

PROGRAMMATIC AGREEMENT

among

**VERMONT AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT,
VERMONT STATE HISTORIC PRESERVATION OFFICER, and
VERMONT HOUSING AND CONSERVATION BOARD**

for the

ADMINISTRATION OF THE HOME INVESTMENT PARTNERSHIP PROGRAM

May 31, 2023

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) has allocated HOME Investment Partnership (HOME) funds to the Vermont Agency of Commerce and Community Development (State) in accordance with the Cranston-Gonzalez National Affordable Housing Act (NARA) of 1990 (Public Law 101-625, approved November 28, 1990); 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 local Participating Jurisdictions receiving funds from the HOME Program; and

WHEREAS, the State has determined that the implementation of the HOME Program may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) pursuant to Section 800.13 of the regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act, 54U.S.C. §306108; and

WHEREAS, the Vermont Housing and Conservation Board (VHCB) is a public instrumentality of the State of Vermont existing by virtue of the Vermont Housing and Conservation Trust Fund Act, 10 V.S.A. Chapter 15, to provide grants and loans to eligible entities for projects which fulfill the dual goals of creating affordable housing for Vermonters and conserving and protecting Vermont's agricultural land, historic properties, important natural areas and recreational lands; and

WHEREAS, Vermont has adopted aggressive goals through statute and its Comprehensive Energy Plan to mitigate the impact of climate change which demands both the use of renewable energy sources and increasing the efficiency of Vermont's building stock; and because intense weather events threaten Vermont's historic land use patterns and structures; and Governor Philip B. Scott reaffirmed Vermont's commitment to these goals in 2017 and called for action in implementing them (E.O. No. 12-17); and

WHEREAS, VHCB policies for funding affordable housing projects require perpetual affordability for lower-income Vermonters, reinforcing historic settlement patterns, rehabilitation of existing buildings whenever possible, long-term stewardship, trauma informed architecture and living space design, and prioritize energy efficiency and the use of renewable resources; and

WHEREAS, the Vermont General Assembly authorized VHCB to administer the HOME Program pursuant to 10 V.S.A. § 321(b)(2) and grant funds to non-profit housing organizations and other affordable housing developers (Applicants); and

WHEREAS, the State and the State Historic Preservation Officer (SHPO) have determined that the State can more effectively fulfill its Section 106 review responsibilities for HOME Program activities if a programmatic approach is used to delegate Section 106 compliance responsibilities to VHCB, when they agree to assume this responsibility, and to identify HOME Program activities that can be excluded from the Section 106 review because they have limited potential to adversely affect historic properties; and

WHEREAS, the Parties intend to comply with the principles identified in the , the Advisory Council on Historic Preservation's (Council or ACHP) "Policy Statement on Affordable Housing and Historic Preservation," including that rehabilitating historic properties to provide affordable housing is a sound historic preservation strategy and that plans and specifications should adhere to the Secretary of the Interiors Standards when possible and practical, 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, the Parties acknowledge the need for partnership in assuring compliance with Section 106 while addressing the mandate to reduce greenhouse gases and they commit to working proactively and creatively to achieve the public goods of preserving historic character and structures and meeting the challenges of a warming climate that threatens that character; and

WHEREAS, in accordance with 36 CFR 800, the Parties acknowledge and accept the advice and conditions outlined in the Council's "Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites" published in the *Federal Register* on May 18, 1999 (99 Fed. Reg. 12055) and the Policy Statement on Burial Sites, Human Remains, and Funerary Objects, dated March 1, 2023; 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, VHCB acknowledges that Indian tribes possess special expertise in assessing the NRHP eligibility of properties with tribal religious and cultural significance; and

WHEREAS, SHPO will take the lead and partner with VHCB to conduct outreach and actively seek and request the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by undertakings funded under the terms of this Agreement;

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

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), VHCB has notified the Council that the implementation of the HOME Program may have an effect on properties listed or eligible for listing in the National Register of Historic Places as part of this undertaking, and **the Council has chosen *not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and***

NOW, THEREFORE, the VERMONT AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT (State) the VERMONT HOUSING AND CONSERVATION BOARD (VHCB), and the VERMONT STATE HISTORIC PRESERVATION OFFICER (SHPO) do stipulate and agree that the HOME Program shall be administered in accordance with the following stipulations to satisfy VHCB's Section 106 responsibilities:

STIPULATION

VHCB will ensure that the following stipulations are carried out.

I. QUALIFIED PROFESSIONAL

1. Some projects may require that VHCB retain qualified professionals in architectural history/historic preservation or archaeology. VHCB will contract with or will ensure that recipients of HOME funds contract with, qualified professionals who meet the *Secretary of the Interior's Professional Qualifications Standards* (Standards), found in 36 CFR 61 (48 FR 44738-9). The qualified professional will carry out reviews related to his/her profession that are required under the terms of this Programmatic Agreement. The qualified professional shall have a clear understanding of how to interpret and apply the Standards and the NRHP criteria and have attended the annual Vermont Department of Historic Preservation (VDHP) Consultant Training. Responsibilities delegated to the qualified professional include:
 - a. identifying and evaluating historic properties, above and below ground;
 - b. reviewing plans and specifications;
 - c. making determinations of No Historic Properties Affected;
 - d. making recommendations for determinations of eligibility, No Adverse Effect and Adverse Effect;
 - e. preparing comment letters and other documents for SHPO concurrence; and
 - f. other tasks related to Section 106 compliance under this Programmatic Agreement.
2. VHCB shall contract with only those consultants identified by SHPO as "Vermont Community Development Approved Consultants." This list is updated annually on or around October 1st.
3. If VHCB chooses to retain a qualified professional on an annual basis, VHCB shall notify SHPO of the contracted qualified historic preservation professional(s) annually. Some projects may require contracting qualified archaeological professionals.
4. Qualified professional(s) shall consult with SHPO when there is a potential for historic properties to be affected as noted on the Section 106 Preliminary Review Form (Section 106 PRF) and will continue consultation throughout the course of project review.
5. Should VHCB be unable to contract with qualified professional(s) to carry out the identification and evaluation review pursuant to this Programmatic Agreement, VHCB shall consult with SHPO to determine alternate administrative arrangements to complete the reviews required pursuant to this Programmatic Agreement. VHCB shall notify the Council in writing of any alternate procedures approved by SHPO.

II. EXEMPT PROPERTIES AND ACTIVITIES

1. The requirements for exempt properties and activities are as follows:
 - a. Project does not involve ground disturbance;
 - b. Project is not located in (or abutting) a Historic District;
 - c. Project does not involve any Historic Properties, as defined below; and
 - d. Project consists of rehabilitation of buildings or structures less than 50 years old.

If all the above criteria are satisfied, then such properties and activities are considered exempt under this Programmatic Agreement and no further review is required. VHCB or its qualified professional shall make this determination.

Historic properties are those that are listed in or eligible for listing in the NRHP, either individually or as part of a historic district. For purposes of this Programmatic Agreement, a single historic property (a house, a bridge) or small grouping of resources (a farm complex) can be listed individually, using the primary resource as the identifier. A historic district is a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. All properties located within a historic district are classified as either contributing (historic) or non-contributing (non-historic). Non-contributing/non-historic properties are exempt from review under this Programmatic Agreement (Appendix A) and no further review is required.

2. A project that does not satisfy all the criteria listed in Section II(1) will nonetheless be exempt from this Programmatic Agreement IF it is limited solely to the exempt activities listed in Appendix A and therefore no further review is required.
3. In accordance with the Council's "Policy Statement on Affordable Housing and Historic Preservation" (Appendix B), for affordable housing projects that do not involve a building that is listed or considered eligible for listing in the NRHP as an individual property or those possessing character-defining interior elements that have been identified to contribute to the significance of the historic district, review under this Programmatic Agreement shall be limited to proposed changes to the exterior of the building.

III. ROLES OF VHCB, SHPO AND STATE

1. As more fully described below, VHCB shall retain a qualified professional to:
 - a. identify the project's area of potential effect (APE);
 - b. identify and evaluate historic properties within the project's APE;
 - c. if the project involves any ground disturbance, confer with SHPO regarding whether the project's APE falls within or intersects with the ancestral homelands of the Stockbridge Munsee Community or any other federally recognized tribe, and if so, work with SHPO to initiate consultation with the tribal leadership;
 - d. make recommendation of eligibility for listing in the NRHP of all properties within the project's APE;
 - e. evaluate project's effect on historic properties:
 - i. make determinations of No Historic Properties Affected;
 - ii. make recommendations of No Adverse Effect and Adverse Effect;

- f. develop recommended appropriate treatment or mitigation measures to avoid, minimize, or mitigate determined effects; and
 - g. submit appropriate documentation of these actions for concurrence by SHPO as set out in this Programmatic Agreement.
2. SHPO, through VDHP staff, and the State shall assist VHCBS and the qualified professional in this process by providing available information and consulting with VHCBS and the qualified professional when asked or when required under the terms of this Programmatic Agreement.
3. SHPO, along with VDHP staff, and the State shall assist VHCBS with compliance of Section 106 by providing technical assistance and organizing/presenting trainings.
4. VHCBS shall maintain project files and report on program activity as required in this Programmatic Agreement to SHPO, which is responsible for federal reporting.
5. SHPO and VHCBS may consult with the Secretary of ACCD or the Council to resolve project conflicts.

IV. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

1. Preliminary steps in identifying potential historic properties.
 - a. All projects will require a Section 106 PRF. The Applicant or VHCBS's Qualified Professional shall consult with SHPO as needed to identify information in existing inventories on historic properties that may be affected by project activities. This should include but not be limited to:
 - i. current listings in the NRHP;
 - ii. documentation from the Vermont Historic Sites and Structures Survey and the State Register of Historic Places;
 - iii. documentation from Vermont Archaeological Inventory;
 - iv. determinations by SHPO regarding properties meeting the NRHP Criteria for Evaluation and therefore deemed eligible for the NRHP; and
 - v. any other readily available information in VDHP's Online Resource Center (ORC) files.
 - b. SHPO shall apply the environmental predictive model to determine if the project area contains potential archaeological sites.
 - c. SHPO shall provide any applicable information identified in the background review to VHCBS (or its qualified professional).
 - d. VHCBS (or its qualified professional) may submit recommendations for eligibility for properties to SHPO concurrently with proposed treatment plans to expedite the Section 106 review. After a fifteen (15) day initial review, SHPO shall inform VHCBS of any missing or additional documentation required for evaluation. SHPO shall provide written comments regarding the concurrence of eligibility recommendations to VHCBS within fifteen (15) days following receipt of adequate documentation.

- e. If it is determined that there is a potential for historic architectural and/or archaeological properties to be affected, a qualified professional must be assigned to review the project.
2. Identifying and evaluating historic buildings or structures.
- a. For properties not listed in the NRHP and not exempt under Section II of this Agreement, the qualified professional shall evaluate the properties and make recommendations for NRHP eligibility based on NRHP Criteria for Evaluation.
 - b. The qualified professional shall submit a recommendation of eligibility to SHPO for concurrence. This must occur prior to any construction activities commencing. SHPO shall provide written comments regarding the concurrence of eligibility recommendations to VHCB within fifteen (15) days following receipt of adequate documentation.
 - c. For evaluation of properties in potential historic districts, the qualified professional shall consult with SHPO for guidance on what additional information and materials may need to be provided. SHPO shall provide written comments regarding the concurrence of eligibility recommendations to VHCB within fifteen (15) days following receipt of adequate documentation.
 - d. Documentation: The qualified professional shall submit the evaluation documentation to SHPO through the VDHP's project review email (ACCD.ProjectReview@vermont.gov) prior to the commencement of construction activities. 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. SHPO and VHCB may agree to an alternative documentation format.
3. Identifying and evaluating archaeological resources.
- a. If a project involves ground-disturbing activities that are not exempt activities in Appendix A and if the project location has been determined by SHPO to have the potential to yield information about archaeological properties that may be affected, as noted on the Section 106 PRF, then the project must be reviewed and approved by a qualified archaeological professional. Ground-disturbing activities include, but are not limited to:
 - i. new construction;
 - ii. construction of roads and parking lots;
 - iii. land clearance and tree cutting in preparation for construction;
 - iv. excavation for footings and foundations; and
 - v. installation or replacement of sewer, water, storm drains, electrical, gas, leach lines, and septic tanks, unless included in Appendix A: exempt activities.

Notwithstanding the above, and in accord with the Council's "Policy Statement on Affordable Housing and Historic Preservation" (Appendix B), 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 should be carried out by a qualified archaeological professional as early as possible during project planning, and should be revisited if the scope of ground disturbance changes. The qualified archaeological professional and VHCB shall consult with SHPO and any federally recognized tribes that may attach religious and cultural significance to historic properties that may be affected by the project. .
- c. It is desirable and generally most cost effective at any stage of study outlined in 3d, 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 VHCB and the qualified archaeological professional and the approach approved by SHPO.
- d. Archaeological Resource Assessment: If the background review undertaken during the Section 106 PRF process identifies potential archaeological sites within the project area, VHCB shall 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, SHPO 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, VHCB shall retain a qualified archaeological professional to conduct a Phase I Identification study. If an archaeological site is identified and cannot be avoided, then proceed to Phase II as outlined below.
- f. Phase II Evaluation Study: VHCB 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 NRHP. If the site cannot be avoided and will be destroyed in whole or in part by the project, then VHCB and the qualified archaeological consultant shall develop a mitigation plan in consultation with SHPO and the Stockbridge Munsee Community or any other federally recognized tribe, as applicable. The Council's *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (1999 or most recent version) shall be followed (Appendix C)
- g. Documentation: All archaeological studies must meet the meet the *Guidelines for Conducting Archaeology in Vermont* (2017 or more recent version) and the *Secretary of the Interior's Standards and Guidelines for Archeology*. The Vermont Archaeological Inventory site number should be acquired prior to the commencement of construction. VHCB or its professional archaeological consultant shall provide copies of all reports and any associated Vermont Archaeological Inventory forms in digital formats to SHPO following the archaeological investigation. SHPO and VHCB may agree to an alternative documentation format.

4. Public Notification of National Register Determinations.
 - a. Prior to making recommendations for NRHP eligibility for a non-listed property, the qualified professional shall notify the owner(s) and Certified Local Government (CLG) representatives and invite them to provide comments to the qualified professional and SHPO concerning the historic, architectural and/or archaeological significance of the property.
 - b. Notification Documentation: VHCB or its qualified professional will submit notification and correspondence with owner(s) and local officials to SHPO.
5. Disagreement about National Register Eligibility.
 - a. If VHCB disagrees with the recommendation of eligibility findings, VHCB 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 SHPO accordingly.
6. Presence of Historic Resource.
 - a. If there is a historic resource present that cannot be avoided through appropriate conditions placed on the project design and construction specifications, proceed to Section V. If there are no historic properties present, then VHCB or its qualified professional shall submit this finding in a formal comment letter to SHPO for inclusion in VDHP project files and for federal reporting purposes. Submittal of this documentation shall occur prior to the commencement of construction.

V. TREATMENT OF HISTORIC PROPERTIES

1. Building rehabilitation: VHCB shall ensure that the rehabilitation plans and specifications for non-exempt HOME Program activities are developed in accordance with the recommended approaches in the *Secretary of the Interior's Standards and Guidelines for the Rehabilitation of Historic Buildings* (Standards) (Appendix D) as follows:
 - a. Prior to the initiation of such activities, Applicant shall submit to the qualified professional work write-ups or plans and specifications that evidence adherence to the Standards. The qualified professional shall review and make recommendations for VDHP concurrence of the plans and specifications. SHPO will concur or request changes within fifteen (15) days.
 - b. If the qualified professional recommends modifications to the work write-ups or plans and specifications to ensure that the project meets the Standards, the Applicant shall make appropriate modifications and submit revised work write-ups or plans and specifications to the qualified professional.
 - c. If demolition or another adverse effect is proposed, the qualified professional may ask the Applicant to provide the following information to evaluate the feasibility of and justification for the undertaking:

- i. condition assessments for various historic elements;
 - ii. alternative treatments considered with 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. SHPO will respond within fifteen (15) days. This step may be combined with the recommendation of eligibility described in Section IV of this Programmatic Agreement for faster processing.
 - e. If the Applicant determines that he/she cannot make the modifications recommended by the qualified professional to meet the Standards and the project will therefore have an adverse effect on historic properties, the qualified professional and Applicant shall consult with SHPO and VHCB 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, the Part 2 Historic Preservation Certification Application may serve as evidence for compliance with the Standards. The Part 2 must be approved and signed by the National Park Service and submitted to SHPO and VHCB.
 - g. If the project contains work that was not included in or approved within the Part 2, such as new construction or ground disturbance that might affect archaeological sites, the remainder of the project shall be reviewed as outlined in this Programmatic Agreement.
2. New Construction: VHCB 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, features, and materials, and is responsive to the recommended approaches for new construction set forth in the Standards.
 - a. Recipients shall develop preliminary design plans in consultation with the qualified professional. Preliminary plans and significant changes in the scope of the design shall be approved by the qualified professional, in consultation with SHPO, prior to the initiation of construction activities. Final plans and specifications shall be provided to the qualified professional for review and shall be forwarded to SHPO if significant changes have been made to the project design.
 - 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 qualified professional shall notify SHPO. Consultation with the SHPO, the qualified professional, Applicant and VHCB shall be initiated to modify the design or to develop a Standard Mitigation Measures Agreement.

- c. If SHPO determines the Standard Mitigation Measures do not apply, VHCB, with assistance and support from SHPO, may notify the Council and initiate the consultation process set forth in 36 CFR § 800.6.
3. Protection of archaeological resources: Any project that involves ground disturbance must comply with Sections IV (3), VI (3), VIII, and IX.
4. Relocation of historic and contributing buildings: VHCB, the qualified professional, and the Applicant must consult with SHPO prior to the approval of plans for the relocation of historic properties as part of the implementation of a HOME project.
 - a. If a historic resource proposed for relocation is a contributing resource within a historic district listed in or eligible for the NRHP, Recipients shall make every effort to relocate the historic resource within the boundaries of the same historic district. Recipients shall forward the following documentation to the qualified professional explaining why relocation is required:
 - i. justification for selection of new site location;
 - ii. assessment of archaeological sensitivity at the new site; and
 - iii. summary of alternatives to relocation that have been considered.
 - b. Justification documentation shall be provided to VDHP for SHPO review and comment. If SHPO objects to the proposed new site, all parties shall consult further with to evaluate other alternate locations. Review, comment, and consultation should occur prior to the commencement of construction.
 - c. Upon approval of an alternative site by SHPO, VHCB, with the support and assistance of Applicant, shall ensure that all historic resources are moved in accordance with the recommended approaches stated in *Moving Historic Buildings* (John Obed Curtis: Technical Preservation Services Division, 1979). The relocation must be completed by a professional mover, who has the capability to move historic resources properly. A relocation plan shall be submitted to the qualified professional for review and forwarded to SHPO for approval.
 - d. Should an acceptable alternative site not be identified, Applicant shall consult with VHCB, the qualified professional, and SHPO to develop a Standard Mitigation Measures Agreement.
 - e. If SHPO determines that the Standard Mitigation Measures do not apply, VHCB, with assistance and support from SHPO, may notify the Council and initiate the consultation process set forth in 36 CFR § 800.6.
5. Demolition: Applicants shall not proceed with the demolition of contributing resources or a portion of a contributing resource (i.e. ells, wings, attached sheds and barns, porches) within a historic district or properties listed in or eligible for the NRHP if the demolition will result in an adverse effect as determined by the qualified professional in consultation with SHPO until the procedures set forth in this section are completed.

- a. The qualified professional shall forward documentation to SHPO for each historic resource or portion of property proposed for demolition. This shall include but not be limited to:
 - i. justification for demolition;
 - ii. recent structural integrity analysis completed by structural engineer;
 - iii. summary of alternatives considered;
 - iv. plans for the site post demolition;
 - v. proposed mitigation plan; and
 - vi. input from the municipality and public.
 - b. If SHPO determines the demolition as proposed is the most feasible alternative, the qualified professional in consultation with SHPO shall develop a Standard Mitigation Measures Agreement.
 - c. If SHPO determines that the Standard Mitigation Measures do not apply, VHCB, with assistance and support from SHPO, may notify the Council and initiate the consultation process set forth in 36 CFR § 800.6.
6. Disaster Response: A disaster or emergency under Section 106 is one declared by the President of the United States, tribal government, or the governor of the state of other immediate threat to life or property. Procedures addressing emergency situations are outlined in the section. These procedures apply only to those undertakings that will be implemented in response to the disaster or emergency within 30 days after the disaster or emergency has been formally declared by the appropriate authority or, in the case of an immediate threat to life or property, within 30 days after such an event occurs.
- a. Immediate rescues and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 (36 CFR § 800.12(d)). This exemption applies regardless of whether there has been a declared disaster or emergency. If VHCB determines that its undertaking meets the criteria for this exemption, the VHCB may take necessary actions in a timely manner to address public health and safety.
 - b. Undertakings that will be implemented in response to a formally declared emergency within 30 days of the declaration shall be reviewed in accord with the project review process described elsewhere in this Programmatic Agreement, including paragraphs V(1), V(3), V(4), and V(5) 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 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, SHPO shall request the Council and Secretary of the Interior to participate in consultation with VHCB, the qualified professional, and Applicant to resolve any adverse effects, as outlined in 36 CFR § 800.10.

2. When the proposed activities cannot meet the Standards and alternatives have been examined, the qualified professional shall make a recommendation to SHPO on whether it is appropriate to execute a Standard Mitigation Measures Agreement as outlined in Appendix E. If SHPO determines that executing a Standard Mitigation Measures Agreement is appropriate to mitigate the adverse effect, the qualified professional shall prepare a draft agreement and submit it to SHPO for review. SHPO shall advise all parties of its decision to execute the agreement within thirty (30) days following receipt with adequate documentation and justification. SHPO and VHCB may consult with the Secretary of the Agency of Commerce and Community Development and/or the Council to resolve project conflicts.
3. In the case of an adverse effect to a NRHP-listed or -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. These guidelines include but are not limited to Council's *Treatment of Archaeological Properties and Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (1999) and *Guidelines for Conducting Archaeology in Vermont*.
 - a. Data recovery projects shall include a significant public education and interpretation component as appropriate. Materials recovered shall be curated and stored in accordance with 36 CFR 79 and VDHP curation standards.
4. When SHPO determines that it is appropriate to execute a Standard Mitigation Measures Agreement, that Agreement shall be signed by VHCB, SHPO, the State, and the Applicant; VHCB shall ensure the terms of the agreement are carried out.
5. If the qualified professional and/or SHPO determine that the Standard Mitigation Measures are not appropriate for a specific project, they shall consult with the Applicant, VHCB, and the State to seek alternate means to minimize or mitigate the adverse effects. If consensus is reached, the qualified professional, in consultation with SHPO, shall prepare a Memorandum of Agreement, as outlined in 36 CFR Section § 800.6(b)(1). VHCB, SHPO, the Applicant, the State, federally recognized tribes as appropriate, and Council if participating, shall sign it.
6. The Applicant or qualified professional shall notify VHCB, SHPO, and the Stockbridge Munsee community or any other federally recognized tribe, if applicable, when all the stipulations in the Standard Mitigation Measures Agreement have been successfully completed. SHPO shall inform the State, Council and participating federally recognized tribes, if any.
7. If VHCB and SHPO cannot reach consensus, VHCB may notify the Council and initiate the consultation process set forth in 36 CFR Section § 800.6(b)(2). In addition, VHCB shall submit to the Council the background documentation.
8. If agreement is not reached, the parties shall follow the process set forth in 36 CFR Section § 800.7, Failure to Resolve Adverse Effects.

VII. PUBLIC INVOLVEMENT

1. VHCB, in consultation with SHPO, shall determine the public interest in HOME Program activities that have the 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 the HOME Program, and in complying with 24 CFR Part 58.
2. VHCB and the Recipients shall seek and consider the views of the public regarding HOME Program projects. This shall be done 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 federal involvement to the undertaking.
 - a. VHCB or SHPO may invite interested persons to participate as consulting parties in the Section 106 consultation process for adverse effects in accordance with 36 CFR § 800.3.
 - b. Contact should be made with local historical preservation commissions and CLG representatives, where they exist, and with other groups or individuals interested in the type(s) of historic resources or area affected by the undertaking.
 - c. 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, VHCB shall notify SHPO and take the objection into account. VHCB, SHPO, or the Council, when requested by the objector, shall consult to resolve the objection. Applicants are not required to cease work while the objections are being reviewed.
 - d. Consulting parties and/or the public may request that the Council enter the consultation process. The Council will review 36 CFR § 800 Appendix A, "Criteria for Council Involvement in Reviewing Individual Section 106 Cases" to determine if it is appropriate for the Council to enter consultation on a project.

VIII. DISCOVERY OF HISTORIC PROPERTIES OR ARCHAEOLOGICAL SITES DURING CONSTRUCTION

1. If unanticipated effect on historic properties or previously unidentified archaeological sites are discovered during project construction, that portion of the project will stop immediately. The Recipient or qualified professional shall notify SHPO and the State of the discovery within 48 hours of the discovery. SHPO shall begin consultation within two (2) business days of the notification. The qualified professional, in consultation with SHPO, shall determine actions that the Recipient can take to resolve potential adverse effects. When the actions are complete, the qualified professional shall provide a report of the finding and actions to SHPO.
2. 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 or qualified professional shall notify SHPO, which will notify the tribe(s), Tribal Historic Preservation Officer (THPO), and the Council within 48 hours of the discovery. A site visit with tribe(s), THPO, Recipient, qualified

professional, VHCB, and SHPO (all 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

1. If human remains are discovered during any phase of archaeological investigation or during construction, the investigation or that portion of the project will stop immediately. The Recipient shall immediately report the discovery to the local police, Office of the Chief Medical Examiner, and State Archaeologist, and follow applicable state laws and procedures, including 18 VSA Section 5212b(f). The remains shall be respectfully covered over and secured. If the human remains are determined to be archaeological, the Recipient shall consult with the State Archaeologist at VDHP. If the human remains are determined to be Indian burials, the Recipient shall work with the State Archaeologist to follow the guidance in the Council's Policy Statement on Burial Sites, Human Remains, and Funerary Objects, dated March 1, 2023.
 - a. Avoidance and preservation in place is the preferred option for treating human remains.
 - b. A treatment and reburial plan shall be developed by the qualified archaeological professional in consultation with the State Archaeologist and the appropriate tribes and THPO, if applicable. VHCB, with the assistance and guidance of SHPO, shall ensure that the treatment and reburial plan is fully implemented and inform SHPO when completed.

X. COORDINATION WITH OTHER FEDERAL SECTION 106 REVIEWS

1. If a project has been previously reviewed and approved under Section 106 through another federal program, such as the Rehabilitation Investment Tax Credit Program or the Community Development Block Grant Program, no further review is required, if the project details are the same as those reviewed under the other program(s). A Recipient shall certify to VHCB staff that a project has not changed (i.e. that the project plans bear the same date as those referenced in the previous comment letter) when submitting a previous comment letter for compliance with Section 106 requirements under the HOME Program.

XI. ADMINISTRATIVE COORDINATION

1. SHPO shall provide comments within fifteen (15) days for reviews required under the terms of this Programmatic Agreement. If SHPO fails to comment within the fifteen (15) day period, the Recipient can assume that SHPO concurs.
2. VHCB shall develop, in consultation with SHPO and the qualified professional, procedures for the implementation of the terms of this Programmatic Agreement.
3. VHCB and/or the qualified professional shall document all program activities that involved historic properties and subject to the terms of this Programmatic Agreement in individual project files. Each file shall include at a minimum:
 - a. for non-exempt properties, documentation on the NRHP eligibility of the property;
 - b. copies of field inspection letters, archaeological scopes of work, and study reports;

- c. written comments on project affects;
- d. copy of the Standard Mitigation Measures Agreement, if appropriate;
- e. description of work or dated project specifications;
- f. photographs of the project before rehabilitation; and
- g. date the project was completed.

Documentation shall be forwarded to the State in anticipation of preparation of the annual report by the State, as set forth in Section XII(5), below.

XII. MISCELLANEOUS PROVISIONS

1. Modifications. The qualified professional may make recommendations for modifications to previously approved specifications or Standard Mitigation Measures Agreements for SHPO concurrence, according to the procedures outline in Section VI.
2. Dispute Resolution. Should SHPO object within a reasonable timeframe, prior to any specifications or actions covered by this Programmatic Agreement, VHCB will consult further with SHPO and the State to seek resolution. If VHCB determines that the objection cannot be resolved, VHCB shall forward all documentation relevant to the dispute to the Council. Within thirty (30) calendar days after receipt of all pertinent documentation, the Council will provide VHCB with recommendations or comment in accordance with 36 CFR § 800.6(b). VHCB will consider the Council's recommendations or formal comments in reaching a final decision regarding the dispute. Any Council comment provided to VHCB in response to such a request will be considered by VHCB in accordance with 36 CFR Section § 800.6(c)(2) with reference to the subject of the dispute. Any recommendation or comment provided by the Council will be interpreted to obtain only to the subject of the dispute, and the responsibility of VHCB to carry out all actions under this agreement that are not the subject of the dispute will remain unchanged.
3. Training Workshops. VDHP shall conduct program specific training workshops for qualified professionals in collaboration with VHCB and the State. Attendance at one of the annual workshops will be mandatory for qualified professionals to be eligible to work under the Programmatic Agreement. Upon written request from VHCB, VDHP and the State will provide training to assist staff, Recipients, and qualified professionals to understand the technical requirements of the Programmatic Agreement.
4. Monitoring. SHPO and the Council may monitor any activities carried out pursuant to this Programmatic Agreement, and the Council will review any activities if requested. VHCB will cooperate with SHPO and Council should they request to monitor or to review project files for activities at specific project sites.
5. Reporting. The State, with support and assistance from VHCB's qualified professional, shall prepare an annual report for SHPO on behalf of VHCB, based on the documentation received in accord with the Section 106 PRFs and the documentation provided pursuant to Section XI(3). Annual reporting shall include:
 - a. inventory of projects reviewed, categorized by name and town, and noting recommended project effects;
 - b. inventory of projects exempt from further review, noting justification;

- c. properties recommended NRHP eligible;
- d. properties studied with an ARA or archaeological investigations; and
- e. list of Standard Mitigation Measures Agreements executed.

A copy of this annual report shall be forwarded to VHCB and SHPO by December 1 and shall be made available to the public on the State website by December 15.

XIII. EFFECTIVE DATE

1. This Programmatic Agreement shall take effect on the date it is signed by the State, SHPO, and VHCB. The Programmatic Agreement will remain in effect for five (5) years, unless terminated pursuant to this Programmatic Agreement.

XIV. AMENDMENTS

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

XV. TERMINATION

1. Any party to this Programmatic Agreement may terminate this Programmatic Agreement by providing thirty (30) calendar days' notice to the other parties, provided that 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

1. If Recipients do not carry out the terms of this Programmatic Agreement, VHCB will comply with 36 CFR Sections 800.4 through 800.6 regarding each individual HOME project for which VHCB has awarded funding to an Applicant.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that VHCB has satisfied its Section 106 responsibilities for HOME-funded activities funded in whole or in part under the HOME Investment Partnership Program.

VERMONT AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT

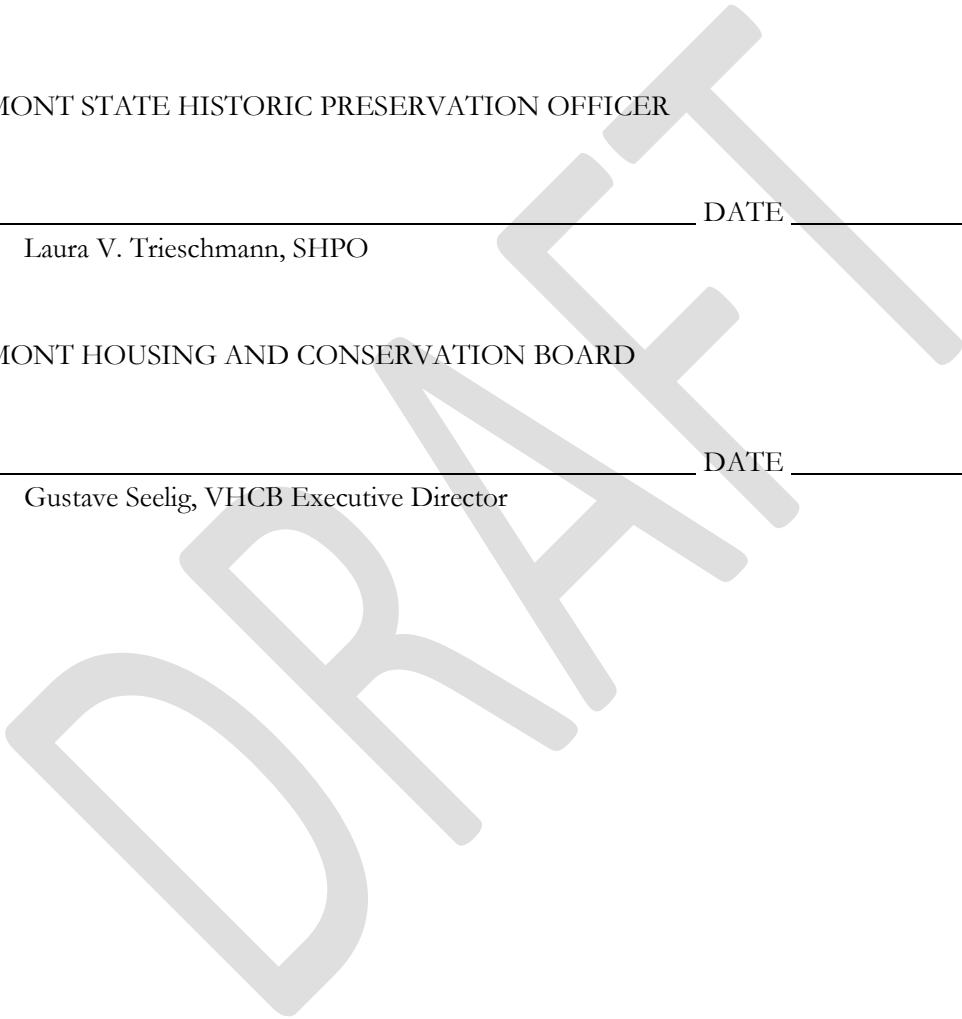
BY _____ DATE _____
Lindsay Kurrle, Secretary

VERMONT STATE HISTORIC PRESERVATION OFFICER

BY _____ DATE _____
Laura V. Trieschmann, SHPO

VERMONT HOUSING AND CONSERVATION BOARD

BY _____ DATE _____
Gustave Seelig, VHCB Executive Director



APPENDIX A

HUD-FUNDED HOME PROGRAM EXEMPT ACTIVITIES

If activities are limited solely to those listed in Appendix A then such properties and activities are considered exempt under this Programmatic Agreement and no further review is required. This determination is made in consultation with SHPO or by qualified professional.

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

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

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

6. **Roof Repair.** Repair of historic roofing with material that closely matches the existing design and form. When repairing existing roofing, corrugated fiberglass roofing is not appropriate.
 - a. *Replacement of non-historic roofing is not an exempt activity. Preservation Briefs 4: Roofing for Historic Buildings,* and other technical briefs, as appropriate, for guidance.
7. **Gutters.** Repair, replacement, or installation of gutters and above-ground downspouts.
8. **Insulation.** Insulation in ceilings, attic, and basement spaces provided it is installed with appropriate vapor barriers, such as the following:
 - a. Air sealing of the building shell, including caulking, weather-stripping, and other air infiltration control measures on windows and doors, and installing thresholds in a manner that does not harm or obscure historic windows or trim.
 - b. Thermal insulation, such as non-toxic fiberglass and foil-wrapped, in walls, floors, ceilings, attics, and foundations of wood-framed structures in a manner that does not harm or damage historic fabric and a mechanical ventilation system is present to direct moisture out of the building.
 - c. Dense-pack cellulose wall insulation in wood-frame structures where no holes are drilled through exterior siding or where holes have no permanent visible alteration to the structure, and a mechanical ventilation system is present to direct moisture out of the building.
9. **Interior Surfaces (floors, walls, ceilings).** Repainting; refinishing; repapering; replacing sheetrock with sheetrock; replacing failing asbestos-containing plaster with traditional plaster system or veneer plaster on gypsum board; laying carpet or sheet flooring; or replacement of suspended ceiling tile.
10. **Interior Trim.** Repairing and retaining interior historic trim and features including doors, baseboards, chair rails, wainscoting, paneling, cornice trim, fireplace mantels, stair balusters, newel posts, window and door casings and other decorative features or replacement of flat stock trim.
11. **Site Improvements.** Repair of existing roads, driveways, sidewalks, parking lots and curbs, if repairs are done with like material, and there are no changes in dimension or configuration of these features. Repair of fencing when work is done in-kind to closely match existing material and form.
12. **Interior Floor Plan.** Removal or alteration of non-historic interior walls.
13. **Underground Utilities.** Emergency repair of water, gas, electric, storm and waste water systems if it occurs within the original trench or footprint.
14. **Lead Paint Abatement.** Interior lead paint abatement when it is limited to washing, scraping and repainting, wallpapering, and chemical stripping of lead-painted surfaces, installation of new window jambs or jamb liners, installation of metal panning in window wells, and replacement of flat stock trim. Exterior Lead Paint Abatement that includes scraping and repainting of exterior wood and masonry surfaces, so long as treatments follow established protocols and best practices as

established by EPA Renovation, Repair & Painting Program (RRP Rule) and Vermont Essential Maintenance Practices—Lead Law Compliance. Please refer to *Preservation Briefs 37: Appropriate Methods of Reducing Lead-Paint Hazards in Historic Housing*, and other technical briefs, as appropriate, for guidance.

15. **Asbestos Abatement.** Necessary removal of asbestos found in MEP and ventilation pipe joints provided it does not involve the removal of contributing historic elements. Any other removal of asbestos is not an exempt activity.
16. **Minor Ground Disturbance due to Maintenance Activity.** Soil disturbance to a depth of six (6) inches or less within an area of 100 square feet or less is permissible.
17. **Plantings.** Planting of grass, flowers, shrubs, or bushes in existing gardens or landscaped areas.
18. **Test Holes and Wells.** Structural test borings, well drilling, and monitoring activities that do not require a temporary or permanent new access road to a site.

APPENDIX B

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 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 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:

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 requires Federal agencies to take into 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.**
- 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 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.

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]

DRAFT

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, recovery or partial recovery of archaeological data, public interpretive display, or any combination of these and other measures.

Archaeological Sites and Their Treatment

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

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

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

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

Given the non-renewable nature of archaeological sites, it follows that if an archaeological site can be practically preserved in place for future study or other use, it usually should be (although there are exceptions). However, simple avoidance of a site is not the same as preservation.

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

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

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

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

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

Resolving Adverse Effects Through Recovery of Significant Information From Archaeological Sites

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

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

1. The archaeological site should be significant and of value chiefly for the information on prehistory or history they are likely to yield through archaeological, historical, and scientific methods of information recovery, including archaeological excavation.
2. The archaeological site should not contain or be likely to contain human remains, associated or unassociated funerary objects, sacred objects, or items of cultural patrimony as those

terms are defined by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001).

3. The archaeological site should not have long-term preservation value, such as traditional cultural and religious importance to an Indian tribe or a Native Hawaiian organization.
4. The archaeological site should not possess special significance to another ethnic group or community that historically ascribes cultural or symbolic value to the site and would object to the site's excavation and removal of its contents.
5. The archaeological site should not be valuable for potential permanent in-situ display or public interpretation, although temporary public display and interpretation during the course of any excavations may be highly appropriate.
6. The Federal Agency Official should have prepared a data recovery plan with a research design in consultation with the SHPO/THPO and other stakeholders that is consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*, the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation*, and the *Advisory Council on Historic Preservation's Treatment of Archaeological Properties: A Handbook*. The plan should specify:
 - a. The results of previous research relevant to the project;
 - b. research problems or questions to be addressed with an explanation of their relevance and importance;
 - c. the field and laboratory analysis methods to be used with a justification of their cost-effectiveness and how they apply to this particular property and these research needs;
 - d. the methods to be used in artifact, data, and other records management;
 - e. explicit provisions for disseminating the research findings to professional peers in a timely manner;
 - f. arrangements for presenting what has been found and learned to the public, focusing particularly on the community or communities that may have interests in the results;
 - g. the curation of recovered materials and records resulting from the data recovery in accordance with 36 CFR part 79 (except in the case of unexpected discoveries that may need to be considered for repatriation pursuant to NAGPRA); and
 - h. procedures for evaluating and treating discoveries of unexpected remains or newly identified historic properties during the course of the project, including necessary consultation with other parties.
7. The Federal Agency Official should ensure that the data recovery plan is developed and will be implemented by or under the direct supervision of a person, or persons, meeting at a minimum the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739).
8. The Federal Agency Official should ensure that adequate time and money to carry out all aspects of the plan are provided, and should ensure that all parties consulted in the development of the plan are kept informed of the status of its implementation.
9. The Federal Agency Official should ensure that a final archaeological report resulting from the data recovery will be provided to the SHPO/THPO. The Federal Agency Official should ensure that the final report is responsive to professional standards, and to the Department of the Interior's *Format Standards for Final Reports of Data Recovery Programs* (42 FR 5377-79).

10. Large, unusual, or complex projects should provide for special oversight, including professional peer review.
11. The Federal Agency Official should determine that there are no unresolved issues concerning the recovery of significant information with any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to the affected property.
12. Federal Agency Officials should incorporate the terms and conditions of this recommended approach into a Memorandum of Agreement or Programmatic Agreement, file a copy with the Council per Sec. 800.6(b)(iv), and implement the agreed plan. The agency should retain a copy of the agreement and supporting documentation in the project files.

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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.
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 archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

APPENDIX E

STANDARD MITIGATION MEASURES AGREEMENTS

VHCB, the qualified professional, the Recipient, the State, and SHPO may develop and execute an agreement that includes one or more of the following Standard Mitigation Measures, as modified by SHPO in consultation with VHCB, the Applicant, and the State, when deemed appropriate. The Council will not be a party to these agreements.

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

7. **Interpretive Signage.** The Recipient and a qualified professional, using research, design and fabrication consultants as appropriate, shall produce one or more signs to describe the work on a property, its history and historic context, and its resources. Local interested entities shall be consulted in the planning and design of the sign(s), and addressing maintenance and long-term care of permanent sign(s). Content shall be edited and approved by SHPO.
8. **Exhibits.** The Recipient and a qualified professional, in conjunction with appropriate consultants, shall develop and install a professional quality exhibit that describes the work on a property, its history and its historic context, and its resources. Local installations or exhibits that travel to local schools are encouraged. Content shall be edited and approved by SHPO.
9. **Lectures/Tours.** The Recipient shall ensure that a qualified professional organize public lectures and tours of ongoing projects and excavations. Involvement of local school groups is encouraged. Content shall be edited and approved by SHPO.
10. **Development of Historic Contexts.** The Recipient shall ensure that a qualified professional is contracted to research and prepare a written historic context statement for the class of resources affected by the project. The format of the context statement shall be determined in conjunction with SHPO. Content shall be edited and approved by SHPO.
11. **Data Recovery of Archaeological Information.** The Recipient and the qualified professional shall develop an Archaeological Data Recovery Plan that meets the Council's *Treatment of Archaeological Properties and Recommended Approach for Consultation on Recovery of Significant Information From Archaeological Sites (1999)*, and the *Guidelines for Conducting Archaeology in Vermont*. Data Recovery projects shall include a significant public education and interpretation component whenever appropriate. Materials recovered shall be curated and stored in accordance with 36 CFR 79 and VDHP curation standards.

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

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

- **significant ground disturbance (digging)**
Examples: new sewer lines, utility lines (above and belowground), foundations, footings, grading, access roads
- **new construction in undeveloped natural areas**
Examples: industrial-scale energy facilities, transmission lines, pipelines, or new recreational facilities, in undeveloped natural areas like mountaintops, canyons, islands, forests, native grasslands, etc., and housing, commercial, and industrial facilities in such areas
- **incongruent visual changes**
Examples: construction of a focal point that is out of character with the surrounding natural area, impairment of the vista or view shed 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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