

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,
THE NORTH CAROLINA HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

REGARDING

**IMPLEMENTATION OF TRANSPORTATION ENHANCEMENT ACTIVITIES UNDER
THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT**

WHEREAS, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) authorizes expenditure of Federal Surface Transportation Program Funds for transportation enhancement activities; and

WHEREAS, that Act defines the term "transportation enhancement activities" to include a variety of project categories that can be beneficial to the preservation of historic properties; and

WHEREAS, transportation enhancements are federally assisted undertakings, which might have the potential to affect properties included in or eligible for inclusion in the National Register of Historic Places and therefore require compliance with §106 of the National Historic Preservation Act of 1966 (16 U.S.C. §470f) and its implementing regulations (36 CFR Part 800); and

WHEREAS, the signatories to this agreement desire to expedite the necessary historic preservation review for transportation enhancement activities beneficial to historic preservation and thereby encourage the use of transportation enhancement funds for historic preservation purposes; and

WHEREAS, the North Carolina Department of Transportation (NCDOT) has participated in the consultation and has been invited to concur in this Programmatic Agreement;

NOW, THEREFORE, the Federal Highway Administration (FHWA), the North Carolina State Historic Preservation Officer (NCSHPO), and the Advisory Council on Historic Preservation (Council) agree that transportation enhancement activities shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The FHWA shall ensure that the following measures are carried out:

I. Transportation Enhancement Activities

Transportation enhancement activities as defined in the ISTEA qualify for the expedited process set forth in this agreement. They are:

1. Provision of facilities for pedestrians and bicycles.
2. Acquisition of scenic easements and scenic or historic sites.
3. Scenic or historic highway programs.
4. Landscaping and other scenic beautification.
5. Historic preservation.
6. Rehabilitation and operation of historic transportation buildings, structures or facilities (including historic railroad facilities and canals).
7. Preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails).
8. Control and removal of outdoor advertising.
9. Archaeological planning and research.
10. Mitigation of water pollution due to highway runoff.

II. Identification and Evaluation of Historic Properties

- A. NCDOT will be responsible for identifying any historic properties within the activity's area of potential effects, and for evaluating their eligibility for the National Register of Historic Places, in consultation with the NCSHPO in accord with 36 CFR §800.4.
- B. NCDOT may encourage or require project sponsors to submit historic property documentation or survey results as part of the ISTEA project application. For those activities where the NCSHPO is the project sponsor, the NCSHPO will be responsible for identification and evaluation, in consultation with the FHWA in accordance with 36 CFR §800.4.

III. Determination of Effect

NCDOT will assess the effects of the proposed transportation enhancement activities on historic properties by applying the criteria of effect and adverse effect (36 CFR §800.9).

A. No Effect

Upon written determination by NCDOT that the undertaking will have no effect on historic properties, and the written concurrence of the NCSHPO, the project may proceed. The NCSHPO will provide concurrence or comments within 15 days of receiving the NCDOT's determination.

B. No Adverse Effect

1. The NCDOT will submit its written determination of effect to the NCSHPO for review. The NCSHPO will provide written concurrence or comments within 30 days of receiving NCDOT's determination.
2. If the NCDOT and the NCSHPO agree that the proposed transportation enhancement activity will have no adverse effect on historic properties in accord with 36 CFR §800.5(d), the FHWA and NCDOT shall document that finding, which shall be made available for public inspection, and proceed with the activity without further review by the Council.
3. If the NCDOT and the NCSHPO cannot agree that the proposed transportation enhancement activity will have no adverse effect, then the NCDOT will notify the FHWA and the process will be completed in accord with CFR §§ 800.5 and 800.6.
4. If a timely objection to a determination of no adverse effect is made to the Council, the Council shall review the objection and, if it finds that the no adverse effect determination was not properly made, it shall notify the FHWA that an adverse effect may exist. In that event, FHWA shall complete the §106 process in accord with 36 CFR §§ 800.5 and 800.6.

C. Adverse Effect

If the NCDOT and the NCSHPO agree that the proposed transportation enhancement activity will have an adverse effect, then the NCDOT will the notify the FHWA and the process will be completed in accord with 36 CFR §§ 800.5 and 800.6.

IV. Amendment

Any party to this Agreement may request that it be amended, whereupon the parties to this Agreement shall consult to consider such amendment in accord with 36 CFR §800.13.

V. Termination

Any party to this Agreement may terminate its participation by providing 30 days written notice to the other parties, provided that the parties shall consult during the period prior to the proposed termination to seek agreement on amendments or other actions that would avoid termination. The Council will be afforded an opportunity to comment during this period as well. In the event of termination, FHWA shall comply with 36 CFR § 800.4 through 800.6.

VI. Dispute Resolution

Should NCDOT and NCSHPO have an objection that is not acceptably resolved, or should any other party to this Agreement object within 30 days to any documents submitted for review or actions proposed pursuant to this Agreement, the parties shall consult to resolve the objection. If the parties cannot reach a mutually agreeable resolution, FHWA shall request the comments of the Council in accord with 36 CFR § 800.6(b).

Execution and implementation of this Programmatic Agreement evidences that FHWA has afforded the Council a reasonable opportunity to comment on transportation enhancement activities and the FHWA has taken into account the effects of such activities on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

By: *Donald J. Vaelder*
for Mr. Nicholas L. Graf, Division Administrator

Date: 2/26/96

NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER

By: *Jeffrey J. Crow*
Dr. Jeffrey J. Crow, State Historic Preservation Officer

Date: 3/8/96

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: *Cathryn B. Slater*
Ms. Cathryn B. Slater, Chairman

Date: 4-12-96

Concurs:

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

By: *Larry R. Goode*
Dr. Larry R. Goode, State Highway Administrator

Date: 3-1-96