

Lead Programmatic Agreement

PROGRAMMATIC AGREEMENT among
VERMONT HOUSING AND CONSERVATION BOARD,
VERMONT STATE HISTORIC PRESERVATION OFFICER and
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

for the

ADMINISTRATION OF THE LEAD-BASED PAINT HAZARD REDUCTION PROGRAM

WHEREAS, the Vermont Housing and Conservation Board ("VHCB") is a public instrumentality of the State of Vermont existing by virtue of the Vermont Housing and Conservation Trust Fund Act, 10 V.S.A. Chapter 15, to provide grants and loans to eligible entities for projects which fulfill the dual goals of creating affordable housing for Vermonters and conserving and protecting Vermont's agricultural land, historic properties, important natural areas and recreational lands;

WHEREAS, the U. S. Department of Housing and Urban Development ("HUD") has awarded a grant to the State of Vermont under the Lead-Based Paint Hazard Control Grant Program ("Program"), to be administered by VHCB under Executive Order No. 07-94 dated April 24, 1994 which authorizes VHCB to establish a pilot program to eliminate lead-based paint hazards in housing which is, or will be, occupied by children under age six; and,

WHEREAS, pursuant to the Multifamily Housing Property Disposition Reform Act of 1994, HUD has delegated the responsibility for compliance with the requirements of Section 106 of the National Historic Preservation Act, 16. U.S.C. 470, ("Section 106") to the State of Vermont and VHCB, the Vermont State Historic Preservation Officer ("SHPO") and the Advisory Council on Historic Preservation ("Council") wish to enter into this Programmatic Agreement pursuant to 36 CFR Part 800; and,

WHEREAS, pursuant to 36 CFR §800.13, VHCB has determined that the implementation of the Program may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places ("National Register") since the undertakings, consisting of lead-based paint hazard reduction activities, would otherwise require numerous individual requests for comments; and,

WHEREAS, the properties covered by this Programmatic Agreement are multifamily residential buildings or single family houses occupied by low to moderate persons listed in or eligible for the National Register which receive limited federal funds for lead-based paint hazard reduction. This Programmatic Agreement does not apply to buildings that are undergoing substantial rehabilitation (i.e. with HOME, FmHA, CDBG funds) where lead-based paint hazard reduction can be incorporated at a more reasonable cost with other work and where more historic materials can be preserved. This Programmatic Agreement does not cover comprehensive review for projects receiving Investment Tax Credits for historic preservation; and

WHEREAS, since the primary purpose of the Program is to reduce the incidence of lead poisoning in Vermont children by developing lead-safe housing, there is need for reasonable and timely or, in the case of children who are severely lead poisoned, immediate, review of properties included in or eligible for the National Register; and

WHEREAS, owners of property eligible for the National Register who receive funds from the Program for lead-based paint hazard reduction shall make every reasonable effort to comply with the Secretary of the Interior's Standards for Rehabilitation, 36 CFR Part 67, ("Secretary's Standards").

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NOW, THEREFORE, the VERMONT HOUSING AND CONSERVATION BOARD ("VHCB"), the VERMONT STATE HISTORIC PRESERVATION OFFICER ("SHPO") and the ADVISORY COUNCIL ON HISTORIC PRESERVATION ("Council") do stipulate and agree that the Program shall be administered in accordance with the following stipulations to satisfy the VHCB's Section 108 responsibilities:

QUALIFIED PROFESSIONAL * *I like how this reads - KC **

1. VHCB may contract with a staff person or consultant with professional qualifications who meets the Secretary of the Interior's Professional Qualifications Standards, found in 36 CFR 61, and has a clear understanding of how to interpret and apply the Secretary of the Interior's Standards and the National Register criteria. The SHPO will participate in the selection of the staff person and will approve their qualifications. The qualified professional will carry out the required historic preservation reviews for the SHPO under the terms of this Programmatic Agreement including reviewing properties for historic designation. Responsibilities delegated by SHPO to the qualified professional include identifying and evaluating historic properties, reviewing lead-based paint hazard reduction plans and specifications, sign-off letters and all other tasks related to Section 106 compliance under this Programmatic Agreement. In addition to regular reports provided to SHPO or VHCB, on controversial or precedent setting issues, the qualified professional shall consult with the SHPO.
2. VHCB shall notify the SHPO annually whether it has contracted with a qualified professional to carry out reviews under the terms of this Programmatic Agreement or whether it will require assistance from the SHPO. The resume of qualified professionals shall be provided to the SHPO for review.
3. Should VHCB determine that it cannot contract with a qualified historic preservation professional to carry out the review pursuant to this Programmatic Agreement, VHCB shall consult with the SHPO to determine whether alternate administrative arrangements should be made to allow VHCB to complete the reviews required pursuant to this Programmatic Agreement. VHCB shall notify the Council in writing of any alternate procedures approved by the SHPO.

* EXEMPT PROPERTIES AND ACTIVITIES * *Please include in Prototype*

4. If VHCB lead program staff determine that (a) properties are less than 50 years old, or (b) that lead-based paint hazard reduction activities in properties will involve only those activities listed in Appendix A, then such properties and activities are exempt from this Programmatic Agreement and no further review is required. All other properties subject to lead-based paint hazard reduction activities shall be reviewed by the qualified professional who shall indicate in writing whether, and under what conditions, VHCB may proceed with lead-based paint hazard reduction.

IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

5. Identification of Historic Properties: VHCB shall consult with the qualified professional or the SHPO to identify historic properties affected by lead-based paint hazard reduction activities. The qualified professional shall determine whether properties listed in or eligible for listing in the National Register may be affected by such activities by reviewing (a) current listing on the National Register; (b) the Vermont Historic Sites and Structures Survey; and (c) properties determined by the Vermont Advisory Council on Historic Preservation to appear eligible for the National Register.
6. For properties not listed in the National Register and not exempt under paragraph 4 of this Agreement, the qualified professional shall evaluate them for National Register eligibility and submit documentation of the evaluation to the SHPO. For eligible properties not included in the Vermont Historic Sites and Structures Survey, the documentation shall include a completed Survey form and black-and-white photograph. The qualified professional may consult with the SHPO at any time during the evaluation process. For evaluation of properties in potential historic districts, the qualified professional may consult with the SHPO for guidance on what additional information and materials s/he may need to provide.

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LEAD HAZARD REDUCTION PROCEDURES FOR HISTORIC PROPERTIES

7. VHCB shall not be required to consult with the SHPO or the qualified professional if the lead-based paint hazard reduction activities are limited to those listed in Appendix A, provided that VHCB maintains sufficient information for each property treated in accordance with Appendix A to demonstrate that the activities were limited to the treatments listed in Appendix A.

8. Lead-Based Paint Hazard Reduction: VHCB shall ensure that the plans and specifications for non-exempt, lead-based paint hazard reduction activities are developed in accordance with the recommended approaches in the Secretary's Standards as follows:

- a. Prior to the initiation of such activities, VHCB shall submit specifications to the qualified professional for review and comment;
- b. The applicant (property owner) and/or VHCB lead program staff may be asked to provide the following in order for the qualified professional to review and evaluate the undertaking:
 - i) Program or health department reports on lead contamination resulting from occupancy of the property;
 - ii) condition assessments for various historic elements;
 - iii) alternative treatments considered and cost estimates for each;
 - iv) life cycle maintenance costs related to each alternative; and
 - v) proposed measures to mitigate or minimize adverse effects.
- c. After reviewing the project documentation, the qualified professional will write a sign-off letter to VHCB, with a copy to the applicant, with any relevant conditions, if appropriate.
- d. Appropriate lead-based paint hazard reduction procedures for historic properties are discussed in Chapter 18 entitled "Lead Hazard Control and Historic Preservation" of the HUD Guidelines. They include wet sanding and scraping, low heat stripping with heat guns or heat plates, chemical stripping and cold-tank dipping.
- e. For significant trim and windows that cannot be treated according to the procedures outlined in Appendix A, other methods of treatment may be approved by the qualified professional on a case by case basis. For example, sash replacement or window replacement replicating the original may be approved if: i) the windows are in poor condition; or ii) cost comparisons show that replacement will be substantially less expensive than stripping and restoration. Replacement of historic windows with vinyl windows or the use of synthetic siding such as vinyl or aluminum on the exterior of the building generally does not meet the Secretary's Standards.

RESOLUTION OF ADVERSE EFFECTS

9. When the proposed activities cannot meet the Secretary's Standards, the qualified professional shall make a recommendation to the SHPO on whether it is appropriate to execute a Standard Mitigation Measures Agreement as outlined in Appendix B for activities that include rehabilitation or replacement of historic materials. The SHPO shall advise VHCB of its decision within thirty (30) days following receipt of adequate documentation.

10. When the SHPO determines that it is appropriate to execute a Standard Mitigation Measures Agreement, that Agreement shall be signed by both VHCB and the SHPO and VHCB shall adhere to the terms of the Agreement. No further review is required by the Council.

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11. If VHCB or the SHPO determine that the Standard Mitigation Measures are not appropriate for a project, VHCB shall notify the Council and initiate the consultation process set forth in 36 CFR Section 800.5(e). In addition, VHCB shall submit the background documentation outlined in paragraph 8(b), above, and a written explanation from the SHPO clarifying why the Standard Mitigation Measures Agreement should not be prepared for the proposed lead-based paint hazard reduction project to the Council for review.
12. Within 30 days following the receipt of adequate documentation, the Council shall determine appropriate further action which may include a Memorandum of Agreement or written comments in accordance with 36 CFR Section 800.6(b).

PUBLIC INVOLVEMENT

13. VHCB shall notify the SHPO of any public interest in lead-based paint hazard reduction activities covered by this Programmatic Agreement. Should the public object to the rehabilitation of property covered by this Programmatic Agreement, VHCB and SHPO shall take any reasonable objection into account and try to resolve the objection by consulting with the objecting party in accordance with 36 CFR 800.5(e)(1). The public will be notified of lead program activities through public hearings conducted by the Vermont Department of Housing and Community Affairs regarding the Consolidated Plan required by HUD. The public may also submit comments to VHCB lead program staff at any time.

MISCELLANEOUS PROVISIONS

1. Modifications. The qualified professional may approve any modifications to previously approved specifications or Standard Mitigation Measures Agreements according to the procedures outlined in paragraph 8, above.
2. Dispute Resolution. Should the SHPO object within a reasonable time frame to any specifications or actions covered by this Programmatic Agreement, VHCB will consult further with the SHPO to seek resolution. If VHCB determines that the objection cannot be resolved, VHCB shall forward all documentation relevant to the dispute to the Council. Within 30 calendar days after receipt of all pertinent documentation, the Council will provide VHCB with recommendations or comment in accordance with 36 CFR 800.6(b). VHCB will take into account the Council's recommendations or formal comments in reaching a final decision regarding the dispute. Any Council comment provided to VHCB in response to such a request will be taken into account by VHCB in accordance with 36 CFR Section 800.8(c)(2) with reference to the subject of the dispute. Any recommendation or comment provided by the Council will be interpreted to obtain only to the subject of the dispute, and the responsibility of VHCB to carry out all actions under this agreement that are not the subject of the dispute will remain unchanged.
- * 3. Ground Disturbing Activities. Except for (a) removal or disturbance of soil to a depth of six (6) inches or less; (b) planting of grass, shrubs, bushes and trees; and (c) other lead-based paint hazard reduction activities approved by the qualified professional, VHCB shall not allow any substantial ground disturbing activities on properties covered by this Programmatic Agreement without the prior written approval of the SHPO. Where such activities are proposed, the qualified professional will consult with the SHPO prior to any such activity to determine if the activity has the potential to affect archeological properties listed on or eligible for the National Register. If such potential exists, the grantee will hire a qualified consulting archeologist to conduct an archeological survey in accordance with 36 CFR 66, Appendices B and C and the SHPO's Guidelines for Conducting Archeological Studies. If archeological resources are found which meet the National Register criteria, they will be avoided or preserved in place whenever feasible. If this is not feasible, the SHPO will be consulted, and a treatment consistent with the Council's handbook, Treatment of Archeological Properties and approved by the SHPO will be developed and implemented.
4. Administrative Coordination. VHCB shall develop, in consultation with the qualified professional, procedures for the implementation of the terms of this Programmatic Agreement.

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5. Workshops. Upon written request from VHCB, the SHPO shall conduct training workshops to assist VHCB employees and or contractors to understand the technical requirements of the Programmatic Agreement.
6. Monitoring. VHCB and/or the qualified professional shall document all program activities which involved historic properties and were subject to the terms of this Programmatic Agreement in individual project files. Each file shall include at a minimum, a) documentation why the exemption from review is applicable; b) for non-exempt properties, comments from the qualified professional regarding the National Register eligibility of the property; c) clarification of whether the abatement activities were exempt under the terms of Appendix A and written comments or a copy of the Standard Mitigation Measures Agreement, if appropriate; d) project specifications; and e) the date the project was completed. This information shall be available for review by the SHPO or Council following reasonable notice. The SHPO shall conduct periodic monitoring visits of project sites to ensure compliance with documents and agreements approved by the SHPO or Council pursuant to this Programmatic Agreement.
7. Reporting Requirements. In addition to the information available under paragraph 6 and information in the VHCB Annual Report to the General Assembly, annually VHCB shall provide the SHPO and Council with a list of all program activities which were reviewed under this Programmatic Agreement.

* EFFECTIVE DATE

This Programmatic Agreement shall take effect on the date that it is signed by VHCB and the SHPO. The Programmatic Agreement will remain in effect until VHCB has expended all funds it has received from HUD for the Lead-Based Paint Hazard Control Grant Program in this and subsequent selection rounds, unless terminated pursuant to this Programmatic Agreement.

(or when resp change)

AMENDMENTS *Part 800*

Any party to this Programmatic Agreement may request that it be amended or modified, whereupon VHCB, the SHPO and Council will consult in accordance with 36 CFR Section 800.13 to consider such revisions. Any resulting amendments or addenda shall be developed and executed among VHCB, SHPO and Council in the same manner as the original Programmatic Agreement.

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 make every reasonable effort to consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that VHCB has satisfied its Section 106 responsibilities for all lead-based paint hazard reduction activities funded in whole or in part under the Lead-Based Paint Hazard Control Grant Program.

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VERMONT STATE HISTORIC PRESERVATION OFFICER

Eric Roberts 3/17/95
By: Date:

VERMONT HOUSING AND CONSERVATION BOARD

Elizabeth Humstall 3/6/95
By: Date:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Robert D. Burt 11/9/95
By: Date:

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APPENDIX A

HUD-FUNDED LEAD-BASED PAINT HAZARD REDUCTION GRANT PROGRAM
EXEMPT ACTIVITIES

The following treatments will not require review by the SHPO or Council:

Exteriors:

1. Repainting of exterior surfaces provided that destructive surface preparation treatments including but not limited to waterblasting, sandblasting, and chemical cleaning are not used.
2. Repair and repaint porch materials and trim, cornices and decorative trim. Porch decks may be replaced. A small amount of replicated material exactly duplicating the original detail may be replaced.
3. Retain, repair, remove flaking paint and repaint window and door frames and original front doors. Temporarily remove original sash for lead-based paint hazard reduction prior to installation.

Windows:

1. Caulking, weatherstripping, reglazing and repainting of existing windows.
2. Installation of new window jambs or jamb liners; metal panning in window wells.
3. 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.

Interiors:

1. Repair and retain significant interior historic trim including doors, baseboards, chair rails, wainscoting, panelling, cornice trim, fireplace mantels, stair balusters, newel posts, window and door casings and other decorative features. Remove lead-based paint by wet scraping, wet sanding, low-heat or careful chemical stripping and repainting.
2. Non-significant flat stock trim may be removed and replaced in kind.
3. Repair failing plaster or patch sheetrock. Repaint or wallpaper sheetrock or plaster wall surfaces.
4. Use of carpet and sheet flooring on floors or stair treads is appropriate.

Soil:

- *David, I included these items (KChoi)
1. Removal or disturbance of soil to a depth of six (6) inches or less.
 2. planting of grass, ^{Sod} Shrubs, bushes, trees and etc
 3. installation of natural or synthetic ground covering including, but not limited to, crushed granite, wood/bark chips, artificial turf, gravel, fencing

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APPENDIX B

STANDARD MITIGATION MEASURES AGREEMENTS

A. VHCB and the SHPO may develop and execute an agreement that includes one or more of the following Standard Mitigation Measures, as modified by the SHPO, when the SHPO deems it appropriate. The Council will not be a party to these agreements.

1. VHCB shall ensure that prior to the initiation of lead abatement activities on the historic property, the historic property is photographically documented in accordance with the Historic American Buildings Survey (HABS) guidelines. The SHPO shall identify an appropriate archive for the deposit and VHCB shall be responsible for submitting such materials. The SHPO may waive the recordation requirement as it deems appropriate.
2. VHCB shall implement the lead abatement project in accordance with the specifications or treatment plan dated of a certain date and approved by the SHPO. The specifications or treatment plan are inconsistent with the Secretary's Standards and/or recommended treatments for lead abatement of historic properties, but determined appropriate due to the amount of lead contamination, the existence of an emergency situation due to the presence of a child who is severely lead poisoned, as defined by the Vermont Department of Health, or the estimated cost of replacement with in-kind or compatible materials.
3. If historic elements are removed, they will be secured in an appropriate location, preferably on-site.