

MEMORANDUM OF AGREEMENT

Amongst the

**DEPARTMENT OF BUILDINGS AND GENERAL SERVICES, AGENCY OF ADMINISTRATION,
DIVISION FOR HISTORIC PRESERVATION, AGENCY OF COMMERCE AND COMMUNITY
DEVELOPMENT,**

and the VERMONT ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING

MUNICIPAL ENERGY RESILIENCE PROGRAM

WHEREAS, the General Assembly of the State of Vermont enacted Act 172, An Act Relating to Municipal Energy Resilience Initiatives (2022); and

WHEREAS, Section 3 of Act 172 directs the Department of Buildings and General Services (BGS) of the Agency of Administration to establish the Municipal Energy Resilience Grant Program (MERP) to award grants to support dependable and sustainable connections to critical municipal services for all Vermonters, targeting communities in need of energy resilience investments; and

WHEREAS, for the development and implementation of MERP, BGS is partnering with the Regional Planning Commissions, Vermont League of Cities and Towns, Efficiency Vermont, and Vermont Energy and Climate Action Network; and

WHEREAS, municipally owned buildings in cities, towns, incorporated villages, fire districts and all other governmental incorporated units, except school districts, are eligible for MERP; and

WHEREAS, the MERP Implementation Grants will address weatherization, thermal efficiency, and supplemental/replacement of fossil fuel heating systems with more efficient renewable or electric versions that may have adverse effects on properties included in, or eligible for inclusion in, the Vermont State Register of Historic Places, hereafter referred to as historic sites or properties; and

WHEREAS, the Vermont Historic Preservation Act (22 VSA chapter 14) requires the State Historic Preservation Officer (SHPO) cooperate with state agencies in the planning and conduct of specific undertakings affecting historic properties and preservation objectives; and

WHEREAS, the Vermont Historic Preservation Act directs any agency, department, division, or commission to consult with the Vermont Advisory Council on Historic Preservation (VACHP) before demolishing, altering, or transferring any property that is potentially of historical, architectural, archaeological, or cultural significance, including any property listed in the State Register of Historic Places; and

WHEREAS, VACHP shall delegate to the Vermont Division for Historic Preservation (VDHP) the authority to review and resolve any impacts on historic properties and archaeological sites in accord with state law and this MOU for those municipalities awarded MERP Implementation Grants to ensure that the State of Vermont's stewardship of its historic properties and archaeological sites complies with the Vermont Historic Preservation Act.

NOW, THEREFORE, BGS, VDHP, and VACHP agree as follows to ensure consultation for the MERP Implementation Grants to promote efficient and appropriate use of state funds and to satisfy the requirements of the Vermont Historic Preservation Act and Act 172:

I. DEFINITIONS

- A. For purposes of this agreement, the definitions provided in 36 CFR Part 800.16 (a) through (z) of the regulations for the National Historic Preservation Act (54 U.S.C. § 306108) and in the Vermont Historic Preservation Act (22 VSA chapter 14 § 701) apply.
- B. “Historic property or resource” is “any building, structure, object, district, area, or site that is significant in the history, architecture, archaeology, or culture of this State, its communities, or the nation;” and includes any resource that is fifty (50) years of age or older that retains sufficient integrity.
1. Integrity: the ability of a property to convey its significance. Criteria for the State Register recognizes seven aspects or qualities that, in various combinations, define integrity. To be considered eligible for the State Register of Historic Places, a property will always possess several, and usually most, aspects of integrity. The seven aspects of integrity are: Location, Design, Setting, Materials, Workmanship, Feeling, and Association.
- C. “Site” is “any aboriginal mound, fort, earthwork, village location, burial ground, historic or prehistoric ruin, mine, cave, or other location which is or may be a source of important archaeological data.” Archaeological sites are the place(s) where the remnants of a past culture survive in a physical context that allows for the interpretation of these remains. The physical evidence, or archaeological remains, usually take the form of artifacts, features, and cultural deposits. Historic archaeological sites may include standing or intact buildings or structures that have a direct historical association with below-ground archaeological remains.
- D. “Altering” addresses both exterior and interior work on historic properties. The treatment approach depends on the property’s significance, existing physical condition, extent of documentation available, and the State of Vermont’s goals for the property. The four treatment approaches to be considered as altering are:
1. Preservation: the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials, and features rather than extensive replacement and new construction. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project. However, new exterior additions are not within the scope of this treatment. *Preservation requires retention of the greatest amount of historic fabric along with the building’s historic form.*
 2. Rehabilitation: the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values. *Rehabilitation acknowledges the need to alter or add to a historic building to meet continuing or new uses, and require code updates, while retaining the building’s historic character.*
 3. Restoration is the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project. *Restoration allows for the depiction of a building at a particular time in its history by preserving materials, features, finishes, and spaces from its period of significance and removing those from other periods.*
 4. Reconstruction is the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location. *Reconstruction establishes a limited framework for recreating a vanished or non-surviving building or space with new materials, primarily for interpretive purposes.*

II. EXEMPT PROPERTIES AND ACTIVITIES

- A. If a project meets **all** the following requirements, it is exempt from review under this agreement:
1. Project does not involve any property that is listed in or eligible for the State Register of Historic Places; and

2. Project consists of rehabilitation or alteration of buildings or structures less than 50 years old; and
 3. Project does not involve ground disturbance, as defined in Stipulation III.B, below.
- B. A project that does not satisfy **all** the criteria listed above will nonetheless be exempt from review under this agreement if it is limited solely to the exempt activities listed in Appendix A.
1. Refer to Appendix A for a list of Exempt Activities, which **DO NOT** require review by VDHP.

III. PROJECT REVIEW RESPONSIBILITIES

- A. All projects to be reviewed by VDHP require submittal of a MERP Project Review Form (Appendix B template) by municipalities.
1. If the submitted documentation is sufficient, VDHP shall complete the review in thirty (30) days.
 2. If additional information is required to complete the project review evaluation, VDHP shall notify the municipality within fifteen (15) days of receipt of documentation.
 3. VDHP, upon receipt of sufficient documentation, shall complete the project review evaluation within thirty (30) days.
 - a. VDHP, if appropriate, may respond that the project will not result in an adverse effect on a historic resource based on the information in the MERP Project Review Form.
 - b. VDHP may consult with municipalities to review plans and explore alternatives that avoid changes to the character-defining elements for which a resource is designated as historic, ensuring there are no adverse effects; or
 - c. VDHP may request that municipalities arrange for further review by a qualified archaeological professional, a qualified historic preservation professional, or both, but will do all possible consultation to avoid this request.
 - 1) For purposes of this agreement, a qualified professional is one who:
 - a) Meets the Secretary of the Interior's *Professional Qualifications Standards*, found in 36 CFR 61 (48 FR 44738-9); and
 - b) Is identified on the Vermont Division for Historic Preservation's Historic Preservation and Archaeological Consultant List. This list is updated annually.
- B. Project Review Submittal Documentation:
1. Ground-disturbing activities include, but are not limited to:
 - a. new construction;
 - b. construction of roads and parking lots;
 - c. land clearance and tree cutting in preparation for construction;
 - d. excavation for signage, footings, pads, and foundations; and
 - e. installation or replacement of sewer, water, storm drains, electrical, gas, fuel tanks, leach lines, and septic tanks, unless included in Appendix A: exempt activities.
 2. For any project that may affect archaeological resources and requires a qualified professional consultant, the submittal to VDHP must address the following:
 - a. All archaeological studies must meet the *Guidelines for Conducting Archaeology in Vermont* and the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*.
 - b. Vermont Archaeological Inventory (VAI) site number should be acquired prior to the commencement of construction.
 - c. If necessary, a VAI form should be completed by a qualified professional consultant.
 3. For any project that may affect any above-ground historic resources, the submittal to VDHP must include the following documentation for review:
 - a. Historic building information;
 - b. Project description and related consultant reports;
 - c. Project plans;
 - d. Digital photographs (and historic images if available); and
 - e. As necessary, qualified professional consultant comment letter outlining the scope of the project, historic resources to be impacted, and the effect(s) of the project on historic resources.

The completed MERP Project Review Form (Appendix B) and all accompanying documentation should be submitted electronically to VDHP at ACCD.ProjectReview@vermont.gov

4. Municipalities should notify VDHP of any changes to the project scope after submittal for review and VDHP concurrence.
5. In the event that municipalities and VDHP cannot resolve any questions about the impact of a project on historic resources, VACHP will be engaged to assist in resolving the issue(s).
6. Projects having an **adverse effect** on historic resources that cannot be avoided or mitigated may, at the discretion of SHPO, be referred to the VACHP for review at the next scheduled meeting.

IV. EFFECTIVE DATE

- A. This agreement shall take effect on the date it is signed by the BGS, SHPO, and VACHP chair. The agreement will remain in effect as long as MERP is active, unless terminated pursuant to this agreement.

V. AMENDMENTS


- A. Any party to this agreement may request that it be amended or modified, whereupon BGS, SHPO, and VACHP will consult to consider such revisions that support and ensure obligations under the Vermont Historic Preservation Act are met. Any resulting amendments or addenda shall be developed and executed among BGS, SHPO, and VACHP in the same manner as this agreement.

VI. TERMINATION


- A. Any party to this agreement may terminate this 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 Memorandum of Agreement evidences that BGS has satisfied its responsibilities under the Vermont Historic Preservation Act for the MERP Implementation Grants.

Signatories:

DocuSigned by:

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Jennifer M.V. Fitch, P. E. 7/1/2024
Acting Commissioner, Buildings and General Services Date

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Laura V. Trieschmann 6/17/2024
Vermont State Historic Preservation Officer Date

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Edward Clark 6/14/2024
Chair, Vermont Advisory Council on Historic Preservation Date