PROGRAMMATIC AGREEMENT
AMONG THE
FEDERAL HIGHWAY ADMINISTRATION,
THE
NEW YORK STATE HISTORIC PRESERVATION OFFICER,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
REGARDING THE
RECONSTRUCTION OF ROUTE 9A
NEW YORK CITY, NEW YORK

WHEREAS, the Federal Highway Administration (FHWA) has determined that the Route 9A Reconstruction Project (Project) in New York City, New York may have an effect on properties/structures included in or eligible for inclusion in the National Register of Historic Places, and has consulted with the Advisory Council on Historic Preservation (Council) and the New York State Historic Preservation Officer (SHPO) pursuant to Sections 106 and 110(f) of the National Historic Preservation Act (16 U.S.C. 470f) and the Council’s implementing regulations, “Protection of Historic Properties” (36 CFR Part 800); and

WHEREAS, the New York State Department of Transportation (DOT) has participated in the consultation and was invited to concur in this Programmatic Agreement;

WHEREAS, the FHWA, the SHPO and the Council agree that the undertaking shall be guided in principal by the methodologies outlined in the Draft Environmental Impact Statement (DEIS) / Supplemental DEIS (SDEIS) and Final Impact Statement (FEIS) for the project;

WHEREAS, the FHWA and DOT have agreed to provide all studies and other documentation to the New York City Landmarks Preservation Commission (LPC) for their information;

NOW, THEREFORE, FHWA, the SHPO and the Council agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of this Project on historic properties/structures.

STIPULATIONS

FHWA WILL ENSURE THAT THE FOLLOWING STIPULATIONS ARE IMPLEMENTED AS PART OF SUBSEQUENT PLANNING, DESIGN AND CONSTRUCTION OF THE SELECTED PROJECT ALTERNATIVE.
I. ARCHEOLOGICAL RESOURCES

Within the area of potential effect (APE) for archeological resources, a comprehensive program for the identification, evaluation, and treatment of archeological resources will be implemented in the manner set forth below.

A. Contextual Studies

To assess the large number of potential archeological sites that may exist within the APE and to refine predictions on locations of potential archeological sensitivity, FHWA and DOT will complete contextual studies for each of the following categories.

1. Prehistoric Sites.
2. Dwellings and Tenements.
5. Offices and Warehouses.
7. Unassociated Structures.
8. Lumber and Building Materials.
10. Services.
11. Piers and Wharves.
12. Landfill Devices and Sunken Ships.
13. 17th Century Fortifications and Foundations at Morris Street.

B. Review and Results of Contextual Studies

1. As the contextual studies for each category are completed, they will be provided to the SHPO for their review and comment.\(^1\)

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\(^1\) The area of potential effect for archeological properties includes (1) the right-of-way; (2) streets intersecting Route 9A for a 50-foot distance east of the roadway; (3) at locations where construction may occur east of the roadway, e.g. between Battery Place and Joseph P. Ward Street, Chambers Street, between Canal and Spring Streets, between Gansevoort and 13th Streets, between 14th and 15th Streets, and Thomas F. Smith Park; (4) footprints at pedestrian over passes or other special features; and (5) construction staging areas outside of the areas listed in (1)-(4) above.

\(^2\) In this instance and in all similar provisions provided for in this Agreement, unless otherwise noted, where comments are sought from the SHPO and/or LPC, it is understood that the party will be provided 30 days from the receipt of the request to submit comments. If no comments are submitted during this review period, it is understood that the party has no wish to comment and concurs with the recommendations or conclusions for which comments were sought. Extensions, totalling no more than 15 days, will be added to the 30-day review period in cases where timely requests are made for additional documentation deemed necessary to complete a review.

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2. For each study, FHWA and DOT, based on comments received from the SHPO, will:
   
a. Determine the need, if any, to verify the assumptions made in the study. If the need for verification exists, an appropriate field testing methodology will be developed by FHWA and DOT in consultation with the SHPO (See Stipulation I.C. below).

b. Determine which presumed site locations do not require further consideration. Provided the SHPO agrees with these conclusions, such site locations need receive no further consideration under this Agreement.

c. Determine which presumed site locations do require further consideration. These site locations should be treated in accordance with Stipulation I.D. below.

If conclusions reached by FHWA and DOT are not consistent with comments and recommendations received from the SHPO, FHWA and DOT will consult to resolve the objection. If the objection cannot be resolved, the recommendations of the Council will be sought consistent with Stipulation V of this Agreement.

C. Field Testing Assumptions of Contextual Studies

In consultation with the SHPO, FHWA and DOT will develop and undertake a strategy for carrying out field testing. If the results of such field testing demonstrates that assumptions upon which predictions were made in the Contextual Studies are not valid, the Studies, as appropriate, will be revised in a manner acceptable to the SHPO.

The Council will be kept apprised of any such field testing that is carried out and its results and will be provided copies of field reports and any revised Contextual Studies.

D. Further Evaluation of Potential Sites

For those site locations determined to require further consideration pursuant to Stipulation I.B.2.c. and determined by FHWA and DOT, in consultation with the SHPO, to be subject to possible project impacts, field testing will be undertaken to determine site characteristics and the degree of site integrity and disturbance. This field evaluation and testing program will be carried out in consultation with the SHPO and at a level sufficient to be able to determine if sites meet the criteria for listing in the National Register of Historic Places (36 CFR Section 60.4). For each field tested site, FHWA and DOT, in consultation with the SHPO, will apply the National Register criteria and reach one of the following conclusions:

1. The site does not meet the National Register criteria; no further action is required.

2. The site does meet the National Register criteria, in which case the site will be treated in accordance with Stipulation I.E. below.

3. A dispute exists regarding whether the criteria are met, in which case the opinion of the Keeper of the National Register will be sought to resolve the disagreement, and the site treated in accordance with the Keeper’s finding.

FHWA and DOT will notify the SHPO, and interested parties of conclusions regarding evaluation of all sites for National Register.

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E. Data Recovery

For those sites determined to be eligible for inclusion in the National Register, FHWA and DOT, in consultation with the SHPO, shall develop and conduct a data recovery plan that is consistent with the Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37) and the Council's Treatment of Archeological Properties and subsequent amendments (Advisory Council on Historic Preservation, 1980). The plan shall:

1. Be responsive to the relevant historic contextual study developed for this project;
2. Be designed to recover data sufficient to address significant research issues and to test assumptions set forth in the appropriate historic contextual study;
3. Provide adequate flexibility to allow for addressing unanticipated resource, site conditions, and alternative methods and scopes of work, as appropriate. The SHPO shall be kept apprised of any changes to the data recovery plan;
4. Include a process for consultation with the SHPO, LFC and interested parties, as appropriate, throughout the monitoring and data recovery phases; and,
5. Include a schedule of proposed data recovery efforts with reporting requirements.
6. In some cases, the data recovery plan may be implemented through a monitoring program during construction. The use of this method would be subject to approval by SHPO, DOT, and FHWA.

F. Professional Standards

DOT shall ensure that all archeology carried out pursuant to this Agreement is conducted by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior’s Professional Qualifications Standards (48 FR 44138-9).

G. Curation

DOT shall develop and implement, in consultation with the SHPO and in accordance with 36 CFR Part 79, a plan for the analysis and curation of material and records from the archeological excavations are curated in accordance with 36 CFR Part 79.

H. Reports

DOT shall ensure that all final archeological reports resulting from the actions pursuant to this Agreement shall be provided to the SHPO, LFC and interested parties, and submission to the National Technical Information Service (NTIS). FHWA and DOT shall ensure that all such reports are responsive to contemporary professional standards, and to the Department of the Interior's Format Standards for Final Reports of Data Recovery Program (42 FR 3577-79).

I. Phasing of Construction Activities and Archeological Field Work

DOT will take all steps practical to ensure that needed archeological field analysis and data recovery can proceed in advance of construction activities. In establishing construction scheduling and staging, FHWA and DOT will fully consider, anticipate, and prepare for archeological work that must be undertaken. FHWA and DOT shall coordinate the site preparation in a manner
which allows maximum exposure of the areas to be tested at the earliest possible date. Further, FHWA and DOT will provide to the SHPO and LPC regularly scheduled status reports that will include notice about schedules, plans, and timing related to phasing archeological work with construction in order that the SHPO can better anticipate review requirements and thereby provide more timely advice.

II. HISTORIC PROPERTIES/STRUCTURES - WITHIN THE ROUTE 9A CORRIDOR

Within the area of potential effects for the Route 9A Corridor (APE) for historic properties/structures\(^2\), a comprehensive program for assessment of effects and treatment of historic properties/structures will be implemented in the manner set forth below.

A. Analysis of Effects

In consultation with the SHPO, FHWA and DOT will determine if, there are any effects on the historic properties/structures listed or determined eligible for listing in the National Register of Historic Places identified on Attachment A. Analysis of effects will be guided by the Criteria of Effect [36 CFR Section 800.9(a)]. A determination of effect will consider if there are physical takeoffs, visual effects, vibrations resulting from construction and anticipated traffic increases, access changes, or noise impacts. These will be evaluated in light of those characteristics which make the properties/structures significant.

1. Findings of No Effect

If, after consultation with the SHPO; FHWA and DOT determines that there will be no effect to a property/structure, this finding will be documented and copies will be provided to the SHPO for review. Any objections and reasons therefor must be provided in writing within 30 days. Specific effects must be identified so that any possible mitigation measures can be considered and developed.

2. Findings of No Adverse Effect

If, after consultation with the SHPO; FHWA and DOT determines that there will be no adverse effect to a property/structure, this finding will be documented and copies will be provided to the SHPO for review. Should the SHPO object within 30 days, FHWA and DOT can either accept a finding of adverse effect for the property/structure or seek Council review pursuant to Stipulation V.

3. Findings of Adverse Effect

If, after consultation with the SHPO; FHWA and DOT determines that there will be adverse effects to a property/structure, FHWA and DOT will develop a treatment plan as set forth in Stipulation II.B.

\(^2\)The area of potential effect for historic structures includes the roadway frontage for the selected alternative and those areas where pedestrian bridges will be located.

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B. Treatment of Adverse Effects

1. Treatment Measures

If adverse effects to historic properties/structures are identified, FHWA and DOT will consider, depending on the nature of the effect and the significance of the property/structure, mitigation measures including, but not limited to, the following:

a. Avoidance of demolition or taking through project redesign,
b. Use of noise attenuation design features,
c. Landscaping to minimize visual impacts,
d. Monitoring of seismic impacts, with modifications in construction techniques if seismic impacts are detected,
e. Signalization and other traffic control measures to reduce traffic generated impacts,
f. Use of construction materials and design features that will improve visual compatibility with adjacent historic properties/structures,
g. Documentation of existing streetscapes and/or historic properties/structures.

2. Views of Interested Parties

In considering mitigation measures for treatment of adverse effects, FHWA and DOT will take fully into account the views of interested parties, in particular LPC and owners of affected historic properties/structures. A community liaison office will be kept open during design and construction to allow input from the general public. Depending on the level of public interest, FHWA and DOT will institute means to solicit and fully consider the views of the public in arriving at appropriate treatment measures.

3. Development of Treatment Plans

Giving full consideration to the views of the property owners, FHWA and DOT, in consultation with the SHPO, will develop a treatment plan for each historic property/structure adversely affected. The treatment plan will set forth the mitigation measures that will be undertaken and will contain evidence that it has been reviewed and approved by the SHPO. An informational copy of the treatment plan will be provided to the Council. FHWA and DOT will then implement the approved treatment plan.

4. If FHWA, DOT and the SHPO are unable to agree on a treatment plan for an historic property/structure adversely affected, FHWA will complete the steps set forth in Sections 800.5(e) - 800.6 of the Council's regulations to address adverse effects to the property/structure.

III. HISTORIC PROPERTIES/STRUCTURES - WITHIN THE INLAND STUDY AREA

Using traffic data and modeling, FHWA and DOT, in consultation with the SHPO, will identify possible areas, streets, and/or locations within the inland study area where traffic changes are expected to occur as a result of the selected alternative. In determining these areas, DOT will use a criteria, which includes, functional classification changes, congestion, above normal traffic variations, land use, expected noise level changes and level of service changes.
A. Determination of APEs

The above noted parameters will indicate areas that need to be examined to determine if they are areas of potential effect (APEs). These areas will be assessed by FHWA and DOT in consultation with the SHPO. This assessment, which will include onsite reviews, will arrive at one of the following conclusions:

1. No Further Study

The areas and expected traffic condition and effects indicate the areas identified are not APEs and no further study is warranted.

2. Historic District Areas

The areas identified are in a historic district and overall effects on the historic district need to be examined.

3. Areas of Potential Effect

The area and expected traffic conditions are such that an APE is evident. Further evaluation of the APE is warranted to determine if there is a high concentration of historic properties/structures. If there is a low concentration or no historic properties/structures in the APE, no further study is warranted.

4. Additional Study Needed

If the SHPO determine that preliminary evidence is inconclusive, FHWA and DOT will undertake additional studies of properties/structures in the identified area(s) in order that the SHPO can conclude with certainty that an area is of high or low concentration.

B. Analysis of Effect

For those determined APEs that contain a high concentration of historic properties/structures, FHWA and DOT, in consultation with the SHPO, will determine the nature and extent of effects.

1. Historic Districts

   a. No Effect - The cumulative affects of the expected traffic conditions on the Historic Districts are negligible and no effect is expected.

   b. No Adverse Effect - There are some perceptible changes in the expected traffic conditions, but no adverse effects to the Historic District are evident.

   c. Adverse Effect - Specific adverse effects will result from expected traffic conditions that will affect the character and setting of the Historic District. Possible mitigation measures will follow those steps in Stipulation II.B.

2. APEs - High Concentration of Historic Properties/Structures

   a. No Adverse Effect - The effects of the expected traffic conditions are perceptible and evident, but no specific adverse effects are expected on the specific historic properties/structures.

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b. Adverse Effect - Specific adverse effects will result from expected traffic conditions that will affect the character and setting of the historic properties/structures. Possible mitigation measures will follow those steps in Stipulation II.B.

3. Views of Interested Parties

In considering mitigation measures for treatment of adverse effects, FHWA and DOT will take fully into account the views of interested parties. For those sites, the steps in Stipulation II.B.2. will be followed.

IV. REPORTING

One year from the date this agreement is concluded, and every year thereafter until project completion, DOT will provide to the Council, the SHPO, and LPC a report on activities carried under this Agreement during the preceding year. At the time the report is submitted the signatories of the Agreement will review implementation of the Agreement and determine whether revisions are needed. If revisions are needed, the parties to this Agreement will consult in accordance with 36 CFR Part 800 to make such revisions.

V. DISPUTE RESOLUTION

Should the Council or the SHPO object within 30 days to any actions proposed pursuant to this agreement, DOT and FHWA shall consult with the objecting party to resolve the objection. If FHWA determines that the objection cannot be resolved, FHWA shall forward all documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council will either:

A. provide FHWA with recommendations, which FHWA will take into account in reaching a final decision regarding the dispute; or

B. notify FHWA that it will comment pursuant to 36 CFR Section 800.6(b), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by FHWA in accordance with 36 CFR Section 800.6(c)(2) with reference to the subject of the dispute.

Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; FHWA's responsibility to carry out all actions under this agreement that are not the subjects of the dispute will remain unchanged.

March 14, 1994
EXECUTION AND IMPLEMENTATION OF THIS PROGRAMMATIC AGREEMENT EVIDENCES THAT
FHWA HAS SATISFIED ITS SECTION 106 RESPONSIBILITIES FOR THE ROUTE 9A RECONSTRUCTION
PROJECT.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: [Signature] Date: 3-23-94

FEDERAL HIGHWAY ADMINISTRATION

By: [Signature] Date: 3-15-94

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: [Signature] Date: 3-17-94

CONCUR:

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

By: [Signature] Date: 3/15/94

SEE NEXT SHEET FOR ADDED SIGNATURE IDENTIFICATION
**Added After Signatures**

Signature Identification

**Signatories:**

Robert W. Bush, Executive Director  
Advisory Council on Historic Preservation

Gene K. Fong, Assistant Division Administrator  
Federal Highway Administration

John Winthrop Aldrich, Deputy Commissioner for Historic Preservation  
New York State Office of Parks, Recreation and Historic Preservation

**Concurrence:**

Robert J. Ronayne, Executive Director  
Route 9A Reconstruction  
New York State Department of Transportation