

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE NEW HAMPSHIRE STATE HISTORIC PRESERVATION OFFICE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION
REGARDING THE FEDERAL AID HIGHWAY PROGRAM IN NEW HAMPSHIRE**

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 New Hampshire (NH) by funding and approving state and locally sponsored transportation projects that are administered by the NH Department of Transportation (NHDOT); and

WHEREAS, the NH FHWA Division Administrator is the "Agency Official" responsible for ensuring that the Program in the state of NH 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); and

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

WHEREAS, the responsibilities of the NH 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; and

WHEREAS, FHWA has determined that Program transportation projects, hereafter referred to as "projects," may have an effect upon properties included in, or eligible for inclusion in, the National Register of Historic Places (National Register), hereafter referred to as "historic properties," and has consulted with the SHPO and the Advisory Council on Historic Preservation (ACHP) pursuant to Section 800.14(b) of the regulations implementing Section 106 of the NHPA; and

WHEREAS, Program projects meet the definition of "undertaking" for the purpose of compliance with Section 106 of the NHPA; and

WHEREAS, FHWA has consulted with Federally-recognized Indian Tribes (Tribes) with ancestral lands in New Hampshire about this Agreement, has requested their comments, and has taken any comments received into account. These Tribes include the Mashantucket Pequot Tribal Nation, the Mohegan Tribe of Indians of Connecticut, the Narragansett Indian Tribe, the Passamaquoddy Tribe, and the Penobscot Nation; and

WHEREAS, any project involving tribal lands as defined in 36 CFR 800.16(x), or any project that may affect a property identified by a federally recognized Native American Tribe as possessing traditional religious and cultural significance, shall not be governed by this Agreement, but shall be reviewed by FHWA in accordance with 36 CFR Part 800; and

WHEREAS, FHWA and NHDOT are committed to the design of transportation systems that: (1) achieve a safe and efficient function in the State of NH; (2) avoid, minimize, and mitigate adverse effects on historic properties; and (3) respond to the needs of NH's citizens and communities, including strategies that enhance the preservation of historic properties; and

WHEREAS, the NHDOT Bureau of Environment (NHDOT-BOE) employs a staff of cultural resource specialists and consultants who meet the *Secretary of the Interior's Professional Qualification Standards* (SOI's Standards: https://www.nps.gov/history/local-law/arch_stnds_9.htm), and who are eligible for listing with the NH Division of Historical Resources as professionally qualified in the fields of archaeology and architectural history, to carry out its cultural resource programs and responsibilities; and

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

WHEREAS, FHWA has notified the public, Federal and State agencies, and Regional Planning Commissions in New Hampshire about this Agreement, has requested their comments, and has taken any comments received into account; and

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

WHEREAS, this Agreement shall supersede the previous programmatic agreement among the FHWA, SHPO, ACHP, and NHDOT dated November 26, 2014; and

WHEREAS, this Agreement sets forth the process by which FHWA, with the assistance of NHDOT-BOE, will meet its responsibilities under Section 106 and the implementing regulations set forth in 36 CFR Part 800. For purposes of this Agreement, the definitions for terms appearing in 36 CFR 800.16(a) through (y) inclusive shall be employed whenever applicable; and

WHEREAS, FHWA provides financial assistance to the state for Local Public Agency (LPA) transportation projects; and

WHEREAS, *The Stewardship and Oversight Agreement on Project Assumption and*

Program Oversight by and Between Federal Highway Administration, New Hampshire Division and the State of New Hampshire Department of Transportation (May 14, 2015) (Stewardship & Oversight Agreement) states that, “The NHDOT is responsible and accountable for LPA compliance with all applicable Federal laws and requirements;” and

WHEREAS, FHWA, with NHDOT’s assistance, shall ensure that Section 106 requirements for LPA projects are met in accordance with the applicable provisions of this Agreement; and

WHEREAS, cooperating federal agencies who recognize FHWA as the lead federal agency for an undertaking may fulfill their obligations under Section 106 according to 36 CFR 800.2(a)(2), provided that FHWA and NHDOT follow the requirements of this Agreement and the cooperating federal agency’s undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and NHDOT; and

WHEREAS, FHWA, ACHP, NHDOT, and SHPO aspire to engage in meaningful, long term planning for the protection of historic and archaeological properties and, toward that end, desire to: (1) seek and explore procedural efficiencies; (2) devote a larger percentage of time and energies identifying relevant problems threatening historic and archaeological properties; (3) create innovative programs to address those problems; (4) develop transportation survey methodologies and appropriate training opportunities; and (5) develop a plan to maximize efficiencies when evaluating potential historic properties during emergency response procedures; and

WHEREAS, NHDOT and SHPO agree that NHDOT may use provisions of this Agreement to address the applicable requirements of NH RSA 227-C:9 in the location, identification, evaluation and management of historic resources, as applicable for projects not funded by the Program, but that are funded with State funds:

NOW, THEREFORE, FHWA, the SHPO, the ACHP, and NHDOT agree that the Program in NH shall be carried out in accordance with the following stipulations in order to take into account the effects of the Program on historic properties in NH 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 and appendices are organized in the following order:

- I. Purpose, 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. Project Review
- VIII. Emergency Situations
- IX. Post-Review and Unanticipated Discoveries
- X. Identification and Treatment of Human Remains
- XI. Monitoring and Reporting
- XII. Dispute Resolution
- XIII. Amendment
- XIV. Termination
- XV. Confidentiality
- XVI. Transition
- XVII. Duration of Agreement

Appendix A: Activities with No Potential to Cause Effects

Appendix B: Activities with Minimal Potential to Cause Effects

Appendix C: Definitions for key terms used in this Agreement

Appendix D: NHDOT Bureau of Bridge Maintenance EHS Procedure – 01, Title:
Washing and Sealing of Bridges

Appendix E: Organizations/agencies that should be considered when inviting consulting parties during the public involvement process

STIPULATIONS

The FHWA, with the assistance of NHDOT, shall ensure that the following measures are carried out:

I. PURPOSE, APPLICABILITY AND SCOPE

- A. The objective of this Agreement is to make more efficient the methods by which FHWA and NHDOT review individual projects processed under Section 106 that may affect historic properties and to establish the process by which FHWA carries out its Section 106 responsibilities.
- B. This Agreement sets forth the process by which FHWA, with the assistance of NHDOT, will meet its responsibilities pursuant to Section 106 and 110 of the NHPA (54 U.S.C. 306102 and 306108).
- C. Through this Agreement, FHWA authorizes NHDOT to initiate and, in many cases, conclude consultation with the SHPO and other consulting parties for purposes of compliance with Section 106 of the NHPA.

- D. This Agreement establishes the basis for review of projects carried out under the Program.
- E. The FHWA retains the responsibility to consult with Tribes as required under 36 CFR Part 800, as amended. The NHDOT may assist FHWA if individual Tribes agree to alternate procedures.
- F. This Agreement shall not apply to projects that occur on or affect tribal lands as they are defined in 36 CFR 800.16(x). For such projects, FHWA shall follow the procedures in 36 CFR Part 800.
- G. At any time, NHDOT-BOE can choose to process a project by following the procedures in 36 CFR Part 800 rather than by following the procedures in this Agreement. For reasons such as known controversy, SHPO, ACHP, or FHWA may also request that NHDOT-BOE process a project by following the procedures in 36 CFR Part 800.

II. DEFINITIONS

Terms used in this Agreement are defined in Appendix C of this Agreement.

III. PROFESSIONAL QUALIFICATIONS STANDARDS

NHDOT-BOE shall employ, at a minimum, an archaeologist and an architectural historian to direct consultants who conduct Section 106 work, and to provide review and quality control on all Section 106 work. NHDOT-BOE Cultural Resources Program staff and all consultants who conduct Section 106 compliance work shall meet the *Secretary of the Interior's Professional Qualifications Standards*. In the event of a temporary absence of the archaeologist or the architectural historian, NHDOT-BOE, FHWA, and SHPO shall closely coordinate to determine requirements needed to continue to meet the stipulations of this Agreement. In the event of a prolonged absence of the archaeologist or the architectural historian, or should NHDOT no longer employ either the archaeologist or the architectural historian, all active projects previously covered by this Agreement shall follow the Section 106 review process outlined in 36 CFR Part 800. For the purposes of this Agreement, a prolonged absence is defined as a period of no more than six (6) months. However, nothing in this stipulation may be interpreted to preclude FHWA or NHDOT or any agent or contractor thereof from using the services of persons who do not meet these qualifications standards, providing their activities are conducted under the supervision of a person who does meet the standards.

IV. RESPONSIBILITIES

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

A. FHWA Responsibilities

1. Consistent with the requirements of 36 CFR 800.2(a), 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 NHDOT under the authority of FHWA. At any point in the Section 106 process, FHWA may inquire as to the status of any project carried out under the authority of this Agreement and may participate directly in any project 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 NHDOT to assist in consultation if the individual Tribes agree to alternate procedures.
3. FHWA shall be responsible for resolving disputes and objections pursuant to Stipulations XII of this Agreement.
4. FHWA shall take the lead in any consultation with the ACHP for projects with active ACHP participation (36 CFR 800.6(b)(2)), and those involving the Secretary of the Interior.
5. FHWA shall be responsible for resolving adverse effects pursuant to 36 CFR 800.6.

B. NHDOT Responsibilities

NHDOT, using staff and/or consultants meeting the *Secretary of the Interior's Professional Qualifications Standards*, will independently perform the work and consultation described in 36 CFR 800.3 – 36 CFR 800.5 (including any succeeding revisions to the regulations) on behalf of FHWA. Assignment of these responsibilities is based on adequate and appropriate performance by NHDOT, as evaluated by FHWA pursuant to Stipulation XI.B of this Agreement. These responsibilities include carrying out the following requirements:

1. 36 CFR 800.3(a) - Determine whether a project is a type of activity that has the potential to cause effects on historic properties.
2. 36 CFR 800.3(b) - Coordinate with other reviews.
3. 36 CFR 800.3(c) and (d) - Determine whether a project may occur on or has the potential to affect historic properties on tribal lands.
4. 36 CFR 800.3(e) - Solicit public comment and involvement.
5. 36 CFR 800.3(f) - Identify additional consulting parties who should be invited to participate in the projects covered by this Agreement.

6. 36 CFR 800.4(a) - In consultation with the SHPO, determine and document the scope of identification efforts and level of effort, including the project's area of potential effects (APE).
7. 36 CFR 800.4(b) - In consultation with the SHPO, identify properties within the APE included in or eligible for listing in the National Register of Historic Places.
8. 36 CFR 800.4 (c) – In consultation with the SHPO, evaluate historic significance of properties within the APE.
9. 36 CFR 800.4(d) – Make findings of No Historic Properties Affected.
10. 36 CFR 800.5(a) and (b) – In consultation with the SHPO, determine whether historic properties may be affected by a project by applying the criteria of adverse effect, and make findings of No Adverse Effect.
11. Provide FHWA copies of all correspondence sent out on its behalf (e.g. letters to SHPO or Tribes).
12. Complete project reviews pursuant to Stipulation VII of this Agreement.

The NHDOT-BOE shall have sufficient financial resources and administrative support to efficiently, and adequately operate under this Agreement, and maintain databases and other tools necessary to implement the stipulations of this Agreement. Should the NHDOT-BOE, through its Cultural Resources Program, not be able to execute its internal review for a project qualifying for use of this Agreement as outlined under Stipulation IV.B, that project shall undergo the Section 106 review process outlined in 36 CFR 800.3-800.6.

C. SHPO Responsibilities

The SHPO reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with Section 101(b)(3) of the NHPA, 36 CFR Part 800, and this Agreement, the SHPO will advise and assist FHWA in carrying out its Section 106 responsibilities, and cooperate with NHDOT to ensure that historic properties are taken into consideration in the implementation of this Agreement.

V. CONSULTATION WITH TRIBES

- A. FHWA shall take the lead in identifying and establishing consultation with Native American Tribes consistent with the requirements of 36 CFR 800.2(c)(2) and 36 CFR 800.3(c)-(f). To assist FHWA, NHDOT 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 Tribes that might attach religious and cultural significance to historic properties in the APE shall be identified by NHDOT and invited by FHWA to be consulting parties.
- C. FHWA and NHDOT shall ensure that consultation with Tribes is initiated early in the project planning process to identify cultural, confidentiality, or other concerns and to allow adequate time for consideration.
- D. FHWA and NHDOT shall ensure that consultation continues with Tribes throughout the Section 106 review process prescribed by this Agreement whenever such Tribes express a concern about a project or about historic properties that may be affected by a project.
- E. FHWA may ask NHDOT to assist in consultation if the individual Tribes agree.

VI. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Additional Consulting Parties

Consulting parties shall be identified in writing by NHDOT in consultation with the SHPO pursuant to 36 CFR 800.3(c-f). Participation of the consulting parties in projects covered under this Agreement shall be governed by 36 CFR 800.3(f)(3). Written requests by individuals, organizations, and agencies to become consulting parties will be evaluated on a case-by-case basis by NHDOT and FHWA in consultation with the SHPO. Individuals and organizations with a demonstrated interest in a project shall be invited by NHDOT in consultation with FHWA to participate in the Section 106 process.

B. Public Involvement

- 1. Public involvement in planning and implementing projects covered by this Agreement shall be governed by FHWA's and NHDOT's environmental procedures. Procedures for involving the public shall include, at a minimum, the following:
 - a. Sending contact letters, as appropriate, to local historic commissions, other governmental entities with jurisdiction, regional planning commissions, and other potential consulting parties in accordance with 36 CFR 800.2(c), 800.3(f), and 800.4(d);
 - b. Coordinating directly with abutting property owners through meetings, letters, electronic communication, and telephone communication;
 - c. On site meetings with concerned property owners, and/or;

- d. Presenting findings and soliciting input at public officials meetings, public informational meetings, and/or public hearings, as appropriate.

Appendix E includes a list of organizations/agencies that should be considered when inviting consulting parties during the public involvement process.

2. Public involvement and the release of information hereunder shall be consistent with 36 CFR 800.2(d), 800.3(e), and 800.11(c)(1 and 3).
3. The NHDOT shall continue to seek and consider the views of the public in a manner that reflects the nature and complexity of the project 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.
4. For those actions that do not routinely require public review and comment (e.g., projects with no potential to cause effects consistent with 36 CFR 8003.(a)(1)), appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of historic properties, and the project's potential impacts on them.
5. The NHDOT shall make FHWA and SHPO aware of any and all public controversy as it relates to the historic properties potentially affected by the proposed project, including, but not limited to, properties of religious and/or cultural significance to any Tribe.

VII. PROJECT REVIEW

This stipulation outlines the approach to cultural resources review for all projects in the Program, and provides a streamlined approach to Section 106 compliance for certain projects limited to activities with a known history of resulting in findings of no potential to cause effects, and no historic properties affected. For all projects undertaken pursuant to this Agreement, the following requirements shall be observed.

- A. Through this Agreement, FHWA and NHDOT establish two (2) categories of activities:
 1. "Appendix A Activities:" activities with No Appreciable Potential to Cause Effects (To be applicable for processing under Appendix A, a project shall be limited to any combination of the activities listed in Appendix A of this Agreement); and
 2. "Appendix B Activities:" activities with Minimal Potential to Cause Effects (To be applicable for processing under Appendix B, a project shall be limited to any combination of the activities listed in Appendix B of this Agreement, with or without the inclusion of activities listed in Appendix A).

Projects processed under Appendix A or Appendix B require different levels of review, and each has a demonstrated history of typically resulting in Section 106 findings of “No Potential to Cause Effects,” or “No Historic Properties Affected,” as defined in 36 CFR 800.3(a)(1), and 36 CFR 800.4(d)(1). Review shall follow the procedures outlined in Stipulation VII.B and VII.C below, as appropriate. Projects that do not conform to Appendices A or B shall follow the procedures in 36 CFR Part 800 and in Stipulation VII.D of this Agreement.

B. Projects with No Appreciable Potential to Cause Effects (projects with activities limited to those listed in Appendix A)

1. Certain projects have no potential to affect historic properties, whether or not there may be historic properties in the project area. The signatories to this Agreement agree that the activities listed in Appendix A, by their nature typically have “No Potential to Cause Effects” (36 CFR 800.3(a)(1)).
2. The NHDOT may add additional activities to the list in Appendix A upon written notice to, and concurrence from, all parties to this Agreement, and the Agreement will not need to be amended.
3. For all projects with activities limited to those listed in Appendix A, the project sponsor shall submit a hard copy of a completed Appendix A Certification Form to the NHDOT-BOE Cultural Resources Program for review. The NHDOT-BOE Cultural Resources Program shall evaluate whether a project is solely limited to the activities listed in Appendix A, and shall make a finding that the project has either No Potential to Cause Effects, or does not conform to Appendix A. The NHDOT-BOE Cultural Resources Program shall provide the finding to the project sponsor and maintain such documentation in its files. The NHDOT-BOE Cultural Resources Program shall notify FHWA and SHPO of its use of the documentation on specific projects in an annual report to the signatories of this Agreement, as specified in Stipulation XI.

C. Projects with Minimal Potential to Cause Effects (projects with activities limited to those listed in Appendix B)

1. Certain projects have minimal potential to affect historic properties. The signatories to this Agreement agree that the activities listed in Appendix B, by their nature typically result in findings of “No Historic Properties Affected” (36 CFR 800.4(d)(1)).
2. The NHDOT may add additional activities to the list in Appendix B upon written notice to, and concurrence from, all parties to this Agreement, and the Agreement

will not need to be amended.

3. For all projects with activities limited to those listed in Appendix B, the NHDOT-BOE Cultural Resources Program shall ensure that a multidisciplinary approach is employed to initiate consultation, and identify and evaluate historic properties that may be affected, in accordance with the procedural requirements of 36 CFR 800.2, 36 CFR 800.3 and 36 CFR 800.4.
 - a. The project sponsor shall initiate the Section 106 process in accordance with the regulations at 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.
 - b. The project sponsor shall coordinate with the public in accordance with Stipulation VI of this Agreement. Appendix E provides a list of typical organizations to consider as consulting parties.
 - c. The NHDOT-BOE Cultural Resources Program shall determine whether archaeological or aboveground surveys are needed, utilizing rationale that include, but are not limited to, the following:
 - i. The potential for the project to directly or indirectly impact the integrity of a potential historic property;
 - ii. Compromises to the physical integrity of a property more than 50 years old that could render it ineligible for the National Register;
 - iii. The degree of recent development and overall change within the APE;
 - iv. The density of potential historic properties in the area of the project;
 - v. Modifications to the project that can be made to avoid impacts to potential historic properties;
 - vi. The potential archaeological sensitivity within the APE; and
 - vii. Information from consulting parties and others with knowledge of, or concerns with, historic properties within the APE.
 - d. The NHDOT-BOE Cultural Resources Program shall assess potential impacts, including archaeological and aboveground sensitivity potential, to determine whether a project qualifies for processing under Appendix B. The project sponsor shall submit to the NHDOT-BOE Cultural Resources Program information required for the NHDOT-BOE Cultural Resources Program to

complete its assessment, including an Appendix B Certification Form, topographical maps, photographs, design plans, as-built plans (if available), and two (2) original “*Request for Project Review by the New Hampshire Division of Historical Resources for Transportation Projects*” forms (Transportation RPR). The NHDOT-BOE Cultural Resources Program may waive the requirement for submittal of a Transportation RPR for projects where NHDOT is the project sponsor.

- e. For all work that is proposed within a designated or potential historic district, the NHDOT-BOE Cultural Resources Program will review the activities to determine whether they have the potential to alter, either directly or indirectly, the characteristics that qualify, or may qualify, the historic district for listing in the National Register. The NHDOT-BOE Cultural Resources Program will gather additional information, as necessary for the review on the historic district, including, but not limited to, the National Register of Historic Places, SHPO records, town websites, as well as municipal master plans, and other municipal records, as appropriate. Designated districts will be noted on the Appendix B Certification Form/RPR. Potential districts shall be treated as eligible resources. To determine whether the activities have an effect on an historic district(s), the NHDOT Cultural Resources Program will consider the characteristics that qualify, or may qualify, the historic district for the National Register following guidance in National Register Bulletin 15: *How to Apply the National Register Criteria for Evaluation*.
- f. The NHDOT-BOE Cultural Resources Program shall ensure that the project sponsor undertakes archaeological and/or aboveground surveys, as warranted, for any property within the APE that may be affected by a project, and that may be eligible for listing in the National Register of Historic Places, as outlined below, and in accordance with Stipulation III of this Agreement.
 - i. Archaeological Phase IA surveys shall be conducted by the NHDOT-BOE qualified professional archaeologist, or qualified professional consulting archaeologist(s).
 - ii. Studies beyond Phase IA archaeological reviews, as recommended by the NHDOT Archaeological Standards and Guidelines, and the determination of National Register eligibility of archaeological sites shall follow Stipulation VII.D of this Agreement.
 - iii. Aboveground reviews shall be conducted by the NHDOT-BOE qualified professional architectural historian, or qualified professional consulting architectural historian(s).

- iv. As warranted, individual inventory or area forms shall be prepared in accordance with SHPO guidelines for properties within the APE in order to determine National Register eligibility.

Project sponsors may address multiple steps simultaneously.

4. Eligibility Findings

The NHDOT-BOE Cultural Resources Program shall conduct National Register of Historic Places eligibility findings in accordance with Stipulation VII.D.1 of this Agreement, and 36 CFR 800.4.

5. Effects Findings

For projects with activities that are limited to those listed in Appendix B, with or without the inclusion of any activities listed in Appendix A, the NHDOT-BOE Cultural Resources Program shall make a finding that the project results in No Potential to Cause Effects, or No Historic Properties Affected, as appropriate, on the Appendix B Certification Form, and maintain documentation in its files. The NHDOT-BOE Cultural Resources Program shall notify FHWA, and the SHPO of its use of the documentation on specific projects in an annual report to the signatories of this Agreement, as specified in Stipulation XI.

If a NHDOT-BOE Cultural Resources Program review under Stipulation VII.C determines that a project may affect (either adversely or not adversely) National Register-listed or eligible properties, or is not only limited to any one, or combination of, the activities listed in Appendix B, and thereby does not qualify for processing under Appendix B, with or without the inclusion of any activities listed in Appendix A, the NHDOT-BOE Cultural Resources Program shall utilize the Appendix B Certification Form to notify the project sponsor in writing that the project does not qualify for processing under Appendix B, and that the project will be reviewed in accordance with Stipulation VII.D of this Agreement, as appropriate.

All documents submitted by the NHDOT-BOE Cultural Resources Program to SHPO for review under this Agreement shall include the SHPO Review and Compliance number, if known, as well as a statement that the information is being submitted pursuant to a review under this Agreement.

Stipulation VII.D shall be followed for all projects for which adverse effects to historic properties cannot be avoided.

D. Projects Not Covered by Appendix A or Appendix B

For any project that either does not qualify for processing under Appendices A or B, or that includes within the APE, National Register-listed or eligible properties that the NHDOT-BOE Cultural Resources Program, in consultation with the SHPO, determines may be affected (either adversely or not adversely) by the project, as defined by criteria set forth in 36 CFR 800.5(a) and outlined in Stipulation IV.B of this Agreement, the NHDOT-BOE Cultural Resources Program shall review the project in accordance with this Stipulation.

1. Eligibility Findings

- a. NHDOT-BOE Cultural Resources Program staff shall apply the National Register Evaluation Criteria in consultation with the SHPO and other consulting parties, as appropriate, to assess the need for any additional investigation and determine National Register eligibility in accordance with 36 CFR 800.4, and Stipulation IV.B.
- b. If the APE may contain properties of traditional cultural and religious significance to Native American Tribes, or identified properties within the APE may be of interest to Tribes, consultation under this Agreement will cease, and FHWA will initiate consultation with appropriate Tribes pursuant to 36 CFR 800.2(c)(2), and Stipulation V of this Agreement.

2. Effects Findings

NHDOT will apply the Criteria of Adverse Effect to any historic properties, in consultation with the SHPO, and other consulting parties, as appropriate, in accordance with 36 CFR 800.5.

a. No Historic Properties Affected

For any project for which the NHDOT-BOE Cultural Resources Program finds, in consultation with the SHPO, that either there are no historic properties present in the APE, or there are historic properties present but the project will have no effect upon them, the NHDOT-BOE Cultural Resources Program shall make a finding of no historic properties affected pursuant to 36 CFR 800.4(d)(1).

b. No Adverse Effect

For any project for which the NHDOT-BOE Cultural Resources Program finds, in consultation with the SHPO, that the effects do not meet the criteria

of adverse effects outlined in 36 CFR 800.5(a)(1), or if the project is modified or conditions are imposed to avoid adverse effects, the NHDOT-BOE Cultural Resources Program shall make a finding of no adverse effect pursuant to 36 CFR 800.5(b).

The NHDOT 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; and
- v. Any records on resolving adverse effects.

c. Adverse Effect

For any project for which adverse effects to historic properties cannot be avoided, the NHDOT-BOE Cultural Resources Program will notify FHWA, and FHWA will take the Section 106 compliance lead, and notify the ACHP of the adverse effect and consult with the SHPO and other consulting parties in order to resolve adverse effects and conclude the Section 106 process in accordance with 36 CFR 800.6.

E. Changes to the Scope of a Project

Changes, or anticipated changes, to the design and/or scope of a project shall be coordinated with the NHDOT-BOE Cultural Resources Program. The NHDOT-BOE Cultural Resources Program staff shall be provided with sufficient information and time to allow for a complete reassessment of the modified project. As appropriate, the NHDOT-BOE Cultural Resources Program shall evaluate the revised project and alert the project sponsor as to whether:

1. The project continues to qualify for processing under Appendix A or Appendix B, as applicable,
2. Additional or revised certification forms are required for a complete and thorough reassessment, and/or
3. The project will be processed under Stipulation VII.D of this Agreement.

VIII. EMERGENCY SITUATIONS

For the purposes of this Agreement, emergencies are defined as occurrences that require emergency highway system and 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 safe roadway travel. The following stipulations apply to emergency situations:

- A. Repairs 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 repair project could affect historic properties, NHDOT-BOE's Cultural Resources Program staff shall notify the SHPO, the FHWA, and Tribes prior to any work taking place. The SHPO and any Tribe that may attach religious and cultural significance to historic properties likely to be affected will have 72 hours to respond.
- C. For projects where the repair must be made within the first 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, NHDOT will comply with the procedures in Stipulation VII of this Agreement to the extent possible, but the reviews will likely be conducted after the emergency work is completed.
- D. For projects taking longer than 30 days for repair, NHDOT will comply with the procedures in Stipulation VII.
- E. Written notification of an emergency action shall be provided to the 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), dated photograph(s) if available, and the anticipated time frame available for comment.

IX. POST-REVIEW AND UNANTICIPATED DISCOVERIES

- A. Planning for Subsequent Discoveries

When NHDOT's reasonable and good faith identification efforts indicate that historic properties are likely to be discovered during implementation of a project, NHDOT 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 800.4-6

B. Unanticipated Discoveries Without Prior Planning

1. If previously unidentified archaeological or historic properties, or unanticipated effects, are discovered after NHDOT 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. NHDOT will consult with SHPO and Tribes, as appropriate, to record, document, and evaluate National Register 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 the SHPO nor a Tribe files an objection within 72 hours of NHDOT's plan for addressing the discovery, NHDOT may carry out the requirements of 36 CFR 800.13 on behalf of FHWA, and the ACHP does not need to be notified.

X. IDENTIFICATION AND TREATMENT OF HUMAN REMAINS

In the event that human remains are identified prior to, or during construction, that portion of the project shall stop immediately, and the area shall be protected and the project sponsor shall immediately notify the county medical examiner pursuant to NH RSA 227-C:8-a. If the remains are determined to be the responsibility of the State Archaeologist, the project sponsor will develop a treatment plan in consultation with NHDOT-BOE Cultural Resources Program, FHWA and the SHPO. Any human remains discovered on non-federal lands shall be guided by NH RSA 227-C:8-a through 8-g. If it is determined that the human remains are associated with Native American occupation, FHWA and NHDOT shall immediately consult with any federally recognized Native American Tribe or Tribes that may ascribe traditional cultural and religious significance to the remains. Native American human remains discovered on federal or tribal lands shall be treated in accordance with the Native American Graves Protection and Repatriation Act (P.L. 101-106). If the human remains are determined not to be associated with Native American occupation, the provisions of NH RSA 227-C:8-e through 8g shall govern.

XI. MONITORING AND REPORTING

- A. NHDOT-BOE, FHWA, and SHPO shall meet annually after the date this Agreement takes effect to evaluate the agencies' joint functioning under this Agreement, and identify

actions needed to advance long-term planning goals. Prior to any such meetings, the ACHP shall be notified and may participate at its discretion. Prior to the annual evaluations NHDOT-BOE shall submit a report of the current activities under this Agreement to FHWA, SHPO, and ACHP. This report shall include, but is not limited to:

1. A table identifying all projects processed under this Agreement, specifying project names, state and federal numbers, towns, any other pertinent information, and all findings pursuant to 36 CFR Part 800 that were processed by NHDOT-BOE for the year under review, and
 2. A narrative description summarizing accomplishments, trends, concerns, resource needs, recommendations, etc., regarding any aspect of this Agreement.
- B. FHWA shall undertake a program review of the provisions of this Agreement no more than every five (5) years after the date of execution of this Agreement to ensure that the Agreement is working as intended. The monitoring effort shall consist of a review of project records and interviews of staff at NHDOT, SHPO, as well as interviews with other consulting parties.

XII. DISPUTE RESOLUTION

- A. Should any signatory party object in writing to FHWA regarding the manner in which 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. The FHWA shall establish a reasonable time frame for such consultations.
- B. If the SHPO or another consulting party objects to a NHDOT eligibility finding pursuant to 36 CFR 800.4(c) and Stipulation IV.B of this Agreement, NHDOT will work to resolve the objection through consultation. If NHDOT is able to resolve the objection, the disputed action will proceed in accordance with the terms of the resolution. If NHDOT is unable to resolve the objection, the objection will be referred to FHWA who will follow the requirements of 36 CFR 800.4(c)(2) and 36 CFR Part 63 to resolve the objection.
- C. If the SHPO or another consulting party objects to a NHDOT effect finding pursuant to 36 CFR 800.5 and Stipulation IV.B of this Agreement, NHDOT will work to resolve the objection through consultation. If NHDOT is able to resolve the objection, the disputed action will proceed in accordance with the terms of such resolution. If NHDOT is unable to resolve the objection, the objection will be referred to FHWA who will follow the requirements of 36 CFR 800.5(c)(2) to resolve the objection.

- D. 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.
- E. 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.
- F. 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.

XIII. 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.

XIV. TERMINATION

- A. Any signatory party may terminate this agreement. If this Agreement is not amended as provided for in Stipulation XIII, 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 30 days to seek alternatives to termination.
- B. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement.
- C. Should such consultation fail, the signatory party proposing termination may terminate

this Agreement by promptly notifying the other parties in writing.

- D. Should this Agreement be terminated, FHWA would carry out the requirements of 36 CFR Part 800 for individual projects.
- E. Beginning with the date of termination, FHWA shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such projects shall be reviewed individually in accordance with 36 CFR Part 800.

XV. 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 the NHPA. Section 304 allows FHWA to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if NHDOT or SHPO recommends to FHWA 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.

XVI. TRANSITION

This Agreement shall become effective upon the date of its execution by all parties. Any projects where the Section 106 process has started prior to the signing of this document may follow the process outlined in 36 CFR Part 800, the earlier Programmatic Agreement signed on November 26, 2014, or this Programmatic Agreement, as appropriate.

XVII. DURATION OF AGREEMENT

This Agreement shall remain in effect for a period of five (5) years after the date it takes effect, unless it is terminated prior to that time pursuant to Stipulation XIV of this Agreement. This Agreement shall be reviewed by all parties on an annual basis for modification or termination in accordance with Stipulation XI. If no changes are proposed and no party objects within the first five (5) year term, the term of the Agreement shall be extended automatically for another five (5) years without re-execution.

SIGNATURES

Execution and implementation of this agreement evidences that FHWA has delegated certain Section 106 responsibilities to NHDOT, and has afforded ACHP a reasonable opportunity to comment on the Program and its individual projects in NH; that FHWA has taken into account the effects of the Program and its individual projects 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 projects.


The parties hereby acknowledge and reaffirm their commitment to perform all duties set forth in this Agreement.

This Agreement may be executed in counterparts, with a separate page for each signatory. The FHWA shall ensure that each party is provided with a copy of the fully executed Agreement.

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Programmatic Agreement Regarding Transportation Projects in New Hampshire

Federal Highway Administration, New Hampshire Division

By: 


Patrick A. Bauer
Division Administrator

8-8-18
(date)

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Programmatic Agreement Regarding Transportation Projects in New Hampshire

New Hampshire Division of Historical Resources

By: 
Elizabeth H. Muzzey
State Historic Preservation Officer

8/6/18
(date)

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Programmatic Agreement Regarding Transportation Projects in New Hampshire

Advisory Council on Historic Preservation

By: John M. Fowler
John M. Fowler
Executive Director

8/24/18
(date)

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Programmatic Agreement Regarding Transportation Projects in New Hampshire

New Hampshire Department of Transportation

By: Victoria F. Sheehan
Victoria F. Sheehan
Commissioner

8/7/18
(date)

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APPENDIX A

ACTIVITIES WITH NO POTENTIAL TO CAUSE EFFECTS TO HISTORIC PROPERTIES, AND APPENDIX A CERTIFICATION FORM

NHDOT-BOE, SHPO, and FHWA have jointly concurred that, based on their past experience, the following activities typically have no appreciable potential to cause effects to properties eligible for, or listed in, the National Register of Historic Places, pursuant to 36 CFR 800.3.

In accordance with Stipulation VII.B of this Agreement, the NHDOT-BOE Cultural Resources Program may determine that a project qualifies for processing under this appendix as one with no potential to cause effects.

To be applicable, a project shall be limited to any combination of the activities specified below.

Projects qualifying for processing under this appendix shall be coordinated with, and reviewed by the NHDOT-BOE Cultural Resources Program in accordance with Stipulation VII.B of this Agreement. In addition, these projects shall occur within the existing right-of-way. Easements needed for work shall either be temporary or for the purpose of perpetuating existing conditions, such as access or drainage.

1. Areas where the work is an in-kind replacement of modern facilities including driveway reconstruction, and re-installation of utilities.
2. Equipment and supply purchase and maintenance (vehicles, computers, brochures, etc.).
3. Pavement marking/stripping.
4. Crack sealing.
5. Pavement grinding, rehabilitation and resurfacing, including driveway aprons, provided there are no impacts below the roadway select materials.
6. Shoulder leveling and reconstruction, provided leveling material does not extend beyond 24" from the existing edge of pavement.
7. Installation of speed bumps, and speed tables.
8. Signal timing/program upgrades, with no ground disturbance.
9. Sign replacement when they are replaced in the same area.
10. Upgrades to lighting technology (i.e. fluorescent bulbs to LED bulbs).
11. Application of herbicide.
12. Planting of wildflowers.
13. Mowing and brush removal (does not include tree removal).
14. Bridge maintenance and repair on bridges less than 50 years old.

15. Bridge painting (regardless of the age of the bridge provided that the paint color is not changing).
16. Bridge washing and sealing when conducted in accordance with NHDOT EHS Procedure – 01 (Appendix D).
17. Culvert and catch basin clean out.
18. Maintenance of sound walls.
19. Improvements to existing maintenance facilities, rest areas, weigh stations and park-and-rides less than 50 years old, provided there is no expansion of the facility and no additional lighting.
20. Installation of median barriers when conducted within the New Hampshire interstate system (excluding the Franconia Notch State Parkway).
21. Installation of new roadway signs when conducted within the New Hampshire interstate system (excluding the Franconia Notch State Parkway).
22. Installation of new and replacement guardrail when conducted within the New Hampshire interstate system (excluding the Franconia Notch State Parkway).
23. Grading to re-establish slopes, seeding and the removal of accumulated sediment from ditches and other drainage features.
24. Rock scaling and/or blasting.
25. Street sweeping.
26. Routine maintenance of manmade stormwater treatment features and related infrastructure.

Section 106 Programmatic Agreement – Cultural Resources Review Effect Finding

Appendix A Certification – Activities with No Potential to Cause Effects

Date Reviewed: (Desktop or Field Review Date)	Click here to enter a date.	Approved by:	_____
			NHDOT Cultural Resources Staff
Project Name:	Click here to enter text.	Approval date:	
State Number:	Click here to enter text.	FHWA Number:	Click here to enter text.
Environmental Contact:	Click here to enter text.	DOT	
Email Address:	Click here to enter text.	Project Manager:	Click here to enter text.
Project Description:	Click here to enter text.		

Please select any combination of the following activities:

<input type="checkbox"/>	Areas where the work is an in-kind replacement of modern facilities including driveway reconstruction, and re-installation of utilities.
<input type="checkbox"/>	Equipment and supply purchase and maintenance (vehicles, computers, brochures, etc.).
<input type="checkbox"/>	Pavement marking/stripping.
<input type="checkbox"/>	Crack sealing.
<input type="checkbox"/>	Pavement grinding, rehabilitation and resurfacing, provided there are no impacts below the roadway select materials.
<input type="checkbox"/>	Shoulder leveling and reconstruction, provided leveling material does not extend beyond 24" from the existing edge of pavement.
<input type="checkbox"/>	Installation of speed bumps, and speed tables.
<input type="checkbox"/>	Signal timing/program upgrades, with no ground disturbance.
<input type="checkbox"/>	Sign replacement when they are replaced in the same area.
<input type="checkbox"/>	Upgrades to lighting technology (i.e. fluorescent bulbs to LED bulbs).
<input type="checkbox"/>	Application of herbicide.
<input type="checkbox"/>	Planting of wildflowers.
<input type="checkbox"/>	Mowing and brush removal (does not include tree removal).
<input type="checkbox"/>	Bridge maintenance and repair on bridges less than 50 years old.
<input type="checkbox"/>	Bridge painting (provided that the bridge is less than 50 years old, and the paint color is not changing).
<input type="checkbox"/>	Bridge washing and sealing when conducted in accordance with NHDOT EHS Procedure – 01 (Appendix D).
<input type="checkbox"/>	Routine roadway maintenance, including culvert and catch basin clean out, and as street sweeping.
<input type="checkbox"/>	Maintenance of sound walls.
<input type="checkbox"/>	Improvements to existing maintenance facilities, rest areas, weigh stations and park-and-rides less than 50 years old, provided there is no expansion of the facility and no additional lighting.
<input type="checkbox"/>	Installation of new or replacement guardrail, and/or median barriers within the New Hampshire interstate system (excluding the Franconia Notch State Parkway).
<input type="checkbox"/>	Installation of new roadway signs, within the New Hampshire interstate system (excluding the Franconia Notch State Parkway).
<input type="checkbox"/>	Grading to re-establish slopes, seeding and the removal of accumulated sediment from ditches and other drainage features.
<input type="checkbox"/>	Routine maintenance of stormwater treatment features and related infrastructure

Section 106 Programmatic Agreement – Cultural Resources Review Effect Finding

Appendix A Certification – Activities with No Potential to Cause Effects

Coordination of the Section 106 process should begin as early as possible in the planning phase of the project (undertaking) so as not to cause a delay.

Project sponsors should not predetermine a Section 106 finding under the assumption that a project is limited to the activities listed in Appendix A until this form is signed by the NHDOT Bureau of Environment Cultural Resources Program staff.

Every project shall be coordinated with, and reviewed by the NHDOT Bureau of Environment Cultural Resources Program in accordance with the *Programmatic Agreement Among the Federal Highway Administration, the New Hampshire State Historic Preservation Office, the Advisory Council on Historic Preservation, and the New Hampshire Department of Transportation Regarding the Federal Aid Highway Program in New Hampshire*.

All projects shall occur within the existing right-of-way. Easements needed for work shall either be temporary or for the purpose of perpetuating existing conditions, such as access or drainage. If any portion of the undertaking is not entirely limited to any one or a combination of the types specified in Appendix A, please continue discussions with NHDOT Cultural Resources staff.

Should project plans change, please inform the NHDOT Cultural Resources Program staff in accordance with Stipulation VII.E of the Programmatic Agreement.

This No Potential to Cause Effects project determination is your Section 106 finding, as defined in the Programmatic Agreement. No further coordination is necessary.

APPENDIX B

ACTIVITIES WITH MINIMAL POTENTIAL TO CAUSE EFFECTS, AND APPENDIX B CERTIFICATION FORM

NHDOT-BOE, SHPO, and FHWA have jointly concurred that, based on their past experience, the following activities typically result in findings of “No Potential to Cause Effects” (36 CFR 800.3), or “No Historic Properties Affected” (36 CFR 800.4(d)(1)).

In accordance with Stipulation VII.C of this Agreement, the NHDOT-BOE Cultural Resources Program may determine that a project qualifies for processing under this appendix as one with minimal potential to cause effects.

To be applicable, a project shall be limited to any of the activities specified below (with, or without the inclusion of any activities listed in Appendix A).

These activities shall be coordinated with, and reviewed by the NHDOT-BOE Cultural Resources Program in accordance with Stipulation VII.C of this Agreement.

Projects that are located within known or potential historic districts shall be reviewed in accordance with the procedures relative to work in historic districts outlined in Stipulation VII.C.3.c.

Highway and Roadway Improvements

1. Modernization and general highway maintenance **that may require additional highway right-of-way or easement**, including:
 - a. Sidewalk reconstruction.
 - b. Crosswalk installation/replacement.
 - c. Lighting replacement.
 - d. Ditching, provided excavation does not exceed 24” and is not located within 25’ of a cemetery.
 - e. Median barrier installation.
 - f. Installation of solar or alternative energy devices.
 - g. Placement of riprap and/or other erosion control measures to prevent erosion of waterway banks and bridge piers, provided no excavation is required.
 - h. Removal of trees, as part of roadway improvements.
 - i. Landscaping, including weeding, thinning, in-kind replacement of existing specimens, and shallow bed preparation in areas previously landscaped within the existing right-of-way.

- j. Construction of wetland mitigation areas in previously disturbed areas of the roadway right-of-way.
 - k. Construction of turning lanes and pockets, auxiliary lanes (e.g. truck climbing, acceleration and deceleration lanes) and shoulder widening where only placement of fill material is involved, or within an area previously disturbed by vertical and horizontal construction activities.
2. Installation of rumble strips or rumble stripes.
 3. Installation or replacement of pole-mounted signs.
 4. Guardrail replacement.
 5. Rehabilitation or replacement of existing storm drains.

Bridge and Culvert Improvements

6. Bridge approach rail replacement, provided any extension does not connect to a bridge older than 50 years old (unless it does already), and there is no change in access associated with the extension.
7. Culvert replacement (excluding stone box culverts), when the culvert is less than 60" in diameter and excavation for replacement is limited to previously disturbed areas.
8. Bridge deck preservation and replacement, as long as no character defining features are impacted.
9. Non-historic bridge and culvert maintenance, renovation, or total replacement, **that may require minor additional right-of-way or easement**, including:
 - a. Replacement or maintenance of non-historic bridges.
 - b. Installation of vandal fencing, vandal protection lighting and/or cameras, suicide fencing, and/or suicide netting.
 - c. Bridge painting.
10. Historic bridge maintenance activities within the limits of existing right-of-way, including:
 - a. Installation of load and height restriction barriers.
 - b. Concrete patching with compatible materials and concrete sealing.
 - c. Placement of riprap and channel work.
 - d. Maintenance of drainage features, including but not limited to scupper repair.
 - e. Replacing or repair of expansion joints and sealing deck joints.
 - f. In-kind railing and approach rail replacement or repair.
 - g. Electrical/mechanical upgrades.
 - h. Installing fire prevention systems on covered bridges.
 - i. In-kind repair or replacement of covered bridge roof material
 - j. Surface preparation and painting to preserve critical members in the salt zone.
 - k. Bridge painting.
 - l. Installation of culvert inverts or slip-lining

11. Stream and/or slope stabilization and restoration activities (including removal of debris or sediment obstructing the natural waterway, or any non-invasive action to restore natural conditions).

Bicycle and Pedestrian Improvements

12. Construction of pedestrian walkways, sidewalks, sidewalk tip-downs, small passenger shelters, and alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
13. Installation of bicycle racks.
14. Recreational trail construction.
15. Recreational trail maintenance when done on existing alignment.
16. Construction of bicycle lanes, and shared use paths and facilities within the existing right-of-way.

Railroad Improvements

17. Modernization, maintenance, and safety improvements of railroad facilities within the existing railroad or highway right-of-way, **provided no historic railroad features are impacted**, including, but not limited to:
 - a. Closure of existing railroad crossings.
 - b. Signal box upgrades.
 - c. Rail bed maintenance.
 - d. Lighting upgrades to modern standards provided.
18. In-kind replacement of modern railroad features (i.e. those features that are less than 50 years old).
19. Modernization/modification of railroad/roadway crossings provided that all work is undertaken within the limits of the roadway structure (edge of roadway fill to edge of roadway fill) and no associated character defining features are impacted.

Other Improvements

The following types of undertakings involve facility modernization and property acquisitions:

20. Installation of Intelligent Transportation Systems.
21. Acquisition or renewal of scenic, conservation or other habitat or land preservation easements where no construction activities will occur.

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Appendix B Certification – Activities with Minimal Potential to Cause Effects

Date Reviewed: Click here to enter a date.
(Desktop or Field Review Date)

Project Name: Click here to enter text.

State Number: Click here to enter text.

FHWA Number: Click here to enter text.

Environmental Contact: Click here to enter text.

DOT

Email Address: Click here to enter text.

Project Manager: Click here to enter text.

Project Description: Click here to enter text.

Please select the applicable activity/activities:

Highway and Roadway Improvements	
<input type="checkbox"/>	1. Modernization and general highway maintenance that may require additional highway right-of-way or easement , including: Choose an item. Choose an item.
<input type="checkbox"/>	2. Installation of rumble strips or rumble stripes
<input type="checkbox"/>	3. Installation or replacement of pole-mounted signs
<input type="checkbox"/>	4. Guardrail replacement, provided any extension does not connect to a bridge older than 50 years old (unless it does already), and there is no change in access associated with the extension
Bridge and Culvert Improvements	
<input type="checkbox"/>	5. Culvert replacement (excluding stone box culverts), when the culvert is less than 60" in diameter and excavation for replacement is limited to previously disturbed areas
<input type="checkbox"/>	6. Bridge deck preservation and replacement, as long as no character defining features are impacted
<input type="checkbox"/>	7. Non-historic bridge and culvert maintenance, renovation, or total replacement, that may require minor additional right-of-way or easement , including: Choose an item. Choose an item.
<input type="checkbox"/>	8. Historic bridge maintenance activities within the limits of existing right-of-way, including: Choose an item. Choose an item.
<input type="checkbox"/>	9. Stream and/or slope stabilization and restoration activities (including removal of debris or sediment obstructing the natural waterway, or any non-invasive action to restore natural conditions)
Bicycle and Pedestrian Improvements	
<input type="checkbox"/>	10. Construction of pedestrian walkways, sidewalks, sidewalk tip-downs, small passenger shelters, and alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons
<input type="checkbox"/>	11. Installation of bicycle racks
<input type="checkbox"/>	12. Recreational trail construction
<input type="checkbox"/>	13. Recreational trail maintenance when done on existing alignment
<input type="checkbox"/>	14. Construction of bicycle lanes and shared use paths and facilities within the existing right-of-way
Railroad Improvements	
<input type="checkbox"/>	15. Modernization, maintenance, and safety improvements of railroad facilities within the existing railroad or highway right-of-way, provided no historic railroad features are impacted , including, but not limited to: Choose an item. Choose an item.

Section 106 Programmatic Agreement – Cultural Resources Review Effect Finding

Appendix B Certification – Activities with Minimal Potential to Cause Effects

<input type="checkbox"/>	16. In-kind replacement of modern railroad features (i.e. those features that are less than 50 years old)
<input type="checkbox"/>	17. Modernization/modification of railroad/roadway crossings provided that all work is undertaken within the limits of the roadway structure (edge of roadway fill to edge of roadway fill) and no associated character defining features are impacted
Other Improvements	
<input type="checkbox"/>	18. Installation of Intelligent Transportation Systems
<input type="checkbox"/>	19. Acquisition or renewal of scenic, conservation, habitat, or other land preservation easements where no construction will occur
<input type="checkbox"/>	20. Rehabilitation or replacement of existing storm drains.
<input type="checkbox"/>	21. Maintenance of stormwater treatment features and related infrastructure

Please describe how this project is applicable under Appendix B of the Programmatic Agreement.

Click here to enter text.

Please submit this Certification Form along with the Transportation RPR, including photographs, USGS maps, design plans and as-built plans, if available, for review. Note: The RPR can be waived for in-house projects, please consult Cultural Resources Program Staff.

Coordination Efforts:

Has an RPR been submitted to NHDOT for this project?	Choose an item.	NHDHR R&C # assigned?	Click here to enter text.
Please identify public outreach effort contacts; method of outreach and date:		Click here to enter text.	

Finding: (To be filled out by NHDOT Cultural Resources Staff)

<input type="checkbox"/>	No Potential to Cause Effects	<input type="checkbox"/>	No Historic Properties Affected
This finding serves as the Section 106 Memorandum of Effect. No further coordination is necessary.			
<input type="checkbox"/>	This project does <i>not</i> comply with Appendix B. Review will continue under Stipulation VII of the Programmatic Agreement. Please contact NHDOT Cultural Resources Staff to determine next steps.		
NHDOT comments:			
_____		_____	
NHDOT Cultural Resources Staff		Date	

Coordination of the Section 106 process should begin as early as possible in the planning phase of the project (undertaking) so as not to cause a delay.

Project sponsors should not predetermine a Section 106 finding under the assumption a project is limited to the activities listed in Appendix B until this form is signed by the NHDOT Bureau of Environment Cultural Resources Program staff.

Section 106 Programmatic Agreement – Cultural Resources Review Effect Finding

Appendix B Certification – Activities with Minimal Potential to Cause Effects

Every project shall be coordinated with, and reviewed by the NHDOT-BOE Cultural Resources Program in accordance with the *Programmatic Agreement Among the Federal Highway Administration, the New Hampshire State Historic Preservation Office, the Army Corps of Engineers, New England District, the Advisory Council on Historic Preservation, and the New Hampshire Department of Transportation Regarding the Federal Aid Highway Program in New Hampshire*. In accordance with the Advisory Council's regulations, we will continue to consult, as appropriate, as this project proceeds.

If any portion of the project is not entirely limited to any one or a combination of the activities specified in Appendix B (with, or without the inclusion of any activities listed in Appendix A), please continue discussions with NHDOT Cultural Resources staff.

This No Potential to Cause Effect or No Historic Properties Affected project determination is your Section 106 finding, as defined in the Programmatic Agreement.

Should project plans change, please inform the NHDOT Cultural Resources staff in accordance with Stipulation VII of the Programmatic Agreement.

APPENDIX C

DEFINITIONS FOR KEY TERMS USED IN THIS AGREEMENT

Aboveground resources means historic buildings, structures, sites, objects and districts that are included in, or eligible for inclusion in, the National Register of Historic Places.

Area of Potential Effects (APE) means the geographical area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (36 CFR 800.16(d)).

Clean out means the removal of accumulated environmental material, such as leaf litter, sand, gravel, and woody debris, either by hand or machine, that does not require excavation into the existing surface of the ground.

Historic District means any resource that possesses a significant concentration, linkage or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. Link to the guidance on the National Park Service website: <https://www.nps.gov/nr/publications/bulletins/nrb15/INDEX.htm>.

Historic property (also referred to as historic resource) means any Pre-Contact or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to a Native American tribe or Native Hawaiian organization and that meet the National Register criteria.

In-kind replacement means the substitution of a new structure for an existing structure in the same location and with like materials, so that there are no impacts to the environment beyond the footprint of the original structure, beyond those required for construction, and that cannot be returned to the pre-construction condition.

LPA means Local Public Agency.

Maintenance and repair means a planned strategy of cost-effective treatments to an existing roadway system and its appurtenances that preserves the system, retards future deterioration, and maintains or improves the functional condition of the system (without significantly increasing the structural capacity).

Modern facility means a man-made structure or infrastructure that is less than 50 years old. It is assumed that roadways and their select materials are all modern facilities for the purposes of this Agreement.

No Historic Properties Affected means a finding that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in 36 CFR 800.16(i).

No Potential to Cause Effects means a finding that the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present.

Project Sponsor means the recipient of Program funds, including but not limited to NHDOT or a LPA; to develop, improve, and enhance New Hampshire's transportation network. The project sponsor is responsible for planning, programming, environmental investigation, design, right-of-way acquisition, construction (including inspection), and documentation management for projects. The project sponsor must ensure that staff, consultants, and contractors comply with applicable State and Federal laws, regulations, and procedures in developing and constructing a project.

Reconstruction means to rebuild an existing roadway system and its appurtenances with new materials in order to improve the function and condition of the system. Reconstruction may or may not require modifications to the size and configuration of the existing system.

Rehabilitation means structural enhancements with new materials in order to extend the service life of an existing roadway system and its appurtenances.

Replacement means substitution of a new structure for an existing structure, which may require a change in size, dimension, location, and configuration, in order to improve the function and condition of a roadway system.

Pavement resurfacing means any number of physical alterations to a roadway surface designed to enhance the condition of pavement in order to preserve a transportation system, and retard future deterioration. Resurfacing may or may not require slight additions of material to the edge of the new pavement in order to eliminate drop off pavement edges (i.e. shoulder leveling).

Qualified Professional is a person who meets the relevant standards outlined in the Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines [As Amended and Annotated] (http://www.nps.gov/history/local-law/arch_stnds_9.htm).

Select materials means the engineered layers of sand, gravel, and crushed gravel, or other sub-pavement materials, upon which pavement sits.

Transportation RPR is the document required by the State Historic Preservation Office in New Hampshire to initiate a review of an undertaking pursuant to Section 106 of the National Historic Preservation Act or NH RSA 227-C:9. A Transportation RPR, formally referred to as a *“Request for Project Review by the New Hampshire Division of Historical Resources for Transportation Projects,”* may be found by visiting the NH Division of Historical Resources website at: <http://www.nh.gov/nhdhr/review/rpr.htm>.

Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including A) those carried out by or on behalf of the agency; B) those carried out with Federal financial assistance; C) those requiring a Federal permit, license, or approval; and D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency. {16 U.S.C. Section 470w(7) (1994)}

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APPENDIX D

**NHDOT BUREAU OF BRIDGE MAINTENANCE EHS PROCEDURE – 01, TITLE: WASHING
AND SEALING OF BRIDGES**

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Title: Washing and Sealing of Bridges

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Revision #: 2

Revised Date: 4/13/2011

JLMC Approved: 4-27-09

- 1.0 PURPOSE:** Washing and sealing of bridges are preventative maintenance methods performed by Bridge Maintenance on an annual basis in order to protect bridges against salt corrosion and surface spalling.
- 2.0 SCOPE:** To define proper procedures for washing and sealing operations so that no adverse affects on the environment, the health and safety of the traveling public and construction crews occurs.
- 3.0 RESPONSIBILITIES:**
- 3.1 Superintendents of Construction Crews**
- Ensure that employees who are involved in these procedures understand the application methods and are aware of the hazards associated with these methods.
 - Coordinate annual preventative maintenance schedule with the Maintenance and Construction Engineer and Senior Engineer in order to ensure the proper method(s) are applied.
 - Ensure that all product drums are stored, handled and transported in accordance with internal procedures, as well as any state, local or federal regulation(s).
 - Ensure that any full, partially used and empty product drums are properly stored and handled until such a time as to be picked up or transported back to the Franklin Yard.
- 3.2 Maintenance and Construction Engineer**
- Ensure that funding for materials, products and equipment is available.
 - Ensure that personal protective equipment, spill kit equipment, products and any other materials or accessories needed for these methods are in stock and available when needed.
- 3.3 Superintendent of Warehouse (Franklin Yard)**
- Ensure that warehouse employees understand the proper storage, handling and transporting requirements of all products under its control.
 - Ensure that warehouse employees are trained and use best management practices when handling and transporting products under its control to its destination place.
- 3.4 Safety & Environmental Coordinator**
- Develop, implement and train employees on procedures, job hazard analysis pertaining to washing and sealing operations.
 - Ensure that employees are medically cleared and fit tested for respirator use.
 - Train and educate employees on the proper storage, handling and transporting of materials and/or products associated with these procedures.
 - Train and educate employees on proper cleanup and disposal methods if materials and/or products are released into the surface and/or waterway.

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4.0 RECORDS:

- 4.1 Request for Waiver(s) of NH Code of Administrative Rules Chapter Env-A 4200 AIM dated May 2008 and June 2008.
- 4.2 MSDS (Material Safety Data Sheets) Silane-Siloxane a/k/a Vexcon (product and manufacturer will vary from year to year).
- 4.3 JHA (Job Hazard Analysis) for Washing and Sealing Procedures.
- 4.4 Best Management Practice for handling and transporting regulated substances or materials.

5.0 PROCEDURE:

5.1 Washing Bridges

- 5.1.1 Prior to washing, crews will sweep sand, debris and sediment contaminants. Arrangements for a Bobcat or other equipment can be scheduled to assist with this task.
- 5.1.2 Crews will work with Highway Maintenance sheds and encourage them to assist with bridge cleaning.
- 5.1.3 Sweepings will be removed by hand using shovels, wheelbarrows or bobcat buckets and placed off the roadway shoulder. Large amounts of sweepings will be spread out along roadway shoulder.
 - Sweepings will not be swept into open deck drains or over the edge of the bridge.
- 5.1.4 Water hose nozzles will be aimed in such a manner that overspray into surface waters is kept to a minimum (water pressure out of nozzle will be no greater than 50psi).
- 5.1.5 Water will be aimed along the curb line to wash any accumulated sand/salt buildup normally following the downward slope of the bridge.
- 5.1.6 To the extent practicable, residual wash water will be diverted to upland areas (i.e. over embankments into vegetated areas or into catch basins) so that sediments may settle out prior to reaching the waterway.
- 5.1.7 Wash water will be diverted as much as possible around open deck drains that discharge directly into open water.
- 5.1.8 Washing of bridges will continue to be scheduled on structures over waterways during the springtime to coincide with high-flow periods or during other high-flow periods following storm events.
 - Interference with step 5.1.8 washing operations may occur due to bridge repair priorities, amount of setup preparation and equipment needed elsewhere.
- 5.1.9 Any debris or wet sweepings left after washing procedures will be removed by hand using shovels, wheelbarrows or bobcat buckets and placed off shoulder of roadway.

5.2 Sealing Bridges

- 5.2.1 Products will be used in accordance with any applicable local, state or federal regulations as they pertain to surface water quality or best management practice

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- regulations of the Department or asserted by the Department of Environmental Services.
- 5.2.2 The products used for sealing bridges are based on the age of the bridge and /or concrete structures.
 - Silane-Siloxane a/k/a Vexon (product and manufacturer will vary from year to year) is applied to new concrete structures and is used on construction where silane has previously been applied.
 - 5.2.3 Prior to applying silane-siloxane products, employees will be educated, trained and aware of the hazards associated with this procedure to include, but not limited to:
 - 5.2.3.1 MSDS's (Material Safety Data Sheets) on products being used.
 - 5.2.3.2 Health and Safety Hazards as they pertain to worker(s). Required personal protective equipment to be worn while applying these products.
 - 5.2.3.3 Environmental Hazards as they pertain to surface waters and/or spill release response corrective actions while applying these products.
 - 5.2.3.4 Proper equipment needed for applying these products while over or adjacent to surface waters.
 - 5.2.3.5 Proper disposal methods of contaminated materials and/or equipment.
 - 5.2.4 Silane-siloxane products will be applied to the following bridge structures:
 - 5.2.4.1 To all new concrete construction.
 - 5.2.4.2 To all existing concrete elements subject to deicing chemicals and sand buildup.
 - Abutments – adjacent structures of bridges.
 - Wings or curtain walls – side structure of bridges.
 - Curbs and/or Sidewalks – typically associated with guardrail overhang.
 - Not applied to vertical surfaces over water.
 - 5.2.5 Silane-siloxane is typically applied using a two and a half gallon hand pump sprayer allowing workers to control the amount of pressure to the wand prior to releasing material.
 - 5.2.6 The material can be applied by using a gasoline powered pump which feeds directly from a 55 gallon drum to a hose and nozzle designed for low pressure (less than or equal to 20psi).
 - 5.2.7 All equipment used to perform this application will be checked to ensure that no equipment failure should pose a risk to the health and safety of the workers and/or material release into the environment. All equipment will be handled, stored and cared for properly in order to maintain good working condition.
 - 5.2.8 Each crew will be equipped with chemical skimming booms and chemical absorbent mat pads for emergency response should a spill release occur.
 - 5.2.9 Each crew will be equipped with a metal container with a tight fitting lid in order to properly store and transport contaminated or used rags while sealing.
 - 5.2.10 A deflector shield will be used while applying silane-siloxane to the horizontal surface of the bridge curbs. This shield is used during the application process to

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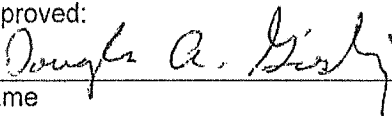
prevent any overspray or splashed material from going over the edge of the structure.

- 5.2.11 Spray application is preferred, however roller application can be used as another precautionary method to avoid dripping material off the edge of the bridge into the water.
- 5.2.12 The vertical outside surfaces of bridges will not be treated over any surface water.
 - This will directly reduce the chance of material from dripping off the edge of the bridge and into the water.
- 5.2.13 No sealing operations will be performed during windy conditions (above 10mph). No sealing operations will be performed if rainfall is imminent.
 - Product requires 24 hours of clean, dry conditions before, and 3-5 hours after application.
- 5.2.14 The management of leftover materials from sealing operations are as follows:
 - 5.2.14.1 All silane-siloxane drums (full, partially full or empty) must be transported back to the Franklin Yard.
 - 5.2.14.2 Franklin-Crew 13 will consolidate what is left inside each drum, crush and recycle the drums.
 - 5.2.14.3 When each crew has completed sealing, they need to ensure that the used rags are disposed of properly.
 - Used rags are allowed to lie or hang flat to dry.
 - After rags are completely dry, they can be disposed of with regular trash.

6.0 REFERENCES:

- 6.1 NH Code of Administrative Rules Env-A 4200
- 6.2 40 CFR EPA (Environmental Protection Agency)
- 6.3 NH Department of Environmental Services
 - Surface Water Quality Bureau
 - Hazardous Waste Management Division
 - Air Resource Division
- 6.4 AASHTO (American Association & State Highway Transportation Officials) Specifications

REVISION AND APPROVAL HISTORY:

Approved:  Name	<u>4/14/11</u> Date	REVISION #: <u>2</u>
Title: Bureau Administrator		DATE: <u>4-13-2011</u> SUPERSEDES EDITION: Original dated: Original 8/29/2008

APPENDIX E

ORGANIZATIONS/AGENCIES THAT SHOULD BE CONSIDERED WHEN INVITING CONSULTING PARTIES DURING THE PUBLIC INVOLVEMENT PROCESS

The following are ideas for organizations/entities that should/could be invited to be Consulting Parties if project proponents' research finds they are applicable in the areas of their undertakings. The list is not comprehensive and not all may be applicable for every undertaking, but it can give a starting place for compiling a list for undertakings.

- Heritage Commissions
- Historic District Commissions
- Planning Commissions
- Conservation Commissions
- Agricultural Commissions
- Energy Commissions
- Historical Societies
- Native American organizations/tribes http://www.nh.gov/nhdhr/review/tribal_list.htm;
<http://www.nh.gov/nhdhr/review/thpo.htm>
- Local governments
- Property owners within the area of the undertaking
- Political representatives for the area of the undertaking
- Neighborhood associations
- Local, state, or national preservation groups, such as NH Preservation Alliance and National Trust for Historic Preservation
- Local, state, or national groups related to specific types of resources, such as historic bridges

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