

PROGRAMMATIC AGREEMENT
AMONG THE
COMMUNITY DEVELOPMENT FINANCE AUTHORITY (CDFA)
AND
THE NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES (NHDHR)
FOR THE ADMINISTRATION OF
THE NEIGHBORHOOD STABILIZATION PROGRAM (NSP)
IN NEW HAMPSHIRE

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) has allocated Neighborhood Stabilization Program (NSP) funds to the Community Development Finance Authority (CDFA) in accordance with Title III of the Housing and Economic Recovery Act (HERA) of 2008 (Public Law 110-289, approved July 30, 2008); Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); the American Recovery and Reinvestment Act of 2009; and any future legislation which directs the use of such federal funds by CDFa; and

WHEREAS, activities under this program may include Rehabilitation, New Construction, and Demolition; and

WHEREAS, the CDFa has determined that the implementation of the Neighborhood Stabilization Program may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (National Register) pursuant to Section 800.13 of the regulations, 36 CFR Part 800; implementing Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f; and

WHEREAS, CDFa and the NHDHR have determined that the CDFa can more effectively fulfill its Section 106 review responsibilities for Neighborhood Stabilization Program activities if a programmatic approach is used to delegate Section 106 compliance responsibilities to the NSP awardees of State NSP funds, when they agree to assume this responsibility, and to identify NSP Program activities which can be excluded from the Section 106 review because they have limited potential to adversely affect historic properties; and,

NOW, THEREFORE, CDFa and NHDHR agree that the Neighborhood Stabilization Program in New Hampshire shall be administered in accordance with the following stipulations to satisfy CDFa's Section 106 responsibilities for all individual undertakings of the program.

STIPULATIONS

CDFa will ensure that the following measures are carried out:

I. SURVEY

- A. Phase I: Evaluation of Target Neighborhoods. The CDFa will contract with a 36 CFR 61-qualified consultant to prepare historic resources surveys of each identified neighborhood targeted for NSP funding using a NHDHR Area Form hybrid, which combines elements of both the Project Area form and the Historic District Area form (to be known as NSP Area Forms). Both the CDFa and the NHDHR will use the overall evaluation of these target neighborhoods as comments for any future individual undertakings in the area.

NHDHR files are available to the consultant to identify historic properties within the NSP activities' area of potential effect (APE) as set forth in 36 CFR Section 800.2(c). At a minimum, the consultant's research shall include the current listing of the National Register and state surveys housed at NHDHR. As appropriate, the focus of the identification surveys shall be on the target neighborhoods rather than property-by-property assessments.

NSP Area forms completed for each target neighborhood will contain the consultant's recommendations of eligibility.

B. Phase II: Evaluation of Individual Properties (when needed).

There are two circumstances in which the above recording of target neighborhoods on NSP Area Forms will be insufficient:

1. Any project that occurs outside the recorded target neighborhood. All resources potentially affected by a project occurring outside the recorded target neighborhood will need to be recorded on appropriate NHDHR inventory forms.
2. Any property identified as potentially individually eligible in the area form will need to be recorded on an individual inventory form if a project will directly impact that resource, either the building or the lot on which it is situated.

C. NHDHR Review and Comment.

1. The NHDHR shall notify the CDFA whether it concurs or objects to the determination of eligibility within 30 (thirty) days following receipt of adequate documentation.
2. If there is any question or dispute as to whether a property meets the National Register criteria, the CDFA may request a formal determination of eligibility from the Secretary of the Interior (36 CFR 800.4(c)(2)).

II. TREATMENT

Properties that are determined to be eligible for the National Register or which are listed in the National Register will be treated in the following manner for all work that is outside of the exclusions found in Appendix I:

- A. Rehabilitation and Additions. Properties that are to be rehabilitated or expanded will be rehabilitated in accordance with the recommended approach in the Secretary of the Interior's Standards for Rehabilitation (Standards) in consultation with NHDHR.
- B. New Construction. CDFA shall require NSP awardees to ensure that the project design for new construction is developed in consultation with the NHDHR. New construction will be compatible with the historic and architectural qualities of the National Register district or National Register-eligible district in which it is located in terms of scale, massing, and materials, and is responsive to the recommended approaches to new construction set forth in the Standards.
- C. Demolitions. Demolition of properties listed in or eligible for listing in the National Register or within a district listed or eligible for listing in the National Register, will be reviewed on a case-by-case basis with the NHDHR.

III. RESOLUTION OF ADVERSE EFFECTS

If awardees, in consultation with the NHDHR, determine that a project meets the Criteria of Adverse Effect, awardees shall consult with the NHDHR to determine whether the historic properties should be treated in accordance with the Potential Mitigation Measures outlined in Appendix 2 or reviewed in accordance with 36 CFR Section 800.5(e).

- A. Awardees shall submit background documentation to include, an analysis of alternatives, recent structural reports or assessments of conditions, cost estimates for rehabilitation, programmatic and economic considerations, and marketing studies.
- B. If the NHDHR determines that no prudent and feasible alternatives exist to implementing the undertaking without adverse effects or mitigating circumstances exists, the NHDHR and awardees shall negotiate mitigation(s) listed in the Potential Mitigation Measures Agreement outlined in Appendix 2. Appendix 2 is only a guideline and other mitigation measures may be negotiated between NHDHR and the awardee.
- C. Awardees will develop a Mitigation Measures Agreement for signature by the NHDHR Director within 30-days following receipt. No further review of the undertaking is required by the Council.
- D. If awardees object to the terms of the Mitigation Measures agreement, the Awardees shall notify the NHDHR and initiate the consultation process set forth in 36 CFR Section 800.5(e).

IV. GROUND DISTURBING ACTIVITIES

Prior to any development activity not listed in Appendix I and that would result in disturbance of lands previously undisturbed, NSP awardees shall notify the NHDHR and request an opinion on the potential existence of archaeological resources. If the potential for archaeological resources exists, an archaeological survey conducted by a professional meeting 36 CFR 61 and meeting the New Hampshire Division of Historical Resources Archaeological Standards and Guidelines, published 2003, revised 2004 of the affected area will be carried out in consultation with the NHDHR. If archaeological resources are found which may meet the National Register criteria, whenever feasible, they shall be avoided or preserved in place. When this is not feasible, the NHDHR will be consulted and a treatment consistent with the ACHP's Handbook, Treatment of Archaeological Properties and approved by the NHDHR, will be developed and implemented.

V. ACTIVITIES EXEMPT FROM FURTHER REVIEW

If NSP awardees determine that NSP Program activities will involve properties less than fifty years old or NSP Program activities are limited solely to those included in Appendix 1, no further review is required, including evaluation of the property for National Register eligibility.

The following activities do not require further review under this agreement:

- A. Demolitions, repairs, or additions to buildings less than 50 years of age which are not considered eligible for the National Register, located within or adjacent to an historic district, or located adjacent to properties individually listed in or eligible for the National Register;
- B. Repairs or upgrades listed in Appendix I to buildings greater than 50 years of age which are not considered eligible for the National Register, located within or adjacent to a historic district, or located adjacent to properties individually listed or eligible for the National Register.

- C. The installation of utilities, such as sewer, storm, electrical, gas, steam, compressed air, leach lines, and septic tanks in road rights of way, existing utility corridors, or other areas previously disturbed by these activities
- D. Purchases of buildings less than 50 years of age

VI. PUBLIC INVOLVEMENT

- A. NSP awardees, in consultation with the NHDHR, shall determine the public interest in NSP PROGRAM activities which have the potential to affect historic properties by informing the public about historic properties while meeting its public participation requirements as set forth in the regulations for the NSP program and in complying with 24 CFR Part 58. NSP AWARDEES shall notify the NHDHR of the public interest in any project activities covered under the terms of this Programmatic Agreement.
- B. NSP awardees may invite interested persons to participate as consulting parties in the consultation process for adverse effects in accordance with 36 CFR Section 800.5(e)(1).
- C. At any time during the implementation of the measures stipulated in this Programmatic Agreement, should the public raise an objection pertaining to the treatment of an historic property, NSP awardees shall notify the NHDHR and take the objection into account. NSP awardees, and the NHDHR, when requested by the objector, shall consult to resolve the objection. NSP awardees are not required to cease work while objections are being reviewed unless imminent threat to the resource or character-defining elements will be affected by the proposed work.

ADMINISTRATIVE CONDITIONS

I. PERSONNEL QUALIFICATIONS

NSP awardees shall ensure that all investigations carried out pursuant to this Agreement will be by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualification Standards for Archaeologists (48 FR 44738-9) or the Secretary of the Interior's Professional Qualification Standards for Architectural Historian Professionals (48 FR 44738-9), as appropriate.

II. LATE DISCOVERY

If unanticipated cultural materials (e.g., large, intact artifacts or animal bones; large clusters of artifacts or animal bones; large soil stains or patterns of soil stains; buried brick or stone structures; clusters of brick or stone) or human skeletal remains are discovered prior to or during land altering or construction activities, then NSP awardees will temporarily halt any activities and immediately notify the NHDHR of the late discoveries.

If human remains are found or suspected, they should be left in place and protected until appropriate consultation is completed. NSP awardees are responsible for notifying the NHDHR, the local coroner or medical examiner, and interested parties, such as Native American tribes, of the find to initiate consultation.

III. REPORTING

CDFA shall provide NHDHR with an annual report on this agreement for the previous calendar year on March 31st of each year that this agreement is in effect. This report shall summarize projects

funded through NSP on which Section 106 reviews were not performed and why. Upon request of either signatory, meeting shall be held subsequent to the submittal of the annual report to review the report and/or discuss issues in greater detail.

IV. AMENDMENTS

Any party to this Agreement may propose that the Agreement be amended, whereupon the parties shall consult with one another to consider such an amendment in accordance with 36 CFR § 800.6(c)(7).

V. RESOLUTION OF OBJECTIONS

- A. Should any party to this Agreement object in writing to one of the NSP awardees regarding any action carried out or proposed with respect to any work covered under this agreement or to the manner in which such work is being implemented under this Agreement, the awardee shall consult with the party to resolve the objection. If after initiating such consultation, the awardee determines that the objection cannot be resolved through consultation, the awardee shall forward all documentation relevant to the objection to the Advisory NHDHR on Historic Preservation (NHDHR) including the proposed response to the objection. Within thirty days after receipt of all pertinent documentation, the NHDHR shall exercise the following options:
1. Advise the awardee that the NHDHR concurs with the awardee's proposed response to the objection, whereupon the awardee shall respond to the objection accordingly; or
 2. Provide the awardee with recommendations, which shall be taken into account in the awardees final decision regarding its response to the objection; or
 3. Notify the awardee that the object will be referred to for comment to pursuant to 36 CFR § 800.7(c)(4) and Part 110(1) of the NHPA.
- B. Should NHDHR not exercise one of the above options within thirty days after receipt of all pertinent documentation, the awardee may assume the NHDHR's concurrence with its proposed response to the objection.
- C. The awardee shall take into account any NHDHR recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the awardees responsibility to carry out all actions under this Agreement that are not subjects of the objection shall remain unchanged.

VI. RESOLUTION OF OBJECTIONS BY THE PUBLIC

Should an objection pertaining to historic preservation or implementation of the terms of this Agreement be raised by a member of the public in a timely and substantive manner, the awardee shall notify the parties to this Agreement and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this Agreement to resolve the dispute.

VII. REVIEW OF IMPLEMENTATION

If the stipulations have not been implemented within two years after execution of this Agreement, the parties to this agreement shall review it to determine whether revisions are needed. If revisions are needed, the parties to this Agreement shall consult in accordance with 36 CFR § 800 to make such revisions.

VIII. DURATION

This Agreement will continue in force through the year 2014 with annual reviews by its parties for possible modifications, termination, or extension.

IX. CDFA will comply with the ACHP's regulation (36 CFR Part 800) on a case by case basis.

X. TERMINATION

Any party to this Programmatic Agreement may terminate the Agreement by providing thirty (30) calendar days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

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EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that CDFA has satisfied its Section 106 responsibilities for all individual undertakings of the State administered Neighborhood Stabilization Program.

COMMUNITY DEVELOPMENT FINANCE AUTHORITY

By: *Katharine Bogle Shields*

Date: *0/20/09*

Katharine Bogle Shields, CDFA Executive Director

NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES

By: *Elizabeth H. Muzzey*

Date: *7/10/09*

Elizabeth H. Muzzey, State Historic Preservation Officer

APPENDIX I

The following project activities do not require review by the NHDHR:

1. Demolition and rehabilitation on a non-historic property, except when a proposed addition to an existing property may impact a surrounding historic district.
2. Demolition of buildings blighted by fire. The term “blight” is defined by RSA 205:2 (1) as buildings that “are detrimental to the safety, health, morals, or welfare of the community.”
3. Repair, replacement and installation of the following systems provided that such work does not affect the exterior or require the installation of new ducts through the interior: a) electrical work; b) plumbing pipes and fixtures; c) heating system improvements; d) installation of fire detectors; e) ventilation systems; and f) bathroom improvements where work is contained within the existing bathroom.
4. Repainting of exterior surfaces provided that destructive surface preparation treatments, including, but not limited to water blasting, sandblasting, and chemical cleaning are not used.
5. Repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or other trim when the repair or replacement is done in-kind to closely match existing material and form.
6. Caulking, weather-stripping, re-glazing, and repainting of windows.
7. Repair, replacement or installation of storm windows (exterior, interior, metal, or wood) provided they match the shape and size of historic windows and that the meeting rail coincides with that of the historic window. Color should match trim.
8. Installation of new window jambs or jamb liners.
9. Repair or replacement of awnings when work is done in-kind to closely match existing materials and form.
10. Roof repair or replacement of historic roofing with material which closely matches the existing material and form. Cement asbestos shingles may be replaced with asphalt based shingles.
11. Repair, replacement, or installation of gutters and downspouts that are in keeping with the existing materials.
12. Installation of insulation in ceilings, attic, and basement spaces provided is installed with appropriate vapor barriers and within wall cavities provided that decorative interior plaster, woodwork, or exterior siding is not altered or damaged.
13. Replacement of suspended ceiling tile.
14. Replacement of non-significant flat stock trim.
15. Treatment of interior surfaces (floors, walls, ceilings, woodwork) when work is limited to repainting, refinishing, re-papering, replacing sheet rock with sheetrock, replacing failing asbestos plaster with plaster sheetrock, or laying carpet or sheet flooring.
16. Interior lead paint abatement when it is limited to washing, scraping and repainting, wallpapering, and chemical stripping of lead-painted surfaces. Exterior lead paint abatement that includes scraping and repainting of exterior wood and masonry surfaces.
17. Repair or replacement of fencing done in-kind to closely match existing material and form.
18. Repair or replacement of water, gas, storm, and sewer lines if it occurs within the dimensions of the original trench.
19. Acquisition of properties which is limited to the legal transfer of ownership with no physical improvements proposed.

APPENDIX 2

POTENTIAL MITIGATION MEASURES FOR ADVERSE EFFECTS

Awardees and the NHDHR may develop and execute an agreement that includes one or more of the following Mitigation Measures, as modified by the NHDHR, for undertakings not listed in Stipulation VI.B when the NHDHR deems it appropriate. The Council will not be a party to these agreements; however, awardees must submit a copy to the NHDHR and CDFA for their records within 30-days after the Agreement is executed between the awardee and NHDHR.

- I. Awardees shall ensure that the marketing plan proposed by the NHDHR is implemented for a mutually agreed upon period prior to the demolition or relocation of historic properties. Awardees shall review all purchase offers in consultation with the NHDHR. If a successful purchaser is selected, awardees shall include preservation covenants approved by the NHDHR in the transfer deed. If no successful purchaser is identified, awardees may either convey the property without covenants or proceed with the demolition or relocation after the historic properties have been recorded pursuant to HABS standards or NHDHR guidelines.
- II. Awardees, in consultation with the NHDHR, shall identify appropriate parties to receive salvaged architectural features. Awardees shall ensure that significant architectural features are salvaged prior to the initiation of demolition activities and properly stored and curated. When feasible, salvaged architectural features shall be reused in other preservation projects, if appropriate.
- III. Awardees, in consultation with NHDHR, shall develop and complete an initial printing (not to exceed 1,000 copies) of an 8½ x 11 tri-fold brochure to be used for a self-guided walking tour within the neighborhood of the affected site.
- IV. Awardees shall, in consultation with NHDHR, develop a permanent, all-weather exhibit containing at least two large panels. The exhibit will provide an explanation of the historic components of the neighborhood.
- V. Awardees shall, in consultation with NHDHR, develop, in conjunction with its homeownership training course, a training tool for maintaining historic homes. This training tool could take the form of a handbook or training and shall include techniques for maintenance of historic homes.
- VI. Awardees shall ensure that the treatment of historic properties or the design of new buildings which the NHDHR has determined cannot feasibly meet the Standards or NHDHR approved design guidelines is carried out in accordance with the construction documents or work write-ups reviewed and approved by the NHDHR.
- VII. Awardees shall ensure that the historic property is recorded prior to its demolition, alteration, or relocation in accordance with the Historic American Buildings Survey (HABS) standards or a Recordation Plan developed by the NHDHR. At a minimum this Plan will establish recordation methods and standards. The NHDHR shall identify appropriate archive, other than the Library of Congress, for the deposit of recordation materials and awardees shall be responsible for submitting such materials. Awardees and the NHDHR may mutually agree to waive the recordation requirement if the affected historic properties will be substantially repaired in accordance with the Standards.