

MEMORANDUM OF UNDERSTANDING

ENVIRONMENTAL COORDINATION AND REVIEW
AMONG THE FEDERAL AND STATE PARTNERS
FOR THE
WINOOSKI DOWNTOWN DEVELOPMENT PROJECT

This Memorandum of Understanding (“MOU”) is entered into jointly by the following parties: the U.S. Department of Housing and Urban Development (“HUD”), the Federal Highway Administration (“FHWA”), the Vermont Agency of Transportation (“AOT”), and the City of Winooski (“City”).

I. Purpose

The purpose of this MOU is to formalize the commitment among the listed federal agencies and state agencies and the City to work in a partnering process to coordinate the review of projects under the National Environmental Policy Act (“NEPA”) and other environmental laws, regulations, and Executive Orders that apply jointly to the agencies in order to develop environmentally responsible projects while preventing project delays. This partnership will facilitate a coordinated approach that ensures sound decisions based on concurrent and expedited agency reviews. This MOU shall be applicable to projects related to the Winooski Downtown Development Project.

II. Background

The goal of the Winooski Downtown Development Project (“Project”) is to reinvent downtown Winooski using history as a guide, to create a vibrant mixed-use urban environment that is pedestrian-friendly and convenient for the commuter. Among other things, the Project will add up to 800 housing units, and will restructure certain roadways to create a rotary around a traditional New England town green. Funding for Project under this MOU is derived from a number of federal sources. Assistance for the construction of housing units is provided by HUD’s Section 108 Loan Guarantee Program and by HUD’s Section 221(d)(4) mortgage guarantee, Section 234(d) and a low income housing tax credit. It is anticipated that the costs of roadway construction and related infrastructure will be eligible for Federal-aid highway funding administered by AOT for FHWA. As a result, HUD, FHWA and the City are required to comply with NEPA and other environmental laws, regulations, and Executive Orders.

The need for coordination to streamline project development and construction is seen as necessary by the parties to fulfill the mandates of NEPA and applicable federal, state, and local laws.

This MOU designates the agencies and entities cooperating in the preparation of analysis and documentation required by NEPA and other environmental laws, regulations, and Executive Orders, establishes the lead and cooperating agencies, and responsible entity for the

preparation of an Environmental Assessment and establishes a response period among the listed entities for consultation, coordination, and concurrence in project requirements. Additional MOUs or other agreements may be developed to address particular issues, projects, or other needs to further the intent of this MOU.

III. Statutory and Regulatory Authority

WHEREAS, pursuant to NEPA, 42 U.S.C. § 4331(b), the federal government shall use all practicable means to improve and coordinate federal plans, functions, programs and resources to, inter alia, enhance the quality of the environment.

WHEREAS, regulations implementing NEPA emphasize interagency cooperation early in the environmental review process. 40 C.F.R. § 1500.5.

WHEREAS, if more than one federal agency is involved in the same action, 40 C.F.R. § 1501.5 provides for the designation of a lead agency that will supervise the preparation of an environmental document. The other agencies are identified as cooperating agencies. The involved agencies shall determine by MOU which agency shall be lead and which shall be cooperating and shall resolve this issue so as not to cause delay. Id.

WHEREAS, pursuant to 40 C.F.R. § 1501.5(c), a cooperating agency may, in response to a lead agency's request for assistance in preparing the environmental document, defer to the lead agency in preparing such document where agency program commitments preclude involvement.

WHEREAS, pursuant to 40 C.F.R. § 1506.3(a), a cooperating agency may adopt the lead agency's environmental document or portion thereof provided that the document or portion thereof meets the standards for an adequate statement under these regulations.

WHEREAS, pursuant to 24 C.F.R. § 50.10(a), it is the responsibility of all Assistant Secretaries of HUD and the HUD approving official to assure that the requirements of HUD and CEQ regulations are implemented.

WHEREAS, pursuant to 24 C.F.R. § 50.10(b), the HUD Assistant Secretary for Community Planning and Development ("CPD") has overall responsibility for HUD's environmental policies and procedures for compliance with NEPA and related laws and authorities.

WHEREAS, pursuant to HUD's Section 108 program, 42 U.S.C. § 5308, responsibility for environmental review, decisionmaking and action is delegated to the city or state recipient of funds under Section 108, 42 U.S.C. § 5304(g).

WHEREAS, pursuant to 24 C.F.R. § 58.1 and § 58.10, the City of Winooski is the responsible entity under the Community Development Block Grant programs authorized by 42 U.S.C. §

5304(g) to undertake environmental compliance. Under HUD's Section 221 Mortgage Guarantee Program and Section 234(d) Program, the responsibility for environmental compliance has not been delegated and HUD retains that responsibility.

WHEREAS, pursuant to 23 C.F.R. § 771.105(a), it is the policy of the FHWA to coordinate all environmental investigations, reviews and consultations as a single process.

WHEREAS, pursuant to 23 CFR 771.109 (c) (1) the City of Winooski acting through the AOT can prepare an Environmental Assessment with FHWA furnishing guidance and independently evaluating the document.

WHEREAS, pursuant to 23 C.F.R. § 771.111(c), FHWA has the ability to establish NEPA procedures on a case-by-case basis when other federal agencies are involved.

WHEREAS, a single EIS or EA may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities, 24 C.F.R. § 58.14.

NOW, THEREFORE:

IV. Commitment of the Agencies

To facilitate preparation of the Environmental Assessment, the Agencies and entities hereby commit as follows:

- HUD - with respect to oversight of an Environmental Assessment ("EA"), HUD will serve as lead agency and will coordinate all project review.
- The City of Winooski - pursuant to statutory and regulatory authority, the City is the responsible entity for environmental compliance under the Section 108 Program. The City, will be responsible for environmental review and preparing an EA. HUD may use the EA created under Section 108 to support its environmental review under programs for which responsibility is not delegated to the City.
- FHWA - FHWA will serve as a cooperating agency and, after consultation with the lead agency, will concur on any EA if appropriate. FHWA and AOT will provide technical assistance for road related projects. Any review of the Project for purposes of compliance with Section 4(f) will be conducted by FHWA outside of the process established by this MOU.

In the spirit of cooperation and collaboration, and with the mutual understanding that this is a flexible working agreement among the signatory agencies, we hereby commit to the following responsibilities:

As lead agency, HUD agrees to

- provide project information including study results
- invite cooperating agencies to coordination meetings
- consult with cooperating agencies on technical studies
- organize joint field reviews, and
- provide cooperating agencies an opportunity to comment on draft documents.

As cooperating agencies, FHWA and AOT agree to

- to utilize the EA as its decision-making document
- promptly advise the City or HUD if its needs are not being met, and
- promptly provide comments on draft documents.

To aid in meeting these commitments the parties agree to the following:

- The City shall prepare the Environmental Assessment and a Finding of No Significant Impact ("FONSI") and shall publish a Notice of FONSI and Notice of Intent to Request a Release of Funds, as provided in 24 CFR Sec. 58.43, Sec. 58.45 and Sec, 58.70, and allow a fifteen-day public comment period. Following the comment period, the City shall submit the Request for Release of Funds to HUD.
- HUD shall rely on the Environmental Assessment and, if appropriate, publish a Notice of Availability of a FONSI.
- FHWA shall rely on the Environmental Assessment and, if appropriate, publish a Notice of Availability of a FONSI.

This agreement may be implemented in counterparts, with a separate page for each signatory, and HUD will ensure that each party is provided with a complete copy. The effective date of this agreement is the signatory date for each party to it. Potentially other state and local agencies will become parties to this agreement as project development progresses in order to further the purpose of the MOU. This MOU shall be effective until the last funded project under the laws referenced above is fully constructed.

IV. Conclusion

In signing this MOU, the undersigned recognize and accept the roles and responsibilities assigned to each party. Each of the parties agrees to pursue maximum cooperation and communication to ensure that the projects fully comply with all applicable federal requirements and minimizes duplication of effort.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: _____ Date: _____

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: _____ Date: _____

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: _____

CITY OF WINOOSKI

By: _____ Date: _____

VERMONT AGENCY OF TRANSPORTATION

By: _____ Date: _____

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