

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

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

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

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

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

WHEREAS, FHWA has determined that certain types of Minor Transportation Projects processed as categorical exclusions under National Environmental Policy Act (NEPA) may have an effect upon properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with SHPO and the Advisory Council on Historic Preservation (ACHP) pursuant to Section 800.14(b) of the regulations implementing Section 106 of the NHPA;

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

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

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

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

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

WHEREAS, FHWA has notified the public, federal and state agencies, and Certified Local Governments (CLGs) about this Agreement, has requested their comments, and has taken any comments received into account;

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

WHEREAS, the Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Vermont State Historic Preservation Officer, and the Vermont Agency of Transportation Regarding Implementation of the Federal-Aid Highway Program in Vermont, dated April 5, 2000, has expired; and

NOW, THEREFORE, FHWA, SHPO, ACHP, and VTrans agree that the Program in Vermont shall be implemented in accordance with the following stipulations in order to take into account the effects of the Program on historic properties in Vermont and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires or is terminated.

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

- I. Applicability and Scope
- II. Definitions
- III. Professional Qualifications Standards
- IV. Responsibilities

- V. Consultation with Tribes
- VI. Participation of Other Consulting Parties and the Public
- VII. Application of Appendices A and B
 - a. Exempt
 - b. Screened
- VIII. Review of Other Minor Transportation Projects
- IX. Emergency Situations
- X. Post-Review and Unanticipated Discoveries
- XI. Identification and Treatment of Human Remains
- XII. Transfer of Archaeological Collections to the Vermont Archaeology Heritage Center
- XIII. Administrative Stipulations
- XIV. Resolution to Objections to Implementation
- XV. Amendment
- XVI. Termination
- XVII. Confidentiality
- XVIII. Duration of Agreement

STIPULATIONS

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

I. APPLICABILITY AND SCOPE

- A. This Agreement sets forth the process by which FHWA will meet its responsibilities under Section 106 of the NHPA, with the assistance of VTrans, for minor transportation projects in the Federal-Aid Highway Program classified as categorical exclusions under 23 CFR § 771.115 and 23 CFR § 771.117 (hereafter “Minor Transportation Projects”) in the State of Vermont. This Agreement establishes the basis for VTrans’s review of individual Minor Transportation Projects and how VTrans will notify and consult with SHPO, FHWA, and individuals and organizations that may be invited to be Section 106 consulting parties. The objective of this Agreement is to make more efficient the methods by which FHWA and VTrans review individual undertakings that may affect historic properties and to establish the process by which FHWA, VTrans, SHPO, and ACHP will be involved in any such review.
- B. This Agreement applies to Minor Transportation Projects. Projects that require an Environmental Assessment or Environmental Impact Statement for compliance with NEPA are not covered by this Agreement and will be reviewed by FHWA and VTrans in accordance with the procedures of 36 CFR Part 800.
- C. Cooperating Federal Agencies that recognize FHWA as the lead Federal agency for an undertaking may fulfill their obligations under Section 106 of NHPA according to 36 CFR 800.2(a)(2), provided that FHWA and VTrans follow the requirements of this Agreement

and the cooperating agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and VTrans.

- D. At any time, VTrans may choose to conduct the Section 106 review for a Minor Transportation Project by following the procedures in 36 CFR Part 800 rather than by following the procedures in this Agreement. VTrans and FHWA will also conduct the Section 106 review for a Minor Transportation Project under the procedures in 36 CFR Part 800 if SHPO, ACHP, or FHWA so requests.
- E. State-funded actions that do not involve FHWA federal funding or permits are not subject to the terms of this Agreement.

II. DEFINITIONS

- A. For purposes of this agreement, the definitions provided in 36 CFR Part 800.16 (a) through (z) shall apply whenever applicable.
- B. *Minor Transportation Project*: An undertaking that is classified as a Categorical Exclusion under 23 CFR § 771.115 and 23 CFR § 771.117.
- C. *Excepted Activities*: Undertakings that typically have no appreciable potential to cause effects to historic properties. Examples include pavement resurfacing, installation of fencing, construction of bicycle/pedestrian lanes, installation of rumble strips, and landscaping in previously disturbed ground. Work is limited to the activities listed in Appendix A. An undertaking will not qualify as excepted from review if conditions must be imposed to ensure that potential historic properties would not be affected.
- D. *Screened Activities*: Undertakings that have some potential to affect historic properties. Following appropriate screening by qualified professionals, some may be determined exempt from further Section 106 review under this agreement. Work is limited to the activities listed in Appendix B.
- E. *Ground disturbance*: Defined as any work or activity that results in a disturbance of the earth, including excavating, digging, trenching, drilling, augering, backfilling, clearing, and grading.

III. PROFESSIONAL QUALIFICATIONS STANDARDS

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

VTrans may, in consultation with SHPO, appoint acting Qualified Staff who meet the Secretary of the Interior's Professional Qualifications Standards (Federal Register 48:44738-44739). If the vacancy is not filled with permanent Qualified Staff within one hundred eighty (180) days of the start of the staffing shortage, this Agreement will be temporarily suspended until permanent Qualified Staff are retained unless FHWA, VTrans, and SHPO agree in writing to an extension.

IV. RESPONSIBILITIES

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

A. FHWA (as the lead agency) Responsibilities

1. Consistent with the requirements of 36 CFR §§ 800.2(a) and 800.2(a)(1-4), FHWA remains legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by VTrans under the authority of FHWA. At any point in the Section 106 process, FHWA may inquire as to the status of any undertaking carried out under the authority of this Agreement and may participate directly in any undertaking at its discretion.
2. FHWA retains the responsibility for government-to-government consultation with Tribes as defined in 36 CFR 800.16(m). FHWA may ask VTrans to assist in consultation if the individual Tribes agree to alternate procedures.
3. Pursuant to 36 CFR § 800.6(a)(1), FHWA is responsible for notifying ACHP of an adverse effect determination and offering ACHP the opportunity to become a consulting party.
4. FHWA shall provide ACHP copies of any Memoranda of Agreement developed for undertakings with adverse effects to historic properties.
5. FHWA shall be responsible for resolving disputes and objections pursuant to Stipulation XIV of this Agreement.
6. FHWA will ensure that the steps in the Section 106 process are coordinated with Section 4(f) of the Department of Transportation Act and the National Environmental Policy Act, in accordance with 36 CFR § 800.3(b).

B. VTrans Responsibilities

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

1. Determine under 36 CFR § 800.3(a) whether the undertaking is a type of activity that has the potential to cause effects on historic properties.
2. Solicit public comment and involvement in accordance with 36 CFR § 800.3(e) and VTrans's "Engaging the Public: Outreach Guidelines for Projects, Plans and other Agency Activities"

3. Identify additional consulting parties as described in 36 CFR § 800.3 and invite them to participate in the undertakings covered by this Agreement.
4. Prepare appropriate documentation for FHWA's consultation with Tribes.
5. Determine and document the scope of identification efforts and level of effort as described in 36 CFR § 800.4(a) and (b)(1), including the boundaries of the undertaking's area of potential effects (APE).
6. Determine the eligibility of properties within the APE for listing in the NRHP.
7. Determine whether historic properties may be affected by the undertaking by applying the criteria of adverse effect as described in 36 CFR § 800.5(a)(1).
8. In consultation with FHWA, SHPO, ACHP (if it has chosen to participate), and any other consulting parties, address any adverse effects as described in 36 CFR § 800.6 through the development, circulation, and execution of a Memorandum of Agreement, as appropriate.
9. Provide FHWA copies of all correspondence sent out on its behalf (e.g. letters to SHPO or Tribes).
10. Provide SHPO copies of all documents produced in connection with Items 1. to 9. above.

V. CONSULTATION WITH TRIBES

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

VI. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Other Consulting Parties

1. VTrans shall identify other consulting parties as described in 36 CFR § 800.3 and invite them to participate in the undertakings covered under this Agreement. Written requests by

individuals, organizations, and agencies to become consulting parties will be evaluated on a case-by-case basis by VTrans and FHWA.

B. Public Involvement

1. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FHWA's and VTrans's environmental compliance procedures. VTrans's "Engaging the Public: Outreach Guidelines for Projects, Plans and other Agency Activities" provides guidance for identifying, informing, and involving the public. FHWA's Technical Advisory and similar and subsequent guidance documents will also be used. Public involvement and the release of information hereunder shall be consistent with 36 CFR §§ 800.2(d) and 800.3(e).
2. VTrans shall continue to seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties, to remain consistent with the intent of 36 CFR Part 800, as amended.
3. For those actions that do not routinely require public review and comment (e.g., exempt or unscreened activities), appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of historic properties, and the undertaking's potential impacts on them.
4. VTrans shall make FHWA and SHPO aware of any and all public controversy as it relates to the historic properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to the Tribes.

VII. APPLICATION OF APPENDICES A AND B

- A. Referencing Appendices A and B of this Agreement, Qualified Staff may make a determination that an undertaking is a type of activity/activities that has minimal potential to affect historic properties. As such, the undertaking will not require additional Section 106 review or consultation with SHPO as long as the undertaking is limited to the activities specified in Appendices A and B, meets all the terms and conditions in Appendices A and B, and is not part of larger undertaking. VTrans may add minor transportation projects to the list in Appendices A and B upon written concurrence by all parties to this Agreement.
- B. **Appendix A** lists Exempt Activities that shall require no consultation with SHPO. For projects that are limited to the activities listed in Appendix A, VTrans staff will document their finding that the project has no appreciable potential to affect historic properties and therefore requires no further coordination pursuant to 36 CFR § 800.3(a)(1) and maintain that document in its project file.
- C. **Appendix B** lists Screened Activities that require review by Qualified Staff to determine whether a project including the listed activities meets all the terms and conditions of Appendix B and that no particular circumstances exist that would call for additional review. Field investigations will be performed at the discretion of VTrans's Qualified Staff, provided an undertaking is not located within or adjacent to an historic property, and has

no known public controversy related to historic properties. If no such circumstances exist, Qualified Staff will document their finding that the project does not require any further review and maintain that document in the project file. The list of screened activities for the federal fiscal year (October 1 to September 30) shall be provided to SHPO annually by November 15 for inclusion in the annual reporting to the National Park Service by the State Historic Preservation Office.

- D. If a Minor Transportation Project does not meet the terms and conditions for Appendices A and B, or if there are special circumstances, the project shall be reviewed under the provisions of Stipulation VIII.

VIII. REVIEW OF OTHER MINOR TRANSPORTATION PROJECTS

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

- A. **VTrans Review:** VTrans will initiate the Section 106 process and identification of historic properties by carrying out the following steps in conformance with the process outlined in the regulations implementing Section 106:
1. Initiate the Section 106 process in accordance with the procedures in 36 CFR § 800.3, including establishing whether there is an undertaking, coordinating with other reviews, planning to involve the public, and identifying and inviting other consulting parties, as appropriate;
 2. Determine the project's APE, as defined in 36 CFR § 800.16(d), in consultation with SHPO,;
 3. Review existing information on file at Division for Historic Preservation (including the State and National Registers of Historic Places and the Vermont Archaeological Inventory Site Form) in the APE;
 4. Assess the likelihood that unidentified historic properties exist in the APE;
 5. Determine the degree of existing disturbance within the APE and determine whether an archaeological or historic architectural survey is needed;
 6. Perform archaeological or historic architectural field reconnaissance and/or intensive surveys, as warranted, in conformance with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation: Identification (1983, as revised in the 48 FR 44716) and SHPO's Guidelines for Conducting Archaeology in Vermont.
 - a. If an archaeological investigation is performed, an archeological inventory site form (VAI) will be prepared for all identified archaeological sites or districts, and as appropriate an Archaeological Resource Assessment (ARA). Documentation shall be forwarded to SHPO.
 - b. If a historic architectural survey is performed, SHPO's Historic Sites and Structure Survey Form (HSSS) will be prepared for any property that will be affected by a project

and that is found eligible for listing in the NRHP by VTrans. Documentation shall be forwarded to SHPO.

B. Eligibility Evaluations and Assessments of Effect

1. As part of VTrans's performance under Stipulation VIII.A of this Agreement, Qualified Staff will apply the NRHP criteria in 36 CFR § 60.4 to properties identified within the APE that have not been previously evaluated to determine if such properties are NRHP eligible in accordance with 36 CFR § 800.4(c)(1), and, if so, make the eligibility determination. If properties not previously evaluated are found to not be NRHP eligible in accordance with 36 CFR § 800.4(c)(2). VTrans will document this work as part of their assessment of effect and forward to SHPO. VTrans shall review existing determinations of eligibility to evaluate if the historic property retains sufficient integrity and forward any recommended changes to existing determinations to SHPO.

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

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

2. Finding of No Adverse Effect. For any Minor Transportation Project that includes, within the APE, NRHP listed or eligible properties, Qualified Staff will apply the criteria of adverse effect set forth in 36 CFR § 800.5(a) to determine the effects of the undertaking on historic properties.

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

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

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

c. VTrans shall make documentation concerning a finding of no adverse effect available for public inspection (subject to confidentiality provisions) prior to approving the undertaking. Contact information and instructions for public inspection of documentation shall be posted on VTrans's website. No further review under Section 106 is required for a finding of no adverse effect unless the scope of work or limits

change, thus requiring additional review. Final documentation shall be forwarded to SHPO.

3. Finding of Adverse Effect.

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

b. National Historic Landmarks. If Qualified Staff determine that an undertaking may adversely affect a National Historic Landmark, VTrans shall request SHPO, ACHP, and the Secretary of the Interior to participate in consultation to resolve any adverse effects, as outlined in 36 CFR § 800.10.

D. VTrans Submittal and SHPO Consultation.

1. Final Documentation pertaining to VTrans' Eligibility Evaluations (including ARAs and HSSS forms) and Assessment of Effect shall be submitted to SHPO within 30 days of making a determination of eligibility and finding of effect. The Eligibility Evaluation and Assessment of Effect may be submitted to SHPO separately or as one documentation packet.
2. SHPO shall respond to VTrans' initiation of consultation under this section within 21 days. If SHPO does not object within 21 days of receipt of an adequately documented eligibility and finding of effect, the agency official's responsibilities under Section 106 are fulfilled under 36 CFR § 800.4 and § 800.5.

IX. EMERGENCY SITUATIONS

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

- A. Actions to address emergency situations as defined above can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies.
- B. If the emergency actions could affect historic properties, VTrans's Qualified Staff shall notify SHPO, FHWA, Tribes, and ACHP prior to any work taking place. SHPO, FHWA, ACHP, and any Tribe that may attach religious and cultural significance to historic properties likely to be affected will have seventy-two (72) hours to respond.
- C. For projects where the actions must be made within the first thirty (30) days of the occurrence of the event that caused the emergency or the declaration of the emergency by an appropriate authority, the processing of environmental documentation will happen concurrently or after the fact. In these cases, VTrans will comply with the procedures in

Stipulation X of this Agreement to the extent possible, but the reviews will likely be conducted after the emergency work is completed.

- D. For Minor Transportation Projects taking longer than thirty (30) days for repair, VTrans will comply with the procedures in Stipulations VII and VIII, as appropriate.
- E. Written notification of an emergency action shall be provided to SHPO. The notice shall be clearly and prominently marked as an emergency notification and shall include an explanation of how the action meets the requirements for emergency as defined herein. The notice shall also include a brief description of the eligibility and/or significance of the resource(s) involved, the nature, effect, and anticipated effect of the emergency action on the resource(s), and the anticipated time frame available for comment.
- F. Notwithstanding the above, activities that consist of immediate rescue and salvage operations conducted to preserve life or property from death or destruction such as necessitate by a natural disaster or other catastrophic event are exempt from Section 106 review, in accordance with 36 CFR § 800.12(d).

X. POST-REVIEW AND UNANTICIPATED DISCOVERIES

A. Planning for Subsequent Discoveries.

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

B. Unanticipated Discoveries.

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

XI. IDENTIFICATION AND TREATMENT OF HUMAN REMAINS

- A. In the event that human remains are identified prior to, during, or after project construction, that portion of the project will stop immediately. The remains will be respectfully covered, and the Resident Engineer will immediately contact the local police and the Office of the Chief Medical Examiner. VTrans will also notify FHWA, SHPO, and the State Archaeologist. VTrans will develop a treatment plan in consultation with FHWA and SHPO. If it is determined that the human remains are associated with a Native American occupation, VTrans and FHWA will consult with the Tribes prior to the development or execution of a treatment plan.

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

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

XIII. ADMINISTRATIVE STIPULATIONS

- A. **Annual Evaluation.** VTrans, FHWA, and SHPO agree to hold annual evaluations in conjunction with the Vermont Advisory Council on Historic Preservation (VACHP) by April 1 to review implementation of the terms of this Agreement. Prior to each annual evaluation meeting, but no later than February 1 of each year, VTrans shall submit a report to FHWA and SHPO. The annual report will include:
 - 1. List in table form identifying all Minor Transportation Project undertakings processed under this Agreement from the previous calendar year and specifying project names, towns, and all findings pursuant to 36 CFR Part 800;
 - 2. List of all Appendix B findings signed by Qualified Staff;
 - 3. Copies of all determinations of National Register eligibility signed by Qualified Staff; and
 - 4. Assessment of the effectiveness of the Agreement, discussion of concerns with the Agreement, and include recommendations for changes to the Agreement, if any. Agreement.
- B. SHPO shall provide a copy of the VTrans annual report to the VACHP by the first week of March in preparation for the annual evaluation meeting.
- C. VTrans, FHWA, and SHPO shall meet on a quarterly basis (not including the Annual Meeting) to share information and engage in continuing dialog on programs, process, initiatives, and projects of significance, including all Section 106 Memoranda of Agreement and Programmatic Agreements. VTrans will coordinate these meetings and any signatory party may propose a meeting and agenda items.

- D. FHWA, ACHP, and SHPO may monitor activities carried out pursuant to this Agreement. VTrans will cooperate with these parties in carrying out their monitoring efforts.

XIV. RESOLUTION TO OBJECTIONS TO IMPLEMENTATION

A. Resolving Objections to Implementation of this Agreement

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

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

- B. Objections to Determination of Eligibility: Should any signatory party object to a determination of eligibility, FHWA will submit the determination to the Keeper of the National Register of Historic Places for resolution.

XV. AMENDMENT

- A. Any signatory party to this Agreement may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties.
- B. Each attachment to this Agreement may be individually amended through consultation of the signatory parties without requiring amendment of the Agreement, unless the signatory parties through such consultation decide otherwise.

XVI. TERMINATION

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

XVII. CONFIDENTIALITY

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

risk harm to the historic resource; or 3) impede the use of a traditional religious site by practitioners. Having so acknowledged, all parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

XVIII. DURATION OF AGREEMENT

This Agreement shall remain in effect for a period of two (2) years after the date it takes effect, unless it is terminated prior to that time. No later than ninety (90) days prior to the conclusion of the two (2) year period, VTrans will notify all parties in writing. If there are no objections from consulting parties, the term of the Agreement will be extended for an additional two (2) years up to a limit of five (5) years with written consent from all signatories. If any party objects to extending the Agreement, or proposes amendments, VTrans will consult with the parties to consider amendments or other actions to avoid termination. The Effective Date shall be the date the last party signs this Agreement.

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

Signatories:

Matthew R. Hake, Division Administrator
Federal Highway Administration

Date

John M. Fowler, Executive Director
Advisory Council on Historic Preservation

Date

Laura V. Trieschmann
Vermont State Historic Preservation Officer

Date

Invited Signatory:

Joe Flynn, Secretary
Vermont Agency of Transportation

Date

Approved as to Form:

Assistant Attorney General

Date

**APPENDIX A
EXCEPTED ACTIVITIES**

If the proposed project involves only those activities listed in Appendix A as “Excepted Activities,” a VTrans Environmental Specialist or Qualified Staff will complete the Excepted Activity Form and save a copy with the project file. No further review under Section 106 is required.

ROADWAY

- a. Routine pavement maintenance installations consisting of crack, rut, and pothole filling and line striping.
- b. Interstate maintenance projects involving paving on existing lanes or shoulders, sub-base reconstruction, sign and guardrail replacement.
- c. Installation of rumble strips, rumble stripes, and traffic sensors.

BRIDGES

- a. Bridge washing.
- b. For bridges that are less than 50 years of age (as determined by written record), rehabilitation of existing pavement or application of new pavement on bridge decks and membrane replacement.
- c. Installation of temporary cable system staging for inspection activities.

RAILROADS (FHWA-funded rail activities only)

- a. Resurfacing of at-grade crossings and installation of railroad crossing signs, signals and gates, within existing footprint (i.e. Previously disturbed areas – edge of pavement, edge of ditches, edge of ballast).
- b. In-kind replacement of existing bolt connected RR tracks and wood ties.

MISCELLANEOUS – ENHANCEMENTS, PARK AND RIDES, REST AREAS, ETC.

- a. Maintenance and minor improvements to existing park and rides within existing boundaries where no excavations will take place.
- b. Purchase of equipment

APPENDIX B SCREENED ACTIVITIES

If the proposed project involves only those activities listed in Appendix B, and any of the activities are included on the list of “Screened Activities,” the VTrans Qualified Staff will complete the Screened Activity Form and save a copy with the project file. SHPO will be notified annually of the projects on the Screened Activities list. No further review under Section 106 is required.

ROADWAY

- a. Rehabilitation of pavement and/or application of new pavement on existing paved travel lanes and existing paved shoulders with shoulder backing on non-Interstate projects.
- b. Sub-base improvements limited to the depth of the existing sub-base and width of existing road prism.
- c. Routine maintenance consisting of in-kind replacement of signs, guardrails, median barriers, safety barriers, guideposts, lights, signals, curbs and sidewalks in their existing location when these roadway features are outside of historic districts.

BRIDGES

- a. Installation of temporary cable system staging for inspection activities.
- b. For bridges less than 50 years of age, in-kind repair of railings and abutments.

CULVERTS

- a. In-kind replacement of culverts less than 50 years old in their existing location provided all work is done from the existing roadway.

DITCHING

- a. Re-establishing existing ditches.

AIRPORTS (FHWA-funded airport activities only)

- a. General repair or maintenance of existing airport facilities less than 50 years old.

RAILROADS (FHWA-funded rail activities only)

- a. Repair or replacement of existing Railroad signals less than 50 years old in their exact existing location and footprint.

MISCELLANEOUS - ENHANCEMENTS, PARK-AND-RIDE, REST AREAS, ETC.

- a. Repair, or replacement of fencing including highway fencing, wildlife fencing, vandal fencing, etc. in existing location.
- b. Modifications to sidewalks and curb ramps of non-historic materials to satisfy the Americans with Disabilities Act. The modifications must remain in the existing footprint.

UTILITIES

- a. Replacement/repairing of existing underground utilities in-kind and within existing roadway footprint.
- b. Replacement and relocation of existing utility poles between edge of sidewalk and road.