

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

WHEREAS, the Federal Highway Administration (FHWA) provides funding for various highway projects administered throughout the state of North Carolina by the North Carolina Department of Transportation (NCDOT) as authorized by 23 USC 771; and

WHEREAS, the Division Administrator, FHWA, is the "Agency Official" responsible for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.) and its implementing regulations (36 CFR Part 800, as amended); and

WHEREAS, FHWA has determined that implementation of the federal aid highway program may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places, and has consulted with the North Carolina State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR § 800.14(b) of the regulations implementing Section 106 of the National Historic Preservation Act; and

WHEREAS, the NCDOT employs qualified professional staff and consultants capable of completing many of the steps of the Section 106 review process on behalf of FHWA, and has a considerable record of successful compliance with Section 106; and

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

WHEREAS, the definitions contained in 36 CFR § 800.16 are appropriate to define the terms used in this agreement;

NOW, THEREFORE, the FHWA, the SHPO, the Council, and the NCDOT agree that the program shall be implemented in accordance with the following stipulations in order to take into the account the effect of its individual undertakings on historic properties.

Stipulations

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

1. NCDOT, using staff and /or consultants meeting the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-9), will independently perform the work and consultation described in specific sections of 36 CFR § 800.3 - 800.5 on behalf of FHWA as follows with the exception of conducting consultation with Indian tribes or Tribal Historic Preservation Officers (THPO):

36 CFR § 800.3

- (1) Establish undertaking
- (2) Coordinate with other reviews
- (3) Identify the appropriate SHPO and/or THPO
- (5) Plan to involve the public
- (6) Identify other consulting parties
- (7) Expediting consultation

36 CFR § 800.4

- (1) Determine scope of identification
- (2) Identify historic properties
- (3) Evaluate historic significance
- (4) Results of identification and evaluation

36 CFR § 800.5

- (1) Apply criteria of adverse effect
- (2) Finding of no adverse effect
- (3) Consulting party review
- (4) Results of assessment

2. In recognition of the unique government-to-government relationship between the Federal government and Indian tribes, FHWA shall take the lead in identifying and establishing consultation with the appropriate THPO or Tribal representatives consistent with 36 CFR § 800.3 (c)-(f). If the tribe is agreeable, further consultation may be conducted among the tribe and NCDOT.
3. If consultation with the SHPO/THPO and other consulting parties results in agreement on a finding of "no adverse effect", NCDOT will prepare documentation in support of the finding as described in 36 CFR § 800.11(e) and forward it to the FHWA. FHWA concurrence in the finding will be sufficient to conclude Section 106 consultation without further review by the Council.
4. If consultation results in a finding of "adverse effect" or if no agreement can be reached, work required to conclude the Section 106 consultation process will be completed by the FHWA as described in 36 CFR § 800.6.

Written documentation will be prepared by NCDOT for use by the FHWA.

5. NCDOT will notify FHWA when a project falls beyond the routine Section 106 process as defined in 36 CFR § 800.3 - 800.6. Using information prepared by NCDOT, FHWA will then take appropriate actions to comply with special provisions of 36 CFR Part 800, especially as they apply to instances involving the protection of National Historic Landmarks (36 CFR § 800.10), post-review discoveries (36 CFR § 800.13), emergency situations (36 CFR § 800.12), and situations calling for program alternatives (36 CFR § 800.14).

ADMINISTRATIVE STIPULATIONS

6. This agreement applies to all projects that are administered through the NCDOT and funded or authorized by the FHWA.
7. It is the intent of the FHWA to become actively involved in the resolution of disagreements pertinent to findings eligibility and effects should they arise. Initially, FHWA will mediate between the NCDOT and SHPO to seek a solution. Disputes regarding eligibility of a property shall be resolved pursuant to 36 CFR § 800.4(c)(2). NCDOT and/or its consultants may prepare documentation in accordance with 36 CFR Part 63 for transmittal by the FHWA to the Keeper of the National Register for this purpose. In order to resolve questions of effect, NCDOT and/or its consultants will prepare documentation in accordance with the provisions of 36 CFR § 800.11(e) for transmittal by the FHWA to the Council for comment pursuant to 36 CFR § 800.6(c)(3).
8. All historic preservation work carried out pursuant to this agreement will be performed by or under the direct supervision of a person or persons meeting the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-9), for the disciplines required to complete the necessary work.
9. The FHWA, the SHPO, or the Council may monitor any activities carried out pursuant to this agreement, and the Council will review such activity if so requested. NCDOT will cooperate with the FHWA, the SHPO and the Council in carrying out these monitoring and review responsibilities.
10. Any party to this agreement may request that it be amended, whereupon the parties shall consult in accordance with 36 CFR § 800.14(b) to consider such an amendment.
11. Any party to this agreement may terminate it by providing thirty days written notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreements on amendments or other actions that would avoid termination. In the event of termination, the FHWA will comply with 36 CFR § 800.3 through 800.6 with respect to the individual undertakings covered in this agreement.
12. In the event the FHWA or NCDOT cannot carry out the terms of this agreement, the FHWA will comply with 36 CFR § 800.3 through 800.6.

Execution of this Programmatic Agreement by FHWA, NCSHPO, the Council, and the NCDOT and implementation of its terms by FHWA evidence that the FHWA has afforded the Council an opportunity to comment on the Federal Aid Highway Program for North Carolina and that FHWA has taken into account the effects of the program on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

Nicholas L. Graf DATE: 2/14/00
Nicholas L. Graf, Division Administrator

NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER

Jeffrey W. Crow DATE: 2/1/00
Jeffrey W. Crow, State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

John M. Fowler DATE: 3/26/00
John M. Fowler, Executive Director

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

L.A. Sanderson DATE: 12-2-99
L. A. Sanderson, State Highway Administrator