

PROGRAMMATIC AGREEMENT  
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,  
THE VERMONT AGENCY OF TRANSPORTATION,  
THE VERMONT STATE HISTORIC PRESERVATION OFFICER,  
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING PAVING AND MINOR HIGHWAY PROJECTS

2-1-96

WHEREAS, The Federal Highway Administration (FHWA) proposes to administer the Federal Aid Highway Program in Vermont authorized by (23 USC 101 et seq.) through the Vermont Agency of Transportation (VTAOT); and,

WHEREAS, VTAOT undertakes Federal paving projects and minor highway projects that would qualify as Categorical Exclusions, as defined in 23 CFR 771, and do not individually or cumulatively have a significant impact on the environment, and therefore may not require the preparation of an Environmental Assessment or an Environmental Impact Statement; and

WHEREAS, FHWA has determined that certain types of these projects typically have no effect or no adverse effect upon historic properties included in or eligible for inclusion in the National Register of Historic Places and has consulted with the Advisory Council on Historic Preservation (ACHP) and the Vermont State Historic Preservation Officer (VTSHPO) pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (NHPA) (16 USC 470f); and

WHEREAS, VTAOT has participated in the consultation and has been invited to concur in this Programmatic Agreement (the Agreement); and

WHEREAS, VTAOT in its role to gain compliance with the National Environmental Policy Act and National Historic Preservation Act seeks to coordinate historical and archeological investigations, reviews, and consultations as a single process; and

WHEREAS, VTAOT has a staff of cultural resource specialists who meet the professional qualifications identified in 36 CFR Part 61, Appendix A, in the fields of archeology, architectural history, and history, to carry out its historic preservation programs and responsibilities; and

NOW, THEREFORE, FHWA, ACHP, VTSHPO, and VTAOT agree that the undertaking of paving projects and minor highway projects shall be administered in accordance with the following stipulations, exercising reasonable judgment and good faith, to satisfy FHWA's Section 106 responsibilities for all individual undertakings of the program.

## STIPULATIONS

FHWA will insure that the following measures are carried out:

(1) Purpose and Applicability. This Agreement sets forth the process by which FHWA will meet its responsibilities under Sections 106 and 110(d) and 110(f) of NHPA, with the assistance of VTAOT, for paving projects and minor highway projects of the Federal Aid Highway Program. This Agreement establishes the basis for VTAOT internal review of individual minor projects and establishes how FHWA will be involved in any review.

(2) Responsibilities of FHWA and VTAOT. In compliance with its responsibilities under NHPA and as a condition of its award of any assistance for paving projects and minor highway projects, FHWA shall require VTAOT to carry out the requirements of 36 CFR Part 800 and applicable ACHP standards and guidelines for all paving projects and minor highway projects that receive federal assistance. FHWA will participate in the process as specified in subsequent stipulations.

VTAOT shall continue to employ personnel trained and qualified in the fields of history, architectural history, and archeology whose duties shall include implementing this agreement.

(3) Guidelines, Standards, and Regulations. Guidelines, standards, and regulations relevant to this Agreement and its purposes include:

- (a) Secretary of the Interior's Standards and Guidelines for Historic Preservation Projects.
- (b) 36 CFR Part 800: Protection of Historic Properties
- (c) Secretary of the Interior's Standards and Guidelines for Archeology (48 FR 44734-37);
- (d) Vermont SHPO Guidelines for Conducting Archeological Studies in Vermont; and
- (e) Vermont SHPO Guidelines for Conducting Non-Archeological Historic Resource Surveys in Vermont. (When implemented)
- (f) 23 CFR Part 771.
- (g) All existing Memorandums of Agreement signed between VTSHPO, VTAOT, FHWA, and ACHP.

(4) Projects Exempted From Review. By their nature, the following paving projects and minor highway projects, so defined by this paragraph subsections (a) through (k) inclusive, are project types that do not constitute undertakings and are therefore categorically exempted from any review necessary to comply with Section 106. Exemption, however, is limited to those projects and activities that are not part of a larger undertaking.

- (a) Rehabilitation of existing pavement and/or application of new pavement on existing paved travel lanes and existing paved shoulders with shoulder backing.
- (b) Sub-base improvement limited to a depth of five feet within the existing footprint for drainage purposes.
- (c) In-kind replacement of culverts not fifty years old, provided replacement is confined to existing locations. In-kind replacement shall mean construction of a new facility substantially the same in materials and size.
- (d) Reestablishment of existing ditches.
- (e) Routine pavement maintenance such as crack filling.
- (f) Routine sign maintenance, such as in-kind replacement of damaged or down signs, and in-kind replacement of signs, guardrails, lights, signals, curbs, sidewalks, shoulder backing, and pavement markings at their existing locations. For projects not located in historic districts, minor modifications in size, location, content, and material composition of these features are permitted and do not require review.
- (g) Modification to concrete sidewalks and ramps to satisfy the Americans With Disabilities Act.
- (h) For bridges that are not fifty years old, rehabilitation of existing pavement and/or application of new pavement on bridge decks, replacement of membranes, and replacement of expansion joints.
- (i) Resurfacing of railroad crossings.
- (j) Interstate projects involving: (1) installation of guardrails to replace existing guardrails; (2) installation of new guardrails on existing shoulders; and (3) maintenance projects that do not involve construction of cross-overs or other disturbance on median strips.
- (k) Converting existing drop inlets to traversable designs.

(5) Project Review and Findings of No Effect - Paving Projects and Minor Highway Projects. The majority of paving projects and minor highway projects are unlikely to have any impact on historic or archeological properties. In general, these projects often have limited areas of potential effects unlikely to contain historic properties, occur largely at grade within existing rights-of-way or within minimal new rights-of-way, do not introduce new structural or visual elements, and do not require substantial ground disturbance.

Therefore, the following paving projects and minor highway projects, so defined by this paragraph subsections (a) through (d) inclusive, will be reviewed for Section 106 purposes within VTAOT by its preservation staff without further review by ACHP or VTSHPO, provided that VTAOT finds that there are no properties that may be affected by the undertaking or that the undertaking by its nature will have no effect on historic or archeological

properties. Application, however, is limited to those projects and activities that are not part of a larger undertaking.

- (a) Paving projects that involve application of new pavement on unpaved travel lanes or unpaved shoulders or that involve widening of travel lanes or shoulders;
- (b) Minor highway projects that involve installation of new guardrails, signs, lighting, curbs, signals, or sidewalks, or that involve replacement of existing signs, guardrails, lights, signals, curbs, sidewalks, shoulder backing and pavement markings minor when these features are being modified in size, location, content, or material composition of when said replacement and modifications are being conducted in an historic district.
- (c) Minor safety related drainage improvements, including installation, replacement or removal of culverts and headwalls; installation, replacement, or extensions of pipes; and addition of pipe end sections or traversable grates;
- (d) For bridges that are not fifty years old, minor bridge rehabilitation, deck rehabilitation, modifications of bridge railings, or substructure alterations.

Review under this paragraph, however, is conditioned upon VAOT basing its review upon information adequate to identify properties and assess projects' effects on historic properties as specified in Stipulation 6 and consistent with 36 CFR Part 800. VAOT decisions should be based on the guidelines, standards and regulations identified in Stipulation 3. Finally, VAOT evaluations of eligibility of properties for the National Register of Historic Places should be made in consultation with VTSHPO pursuant to 36 CFR 800.4(c); and

(6) VTAOT Review Process.

(a) Internal Review. For project types listed in Stipulation 5, VTAOT qualified cultural resource staff, including an archeologist and architectural historian, will employ a multi-disciplinary approach to implement the following internal review process, as appropriate to the project:

- (i) determine the project's area of potential effects;
- (ii) review existing information, including Vermont's survey of historic sites and structures and archeological resources, on properties that are inventoried in the area of potential effects; and
- (iii) assess the likelihood that unidentified properties exist in the area of potential effects; and

- (iv) determine the degree of existing disturbance within the area of potential effects, performing a field inspection where warranted; and
- (v) conduct a field survey in conformance with the applicable standards in Stipulation 3, where warranted; and
- (vi) determine whether there are properties in the area of potential effects; and
- (vii) assess the Project's effects on any historic properties by applying the criteria of effect and adverse effect contained in 36 CFR 800.9.

(b) Eligibility Evaluations. VTAOT will make no determination of eligibility of properties for the National Register of Historic Places without consulting with VTSHPO pursuant to 36 CFR 800.4(c).

(c) Notification and Coordination. For projects that do not include historic properties within the area of potential effects or that by their nature will have no effect on historic properties, VTAOT shall notify the State Historic Preservation Officer and coordinate review of these findings.

(i) Notification. VTAOT will notify VTSHPO of its finding of no historic properties or no effect within 30 calendar days of completing its review. Unless VTSHPO objects within 15 days of receiving the notification, VTAOT is not required to take any further action in the Section 106 process.

(ii) Documentation. Notification under Paragraph 6(c)(i) shall be accompanied by documentation containing sufficient information to explain the finding of no effect or the conclusion that there are no historic properties within the area of potential effects. At a minimum, this documentation should include a description of the undertaking, a map showing the project location and extent, photographs if necessary, and a description of the efforts used to identify historic properties.

(iii) Concurrence. VTAOT may request written concurrence from the VTSHPO on a no effect determination for any project defined under this agreement.

(d) Project Review and Findings of No Adverse Effect on Minor Highway Projects. If VTAOT internal review suggests that a project may affect historic properties, VTAOT will coordinate the project in accordance with 36 CFR 800.4 through 36 CFR 800.6 and will consult with VTSHPO. Following this consultation, if the VTSHPO concurs with this finding of no adverse effect, that concurrence will end compliance with Section 106 without further review by ACHP.

(7) Documentation. For all undertakings reviewed under this agreement, VTAOT will maintain records, including photographs and field notes. For fieldwork that generates artifacts and other materials, VTAOT will maintain collections and records, until such time as they may be transmitted to the VTSHPO for permanent curation. Unless otherwise specified in consultations with VTSHPO, photography shall be with 35mm black and white film. Pertinent records for each project covered under this agreement may include:

- (a) A description of the project and its area of potential effects;
- (b) The location of the project area on USGS 7.5 minute topographic maps, and/or project mapping; large scale project mapping will be maintained until the annual review (Stipulation 10) has been completed;
- (c) The type, extent, and degree of existing disturbance within the area of potential effects;
- (d) The assessment by VTAOT qualified staff of the potential for properties within the area of potential effects, including but not limited to: justification, a listing of inventoried properties, and new or updated inventory forms from Vermont's historic sites and structures survey;
- (e) Justification for the no properties or no effect determinations;
- (f) Associated notes and correspondence.
- (g) Video tapes of route logs.

(8) Project Reviews - Other Undertakings. All other undertakings, as defined in 36 CFR 800.2, with the exception of those that meet the provisions in Stipulations 4, 5, and 6d, will be reviewed in accordance with 36 CFR Part 800.

(9) Cooperation and Communication. VTAOT and VTSHPO will continue to share information developed or generated by each agency related to the identification, evaluation, management and treatment of Vermont's cultural resources.

(10) Annual Review and Monitoring. VTAOT and VTSHPO will meet once a year, beginning in January, 1996, to examine VTAOT files maintained under this agreement and to review implementation of the terms of this agreement. VTSHPO will

schedule the annual review meeting and provide VTAOT with notice at least 30 days prior to the review. FHWA, ACHP, and VTSHPO may monitor activities carried out pursuant to this agreement. VTAOT will cooperate with these parties in carrying out their monitoring efforts.

(11) Amendment. Any party to this agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR 800.13 to consider such an amendment. VTAOT and VTSHPO may develop additions to Stipulations 4, 5, and 6 that identify other types of undertakings that they mutually agree may be exempted from review or be reviewed internally by VTAOT. Any such additions will be incorporated into this agreement by an amendment executed by the parties in accordance with this stipulation.

(12) Termination. Any party to this agreement may terminate it by providing 30 calendar days notice in writing to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments and other actions that would avoid termination. In the event of termination, FHWA will comply with 36 CFR 800.4 through 36 CFR 800.6 with regard to individual undertakings covered by this agreement.

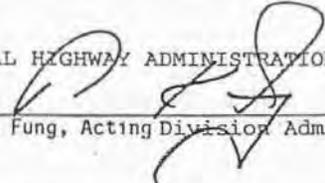
(13) Dispute Resolution. Should VTSHPO or ACHP object within 15 days to any documentation submitted or actions proposed pursuant to this agreement, FHWA will ensure that VTAOT consults with the objecting party to resolve the objection. If the objection cannot be resolved, FHWA will comply in accordance with 36 CFR 800.4 through 36 CFR 800.6. FHWA's responsibility to comply with the stipulations of this agreement for all other projects that are not the subject of the dispute will remain unchanged. When requested by any interested person, ACHP will consider FHWA findings under this agreement. The provisions of 36 CFR 800.6(e) on public requests to ACHP will apply.

(14) Coordination with Title 22 Vermont Statutes Annotated, Chapter 14, Sections 742 and 743. VTAOT and VTSHPO agree that fulfillment of the terms of this agreement for individual state funded paving and minor highway projects as defined in Stipulations 4 and 5 will satisfy VTAOT's responsibilities under the requirements of Title 22, Chapter 14, Sections 742 and 743 of the Vermont Statutes Annotated for all individual state funded projects.

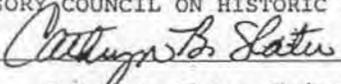
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Execution and implementation of this Programmatic Agreement is evidence that FHWA has satisfied its Section 106 responsibilities for all individual undertakings of paving projects and minor highway projects covered under this agreement.

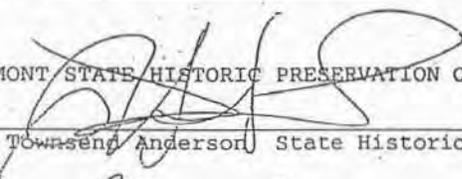
FEDERAL HIGHWAY ADMINISTRATION

By:  Date: 2/13/96  
William Fung, Acting Division Administrator

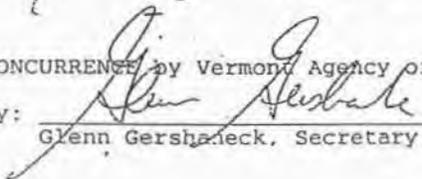
ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 2-27-96  
Title: Cathryn B. Slater, Chairman

VERMONT STATE HISTORIC PRESERVATION OFFICER

By:  Date: 2/2/96  
Townsend Anderson, State Historic Preservation Officer

CONCURRENCE by Vermont Agency of Transportation

By:  Date: 2/5/96  
Glenn Gershneck, Secretary