

PROGRAMMATIC AGREEMENT
BETWEEN
THE TOWN OF STUART
AND
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICE
REGARDING THE UPTOWN STUART REVITALIZATION PROJECT

WHEREAS, the Town of Stuart, in the County of Patrick, Virginia (Town) has applied for and will receive a Community Development Block Grant (CDBG) to address uptown district revitalization and the removal of slums and blight; and

WHEREAS, Congress amended the Housing and Community Development Act of 1974 (HCD Act) in 1981 to give each State the opportunity to administer CDBG funds for non-entitlement areas; and

WHEREAS, in the Commonwealth of Virginia the Department of Housing and Community Development (DHCD) administers CDBG funds from the U.S. Department of Housing and Urban Development (HUD) under the HCD Act; and

WHEREAS, pursuant to 24 CFR Part 58, states administering the CDBG program have the responsibility of ensuring that recipient communities comply with applicable State and Federal laws and requirements, including the National Historic Preservation Act (16 U.S.C. 470f) (NHPA) and, therefore, DHCD has been invited and has participated in consultation towards this Agreement; and

WHEREAS, CDBG funds will be used for the Uptown Stuart Revitalization Project which consists of property acquisition, upper floor housing rehabilitation, clearance of blight, façade improvements, infrastructure improvements including water and sewer, streetscape, streets, circulation, lighting, and signage, and public space improvements including walking trails and the construction of an amphitheatre (Undertaking); and

WHEREAS, the Town, in consultation with the Virginia Department of Historic Resources, which serves as the Virginia State Historic Preservation Office (SHPO), has established that the Undertaking's Area of Potential Effects (APE), shown in Appendix 1, includes portions of the Stuart Uptown Historic District (Historic District), a district listed in the National Register of Historic Places; and

WHEREAS, the Town has determined in consultation with the SHPO that the Undertaking may affect historic properties within the Historic District, per 36 CFR Part 800.5(a) of the regulations implementing Section 106 of the NHPA; and

WHEREAS, the SHPO and the Town have agreed, per 36 CFR Part 800.3(g), to compress the steps of the Section 106 process in order to expedite consultation; and

WHEREAS, the Town has provided notification to the Advisory Council on Historic Preservation (ACHP) per 36 CFR Part 800.6(a)(1); and the ACHP has elected not to participate in consultation; and

WHEREAS, pursuant to 36 CFR Part 800.3(f) the Town has invited the Patrick County Historical Society to participate in consultation and to sign as a concurring party, and they have accepted; and

WHEREAS, the definitions given in Appendix 2 are applicable throughout this Agreement.

NOW, THEREFORE, the Town and the SHPO, agree that the Undertaking shall be implemented in accordance with the following stipulations to take into account the Undertaking's effects on historic properties.

STIPULATIONS

The Town shall ensure that the following stipulations are met:

I. Guiding Principles

A. The Town shall form a storefront advisory committee within 6 months of execution of this Agreement, which will review projects covered under this Agreement and will monitor project work. A representative from the Patrick County Historical Society shall be a member of the advisory committee. The representative shall have a familiarity with the *Secretary of the Interior's Standards for Rehabilitation* and the architectural heritage of Uptown Stuart and bring that knowledge and the resources of the Society to bear upon review of projects involving contributing buildings within the Historic District. The Committee shall be responsible for the identification, evaluation and treatment of historic properties involving the expenditure of federal assistance from HUD.

B. In consultation with the SHPO the Town shall attempt to meet, when feasible, the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (Appendix 3) for all projects related to this Undertaking that affect a contributing property within the Historic District.

C. The Town shall ensure, when feasible, that all CDBG-funded new construction, within the Historic District is compatible with the historic character of the Historic District.

D. The Town and the SHPO in order to streamline the Section 106 review process shall emphasize the treatment of exteriors that contribute to the property's eligibility for the National Register; may exempt categories of routine activities; and may develop treatment and design protocols for rehabilitation and new construction.

II. Coordination of Review

A. When the Town identifies a property that will be affected by the Undertaking, the Town shall submit the following documentation to the SHPO for review and comment. If the Town disagrees with the SHPO's comments, consultation shall continue until an agreement is reached. If an agreement cannot be reached, consultation will continue pursuant to Stipulation X, Dispute Resolution.

1. A Project Review Application Form (Appendix 4).
2. A copy of the map in Appendix 1 showing the precise location of the property.
3. Photographs, digital or print, of the building(s)' exterior(s) from the front, back and sides. For new construction projects, photographs of the site and neighboring streetscape.
4. A determination of whether the property contributes to the Historic District as defined by the boundaries on the map (Appendix 1).

B. If any portion of the Undertaking will result in a cumulative ground disturbance of one (1) acre or greater, the Town will consult with the SHPO per Stipulation V.

C. If the town determines that a property does not contribute to the Historic District, then the Town may proceed with rehabilitation activities on that property but shall continue to consult with the SHPO, per Stipulation II (D), on any new construction at that location.

D. If the Town determines that a property contributes to the Historic District, then it must be treated as an historic property for the purposes of Section 106, and the Town shall assess the effects of the Undertaking on that property. The Town shall prepare the following information based on the type of activity anticipated.

1. Rehabilitation

- a. Detailed scope of work.
- b. Plans and drawings, if applicable.
- c. Materials specification, if applicable.
- d. Description and photos of architectural features to be repaired or replaced.

2. Demolition

- a. An explanation of the reasons for demolition.
- b. Any code enforcement documents that support the necessity of demolition, if applicable.
- c. A structural evaluation and documentation of the building that supports the necessity of demolition, if applicable.
- d. Adequate documentation to demonstrate that rehabilitation is not economically or structurally feasible, or that retention of the property would jeopardize the implementation of an affordable housing project.

3. New Construction

- a. Identification of the lot proposed for new construction, including street address and map.
- b. Plans for exterior elevations.
- c. Exterior materials specifications.
- d. Site plan, including the boundaries of the lot and adjacent lots and proposed footprint of new construction.

E. For all rehabilitation and demolition projects on properties considered contributing to the Historic District and all new construction within the Historic District carried out under this Agreement, the Town shall submit to the SHPO for review and comment the following information.

1. All documentation prepared pursuant to Stipulation II (A).
2. All necessary documentation prepared pursuant to Stipulation II (D).
3. A determination of whether the proposed treatment meets the Standards or detailed statement as to why the Standards cannot be met. A Standards Checklist form shall be completed for all new construction and rehabilitation projects (Appendix 5).
4. A Finding of Effect (No Adverse Effect or Adverse Effect) based on an application of the Standards and the guidance in 36 CFR Part 800.5.

III. Mitigation

A. If adverse effects are identified during the course of the project, the Town shall consult with the SHPO, the Patrick County Historical Society, and other consulting parties, as applicable, to consider possible ways to avoid or minimize the adverse effects. The Town shall provide the opportunity for the interested public to express their views on the proposed mitigation measures pursuant to Stipulation IX (B). If the effects cannot be avoided the Town shall consult with the SHPO, the Patrick County Historical Society, and any other consulting parties about appropriate mitigation which shall be determined based on the degree of the adverse effect and the level of significance of the resource. The agreed upon mitigation shall be submitted to the SHPO for review and comment before construction or demolition begins.

B. All mitigation documentation prepared pursuant to this Agreement shall be prepared by a professional in the appropriate discipline who meets the *Secretary of the Interior's Professional Qualification Standards* (36 CFR Part 61).

IV. Emergency Situations

Should a building collapse, be largely destroyed by fire, be substantially damaged by a storm and/or be on the verge of collapse, the Town may, per 36 CFR Part 800.12, declare an Emergency Situation and, acting in the interest of public health and safety, propose demolition of a historic property. Upon issuance of the order, the Town shall, to the extent possible, document the building and notify the SHPO as soon as possible.

V. Archaeology

A. If no recorded archaeological site, as shown in Appendix 1, is present in the project area, the Town may proceed without archaeological consultation with the SHPO for the following ground-disturbing activities:

1. Any individual activity requiring less than one acre of ground disturbance. The area of potential effect for individual activities shall include all land-disturbing actions associated with site preparation, construction, associated access roads, temporary construction easements, equipment storage areas, staging areas, below ground utilities, etc.
2. The installation of utilities, such as sewer, storm, electrical, gas, steam, compressed air, leach lines, and septic tanks in road rights-of-way, existing utility corridors, or other areas previously disturbed by these activities.

B. Any projects involving ground-disturbing activities within existing archaeological sites or not otherwise exempted under Stipulation V (A), above, shall be submitted to the SHPO, for review and comment through the completion of a Project Review Application Form (Appendix 4).

C. Should the Town determine, in consultation with the SHPO, that further archaeological identification is needed; the SHPO shall recommend a program to identify and evaluate archaeological resources.

D. Should the Town, as a result of survey efforts, determine that an eligible archaeological site will be affected; a plan for its avoidance, protection, or recovery of data will be submitted to the SHPO for review and comment. The Town will consider all comments received in preparing the final treatment plan and will then implement the plan.

E. All archaeological studies, resulting from this Agreement including data recovery plan(s), shall be preformed by an archaeologist meeting the *Secretary of the Interior's Professional Qualifications Standards* (36 CFR Part 61) and in accordance with *The Secretary of the Interior's Standards and Guidelines for Archeological Documentation* (48 FR 44734-37), and the SHPO's *Guidelines for Conducting Cultural Resource Survey in Virginia: Additional Guidance for the Implementation of the Federal Standards Entitled Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44742, September 29, 1983) (1999, rev. 2003), and shall take into account the ACHP's publications, *Consulting About Archeology Under Section 106* (1990), *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999), and *Section 106 Archaeology Guidance* (June 2007).

VI. Review of Documentation

The SHPO agrees to review documentation submitted pursuant to this Agreement within thirty (30) days after confirmed receipt of complete documentation. If no response is received within thirty (30) days, the Town may assume SHPO concurrence with its findings.

VII. Post Review Discoveries

The Town shall ensure that construction documents contain the following provisions for the treatment of unexpected discoveries:

A. In the event that a previously unidentified archaeological resource is discovered during ground disturbing activities, the Town shall immediately notify the SHPO. All construction work involving subsurface disturbance will be halted in the area of the resource and in the surrounding area where further subsurface remains can reasonably be expected to occur. The Town and an archaeologist, meeting *The Secretary of the Interior's Professional Qualifications Standards* (36 CFR Part 61), immediately will inspect the work site and determine the area and the nature of the affected archaeological property. Construction work may then continue in the project area outside the site area. Within two (2) working days of the original notification of discovery, the Town, in consultation with the SHPO, shall determine the National Register eligibility of the resource.

B. Potentially eligible historic properties shall be evaluated using the National Register Criteria for Evaluation in accordance with 36 CFR Part 800.4(c). If the Town determines that the resource meets the National Register Criteria for Evaluation (36 CFR Part 60.6), the Town shall ensure compliance with Part 800.13(b)(3) of the ACHP's Regulations. The SHPO shall provide comments on any treatment plan submitted within two (2) business days of receipt. If the SHPO fails to comment, the Town may assume concurrence and implement the plan. Work in the affected area shall not proceed until the development of an appropriate treatment plan; or the determination is made that the located resource is not eligible for inclusion on the National Register.

VIII. Human Remains

A. Human remains and associated funerary objects encountered during the course of actions taken as a result of this Agreement shall be treated in the manner consistent with the provisions of the *Virginia Antiquities Act*, Section 10.1-2305 of the *Code of Virginia*, and with the final regulations adopted by the Virginia Board of Historic Resources and published in the Virginia Register of July 15, 1991. Copies of the above-listed law and regulations are included as Appendix 6.

B. In the event that the human remains encountered are likely to be of Native American origin, whether prehistoric or historic, the Town shall immediately notify the Virginia Council on Indians (VCI). The treatment of Native American human remains and associated funerary objects will be determined in consultation with the VCI. All reasonable efforts will be made to avoid disturbing Native American gravesites and associated artifacts. To the extent possible, the Town shall ensure that the general public is excluded from viewing any Native American gravesites and associated artifacts. No photographs of any Native American gravesites and/or associated funerary objects will be released to the press or to the general public.

C. The Town may obtain a permit from the SHPO for the removal of human remains in accordance with the regulations stated above. In reviewing a permit involving removal of Native American human remains, the SHPO will notify and consult with the VCI as required by the regulations stated above.

IX. Public Participation

A. The Town shall afford the interested public an opportunity to comment in accordance with the public participation plan approved by DHCD as part of the CDBG grant process.

B. When a finding of adverse effect is made, the Town shall solicit public comment regarding the Undertaking's effects on historic properties and the proposed mitigation measures and shall provide copies of those comments to the SHPO.

X. Dispute Resolution

A. Should any party to this Agreement object in writing to the Town regarding any action carried out or proposed with respect to the Undertaking or implementation of this Agreement, the Town shall consult with the objecting party to resolve the objection. If after initiating such consultation the Town determines that the objection cannot be resolved through consultation, the Town shall forward all documentation relevant to the objection to the ACHP, including the Town's proposed response to the objection. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options.

1. Advise the Town that the ACHP concurs in the Town's proposed response to the objection, whereupon the agency will respond to the objection accordingly;
2. Provide the Town with recommendations, which the Town shall take into account in reaching a final decision regarding its response to the objection; or
3. Notify the Town that the objection will be referred for comment pursuant to 36 CFR Part 800.7(a)(4), and proceed to refer the objection and comment. The Town shall take the resulting comment into account in accordance with 36 CFR Part 800.7(c)(4) and Section 110(l) of NHPA.

Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the Town may assume the ACHP's concurrence in its proposed response to the objection.

The Town shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the Town's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

B. At any time during implementation of the measures stipulated in this Agreement, should an objection pertaining to this Agreement or the effect of any individual undertaking on historic

properties be raised by a member of the public, the Town shall notify the parties to this Agreement and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this Agreement to resolve the objection.

XI. Amendment and Termination

A. Any signatory to this Agreement may request that it be amended, whereupon the signatories shall consult in accordance with 36 CFR Part 800. to consider such an amendment. All signatories to this Agreement must agree to the proposed amendment in accordance with 36 CFR800.6(c)(7).

B. If the Town determines that it cannot implement the terms of this Agreement, or if the SHPO determines that the Agreement is not being properly implemented the Town or the SHPO may propose to the other parties that it be terminated.

C. Termination shall include the submission of any outstanding documentation on any work done up to and including the date of termination.

D. A party proposing to terminate this Agreement shall so notify all parties to the Agreement, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.

E. Should such consultation fail and the Agreement be terminated, the Town shall comply with 36 CFR Parts 800.3 through 800.6 with regard to individual project covered by this Agreement.

XII. Duration of the Agreement

This Agreement shall continue in full force and effect until five (5) years after the date of the last signature. At any time in the sixth-month period prior to such date, the Town may request the SHPO to consider an extension or modification of this Agreement. No extension or modification shall be effective unless the signatories to the Agreement have agreed with it in writing.

Execution of this Programmatic Agreement and implementation of the provisions herein shall be evidence that the Town and the Federal and State agencies have satisfied their Section 106 responsibilities for all individual projects subject to the review of this Agreement.

SIGNATORIES

By: James Cecil McHone, Jr. Date: 5-20-08
The Honorable James Cecil McHone, Jr., Mayor, Town of Stuart, Virginia

By: [Signature] Date: 5/24/08
Kathleen S. Kilpatrick, Director, Virginia Department of Historic Resources
and Virginia State Historic Preservation Officer

CONCURRING PARTY

By: Henry D. Ayers Date: 5/20/08
Henry Ayers, President, Patrick County Historical Society