

PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE VERMONT AGENCY OF TRANSPORTATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE VERMONT STATE HISTORIC PRESERVATION OFFICER
REGARDING IMPLEMENTATION OF THE FEDERAL-AID HIGHWAY PROGRAM
IN VERMONT
April 5, 2000

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WHEREAS, the Federal Highway Administration (FHWA) proposes to administer its Transportation Program in Vermont authorized by 23 U.S.C. 101 et seq. through the Vermont Agency of Transportation (VAOT) (23 U.S.C. 315); and

WHEREAS, FHWA: (1) has determined that undertakings may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places; (2) has consulted with the Advisory Council on Historic Preservation (Council) and the Vermont State Historic Preservation Officer (SHPO) pursuant to Section 800.13 of the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f); (3) wishes to insure that VAOT will conduct its programs in a manner consistent with 36 CFR 800; and (4) intends to integrate its historic and archaeological preservation planning and management decisions with other policy and program requirements to the maximum extent possible consistent with Sec 110 of the NHPA; and

WHEREAS, 36 CFR Part 800 encourages Federal Agencies to efficiently fulfill their obligations under Section 106 of the National Historic Preservation Act through the development and implementation of cooperative programmatic agreements.

WHEREAS, VAOT has participated in the consultation and has been invited to execute this Programmatic Agreement (PA); and

WHEREAS, FHWA and VAOT are committed to the design of transportation systems that: (1) achieve a safe and efficient function appropriately placed within the Vermont context; (2) avoid, minimize and mitigate adverse effects on historical and cultural resources; (3) recognize that investment in these historic, archaeological, and cultural resources is critical to Vermont=s continued growth and prosperity; and (4) respond to the needs of Vermont communities,

WHEREAS, FHWA, the Council, SHPO, and VAOT aspire to engage in meaningful, long term planning for the protection of historic and archaeological properties and, toward that end, desire to: (1) develop a comprehensive and efficient process for all Section 106 undertakings; (2) simplify procedural requirements to the maximum extent possible; (3) eliminate unnecessary paperwork; (4) reduce the role of SHPO to the minimum extent required; (5) devote a larger percentage of time and energies identifying transportation-related concerns threatening historic and archaeological properties; and (6) create innovative programs to address those problems.

WHEREAS it is desirable to integrate and streamline project reviews under parallel state historic preservation and environmental laws.

NOW THEREFORE, FHWA, the Council, VAOT and SHPO hereby agree that the review of FHWA undertakings shall be administered according to the following stipulations in order to satisfy FHWA=s Section 106 responsibilities and to integrate, to the maximum extent feasible, the manner in which FHWA meets its historic and archaeological preservation responsibilities with its other responsibilities under Federal and State statutory or regulatory authorities and policies.

STIPULATIONS

FHWA will ensure that the following measures are carried out:

1. Applicability and Scope. This PA sets forth the process by which FHWA, with the assistance of VAOT, will meet its responsibilities under Section 106 of the NHPA and the regulations set forth in 36 CFR Part 800 as amended adopted to implement that act. For purposes of this PA, the definitions for terms appearing in 36 CFR 800.16 (a) through (y) inclusive shall be employed whenever applicable.

(A) Applicability. This PA shall apply to all FHWA undertakings administered under its Federal-aid Highway Program in Vermont. Those undertakings partially reviewed under any existing programmatic agreements or memorandums of agreement will be superseded by this agreement to the extent that the terms of the former are inconsistent with the latter. A list of those programmatic agreements is attached hereto as Appendix D. See Appendix B for programmatic review of State-funded transportation projects.

(B) Scope. The objective of this PA is to render more efficient the methods by which FHWA and VAOT review individual undertakings that may affect historic properties and to establish the process by which FHWA, the Council, the SHPO, and interested persons will be involved in any such review.

2. **General Requirements.** In compliance with its responsibilities under NHPA and as a condition of its award of any assistance under the Federal-aid Highway Program to VAOT, FHWA shall require that VAOT carry out the requirements of 36 CFR 800 inclusive, all applicable Council standards and guidelines, or the requirements set forth in this PA, for all FHWA undertakings. FHWA will insure that VAOT observes the following requirements.

(A) Employment of Qualified Personnel. For the purpose of implementing this agreement, VAOT shall continue to employ qualified professional staff and consultants who meet the requirements of 36 CFR Part 61, Appendix A. At a minimum, the professional staff shall consist of two permanent, full time, classified service positions: (1) an archaeologist; and (2) an architectural historian or historic preservation professional. The individuals holding these positions shall have the titles: (1) VAOT Archaeology Officer; and (2) VAOT Historic Preservation Officer. These two individuals will report directly to the Environmental Services Engineer. Where the VAOT Archaeology Officer and/or the VAOT Historic Preservation Officer determine that a project may be controversial, the officers may at their discretion consult their Division Director and/or the Secretary of Transportation, and/or, refer a project for review under 36 CFR 800. SHPO shall be consulted in the selection of individuals to fill these two positions. In the event of a prolonged absence of the archaeology officer or the historic preservation officer, VAOT will, in consultation with SHPO, appoint acting officers that meet the requirements of 36 CFR Part 61, Appendix A.

(B) Manual of Ancillary Standards and Guidelines. In addition to the Secretary of the Interior's Standards for Historic Preservation Projects (36 CFR Part 68), and the Vermont SHPO Guidelines for Archeological Studies, as revised, VAOT, FHWA, and SHPO shall prepare a document titled A Manual of Ancillary Standards and Guidelines to implement this PA, to provide guidance for the drafting of any findings or other documents produced by the VAOT Archaeology Officer or Historic Preservation Officer, and to prescribe measures to mitigate any adverse effects caused to historic resources. This document shall, by reference, be incorporated into this PA and will serve as a manual for the Section 106 review by VAOT of all FHWA undertakings in Vermont. The Manual of Ancillary Standards and Guidelines will be prepared by September 30, 2000, or within six months of the date of execution of this agreement, whichever is later. An Outline of Topics for the Manual of Ancillary Standards and Guidelines is attached hereto as Appendix A.

(C) Coordination of Project Review Among VAOT Divisions. VAOT will prepare a detailed written procedure for Section 106 review of FHWA undertakings among its various divisions, and this procedure will be included in the Manual of Ancillary Standards and Guidelines..

(D) Education. FHWA and VAOT, in collaboration with SHPO, will provide a significant public education and interpretation component in its undertakings whenever appropriate.

(E) Training. FHWA and VAOT will collaborate with SHPO in ensuring periodic training for VAOT personnel and their consultants to assure compliance with Section 106 responsibilities. Creative initiatives are encouraged.

(F) Annual Evaluation. VAOT, FHWA, and SHPO shall meet six months after the date this agreement takes effect to evaluate the agreement, suggest revisions to its provisions or to the Manual of Ancillary Standards and Guidelines, and to evaluate the quality of the resource identification and protection activities carried out under the agreement. After the initial period, evaluations shall take place annually, by March 1. Prior to the annual evaluation, VAOT shall submit a report to FHWA and SHPO. This report shall include, but is not limited to, summaries in table form identifying all undertakings and specifying project names, towns, and all findings pursuant to 36 CFR 800. The report shall also contain a narrative description of accomplishments, concerns, and recommendations regarding any changes to this PA or to the Manual of Ancillary Standards and Guidelines.

The SHPO shall provide a copy of the VAOT annual report to the Vermont Advisory Council on Historic Preservation and shall schedule a meeting with the Council to discuss the report prior to the annual review meeting. The SHPO shall provide a written response to the report, after considering the comments of FHWA, the Vermont Advisory Council, and other interest groups and, if appropriate, concur that the terms of the PA and Manual are being met satisfactorily. If the SHPO concludes that performance under the agreement is less than satisfactory, the parties shall consult to improve performance, and meet again within six months to evaluate improvements.

(G) Transition. This PA will become effective upon the date of its execution by all parties and acceptance of the Manual of Ancillary Standards and Guidelines by AOT, FHWA, and the SHPO. If issues arise regarding FHWA undertakings partially reviewed prior to the date this PA becomes effective, the Archaeology Officer or Historic Preservation Officer shall consult with SHPO, ACHP, FHWA, or VAOT as appropriate. If, after consultation, agreement cannot be reached regarding any such prior review, any party may request project review pursuant to the procedures identified in 36 CFR Part 800 et seq. In such event, the terms of this agreement shall be superseded by the provisions contained in 36 CFR Part 800 et seq for that single undertaking.

(H) Delegation. Responsibility for any findings regarding (i) determination that an undertaking exists; (ii) the potential area of an undertaking=s effect; (iii) the eligibility of archaeological or historic properties to the National Register of Historic Places within the project=s area of effect; (iv) determinations of effect; (v) interpretation of the Secretary of the Interior=s Standards for Historic Preservation Projects; (vi)

conformance with Vermont Guidelines for Archeological Studies of 1989, and any successors to those guidelines; or (vii) applicability of the Manual of Ancillary Standards and Guidelines adopted pursuant to this PA, shall rest with VAOT's Archeology Officer or Historic Preservation Officer. These responsibilities may not be delegated to project sponsors.

(I) Innovative Programs Envisioned. To facilitate historic and archaeological preservation planning and actions, VAOT will establish and promote progressive programs and activities of mutual interest to, and in consultation with, FHWA, SHPO, ACHP, or other consulting parties. In its annual reports, VAOT will identify special needs that should be addressed through such programs and activities and will prepare a plan and cost estimate to address those needs. Examples of programs envisioned may include: (i) analysis and synthesis of past data accumulated through VAOT/FHWA projects; (ii) statewide thematic or other surveys of historic properties; (iii) statewide predictive models; (iv) improved data management and access; (v) development of historic contexts and preservation priorities; (vi) identification and survey of properties considered eligible for the National Register of Historic Places; (vii) consultation with Native American groups and (viii) preparation and implementation of relevant preservation or management plans; project information internet site.

3. Documentation. Documentation assembled by the VAOT Archeology Officer, the VAOT Historic Preservation Officer, their staff, or their consultants, to support any Section 106 findings shall be consistent with 36 CFR 800.11. Copies of supporting documentation shall be forwarded as generated to SHPO to be made available for public inspection and use. Scoping reports, corridor studies, EA's and EIS's, and alternative alignment studies shall be included in the documentation. FHWA shall insure that VAOT prepare a plan to address the following requirements, and this plan will be included in the Manual of Ancillary Standards and Guidelines.

A. Types of Documentation. The documentation required to support findings of effect and eligibility to the National Register will be incorporated into a database system as described in the Manual of Ancillary Standards and Guidelines. A list of all FHWA undertakings reviewed each year under this agreement will be included in a report that will be submitted as part of the annual review described in Section 2(F) herein. VAOT shall provide to SHPO copies of all identification, evaluation, treatment and data recovery reports, survey forms, digital survey information, and other relevant resource information as they are generated.

B. GIS Systems. Procedures for incorporating pertinent documentation into GIS systems will be developed as part of the Manual of Ancillary Standards and Guidelines, and FHWA and VAOT will coordinate with SHPO to accomplish this objective. These procedures shall include the development of an historic and archeological resource recovery database and statewide predictive model. SHPO, FHWA, and VAOT will share technology and information by providing mutual access to site data, historic contexts, and any other information pertaining to cultural resource sensitivity analysis and/or site prediction modeling.

C. Archaeology Planning and Research. FHWA and VAOT shall provide for archaeological planning and research that includes, but is not limited to, appropriate care, access, and interpretation of data

collections recovered from the above undertakings. FHWA and VAOT, in consultation with SHPO, will partner with other organizations who maintain or are responsible for Vermont collections to assess needs, identify alternative solutions, and implement the most appropriate collections care, research, and interpretation program for Vermont. Any archaeological research center shall meet the standards set forth by the US Department of the Interior in 36 CFR 79. Archaeological research priorities and a public education and outreach plan will be included in the Manual of Ancillary Standards and Guidelines.

4. Requirements for Project Review by FHWA and VAOT. For all FHWA undertakings reviewed pursuant to this PA, FHWA and VAOT shall observe the following requirements:

A. Determination of Undertaking and Assessment of Area of Potential Effect. On behalf of the FHWA, the VAOT Archaeology Officer and Historic Preservation Officer shall follow the procedures in 36 CFR 800.3 and 800.4 to (i) determine whether proposed projects, activities, or programs constitute an undertaking; and (ii) establish the undertaking's area of potential effects.

B. Identifying Historic Properties. Pursuant to 36 CFR 800.4, the VAOT Archaeology Officer and Historic Preservation Officer shall identify historic and archaeological properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register of Historic Places. Information shall be obtained through cultural resource surveys or other appropriate investigations. Identification of historic and archaeological properties shall follow the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716), applicable SHPO guidelines, and agency programs to meet the requirements of Section 110(a)(2) of NHPA.

C. Public Participation and Notification The VAOT Archaeology Officer and Historic Preservation Officer shall, through opportunities afforded by the VAOT project development process, 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, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking. VAOT will use existing procedures to solicit public participation early in the project planning process and consistent with 36 CFR Part 800.3.

D. Evaluating Historic and Archaeological Significance. For any undertaking that may affect properties that have not been previously evaluated for eligibility to the National Register of Historic Places, the VAOT Archaeology Officer and Historic Preservation Officer shall apply the National Register Criteria (36 CFR 60.4), and shall make an appropriate finding regarding eligibility pursuant to 36 CFR 800.4(c). VAOT shall notify FHWA and any interested person that this finding has been made and shall provide copies to SHPO of adequate documentation to support that finding for inspection by the public.

Prior to any finding of eligibility or non-eligibility, VAOT may consult with SHPO regarding application of the criteria contained in 36 CFR 60.4. Copies of these findings with supporting documentation shall be forwarded as they are generated to SHPO for their records.

E. Finding of No Historic Properties Affected. If VAOT finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect on them as defined in 36 CFR Part 800.16(i), the VAOT Archaeology Officer and Historic Preservation Officer shall make a formal finding of No Historic Properties Affected. Prior to any such finding, VAOT may consult with SHPO regarding application of the criteria. VAOT shall notify FHWA and any interested person that this finding of No Historic Properties Affected has been made and shall forward copies of adequate documentation as set forth in 36 CFR Part 800.11(d) to support that finding to SHPO for inspection by the public. No further review under Section 106 is required for a finding of No Historic Properties Affected unless supplementary review pursuant to Section 5 herein, is requested.

F. Finding of No Adverse Effect. For any undertaking that includes, within the area of potential effects, listed or eligible properties that will not be adversely affected by the undertaking, as defined by the Criteria of Adverse Effect set forth in 36 CFR 800.5(a), the VAOT Archaeology Officer and Historic Preservation Officer shall make a formal finding of no adverse effect and specify those conditions, if any, that shall be imposed to secure that finding. FHWA and VAOT shall ensure that specified conditions are met. VAOT shall notify FHWA and any interested person that this finding of no adverse effect has been made and shall forward copies of adequate documentation to support that finding to SHPO for inspection by the public. No further review under Section 106 is required for a finding of no adverse effect unless supplementary review pursuant to Section 5, herein, is requested.

Prior to any finding of no adverse effect, VAOT may consult with SHPO regarding application of the criteria. Copies of these findings of no adverse effect with supporting documentation shall be forwarded to SHPO as available for their records.

G. Findings of Adverse Effect. For any undertaking that includes, within the area of potential effects, listed or eligible properties that will or may be adversely affected by the undertaking, as defined by the Criteria of Adverse Effect set forth in 36 CFR 800.5(a), the VAOT Archaeology Officer and Historic Preservation Officer shall make a formal finding of adverse effect. When a finding of adverse effect has been made, VAOT shall, at a minimum, evaluate in consultation with consulting parties alternatives to the project that would avoid any adverse effect and document them in the project files. If no such alternatives exist, VAOT shall undertake all possible steps to minimize or mitigate the adverse effect, taking into account the requirements of the Secretary of the Interior's Standards for Historic Preservation Projects; the Vermont Guidelines for Archeological Studies of 1989 and its subsequent revisions, together with the Manual of Ancillary Standards and Guidelines adopted pursuant to this PA.

(1) Adverse Effect - Standard Mitigation Measures Applicable. Prior to any finding of adverse effect, VAOT may consult with SHPO regarding application of the criteria and appropriateness of utilizing the Standard Mitigation Measures set forth in the Manual of Ancillary Standards and Guidelines. If VAOT

makes a determination regarding applicability of the Standard Mitigation Measures, those measures shall be incorporated into a formal written finding of adverse effect. VAOT shall notify FHWA, SHPO, consulting parties and interested members of the public that this finding of adverse effect has been made and shall forward copies of adequate documentation to support that finding to SHPO for inspection by the public. No further review under Section 106 is required for a finding of adverse effect unless supplementary review pursuant to Section 5, herein, is requested.

(2) Adverse Effect - Memorandum of Agreement (MOA) If VAOT determines that the Standard Mitigation Measures are not applicable, VAOT will consult with SHPO, FHWA, and consulting parties on the special provisions adopted to avoid, minimize, or mitigate the adverse effect, and draft an MOA to reflect the agreement. This MOA, together with copies of the documentation necessary to support the finding of adverse effect, will be forwarded to SHPO and FHWA wherein they will, within 30 days, either sign the agreement or initiate consultation with the Council. Copies of the MOA and findings of adverse effect with supporting documentation shall be forwarded to the Council, and SHPO as generated for their records and inspection by the public.

(3) Adverse Effect - Special Requirements for Protecting National Historic Landmarks
If VAOT determines that an undertaking may adversely affect a National Historic Landmark, VAOT shall request the SHPO, the Council and the Secretary of the Interior to participate in consultation to resolve any adverse effects, as outlined in 36 CFR 800.10.

H. Emergency Situations. This document prescribes review processes for two classes of emergency situations. The first class exists when (1) the undertakings are operations that are responding to a disaster or emergency declared by the President or governor, or that are responding to immediate threats to life or property, or (2) that are responding to immediate threats to life or property that are declared emergencies by the Secretary of Transportation in consultation with the VAOT Historic Preservation and Archaeology Officers or, if unavailable, the SHPO and (3) corrective measures are initiated within 30 days after the disaster or emergency has been formally declared. Reviews in these emergency situations shall utilize the review process described in Section 4, but with a shortened timeframe for participation by the SHPO, consulting parties, and the general public as time permits. Written notification of the emergency action being considered shall be provided to the SHPO, the legislative body of the Municipality and the Municipal Planning Commission. The notice shall be clearly and prominently marked as an emergency notification, and shall include a brief description of the significance of the resources involved, the nature and anticipated effect of the emergency action on the resource(s), and the anticipated timeframe available for comment. Notification may be similarly provided to the general public in a box ad in a newspaper of general circulation in the area. VAOT is encouraged to also communicate with consulting parties by telephone.

The second class of emergencies as defined by immediate rescue and salvage operations conducted to preserve life or property such as necessitated by natural disaster or other catastrophic event, are exempt from the provisions of Section 106 and this Programmatic Agreement.

I. Discovery. If previously unidentified archaeological or historic sites are discovered after VAOT

has completed its review under this programmatic agreement, that portion of the project will stop immediately. The resident engineer will immediately contact the SHPO. No further construction will proceed until the requirements of 36 CFR 800.13 have been satisfied. FHWA and VAOT will consult with SHPO to record, document and evaluate National Register eligibility of the site and the project's effect on the site, and to design a plan for avoiding or mitigating adverse effects on a potentially eligible site.

J. Treatment of Human Remains. In accordance with state laws that protect unmarked burials, if previously unidentified Native American remains are discovered during construction, that portion of the project will stop immediately. The remains will be respectfully covered over and the project engineer will immediately consult with FHWA, VAOT's archaeologist, and SHPO. A treatment and reburial plan will be developed by FHWA, VAOT, and SHPO in consultation with appropriate Native Americans. FHWA and VAOT will ensure that the treatment and reburial plan is fully implemented. Avoidance and preservation in place is the preferred option for treating human remains.

5. Supplementary Review This Programmatic Agreement is intended to provide for complete, thorough, and streamlined review of VAOT transportation projects. It is agreed that the formal supplementary review process described below is intended for use in circumstances of significant disagreement only. For the purposes of informal consultation, the SHPO may at his or her discretion, consult via telephone, memo, or in a meeting with the VAOT's historic and archaeological preservation staff.

If, for any undertaking, formal written comment or formal written objection, so titled, is made within 30 days by FHWA, VAOT, SHPO, the Council, or any consulting party, to any findings made by either the Archaeology Officer or Historic Preservation Officer regarding: (i) determination that an undertaking exists; (ii) the potential area of an undertaking's effect; (iii) the eligibility of archaeological or historic properties to the State or National Register of Historic Places within the project area of effect; (iv) determinations of effect; (v) interpretation of the Secretary of the Interior's Standards for Historic Preservation Projects; (vi) conformance with Vermont Guidelines for Archeological Studies of 1989, and any successors to those guidelines; (vii) applicability of the Manual of Ancillary Standards and Guidelines adopted pursuant to this PA; (viii) the appropriateness of the Standard Mitigation Measures, the Archaeology Officer or Historic Preservation Officer shall consult, as appropriate, with SHPO, ACHP, FHWA, or VAOT. If, after consultation, agreement on Federal undertakings cannot be reached regarding any such findings, any party may request the project be reviewed pursuant to the procedures identified in 36 CFR Part 800 et seq. In such event, the terms of this agreement shall be superseded by the provisions contained in 36 CFR Part 800 et seq for that single undertaking only.

6. Dispute Resolution. Should any party to this agreement object within 30 days to any actions proposed pursuant to this agreement not covered by Section 5 (Supplementary Review), FHWA, VAOT, SHPO, and the objecting party shall consult to resolve the objection. If the objection cannot be resolved,

FHWA and VAOT shall request comment from the Council pursuant to 36 CFR 800.6(b). Any Council comment provided in response to such a request will be taken into account by FHWA and VAOT in accordance with 36 CFR 800.6(c)(2) with reference only to the subject of the dispute. The responsibility of VAOT, FHWA, and SHPO to carry out all actions under this agreement, other than those that are the subject of the dispute, will remain unchanged.

7. Amendment. Any party to this agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR 800.14 to consider such amendment. The responsibility of VAOT, FHWA, and SHPO to carry out all actions under this agreement, other than those subject to the amendment, will remain unchanged.

8. Right to Terminate. Any party to this PA may terminate it by providing thirty (30) days written notice to the other parties, provided that the parties will consult during the period before termination to seek agreement on amendments or other action that would avoid termination. In the event of termination, the FHWA shall comply with 36 CFR 800 with regard to the individual undertakings covered by this PA.

9. Duration. This Programmatic Agreement will be in effect for three years from the date of execution, with renewal upon agreement by all parties.

Execution and implementation of this PA evidences that the FHWA has satisfied its Section 106 responsibilities for all individual undertakings of the Federal-aid Highway Program in Vermont.

_____	_____	_____	_____
Division Administrator, Federal Highway Administration	date	Executive Director, Advisory Council on Historic Preservation	date
_____	_____	_____	_____
Vermont State Historic Preservation Officer	date	Secretary, Vermont Agency of Transportation	date

APPENDIX A

MANUAL OF ANCILLARY STANDARDS AND GUIDELINES Outline of Topics

1. Applicability and Scope
 - (A) Applicability
 - (B) Scope

2. General Requirements
 - (A) Employment of Qualified Personnel
 - (B) Manual of Ancillary Standards and Guidelines
 - (C) Coordination of Project Review Among VAOT Divisions
 - (D) Education
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 - (I) Innovative Programs Envisioned

3. Documentation
 - (A) Types of Documentation
 - (B) GIS Systems
 - (C) Archaeology Planning and Research

4. Requirements for Project Review by FHWA and VAOT
 - (A) Determination of Undertaking and Assessment of Area of Potential Effect
 - (B) Identifying Historic Properties
 - (C) Public Participation and notification
 - (D) Evaluating Historical and Archaeological Significance
 - (E) Finding of No Historic Properties Affected
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 - (2) Adverse Effect - Standard Mitigation Measures Applicable
 - (2) Adverse Effect - Memorandum of Agreement
 - (4) Adverse Effect - Special Requirements for Protecting National Historic Landmarks

 - (H) Emergency Situations

- (I) Discovery
- (J) Treatment of Human Remains

- 5. Supplementary Review
- 6. Dispute Resolution
- 7. Amendment
- 8. Right to Terminate
- 9. Duration
- 10. Appendices
 - (A) Manual of Ancillary Standards and Guidelines. Outline of Topics
 - (B) Review of AOT Undertakings under Vermont State Law
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APPENDIX B

Review of VAOT Undertakings under Vermont State Law

1. INTRODUCTION TO STATE REVIEW PROCEDURES. In addition to Section 106 review of VAOT projects, state law requires that state undertakings be reviewed under 22 V.S.A. 14, the Vermont Historic Preservation Act, and in some cases, under 10 V.S.A. 151, Act 250, the State's land use permit law. VAOT undertakings that comply with the review requirements of Section 106 or Act 250 shall be considered to be in compliance with the requirements of 22 V.S.A.14. Compliance with 22 V.S.A.14, however, generally does not satisfy the review requirements of Section 106 or Act 250.

A. 22 V.S.A. 14. In those circumstances where there is no federal or Act 250 involvement in an AOT undertaking, the Vermont Advisory Council on Historic Preservation (VACHP) delegates to the VAOT and VAOT's qualified historic and archaeological preservation professionals the responsibility to identify potentially significant resources, to evaluate project impacts, and to develop mitigation measures that avoid or minimize adverse impacts, as outlined in the Division's rules for State undertakings. For undertakings that do not result in an adverse effect, AOT shall provide a copy of the determinations to the VACHP. For undertakings that may have an impact on a listed or eligible State or National Register resource, VAOT shall consult with the VACHP as outlined in the rules.

B. 10 V.S.A. 151, Act 250. VAOT shall identify the applicability of Act 250 to VAOT projects early in the planning process. For undertakings that require an Act 250 permit, the VACHP delegates to the VAOT and VAOT's qualified historic and archaeological preservation professionals the responsibility to identify potentially significant resources, and the Vermont Division for Historic Preservation delegates the responsibility to evaluate project impacts and to develop mitigation measures that avoid, minimize, or mitigate impacts, as outlined in the Division's rules for state undertakings.

(1) Finding of No Effect. For any undertaking that does not include a listed or eligible State or National Register resource within the area of potential effects, or alternatively includes listed or eligible properties that will not be affected by the undertaking, the VAOT Archaeology Officer and Historic Preservation Officer shall make a formal finding of no effect. VAOT shall forward copies of this finding to the District Environmental Commission and the SHPO and these comments shall serve as the SHPO's

comments on the project for Criterion 8 and other applicable criteria. No further review by AOT under Act 250 is required.

(2) Finding of No Adverse Effect. For any undertaking that includes, within the area of potential effects, a listed or eligible State or National Register resource that will not be adversely affected by the undertaking as defined in the Division's rules, the VAOT Archaeology Officer and Historic Preservation Officer shall make a formal finding of no adverse effect and specify those conditions, if any, that shall be imposed to secure that finding. VAOT shall forward copies of this finding to the District Environmental Commission and the SHPO and these comments shall serve as the SHPO's comments on the project for Criterion 8 and other applicable criteria. No further review by AOT under Act 250 is required.

(3) Finding of Adverse Effect. Prior to any finding of adverse effect, VAOT may consult with SHPO regarding application of the criteria of adverse effect in the Division's rules. For undertakings that may have an adverse effect on a listed or eligible State or National Register resource, VAOT shall consult with the SHPO, and prepare for the SHPO's concurrence a recommendation for mitigation measures that would avoid an undue adverse effect. The recommendation, with the SHPO's concurrence, shall be submitted to the District Commission and shall serve as the Division's comments on the project for Criterion 8 and other applicable criteria. If the SHPO does not concur, either in the assessment of undue adverse effect or in proposed mitigation measures, the SHPO may issue his or her own comments to the District Commission.

2. PUBLIC NOTIFICATION. VAOT shall also be responsible for notifying towns or municipalities when a property is being evaluated for the SR/NR as required by Title 22, Vermont Statutes Annotated, Section 723(11) and related policies. Such notification shall be incorporated into existing VAOT procedures as appropriate. VAOT and SHPO will coordinate any requested public hearings requested pursuant to that act.

Vermont Advisory Council for date
Historic Preservation

Vermont State Historic date
Preservation Officer

APPENDIX C

Exempt Activities

ROADWAY

1. Rehabilitation of existing pavement and/or application of new pavement on existing travel lanes and existing paved shoulders with shoulder backing
2. Sub-base improvement limited to the depth of the existing sub-base, for drainage purposes.
3. Routine pavement maintenance such as crack filling.
4. 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, locations, content, and material composition of these features are permitted and do not require review.
5. Interstate projects involving: (1) installation of guardrails to replace existing guardrails; (2) installation of new guardrails on existing shoulders; and (3) maintenance projects, including construction of cross-overs, on previously disturbed median strips.
6. Converting existing drop inlets to traversable designs.
7. Safety end treatments (standard flares) for guardrails.
8. Installation of new guardrail on existing shoulders outside historic districts.
9. Installation of rumble strips on existing pavement.

CULVERTS AND DITCHING

1. In kind replacement of 48" or smaller 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.

2. In kind replacement of 49" or larger culverts not fifty years old, provided replacement is confined to existing locations, no temporary bridge or culvert is required, and no approach work is undertaken. In-kind replacement shall mean construction of a new facility substantially the same in materials and size and in footprint.
3. Reestablishment of existing ditches to original width.

BRIDGES

1. Washing, cleaning, and regular maintenance.
2. In-kind repairs to abutments where no excavation is proposed.
3. 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, and replacement/repair of railings where bridge is located outside a historic district.

AIRPORTS

1. Repaving of existing runways.
2. Repairing existing less than 50 year old safety components including beacons on airport property as long as no new access is required.
3. In kind replacement or repair of existing beacons less than 50 years old not on airport property as long as no new access is required.
4. General maintenance of existing airport facilities.

RAILROADS

1. Installation of new RR signals and replacement/repair of existing less than 50 year old RR safety components.
2. Resurfacing on railroad crossings.
3. In-kind replacement of existing bolt connected RR tracks and wood ties.

ENHANCEMENTS

1. Installation of Bike Racks.
2. Maintenance and minor improvements to existing Park and Rides, except lighting, where no excavation will take place.
3. Modification to concrete sidewalks and curb ramps to satisfy the Americans with Disabilities Act.

UTILITIES

1. Replacing/repairing existing underground utilities in kind and within existing footprint.
2. Replacement and relocation of existing utility poles between edge of sidewalk and road.

PROCEDURAL

1. Minor changes to previously permitted projects where those changes fall under the exempt activity category as described in this appendix.

APPENDIX D

Existing Statewide Programmatic Agreements

1. Paving and Minor Highway Project Programmatic Agreement, executed February 1, 1996

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. Historic Bridge Programmatic Agreement, executed July 7, 1998

Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Vermont Agency of Transportation, the Vermont Agency of Natural Resources, and the Vermont Agency of Commerce and Community Development regarding implementation of a program involving historic bridges.