

PROGRAMMATIC AGREEMENT
AMONG THE NEW YORK CITY
OFFICE OF MANAGEMENT AND BUDGET
AND THE
NEW YORK STATE HISTORIC PRESERVATION OFFICER
AND THE
NEW YORK CITY
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT
AND THE
NEW YORK CITY DEPARTMENT OF BUILDINGS
AND THE
NEW YORK CITY LANDMARKS PRESERVATION COMMISSION
AND THE
SHINNECOCK INDIAN NATION
REGARDING THE CITY'S DEMOLITION PROGRAM

WHEREAS, in 1976, the City of New York, the New York State Historic Preservation Officer, and the Advisory Council on Historic Preservation executed a Memorandum of Agreement for the Unsafe Building Demolition and Seal Up Program and it remains in effect; and

WHEREAS, 39 years have passed and the Unsafe Building Demolition and Seal Up Program has become the New York City Department of Housing Preservation and Development (HPD) Demolition Program (Program) and it is appropriate to revisit and update the provisions of the existing Memorandum of Agreement to reflect the current operation of the Program; and

WHEREAS, the Program currently is limited to buildings determined through inspection by the New York City Department of Buildings (DOB) to be dangerous and/or unsafe and determined by the New York City Landmarks Preservation Commission (LPC) to have no archaeological sensitivity; and

WHEREAS, recent experience has shown that demolition of historic buildings, as defined below, in the Program is limited to about five buildings per year;

NOW THEREFORE, the signatories agree to replace the 1976 Memorandum of Agreement in its entirety with this Programmatic Agreement (PA) as follows:

WHEREAS, HPD administers the Program for the City of New York to address emergency and non-emergency demolitions and the installation of sidewalk sheds to protect the public during the demolition process, as described in the Appendix, using Community Development Block Grant (CDBG) funds authorized by Title I of the Housing and Community Development Act of 1974, as amended; and

WHEREAS, certain activities under the Program constitute an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 C.F.R. Part 800; and

WHEREAS, pursuant to 36 C.F.R. § 800.12(d), immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 and this PA; and

WHEREAS, work ordered pursuant to an Immediate Emergency Declaration (IED) issued by DOB as described in Appendix A is exempt from the provisions of Section 106 and this PA pursuant to 36 C.F.R. § 800.12(d); and

WHEREAS, under 24 C.F.R. Part 58, the New York City Office of Management and Budget (NYCOMB) has assumed the Department of Housing and Urban Development's (HUD) environmental compliance responsibilities as Responsible Entity for the administration of CDBG funds, including obligations under Section 106 of the NHPA and has assumed those responsibilities for the Program; and

WHEREAS, NYCOMB has determined that the Program may have an adverse effect on historic properties and cultural resources that are listed in or eligible for listing in the National Register of Historic Places, and has consulted with the New York State Historic Preservation Officer (SHPO), LPC, DOB, and HPD pursuant to 36 C.F.R. Part 800; and

WHEREAS, NYCOMB has invited the Delaware Tribe of Indians, the Delaware Nation, the Shinnecock Indian Nation, and the Stockbridge-Munsee Community Band of Mohicans to consult on the development of this PA; and

WHEREAS, NYCOMB has consulted with the Delaware Tribe of Indians, the Delaware Nation, the Shinnecock Indian Nation and the Stockbridge-Munsee Community Band of Mohicans and has invited them to sign this PA as an invited signatory; and

WHEREAS, the Shinnecock Indian Nation has requested to be a signatory and has requested to be notified within 48 hours when human remains older than 50 years are discovered so that proper ceremonial respects can be paid; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), NYCOMB has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

NOW, THEREFORE, NYCOMB, SHPO, HPD, DOB, LPC and the Shinnecock Indian Nation (Parties) agree that the Program shall be implemented in accordance with the following stipulations in order to take into account the effect of individual undertakings of the program on historic properties.

STIPULATIONS

The Parties shall ensure that their designated responsibilities under this PA are carried out:

I. NOTIFICATION

- A. When DOB issues an “Emergency Declaration” (ED) for demolition, it shall notify HPD and LPC. DOB shall also notify HPD and LPC about buildings that are subject to a court-ordered Precept for demolition. HPD shall notify NYCOMB of potential CDBG Program-funded demolition actions.
- B. Upon notification about buildings that are subject to EDs or Precepts for demolition, LPC will review each such building and, within ten (10) days of notification for EDs and within twenty (20) days for Precepts, will send DOB, HPD, and NYCOMB its determination of whether the building is an historic property (i.e., on the National Register of Historic Places, eligible for listing on the National Register of Historic Places, is a designated or calendared New York City landmark, or is within a designated New York City historic district).

II. DEMOLITION DELAY FOR HISTORIC PROPERTIES

- A. If LPC determines that a building that is subject to an ED or a Precept is an historic property, LPC may ask DOB to delay the demolition. If DOB agrees that such delay is feasible without endangering public safety, DOB shall issue a Hold to HPD expeditiously, indicating the reason for and the duration of the Hold. DOB shall determine for how long such delay is feasible without endangering public safety. LPC may seek additional Holds from DOB in order to complete any historical recordation.
- B. LPC shall endeavor to consult with the building owner expeditiously within such time-frame regarding possible rehabilitation of the building. LPC shall provide a summary of their good faith effort to consult and work with the owner to NYCOMB for the Environmental Review Record of the undertaking.
- C. DOB always retains the power to cancel the Hold and order HPD to immediately proceed to demolish the building should the conditions change such that immediate demolition is required.

III. RECORDATION OF HISTORIC PROPERTIES

- A. If either a Hold is not granted or the good faith effort in Stipulation II above is not successful, the building that is subject to an ED or Precept for demolition shall be documented by LPC within five (5) days of notification of denial of Hold, or, where a Hold has been granted, within the

period of the Hold, according to the standards of the Historic American Buildings Survey (HABS), Historic American Engineering Record (HAER), or Historic American Landscape Survey (HALS), as appropriate, and the Cultural Resources Geographic Information Systems (CRGIS). LPC shall determine the choice of documentation program and the level of documentation (I, II, or III). LPC shall contract with a qualified consultant who meets the Professional Standards in 36 C.F.R. Part 61 to undertake the work, and shall review and approve the documentation before demolition occurs.

- B. Where DOB has notified LPC that a Hold will be granted, buildings that are the subject of EDs shall be photographed by the consultant within seven (7) calendar days after LPC notifies its consultant. Buildings that are the subject of Precepts shall be photographed within twenty (20) calendar days after LPC notifies its consultant. The scope of work for photography shall be determined by LPC and the consultant. Interiors shall be photographed if LPC and the consultant determine it is required by HABS/HALS, if access is feasible, and if DOB determines it is safe to enter the building.
- C. The final HABS/HAER/HALS document shall be archived by the consultant at the direction of LPC. Copies of the document shall be maintained at the State Office of Parks, Recreation and Historic Preservation and LPC.

IV. POST REVIEW ACTIVITIES/DISCOVERIES

If during the implementation of any demolition activities covered by this PA a known adjacent or nearby historic property may be impacted due to the demolition activities, HPD will notify NYCOMB. NYCOMB as the Responsible Entity shall consult with LPC and the SHPO to ensure the appropriate measures are employed in order to protect historic resources to the extent feasible given the circumstances. In addition, if a previously unidentified property that may be eligible for inclusion in the National Register is encountered, NYCOMB shall assume its responsibilities pursuant to 36 C.F.R. § 800.13 as follows:

- A. In the event that previously unidentified archaeological sites or human remains are discovered during demolition of buildings in the Program, that portion of the demolition work shall stop as quickly as is feasible, consistent with site safety, worker protection, and protection of the public, and the HPD project manager shall notify DOB, NYCOMB, SHPO, LPC, and other consulting party signatories within 48 hours. If DOB determines that it is safe to halt demolition, HPD shall take appropriate steps to immediately secure the site.
- B. If human remains are discovered, they shall be respectfully covered over. The New York Police Department and Office of the Chief Medical Examiner shall be notified to determine if the remains are of forensic interest. If they are of forensic interest, they will determine the ensuing process. If the remains are not of forensic interest, then NYCOMB, SHPO, LPC, and other consulting and interested parties need to be consulted.

- C. NYCOMB shall consult with the SHPO/Tribal Historic Preservation Officer (THPO) and Tribes to determine if the discovered site appears eligible for the National Register of Historic Places. If it does appear eligible, NYCOMB shall submit a treatment plan for the avoidance, protection, recovery of information, or destruction without data recovery to the SHPO for review and comment. The treatment plan shall be consistent with the ACHP's handbook Treatment of Archaeological Properties and subsequent amendments and SHPO guidelines. If human remains are discovered, the treatment plan shall follow the guidance in Advisory Council on Historic Preservation Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects, including appropriate consultation with descendent communities. NYCOMB shall notify all consulting parties of the unanticipated discovery and provide the proposed treatment plan for their comment. Ground disturbing activities in the area of the discovery shall not continue until the plan has been accepted by the signatory parties and implemented except as necessary to protect public safety. The Shinnecock Indian Nation shall be notified within 48 hours of the discovery of human remains older than 50 years so that proper ceremonial respects can be paid.
- D. All human burial sites in New York City are protected under state law and any undertaking that may affect a human burial site shall comply with provisions of "Not for Profit Corporation Law Article 15, Cemeteries and Crematories, New York State Cemetery Board, New York State Department of State, Division of Cemeteries", <http://www.dos.ny.gov/cmt/cemlaw.html#nfpclaw> the terms of this Agreement notwithstanding.
- E. If other than human remains are discovered which appear to have archaeological significance, demolition work shall cease and the required notifications shall proceed as indicated in Section A above. If DOB determines that it is safe to halt demolition, NYCOMB shall then consult with the SHPO/Tribal Historic Preservation Officer (THPO) and Tribes to determine if the discovered site appears eligible for the National Register of Historic Places. If it does appear eligible, HPD shall send a letter by Certified Mail – Return Receipt to the owner(s) on record requesting permission to undertake an archaeological investigation on the owner's property. HPD shall provide the owner with a form in which to indicate whether permission will be granted along with a stamped envelope with HPD's return address. The owner shall be given fourteen (14) days in which to respond. If the owner grants permission for the City to undertake the archaeological investigation, HPD shall contract with a qualified consultant who meets the Professional Standards in 36 C.F.R. Part 61 to undertake the work. The consultant will work at LPC's direction to develop a treatment plan for the avoidance, protection, recovery of information, or destruction without data recovery. NYCOMB shall submit the treatment plan to the SHPO and/or THPO and tribes for review and comment. The treatment plan shall be consistent with the ACHP's handbook Treatment of Archaeological Properties and subsequent amendments and SHPO guidelines. If the owner refuses to grant permission or permission is not received by HPD within fourteen (14) days, HPD does not have legal authority to enter the property to perform an archaeological investigation and HPD may proceed with the demolition. HPD will seek from DOB a waiver from the requirement to remove the foundation on the basis of the property potentially qualifying as an archaeological site. The site will be minimally graded so as to not disturb any potential artifacts that may be present. LPC shall document in their archaeology database the potential for archaeological

resources at this site so that in the event that any federally-funded construction takes place in the future the environmental review will reveal this concern.

V. DURATION

This Agreement will remain in force for ten (10) years from the date of its execution or until the Program is incorporated into a revised PA for all CDBG-funded activities in New York City.

VI. MONITORING AND REPORTING

Each December following the execution of this PA until it expires or is terminated, NYCOMB shall provide all parties to this PA a summary report detailing work carried out pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in efforts to carry out the terms of this PA.

VII. FUNDING

CDBG funds will be provided to LPC by OMB to cover costs of HABS/HAER/HALS recordation.

VIII. DISPUTE RESOLUTION

Should any signatory or concurring party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, NYCOMB shall consult with such party to resolve the objection. If NYCOMB determines that such objection cannot be resolved, NYCOMB will:

- A. Forward all documentation relevant to the dispute, including NYCOMB's proposed resolution, to the ACHP. The ACHP shall provide NYCOMB with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NYCOMB shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. NYCOMB will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30)-day time period, NYCOMB may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, NYCOMB shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.
- C. NYCOMB's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remains unchanged.

IX. AMENDMENTS

This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

X. TERMINATION

If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

Once the PA is terminated, and prior to work continuing on the undertaking, NYCOMB must either (a) execute a PA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. NYCOMB shall notify the signatories as to the course of action it will pursue.

EXECUTION of this PA by the NYCOMB, SHPO, HPD, DOB, LPC, and the Shinnecock Indian Nation, and implementation of its terms evidence that NYCOMB has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

_____(date)_____
John J. Leonard
Director of Community Development
New York City Office of Management and Budget

_____(date)_____
Ruth Pierpont
Deputy Commissioner/Deputy State Historic Preservation Officer
Division for Historic Preservation
New York State Office of Parks, Recreation and Historic Preservation

INVITED SIGNATORIES:

_____(date)_____
Vito Mustaciuolo
Deputy Commissioner for Enforcement & Neighborhood Services
New York City Department of Housing Preservation and Development

_____(date)_____
Thomas Fariello, R.A.
First Deputy Commissioner
New York City Department of Buildings

_____(date)_____
Meenakshi Srinivasan
Chair
New York City Landmarks Preservation Commission

_____(date)_____
Bryan A. Polite
Chairman
Shinnecock Indian Nation

_____(date)_____
Eugene Cuffee II
Sachem
Shinnecock Indian Nation

APPENDIX

DESCRIPTION OF THE CITY'S DEMOLITION PROGRAM

HPD's Demolition Bureau performs both emergency demolition activities as well as non-emergency demolition activities. Activities include full and partial demolitions of residential and commercial buildings and installation of sidewalk sheds in front of those buildings during the demolition process. The authority for demolition activities performed by the Demolition Bureau is established in accordance with § 28-215.1 of the New York City Administrative Code which authorizes the City to make safe any structure that may become dangerous or unsafe, structurally or as a fire hazard, or dangerous or detrimental to human life and public health.

Emergency demolition activities are initiated by the Department of Buildings' (DOB) issuance of an Emergency Declaration or Immediate Emergency Declaration. The DOB issues emergency declarations for deteriorated residential and commercial structures under its jurisdiction determined to be dangerous and/or unsafe in any area of the City. DOB may issue an "Immediate Emergency Declaration" (IED) or an "Emergency Declaration" (ED) violation that includes an order to mitigate a structurally unsafe building condition, eliminate hazards, or prevent damage to neighboring properties. The prescribed remedy to such emergency orders is typically a partial or full demolition, which would be funded by CDBG dollars.

Building owners issued an IED are required to commence specified remedial work immediately, whereas the expectation is that owners issued an ED will commence remedial work within 30 to 60 days of the order. If an owner fails to timely commence and correct the conditions as specified in the DOB's IED or ED, HPD's Demolition Bureau will perform the necessary work to abate the structurally hazardous condition of the building. These types of emergency demolitions carried out by HPD's Demolition Bureau with CDBG funds would include full and partial demolitions, and the installation of sidewalk sheds. These IEDs and EDs and the orders contained therein are not issued on the basis of location, household or income type, but on the condition of each building.

In addition to IED and ED violations, DOB issues a third type of violation known as an "Unsafe Buildings" (UB) violation, which is issued by a DOB inspector when the building is deemed unsafe and/or dangerous to its occupants and/or the public. If the owner does not correct the unsafe condition, DOB may initiate an Unsafe Buildings proceeding in New York State Supreme Court. The court may issue a Precept, which is an order directing HPD to perform work to remediate the unsafe conditions at the building. For example, the Precept may direct HPD to seal the property; erect a sidewalk shed, scaffold, or fence; or shore, brace, or demolish the structure. Only demolition or erection of a sidewalk shed in conjunction with a demolition would be performed under City's Demolition Program. Other required activities are covered under other programs.