the principles within the ACHP's Policy Statement on Burial Sites, Human Remains, and Funerary Objects, dated March 1, 2023.

XII. TRANSFER OF ARCHAEOLOGICAL COLLECTIONS TO THE VERMONT ARCHAEOLOGY HERITAGE CENTER

FHWA and VTrans will ensure that any significant cultural material collected during archaeological reconnaissance and archaeological intensive investigations on state-owned land or donated materials recovered from privately owned land will be transferred to the Vermont Archaeology Heritage Center. This will take place after the conclusion of a project following the guidance of the “Guidelines for Conducting Archaeology in Vermont.”

XIII. ADMINISTRATIVE STIPULATIONS

- A. **Annual Evaluation.** VTrans, FHWA, and SHPO agree to hold an annual evaluation in conjunction with the Vermont Advisory Council on Historic Preservation (VACHP) at the March ACHP Meeting to review implementation of the terms of this Agreement. By December 15 of each year, VTrans shall submit a report to FHWA, ACHP, and SHPO reflecting the activities applicable under this Agreement for the period between October 1 and September 30 (federal fiscal year). The annual report will include:
1. List in table form identifying all Federal Aid Transportation Project undertakings processed under this Agreement from the previous period between October 1 and September 30 and specifying project names, towns, identifiers for historic properties identified, archaeological site numbers (if assigned), and findings pursuant to 36 CFR Part 800; and
 2. List of all Appendix A and B findings signed by Qualified Staff; and
 3. Data related to determinations of NRHP eligibility evaluations; and
 4. List of projects resulting in Adverse Effect findings for consultations outside the PA;
 5. Assessment of the effectiveness of the Agreement, discussion of concerns with the Agreement, and include recommendations for changes to the Agreement, if any; and
 6. Bibliography of archaeological and architectural reports completed during the year.

- B. SHPO shall provide a copy of the VTrans annual report to the VACHP upon receipt in preparation for the annual evaluation meeting in March.
- C. VTrans, FHWA, and SHPO shall meet quarterly (not including the Annual Meeting) to share information and engage in continuing dialog on programs, process, initiatives, and projects of significance, including all Section 106 Memoranda of Agreement and Programmatic Agreements. VTrans will coordinate these meetings and any signatory party may propose a meeting and agenda items.
- D. FHWA, ACHP, and SHPO may monitor activities carried out pursuant to this Agreement. VTrans will cooperate with these parties in carrying out their monitoring efforts.
- E. Understanding that education, public outreach, planning and research, and improving efficiencies in data recordation and presentation are important aspects of cultural resource stewardship, parties to this Agreement will seek opportunities to collaborate where appropriate and feasible on these initiatives as they relate to transportation projects and the affected resources. Activities may include, but are not limited to, data synthesis and mapping, development of statewide thematic surveys and historic contexts, conservation and exhibition of archaeological materials, public outreach events, and the adoption and implementation of new and emerging technologies.

XIV. RESOLUTION TO OBJECTIONS TO IMPLEMENTATION

- A. Resolving Objections to Implementation of this Agreement
 - 1. Should any signatory party object in writing to FHWA regarding the way the terms of this Agreement are carried out, FHWA will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory party to participate in the consultation and will take any comments provided by such parties into account. FHWA shall establish a reasonable time frame for such consultations.
 - 2. If the objections—other than a determination of eligibility—is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
 - 3. If after initiating such consultation, FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to ACHP and other signatory parties, including FHWA's proposed response to the objection. Within thirty (30) days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
 - a. Advise FHWA that ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection, accordingly; or
 - b. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 - c. Notify FHWA that the objection will be referred for comment pursuant to 36 CFR § 800.7(a)(4) and proceed to refer the objection and comment. In this event, FHWA, as the Agency Official, shall ensure that the resulting comments taken into account are in accordance with 36 CFR § 800.7(~)(4).
 - 4. Should ACHP not exercise one of the foregoing options within thirty (30) days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objection.
 - 5. FHWA shall take into account any ACHP recommendation or comment and any

comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection. FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

6. FHWA shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.

7. FHWA may authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.

8. At any time during implementation of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify FHWA. FHWA shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to FHWA. FHWA shall establish a reasonable time frame for this comment period. FHWA shall consider the objection, and in reaching its decision, FHWA will take all comments from the other parties into account. Within 15 days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. FHWA's decision regarding resolution of the objection will be final. Following the issuance of its final decision, FHWA may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

- B. Objections to Determination of Eligibility: Should any signatory party object to a determination of eligibility and after subsequent consultation if resolution is not achieved, FHWA will submit the determination to the Keeper of the National Register of Historic Places for resolution.

XV. AMENDMENT

- A. Any signatory party to this Agreement may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties.

XVI. TERMINATION

- A. Any signatory party may terminate this Agreement. If this Agreement is not amended as provided for in Stipulation XV, or if any signatory party proposes termination of this Agreement for other reasons, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than thirty (30) calendar days to seek alternatives to termination.
- B. In the event of termination, FHWA would carry out the requirements of 36 CFR Part 800 with regard to individual Federal Aid Transportation Projects covered by this Agreement.

XVII. CONFIDENTIALITY

All parties to this Agreement acknowledge that information about historic properties, potential historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of NHPA. Section 304 allows FHWA to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if VTrans determines that disclosure may 1) cause a significant invasion of privacy; 2) risk harm to the historic resource; or 3) impede the use of a traditional religious site by

practitioners. Having so acknowledged, all parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

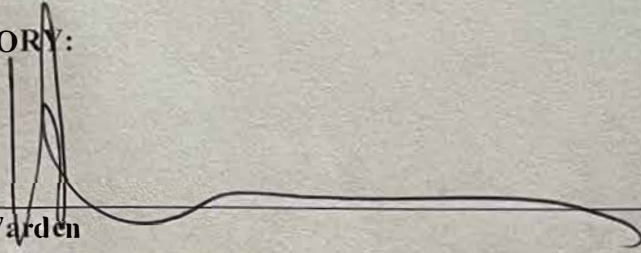
XVIII. DURATION OF AGREEMENT

This Agreement shall remain in effect for a period of five (5) years after the date it takes effect unless it is extended or terminated prior to that time. No later than ninety (90) days prior to the conclusion of the five (5) year period, FHWA will notify all parties in writing of their intention to extend this PA. If there are no objections from consulting parties, the term of the Agreement will be extended for an additional five (5) years through the amendment process in stipulation XV up to a limit of ten (10) years. If any party objects to extending the Agreement, or proposes amendments, VTrans will consult with the parties to consider amendments or other actions to avoid termination. The Effective Date shall be the date the last party signs this Agreement.

Execution and implementation of this agreement evidence that FHWA has delegated certain Section 106 responsibilities to VTrans and has afforded ACHP a reasonable opportunity to comment on the Program and its individual undertakings in Vermont; that FHWA has taken into account the effects of the program and its individual undertakings on historic properties; and that FHWA has complied with Section 106 of the NHPA and 36 CFR Part 800 for the Program and its individual undertakings.

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE VERMONT STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE VERMONT AGENCY OF TRANSPORTATION
REGARDING THE FEDERAL-AID HIGHWAY PROGRAM IN VERMONT**

SIGNATORY:

A handwritten signature in black ink, appearing to read "Randy Warden", is written over a horizontal line. The signature is stylized with a large, looped initial 'R' and a long, sweeping tail that extends to the right.

**Randy Warden
Vermont Division Administrator
Federal Highway Administration**

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE VERMONT STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE VERMONT AGENCY OF TRANSPORTATION
REGARDING THE FEDERAL-AID HIGHWAY PROGRAM IN VERMONT**

SIGNATORY:



[Redacted signature area]

**Reid Nelson, Executive Director
Advisory Council on Historic Preservation
August 11, 2023**

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE VERMONT STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE VERMONT AGENCY OF TRANSPORTATION
REGARDING THE FEDERAL-AID HIGHWAY PROGRAM IN VERMONT**

SIGNATORY:

DocuSigned by:
Laura V Trieschmann 8/1/2023
E88B1289163E42E

**Laura V. Trieschmann
Vermont State Historic Preservation Officer**

Approved as to Form:

DocuSigned by:
Maxwell Krieger 8/1/2023
1FDA0774010147E

**Maxwell Krieger, General Counsel
Vermont Department of Housing and Community Development,
Division for Historic Preservation**

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE VERMONT STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE VERMONT AGENCY OF TRANSPORTATION
REGARDING THE FEDERAL-AID HIGHWAY PROGRAM IN VERMONT**

INVITED SIGNATORIES:

DocuSigned by:

Joe Flynn

8/1/2023

Joe Flynn, Secretary
Vermont Agency of Transportation

Approved as to Form:

DocuSigned by:

Mark Seltzer

7/27/2023

Attorney General's Office
Vermont Agency of Transportation

APPENDIX A EXEMPT ACTIVITIES

If the proposed project involves only those activities listed in Appendix A as “Exempt Activities,” a VTrans Environmental Specialist or Qualified Staff will complete the Exempt Activity Form and Send a copy with the project. SHPO will be notified annually of the projects that have been processed using the Screened Activities list. No Further review under Section 106 is required. All work for Appendix A activities is conducted from the road surface and is contained within the road prism.

Section A: Bridge Repairs/Bridge Maintenance on VTrans Federal Aid Projects

No.	Activity	Description
1.	Bridge washing and Cleaning	Includes clean drainage scuppers and drainpipes, as well as removal of vegetation to allow access for inspection team or repairs
2.	Culvert replacement – In-kind	Replacement of culverts constructed of corrugated metal, reinforced concrete, and/or plastic pipe, provided work is conducted from road surface and contained within the road prism <ul style="list-style-type: none"> • Excluding stone headwall work • Concrete headwall work is exempt
3.	Repair/replace bridge expansion-joints	
4.	Reset bridge bearings	Strengthening bearings by jacking bridge less than 1-inch and replacing or repairing.
5.	Pile encasement for steel bridges	Reinforcement of piles with concrete sheaths including: <ul style="list-style-type: none"> • Addition of concrete encasement approximately 6-inches in diameter • Placement of temporary fill for dewatering activities
6.	Repair/replace portions of approach slabs & bridge deck – In-kind	Includes the following activities: <ul style="list-style-type: none"> • Overlay with permanent asphalt • Filling voids
7.	Post-tension duct repair/internal post-tensioning	Steel strands through ducts formed in the concrete then grouted in place
8.	Repair/replace co-polymer overlay on deck	Replaced with conductive polymer overlay system to protect concrete bridge deck and improve friction

Section B: Pavement Resurfacing/Shoulder Rehabilitation, Ditching, and Guardrail/Cable/Median Barriers on VTrans Federal Aid Projects

No	Activity	Description
1.	Roadway resurfacing and or rehabilitation	<p>Includes the following activities for asphalt roadways:</p> <ul style="list-style-type: none"> • Overlay • Sealing • Milling • Filling • Grinding • Grooving • Crack repair • Rut repair • Pothole filling • Chip seal (AST/BST) • Patching • Resurfacing to subbase • Installation of rumble strips, rumble stripes, line striping, and traffic sensors <p>Includes the following activities for concrete roadways:</p> <ul style="list-style-type: none"> • Grinding • Grooving • Pavement rehabilitation • Spall repair <p>Includes in-kind repair/replacement of guardrail</p>
2.	Slope repair	Repair of failed slopes within the existing road prism, provided work can be performed from the road surface and contained within the road prism
3.	Ditching	Cleaning of existing ditches within as-built ditches.

Section C: Miscellaneous

No.	Activity	Description
1.	Enhancements, Park & Rides, Rest Areas, etc.	Maintenance and minor improvements to existing park & rides within existing boundaries where no excavations will take place
2.	Pavement markings	<p>Includes installation of the following:</p> <ul style="list-style-type: none"> • Rumble strips, chevrons, stop bars, and other pavement markings (raised, reflective, otherwise) • Additional or replacement roadway striping • Pedestrian crosswalk markings

**APPENDIX B
SCREENED ACTIVITIES**

If the proposed project involves only those activities listed in Appendix B as “Screened Activities,” the VTrans Qualified Staff will complete a Screened Activity Form and save a copy with the project file. SHPO will be notified annually of the projects that have been processed using the Screened Activities list. No Further review under Section 106 is required.

Section A: Bridge Repairs/Bridge Maintenance on VTrans Federal Aid Projects

No	Activity	Description
1.	Exceptional Culverts	<p>VTrans shall complete a full Section 106 review of a project on the state highway system that has the potential to affect any of the exceptional culverts listed in Appendix C. Culverts on the highway system that are not on the list in Appendix C are not considered exceptional or historic. Projects on the state highway system involving non-historic culverts can be cleared using the Screened Activities review template.</p> <p>In-kind repair and replacement of concrete headwalls provided all work is conducted from the road surface and/or contained within the road prism is a Screened Activity</p>
2.	Full deck replacement	
3.	Miscellaneous repair or replacement of superstructure and substructure elements	Repair or replacement activities to the superstructure and substructure such as pavement, joints, decks, railings, abutments, and drainage systems, where work and access are limited to previously disturbed and non-archaeologically sensitive areas within the ROW
4.	Bridge jacking	<p>Includes the following activities:</p> <ul style="list-style-type: none"> • Increase vertical clearance by elevating the bridge through use of bearings • Approaches are modified, as needed, within existing roadway
5.	Scour repair – repair undermined abutment caps	Fill voids with flowable fill or other stable material, includes screening of any proposed access required for work
6.	Scour repair – replacement of floor beams	<p>Includes the following activities:</p> <ul style="list-style-type: none"> • Removal of concrete and rebar and subsequent setting of pre-stressed concrete or steel beams. • Placing of framework, rebar, and concrete provided work can occur within the existing ROW
7.	Scour repair – replacement of rip-rap or fill	In-kind replacement over existing materials at bridge bents and/or abutments as a result of a washout
8.	Repair/replace bridge headers, voids, end-and back-walls,	Activities confined to the bridge structure itself

	concrete bent caps, bridge/pot bearings	
9.	Abutment slope repair	Activities confined to the bridge structure itself
10.	Steel bridge painting	Reapplication of paint for steel bridge structures, H-piling, metal shell piling, and steel sway bracing
11.	Installation of crutch or helper bents	Additional supports or shoring in the event of what is in place is not adequate
12.	Repair/replace existing box-girder drainage system	Drainage system found on larger bridges. Includes repair of internal PVC drainage system withing the bridge structure
13.	Heat straightening and/or in-kind replacement of damaged steel beams	
14.	Installation of carbon-fiber reinforcements or post-tensioning design for the substructure/caps	Bridge strengthening technique
15.	Replacement of existing bridge fender structures by driving piles.	Involves cutting the existing fenders to 2' below the bud line for removal and installing new fenders in close proximity to the original location
16.	Epoxy injection repair of all concrete members (i.e. decks, beams, caps, columns, etc.)	
17.	Hydro-demolition of Concrete bridge decks	
18.	Replacement of edge beams	Concrete stiffening member placed transversely at the end of a span
19.	Installation of chain-link safety fencing	Addition of brackets and fence posts attached to the bridge with the fencing stretched atop the bridge railing
20.	Installation of temporary cable system staging for inspection activities	This includes staging for inspections, provided staging is installed on previously disturbed areas within the ROW – e.g. bridge inspection scaffolding etc.

Section B: Pavement Resurfacing/Shoulder Rehabilitation, Ditching, and Guardrail/Cable/Median Barriers on VTrans Federal Aid Projects

No.	Activity	Description
1.	Modernization of an existing transportation facility by widening equal to, or less than, a travel lane, not to exceed 12'	Includes but not limited to: <ul style="list-style-type: none"> • Shoulder additions • Bridge approaches • Turn lanes • Bicycle lanes
2.	Full-depth roadway reconstruction	Full-depth reconstruction to depth of existing subbase and within the existing road prism Full-depth reconstruction beyond existing subbase and withing existing ROW can qualify as Screened Activity following documented coordination with SHPO archaeologist
3.	Railroad ROW activities	Refer to Advisory Council on Historic Preservation's Program Comment to Exempt Consideration of Effects to Rail Properties within Rail Rights-of-Way
4.	Installation of ADA ramps to existing facilities	
5.	Reconstruction or repair of existing sidewalks, bicycle lanes, and multi-use paths including new connections, up to 500 feet, to existing facilities	
6.	Correcting substandard roadway geometrics and intersections	Full-depth reconstruction to correct isolated deficiencies to depth of existing subbase and within the existing road prism Full-depth reconstruction to correct isolated deficiencies beyond existing subbase and withing existing ROW can qualify as Screened Activity following documented coordination with SHPO archaeologist.
7.	Ditching	Establishing new ditches within existing ROW.
8.	Repair or reconstruction of erosion control and protection measures	Includes but not limited to the following: <ul style="list-style-type: none"> • Slope stabilization • Slide repair • Rip-rap • Retaining walls • Streambank stabilization
9.	Ledge repair, removal, and stabilization	

10.	Routine cleaning, maintenance, and repair of existing drainage, stormwater management, and water quality facilities and devices	
11.	Shoulder/median work	Includes the following activities: <ul style="list-style-type: none"> • Shoulder building through the addition of pavement to existing shoulder, within the existing toe-of-slope • Typically associated with resurfacing of turn lanes, bike lanes, medians, etc. • May also include repair of roadway edge line
12.	Guardrail installations	Installation of new guardrail and guardrail anchors withing existing disturbed ROW
13	Median crossovers	Includes the following activities: <ul style="list-style-type: none"> • Installation of, or upgrade to, median crossovers on divided highways, to include the addition of turn lanes • Includes grading and/or fill withing median and addition of paved surface and associated striping
14.	Cable barriers	Includes the following activities: <ul style="list-style-type: none"> • Installation of new, or rehabilitation of existing, cable barriers withing existing toe-of-slope • Includes concrete foundation, breakaway post, and cable

Section C: Miscellaneous – including but not limited to park & rides, rest areas, ADA, utilities/signage/traffic signals on VTrans Federal Aid projects

No.	Activity	Description
1.	In-kind replacement/relocation of existing utility poles and underground utilities	Utility markers cannot be within 20-feet of significant element or access to a historic property
2.	Signage	Routine maintenance consisting of replacement of signs allowing for current safety standards
3.	Installation of dynamic message signs	Includes the following activities: <ul style="list-style-type: none"> • Installation of concrete footer to support sign pole or truss structure • Installation of pull-boxes, cabinets, and conduit
4.	New advance warning signs	Installation of flashing lights at approach to an intersection
5.	Directional underground boring	
6.	Installation of Intelligent Transportation Systems (ITS) equipment to existing poles	Addition of ITS components (cameras, wireless devices, signs, cabinets, etc.) to an existing pole <ul style="list-style-type: none"> • Connected to existing pull-box and conduit
7.	Upgrade existing traffic signals and city signal systems	Involves installation or replacement of traffic signals, poles, and/or signal cabinets
8.	Installation of new traffic signals	
9.	Stormwater retrofits	Construction of stormwater treatment features into existing roadways and facilities
10.	Installation of ADA curb-cuts on existing sidewalks	
11.	Airports (FHWA funded airport activities only)	General repair or maintenance of existing airport facilities
12.	Installation and replacement of pedestrian poles and pedestrian signals	Involves the installation or replacement of signal heads and/or push-button stations

13.	Landscaping	Includes the following activities: <ul style="list-style-type: none"> • Shallow grading, tilling, and planting. Grading and tilling, if needed are used to smooth surface and/or bring in soil prior to planting • Mowing • Seeding
14	Right-of-way reclamation	Includes the following activities: <ul style="list-style-type: none"> • Removal of vegetation which has grown since original construction or reconstruction. Consists of cutting back existing vegetation within the clear zone • May include chemical treatment and/or grinding of stumps to prevent regrowth
15.	Replacement of existing lighting	Replacement of existing lighting within the right-of way or at underpasses
16.	Replacement of existing fencing	Replacement of existing fencing within the ROW
17.	Ramp and intersection improvements	Consists of in-place replacement or upgrading of existing ramps and the addition of ramp turn lanes
18.	Miscellaneous utilities	Replacement/repairing of existing underground utilities in-kind and withing existing roadway footprint Replacement and relocation of existing utility poles between edge of sidewalk and road
19.	Enhancements, park & rides, rest areas, etc.	Maintenance and minor improvements to existing park & rides withing existing boundaries and where excavation will occur
20.	Wayfinding signs	Installation of wayfinding signs for bike/ped use along roadway shoulders, sidewalks, multi-use paths.

APPENDIX C
(Page 1 of 3)
LIST OF EXCEPTIONAL CULVERTS and BRIDGES

VTrans shall complete a full Section 106 review of a project on the state highway system that has the potential to affect any of the exceptional culverts and bridges listed below. This includes only state-owned culverts and bridges.

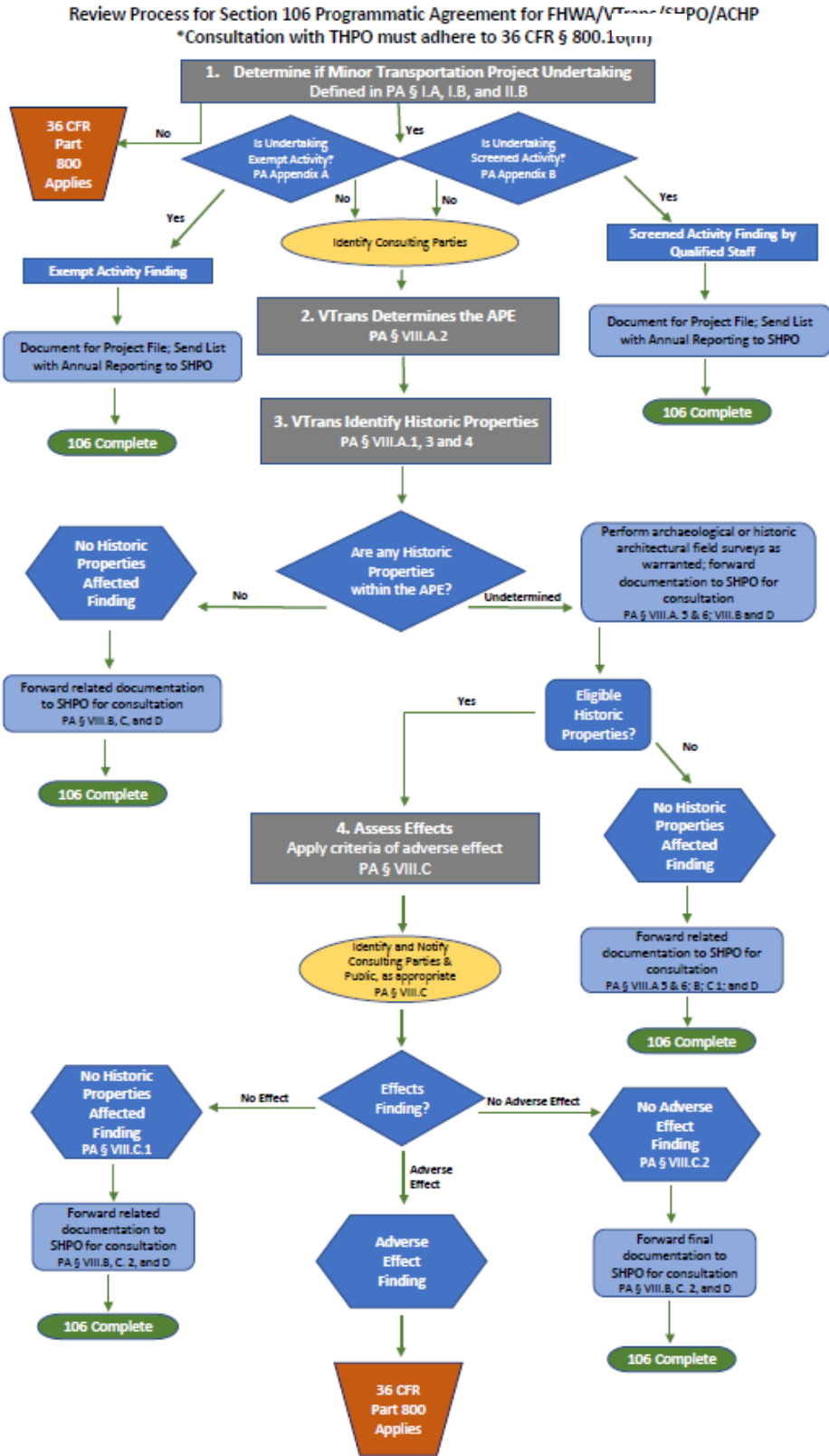
VTrans shall first make any historic culvert or bridge it proposes to demolish available for donation or sale to state, local, or responsible private entity in compliance with 23 U.S.C. 144(g.). However, the only concrete culvert or bridges subject to donation or sale are those identified in Appendix C. For Appendix C bridges, VTrans will determine if the bridge is a reasonable candidate for relocation or remaining in place.

Route Name	Bridge Number	Year Built	Year Reconstructed	Town Name	Bridge Type	Bridge Type Code	NRHP Criteria	Notes	Location
VT4A	5	1924		Castleton	R.C. Box Wd with Slab	100	A or C	Appears to be rigid frame rather than concrete box, railing still mostly intact.	1.2 MI E VT 30
VT133	5	1900		Tinmouth	Concrete Slab	101	A or C	Earliest example, moderate integrity	6.0 MI N. JCT. VT 30
VT140	5	1918		Wallingford	Concrete Slab	101	A or C		3.6 MI E JCT US 7
VT12	56	1918		Northfield	Concrete Slab	101	A or C		2.5 MI S VT 12A
VT7A	17	1919		Arlington	Concrete Slab	101	A or C		2.5 MI N JCT VT 313
VT110	16	1919		Washington	Concrete Slab	101	A or C		8.3 MI S JCT US302
VT133	12	1919		Ira	Concrete Slab	101	A or C		5.8 MI S. JCT. VT 4A
VT100	098G	1919		Ludlow	Concrete Slab	101	A or C		1.4 MI S JCT VT 103
VT7B	6	1919		Clarendon	Concrete Slab	101	A or C		1.7 MI N VT 103
VT110	15	1921	1940	Washington	Concrete Slab	101	A or C		8.7 MI S JCT US302
US7	82	1921		Wallingford	Concrete Encased Steel Beam	101	A or C		0.1 MI S JCT VT 140
VT118	24	1921		Enosburg	Concrete Slab	101	A or C		1.8 MI S JCT VT 105
US302	20	1922		Orange	Concrete Slab	101	A or C		0.6 MI W JCT VT 25
VT14	64	1923		Barre	Concrete Slab	101	A or C		2.8 MI S JCT US 302 S
VT4A	14	1924		Ira	Concrete Slab	101	A or C		1.4 MI W US 4 OVERPASS
US7	159	1924		Colchester	Concrete Slab	101	A or C		2.0 MI N JCT VT 2A
VT09	10	1925	1941	Woodford	Concrete Slab	101	A		3.5 MI E US 7
VT105	73	1927		Derby	Concrete Slab	101	A		4.2 MI E JCT US 5
VT140	3	1927		Wallingford	Concrete Slab	101	A		2.0 MI E JCT US 7
VT12	58	1928		Northfield	Concrete Slab	101	A		1.6 MI S JCT. VT.12A S
VT100B	3	1928		Moretown	Concrete Slab	101	A		1.1 MI E JCT VT 100
VT105	74	1928		Charleston	Concrete Slab	101	A		1.2 MI W JCT VT 5A

Route Name	Bridge Number	Year Built	Year Reconstructed	Town Name	Bridge Type	Bridge Type Code	NRHP Criteria	Notes	Location
VT12	57	1928		Northfield	Concrete Slab	101	A		1.7 MI S JCT VT 12A S
VT114	10	1928		Lyndon	Concrete Slab	101	A		3.0 MI N JCT US 5
VT113	11	1928		Vershire	Concrete Slab	101	A		7.5 MI E JCT VT 110
VT133	20	1928		West Rutland	Concrete Slab	101	A		0.3 MI S. JCT. VT 4A
VT140	4	1929		Wallingford	Concrete Slab	101	A		2.5 MI E JCT US 7
VT15	001A	1929		Essex	Concrete Slab	101	A		0.3 MI E VT 2A
VT09	7	1930		Bennington	Concrete Slab	101	A		1.0 MI E US 7
VT09	8	1930		Bennington	Concrete Slab	101	A		1.3 MI E US 7
VT110	18	1916		Washington	Concrete T-Beam	104	A	Early intact example of a T-beam culvert	4.0 MI S JCT US 302
VT64	8	1919		Williamstown	Concrete Rigid Frame	107	A or C	If rigid frame, could be eligible under Criterion C	0.9 MI W JCT VT 14
VT2B	5	1919		St. Johnsbury	Concrete Frame	107	A or C	Earliest concrete rigid frame with moderate integrity.	2.3 MI E JCT US2
VT104	17	1927		St. Albans	Concrete Rigid Frame	107	A or C		1.2 MI S JCT VT 36
VT14	52	1931		Williamstown	Concrete Rigid Frame	107	A or C	Very poor condition but good example	4.1 MI N VT65
US5	124	1931	1970	Barnet	Concrete Arch	111	A or C		5.0 MI S JCT US 2
VT11	063A	1949		Springfield	Concrete Arch	111	A or C		JCT VT 143
VT09	53	1914		Brattleboro	Concrete Arch Wd with Slab	119	A or C	Not Exempt, Nice example of an early concrete culvert with concrete rail.	1.1 MI W I91
VT15	39	1917		Hyde Park	R.C. Box	119	A	Earliest box culvert with railing but in very poor condition	1.7 MI W VT 100 N
VT15	76	1918	1937	Walden	R.C. Box	119	A	Potential rehabbed but early example	2.2 MI E JCT VT 16
US5	43	1919		Springfield	R.C. Box	119	A		1.0 MI S JCT VT 11 WEST
US5	45	1919		Springfield	R.C. Box	119	A		0.1 MI N JCT VT 11 EAST
US5	126	1919		St. Johnsbury	R.C. Box	119	A		1.6 MI S JCT US 2
VT4A	10	1919		Castleton	R.C. Box	119	A		3.4 MI E VT 30
VT4A	9	1919		Castleton	R.C. Box	119	A		3.2 MI E VT 30
VT7A	28	1919		Manchester	R.C. Box	119	A		0.5 MI S JCT VT 11
VT112	4	1919		Halifax	R.C. Box	119	A		4.8 MI E JCT VT 100
VT142	1	1919		Vernon	R.C. Box	119	A		0.6 MI N VT MASS ST LINE
VT128	7	1919		Westford	Concrete Box	119	A		2.1 MI S JCT VT 104
VT128	4	1919		Essex	Concrete Box	119	A		2.1 MI N JCT VT 15
VT128	2	1919		Essex	R.C. Box	119	A		0.8 MI N JCT VT 15
VT112	6	1919	1940	Halifax	R.C. Box	119	A		3.2 MI E JCT VT 100

Route Name	Bridge Number	Year Built	Year Reconstructed	Town Name	Bridge Type	Bridge Type Code	NRHP Criteria	Notes	Location
VT11	16	1919		Winhall	R.C. Box	119	A		0.5 MI E JCT VT 30
VT112	2	1919		Halifax	R.C. Box	119	A		6.2 MI E JCT VT 100
VT108	4	1919	1953	Stowe	R.C. Box Wid with Slab	119	A		4.0 MI N JCT VT 100
VT14	125A	1919		Irasburg	R.C. Pipe	119	A		0.7 MI N JCT VT 58 W
VT15	77	1919	1938	Walden	R.C. Box	119	A		2.3 MI E JCT VT 16
VT15	2	1919		Essex	R.C. Box	119	A	Good intact example	1.4 MI E VT 2A
VT14	125B	1919		Irasburg	R.C. Pipe	119	A		1.2 MI N JCT VT 58 W
VT346	5	1919	1933	Pownal	R.C. Box	119	A		2.0 MI N JCT US 7
VT100	74	1919		Wardsboro	R.C. Box	119	A		4.0 MI S JCT VT 30
VT125	013A	1919		Ripton	Precast R.C. Box	119	A		3.4 MI. E US7
US302	004A	1919		Barre City	Conc Slab/Gran Slab	119	A		3.5 M EAST JCT US2
VT11	21	1919		Peru	R.C. Box	119	A		4.6 MI E JCT VT 30
VT14	62	1921		Williamstown	R.C. / Stone Box	119	A		3.9 MI S JCT US 302 S
US302	5	1918	1975	Barre City	Jack Arch	302	A	Not Exempt, Series of corrugated pipe arches between steel beams, stone abutments	0.1 M W JCT VT 14
US2	84	1923		Cabot	Timber Penstock	719	A		7.6 MI W JCT VT 15
US5	169	1931		Barton	Granite Slab/ R.C. Box	800	A or C		3.2 MI N JCT VT 16 WEST
US5	162	1905		Barton	2 Span Masonry Slab	801	A or C		0.4 MI S JCT VT 16 SOUTH
US2	123	1917		Lunenburg	Stone Arch	811	A or C		5.7 MI W JCT VT 102
VT109	5	1919		Bennington	Masonry Stone Arch	819	A or C		0.2 MI W US 7
US4	57	1932		Hartland	Masonry Stone Arch	819	A or C		0.1 MI E JCT VT 12 SOUTH

APPENDIX D SECTION 106 FLOWCHART



ATTACHMENT 1: Tribal Consultation Protocol Matrix

FHWA VT DIV Tribal Consultation Contacts						
Tribe	Area of Interest	Contact Information	Email	Phone	Address	Remarks
Stockbridge-Munsee Mohican Tribe	South West portion of VT (See Map)	Jeffrey C Bendremer Ph.D., RPA (THPO)	thpo@mohican-nsn.gov	413-884-6029	(Do not Mail) Stockbridge – Munsee Community Tribal Historic Preservation Extension Office 86 Spring Street Williamstown, MA 01267	Email only
Penobscot Nation	State-wide	Chris Sockalexis (THPO)	Chris.Sockalexis@penobscotnation.org	207-659-5524	Penobscot Nation 12 Wabanaki Way Indian Island, ME 04468	
Narragansett Indian Tribe		John Brown (THPO)	tashtesook@aol.com	(401) 539-4217	Narragansett Indian Tribe Attn: NITHPO 4425 South Country Trail, Charlestown Rhode Island 02813	
Wampanoag Tribe of Gay Head		Bettina Washington Tribal Historic Preservation Officer	bettina@wampanoagtribe.net ; thpo@wampanoagtribe-nsn.gov ; tcrm2@wampanoagtribe-nsn.gov	508-645-9265	Wampanoag Tribe of Gay Head 20 Black Brook Road Aquinnah, MA 02535	
Cayuga Nation		Clint Halftown (Federal Representative)	sharon.leroy@cayuganation-nsn.gov	315-568-0750	Cayuga Nation P.O. Box 803 Seneca Falls, NY 13148 Fed Ex Address 66 Genesee St Auburn, NY 13021	
Passamaquoddy Tribe - Pleasant Point		POC : Vice Chief- Lt. Governor Pos Bassett	posbassett@wabanaki.com	207-853-2600	PO Box 343, Perry, ME, 04667	
Passamaquoddy Tribe - Indian Township		POC: Vice Chief Joseph Socobasin	chief.wnicholas@gmail.com ; Ltgovdnewell@gmail.com Maybe soctomah@gmail.com	207-796-2301	PO Box 301 Princeton, ME 04668	
Mashantucket Pequot Tribe	State-wide	Michael Johnson (THPO)	MEJohnson@mptn-nsn.gov	860-396-7575	Mashantucket Pequot Tribe 110 Pequot Trail Mashantucket, CT 06338	

ATTACHMENT 2: Historic 4(f) De Minimis Use

Page 1 of 5

FHWA, SHPO, and VTrans agree to follow the streamlined 4(f) procedure as outlined in the signed agreement letter below. This agreement applies to Section 4(f) de minimis determinations for historic properties when the project will result in “no adverse effect” or “no historic properties affected” under Section 106 of the National Historic Preservation Act. This process will be reevaluated for continuation during each PA revision.



Vermont Division

June 9, 2022

87 State Street
Montpelier, VT 05602
802 828-4423
802 828-4424 Fax
Vermont.FHWA@dot.gov

In Reply Refer To:
HDA-VT

Ms. Laura Trieschmann
Vermont State Historic Preservation Officer
Department of Housing and Community Development/ACCD
1 National Life Drive
Deane Davis Building, 6th Floor
Montpelier, Vermont 05620-0501

Subject: Section 4(f) *de minimis* Determination Streamlining

Dear Ms. Trieschmann:

The Federal Highway Administration Vermont Division (FHWA) would like to update the procedures regarding *de minimis* impact findings under Section 4(f) of the USDOT Act of 1966. As detailed in 23 CFR 774 and the FHWA's Section 4(f) Policy Paper (2012), there is increased flexibility with respect to minor transportation project impacts to properties protected under Section 4(f), including historic properties. It simplifies the processing and approval of federal transportation projects that have a *de minimis* impact on lands protected by Section 4(f). For historic properties, the FHWA may determine that an impact is *de minimis* only after receiving written concurrence from the State Historic Preservation Office (SHPO) that the project will result in "no adverse effect" or "no historic properties affected" under Section 106 of the National Historic Preservation Act.

23 CFR 774(5)(b)(1) and the FHWA Section 4(f) Policy Paper Questions 12B and 12D clarify the requirements for written concurrence by the SHPO as follows:

Question 12B: How should the concurrence of the SHPO/THPO, and ACHP if participating in the Section 106 determination of effect, be documented when the concurrence will be the basis for a *de minimis* impact finding?

Answer: Section 4(f) requires that the SHPO/THPO, and ACHP if participating, must concur in writing in the Section 106 determination of no adverse effect (See 23 CFR 774.S(b)(1)(ii)). The request for concurrence in the Section 106 determination should include a statement informing the SHPO/THPO, and ACHP if participating, that FHWA or FTA intends to make a *de minimis* impact finding based upon their concurrence in the Section 106 determination.

ATTACHMENT 2: Historic 4(f) De Minimis Use

Page 2 of 5

Under the Section 106 regulation, if a SHPO/THPO does not respond within a specified time frame, FHWA may move forward to the next step of the Section 106 process, but Section 4(f) explicitly requires their written concurrence (See 23 CFR 774.S(b)(1)(ii)). It is therefore recommended that transportation officials share this guidance with the SHPOs and THPOs in their States so that these officials fully understand the implication of their concurrence in the Section 106 determinations and the reason for requesting written concurrence.

Question 12D: Certain Section 106 Programmatic Agreements (PAs) allow the lead agency to assume the concurrence of the SHPO/THPO in the determination of *no adverse effect* or *no historic properties affected* if a response to a request for concurrence is not received within the time period specified in the PA. Does such concurrence through non-response, in accordance with a written and signed Section 106 PA, constitute the written concurrence needed to make a *de minimis* impact finding?

Answer: In accordance with the provisions of a formal Section 106 programmatic agreement (PA), if the SHPO/THPO does not object to the no adverse effect or no historic properties affected in the Section 106 determination within a specified time frame, the non-response together with the written PA, will be considered written concurrence in the Section 106 determination that will be the basis for the *de minimis* impact finding by FHWA. The FHWA must inform the SHPO/THPO who are parties to such PAs, in writing, that a non-response which is treated as a concurrence in a no adverse effect or no historic properties affected determination will also be treated as the written concurrence for purposes of the FHWA *de minimis* impact finding (see 23 CFR 774.S(b)(1)(ii)). It is recommended that this understanding of the parties be documented via formal correspondence or other written means and appended to the existing PA. There is no need to amend the PA itself.

By transmittal of this letter, the FHWA is notifying your office of our intent to determine Section 4(f) *de minimis* use for those projects which have a no adverse effect or no historic properties affected determination when your office has not objected to the Section 106 determination of effect within 14 days per XIII.D.2. of the *Programmatic Agreement Among the Federal Highway Administration, the Vermont State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Vermont Agency of Transportation Regarding the Federal-Aid Highway Program in Vermont*. The use of the historic property, when determined through the Section 106 process to have no adverse effect or no effect to the historic property, with reference to that historic property separately, will be considered *de minimis* under Section 4(f). With regard to the project's area of potential effect, which includes the bridge and surrounding necessary acquisitions of right-of-way, the project's effect under Section 106 will be considered in totality. Finally, this notification will also cover scenarios where a project related adverse effect, such as the replacement of a National Register-listed/eligible bridge, could also require a conversion to transportation use from another historic property or properties immediately adjacent to the bridge for placement of abutments, wingwalls, utility relocation, and/or other minor associated work, including roadway realignment.

ATTACHMENT 2: Historic 4(f) De Minimis Use
Page 3 of 5

By the following signature, the SHPO acknowledges it has been notified of the intent of the FHWA to make *de minimis* findings for specific use of historic properties under 23 CFR 774.3 and agrees that when a Section 106 determination of no adverse effect or no historic properties affected is made, a Section 4(f) *de minimis* determination is appropriate for these affected historic properties.

These updated 4(f) procedures will be in place for the duration of the current Section 106 Programmatic Agreement and will be reevaluated for inclusion when the current the PA is updated. After your agreement and signature, please return this document to Ms. Liz Shipley at Elizabeth.Shipley@dot.gov. If you have any questions, reach out to Ms. Shipley as she is my point of contact on this subject.

Sincerely,

**MATTHEW R
HAKE**

Matthew R. Hake, P.E.
Division Administrator

Digitally signed by
MATTHEW R HAKE
Date: 2022.06.09 15:05:00
-04'00'

I acknowledge and accept FHWA's intent to make a Section 4(f) *de minimis* determination for historic properties when a Section 106 determination of no adverse effect or no historic properties affected is made. I acknowledge and accept that if the SHPO does not object or does not respond to a Section 106 determination of no adverse effect or no historic properties affected, it will be treated as concurrence for the purposes of a FHWA *de minimis* impact finding.

DocuSigned by:

E88B1209103F42E...

Laura Trieselmann
Vermont State Historic Preservation Officer

Date signed: 6/10/2022

ATTACHMENT 2: Historic 4(f) De Minimis Use
Page 4 of 5

Vermont Agency of Transportation
Historic Section 4(f) De Minimis Use Clearance Form

VTrans Request for De Minimis Finding

Based on the information provided, and the analysis below, VTrans believes that the Section 4(f) use of this property is considered de minimis as defined in 23 CFR 774.17.

_____ Click or tap to enter a date.
Select Name, title
Vermont Agency of Transportation Date

FHWA De Minimis Finding

_____ Click or tap to enter a date.
Elizabeth Shipley Date
Environmental and ROW Program Manager
FHWA Vermont Division

Project Information

Date: Click or tap to enter a date.	Project Location: Click or tap here to enter text.
Project Title: Click or tap here to enter text.	Project Route: Click or tap here to enter text.
Project Number: Click or tap here to enter text.	Lead Agency: FHWA

Resource Information

Type of 4(f) Property: Choose an item.
Other Section 4(f) Property: Click or tap here to enter text.
<input type="checkbox"/> For historic, check box if clearing multiple properties and attach table
Official with Jurisdiction: SHPO

ATTACHMENT 2: Historic 4(f) De Minimis Use
Page 5 of 5

De Minimis Documentation:

1. Describe the Section 4(f) property and the attributes and features that qualify it for Section 4(f) protection.

2. Describe the impacts to the Section 4(f) property, and why they are considered de minimis as defined by 23 CFR 774.17. Include all avoidance, minimization, or enhancement measures.

For Prepared by: Select Name, title