

TITLE 12 TRADE COMMERCE AND BANKING
CHAPTER 21 COMMUNITY REVITALIZATION AND DEVELOPMENT
PART 3 LENDING PROCEDURES OF THE MAIN STREET REVOLVING LOAN FUND

12.21.3.1 ISSUING AGENCY: Main Street Revolving Loan Committee. Contact State Historic Preservation Division, Department of Cultural Affairs.
[12.21.3.1 NMAC - N, 12/15/08]

12.21.3.2 SCOPE: This rule applies to the members of the main street revolving loan committee, the state historic preservation officer, the historic preservation division, members of the public having business with the committee, the economic development department, the New Mexico main street program, property owners in main street districts, lending institutions and federal agencies or non-profit organizations with funds available for making loans to owners of main street properties.
[12.21.3.2 NMAC - N, 12/15/08]

12.21.3.3 STATUTORY AUTHORITY: Section 3-60C-4, NMSA 1978.
[12.21.3.3 NMAC - N, 12/15/08]

12.21.3.4 DURATION: Five years.
[12.21.3.4 NMAC - N, 12/15/08]

12.21.3.5 EFFECTIVE DATE: December 15, 2008, unless a later date is cited at the end of a section.
[12.21.3.5 NMAC - N, 12/15/08]

12.21.3.6 OBJECTIVE: This rule establishes lending procedures for loans and loan subsidies made to New Mexico main street property owners for the repair, rehabilitation, restoration and preservation of eligible main street properties and to promote preservation and economic development in main street communities. The regulations describe the eligibility requirements for property owners and their property for loans or loan subsidies. The regulations describe the procedures that are followed and the documentation required and entered into by the state of New Mexico, the committee, historic preservation division and lending institutions or other entities that participate in the loan, and property owners, including descriptions of the preliminary loan application, the loan participation agreement, and the development agreement and preservation covenants and deed restrictions. The regulations also describe the terms and conditions contained in the required documentation and agreements entered into between the committee, division, lending institution, any other entity, and the borrower. This rule governs projects jointly funded by the state historic preservation division through the main street revolving loan fund and lending institutions. Entities other than lending institutions, e.g., non-profit organizations, may also contribute funding to the projects.
[12.21.3.6 NMAC - N, 12/15/08]

12.21.3.7 DEFINITIONS:

- A. "Acquisition" means the acquiring of a fee simple interest or of a lesser interest by appropriate mechanism, including but not limited to easement or lease, in a main street property.
- B. "Development agreement and covenants and deed restrictions" means the agreement entered into between the committee, division and the property owner/borrower.
- C. "Committee" means the main street revolving loan committee.
- D. "Division" means the historic preservation division, department of cultural affairs.
- E. "Eligible property" means a site, structure, building or object that is subject to the Main Street Act (3-60B-1 NMSA 1978) or otherwise found pursuant to rule of the committee to merit preservation pursuant to the main street revolving loan act.
- F. "Fund" means the main street revolving loan fund.
- G. "Lending institution" means a commercial bank, savings and loan, credit union or non-profit organization with lending as part of its by-laws.
- H. "Loan contributions" means the amount of funds from the main street revolving loan fund deposited into the loan pool.
- I. "Loan participation agreement" means the agreement entered into between the division and a lending institution.

J. "Loan pool" means an account established and administered by a lending institution that contains contributions from the main street revolving loan fund, funds from participating lending institution(s), and may include funds from private and federal agencies.

K. "Main street revolving loan fund" or MSRL fund means the revolving loan fund established by Section 3-60C-1 through 3-60C-6, NMSA 1978, of the Main Street Revolving Loan Act, consisting of funds appropriated by the legislature of the state of New Mexico, funds available from federal agencies, non-profit organizations, and private funds made available for purposes of the Main Street Revolving Loan Act and receipts from the repayment of loans or loan subsidies made pursuant to the Main Street Revolving Loan Act.

L. "Non-profit organization" means an organization who has received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

M. "Property owner" means the sole owner, joint owner, owner in partnership or an owner of a leasehold interest with a term a term of five or longer of an eligible property.

N. "State historic preservation officer" or "SHPO" means the state official designated by the Cultural Properties Act, Section 18-6-8 NMSA 1978, to serve as the director of the state historic preservation division and administer the Cultural Properties Act and the Main Street Revolving Loan Act, Section 3-60C-4 to administer the main street revolving loan act.

O. "Standards" means the MSRL fund standards for rehabilitation adopted by the committee. The standards are for rehabilitation to guide projects on main street buildings under the Main Street Revolving Loan Act. [12.21.3.7 NMAC - N, 12/15/08]

12.21.3.8 MSRL FUND CONTRIBUTIONS TO THE LOAN POOL AND THE LOAN POOL:

A. MSRL funds are contained in the main street revolving loan fund. Funding of restoration, rehabilitation, repair and preservation of an eligible property is accomplished by the division contributing an amount of MSRL funds into the loan pool.

B. For each approved project, the division and the lending institution shall establish a schedule for disbursement of loan funds to the borrower. The schedule shall be included in the loan participation agreement as provided for in Subsection E of 12.21.3.13 NMAC of these regulations, and indicate the stages of work progress and the anticipated dates of disbursements and amount of MSRL contributions to be directed toward each stage of work progress. The period during which all disbursements of the MSRL contributions for a project shall not exceed a period of twelve months from the date the first disbursement of loan funds was made to the borrower or a period otherwise agreed to by the parties in the loan participation agreement. In either event, such period shall not exceed two years from the date of project loan approval by the division. The disbursement schedule for the MSRL funds from the loan pool shall be based upon the planned restoration, rehabilitation, repair and authorized use of MSRL funds.

C. Prior to the date of a scheduled disbursement of MSRL Funds, the lending institution shall notify the division that a deposit of a specified amount of MSRL funds into the loan pool is necessary. The division shall make an appropriate request to the New Mexico state treasurer's office to effect the deposit of the specified amount of MSRL funds into the loan pool for disbursement to the borrower by the lending institution. An MSRL contribution that is not disbursed to the borrower as provided in Subsection B of 12.21.3.8 NMAC herein shall be returned by the lending institution to the division.

D. The division shall only deposit MSRL funds into the loan pool to pay the costs of completed rehabilitation, restoration, or repair work, or for reimbursement of payment of approved materials delivered to the project site, including eligible costs approved by the division.

E. In addition to MSRL funds, the funds in the loan pool may include other funds from other sources that are available for loans or loan subsidies made pursuant to the Main Street Revolving Loan Act.

F. MSRL funds contributed into and disbursed from the loan pool shall be used in accordance with these regulations.

G. Non-MSRL contributions in the loan pool may be available for costs of land acquisition, purchase, or other costs for which MSRL funds cannot be used.

H. Use of non-MSRL contributions in the loan pool shall be governed by any applicable restrictions, requirements, terms or conditions of the lending institution or other funding entity.

[12.21.3.8 NMAC - N, 12/15/08]

12.21.3.9 ELIGIBILITY OF PROPERTY:

A. An eligible property is any property in the designated main street district, historic and non-historic.

B. Eligible properties may be restored, rehabilitated, repaired, and preserved with a loan or loan subsidy using MSRL contributions to the loan pool.
[12.21.3.9 NMAC - N, 12/15/08]

12.21.3.10 ELIGIBILITY OF PROPERTY OWNERS:

A. An eligible property owner is a sole owner, joint owner, owner in partnership, corporate owner or owner of a leasehold interest of a term not less than five years, of any eligible property as described in Subsection A of 12.21.3.9 NMAC of these regulations.

B. A loan or loan subsidy from the loan pool shall be made only to eligible property owners who agree:

(1) to repay the loan and maintain the registered cultural property as restored, rehabilitated or repaired for a period of not less than five years; and

(2) that the property owner's failure to so maintain the property in conformity with Paragraph (1) of Subsection B of 12.21.3.10 NMAC of these regulations shall constitute a default of the loan or loan subsidy promissory note and mortgage agreement and shall be cause for acceleration of the unpaid loan or subsidy balance and exercise of foreclosure remedies against the collateral by the lending institution; and

(3) to execute a development agreement and covenants and deed restrictions with the committee and other loan agreements or documentation that may be required by the lending institution; and

(4) to rehabilitate, restore or repair a main street property, including rehabilitation of a portion of its front façade, in compliance with the standards as determined and agreed upon by the division; and

(5) to maintain complete and proper financial records regarding the eligible property and to make such records available to the division upon request; and

(6) to complete the proposed rehabilitation, repair or restoration work on the main street property within two years from the date the loan or loan subsidy is approved by the committee and closed by the lending institution; and

(7) to provide sufficient collateral security interest in the property to the state of New Mexico in accordance with 12.21.3.16 NMAC of these regulations; and

(8) to meet the committee criteria for priority ranking of loans or subsidies made from the MSRL contributions to the loan pool; and

(9) to meet the income eligibility criteria to satisfy the lending institution; and

(10) to credit the program with a job sign at least 36" in height by 24" in width, including the names of lender, other participating funding organizations, MSRL fund and the division.

[12.21.3.10 NMAC - N, 12/15/08]

12.21.3.11 MSRL CONTRIBUTIONS - ELIGIBLE COSTS: Costs which can be paid with MSRL funds to the loan pool are architectural, design, graphic design, construction and engineering documents and planning costs, inspection of work in progress, contracted restoration, rehabilitation, and repair and costs necessary to meet code compliance. The division or the lending institution with prior approval of the committee, may use the MSRL funds to the loan pool to pay costs associated with enforcement of the obligations of the borrower under the promissory note, mortgage or loan agreement.
[12.21.3.11 NMAC - N, 12/15/08]

12.21.3.12 MSRL CONTRIBUTIONS - INELIGIBLE COSTS:

A. MSRL contributions to the loan pool shall not be used to pay costs of land acquisition, legal costs, fiscal agents' fees, loan origination fees, points, or other charges incurred by the borrower or which may be imposed by the lending institution or other lending entity, including fees described in 12.21.3.17 NMAC of these regulations and costs that are not expressly permitted in 12.21.3.11 NMAC of these regulations.

B. The borrower shall not apply MSRL funds contributions to the loan pool toward the acquisition or purchase of property.

[12.21.3.12 NMAC - N, 12/15/08]

12.21.3.13 COMMITTEE AND DIVISION PROCEDURES: The committee shall consider loan applications at a regularly scheduled public meeting. The committee will review the application for conformance with the applicable standards and will take action on the application. Such action will take the form of an approval, approval with conditions, tabling or denial. Applicants will be notified of the committee's decisions within 14

calendar or 10 business days of the committee's meeting. If approved division staff will prepare the state's agreement documents for review and approval of the committee.

A. All plans, specifications and descriptions for a project shall be included in the application. All work that will affect the property during the project time frame shall be described, whether or not it is eligible for the state loan funding. The application shall be received in the office of the division at least 15 business days prior to the committee meeting in which it shall be reviewed or an alternate time established by the committee. The division shall determine whether the information being presented is complete and adequate for committee review. The division shall provide the committee with a staff recommendation for the project conformance with applicable standards.

B. Projects must be completed within 24 months of approval date. Alterations to approved projects must be submitted to the division. Major project alterations shall be submitted to the committee for action at a regularly scheduled meeting. The committee may assign to the division review and approval authority for minor project alterations.

C. Loan participation agreement: The committee shall enter into a loan participation agreement with one or more lending institutions, a federal entity, or other funding entity, to make MSRL funds available for deposit into the loan pool for purposes of the Main Street Revolving Loan Act.

D. The loan or loan subsidy from the MSRL contributions to the loan pool for a repair, restoration or rehabilitation project, shall be governed by the terms of the loan participation agreement.

E. The loan participation agreement shall contain the following:

(1) the names and street addresses of all parties participating in the project by making a contribution of funds to the loan pool; and

(2) recitals of the project, definitions, and

(3) a statement specifying the parties' respective percentages of financial participation or "share" in the loan pool, such participation shall be described as a "sale of participation" in the loan or loan subsidy by each party; and

(4) a statement describing the manner in which MSRL funds will be contributed to the loan pool; the lending institution shall notify the division that according to the schedule for disbursements of loan funds to the borrower, a contribution of MSRL funds into the loan pool is necessary; the division shall make an appropriate request to the department of finance and administration and the state treasurer's office to effect a contribution of MSRL funds into the loan pool; and

(5) a statement that upon deposit of the MSRLF contribution to the loan pool, the MSRLF contribution shall accrue interest at the rate of three percent per annum; and

(6) a statement that the lending institution shall disburse loan funds to the borrower in no more than five separate installments and as provided in Subsection B of 12.21.3.8 NMAC herein; and

(7) a statement that the division shall establish an inspection schedule relating to the purposes and goals of the Main Street Revolving Loan Act, authorized uses of the MSRL contributions, and compliance with the development agreement and preservation covenants and deed restrictions and the MSRL standards; and

(8) a statement that provides that the lending institution shall establish an inspection schedule relating to construction progress; and

(9) a statement that provides that MSRLF contributions that are not disbursed to the borrower, as provided in Subsection B of 12.21.3.8 NMAC herein, shall be returned by the lending institution to the division; and

(10) a statement describing the rates of interest charged to the borrower for the loan or loan subsidy attributable to each party who contributed to the loan pool, including the rate charged on the MSRLF contribution as stated in Section C of 3-60C-6 NMSA 1978, and other rates charged on funds contributed by the lending institution; and

(11) a statement indicating the combined interest rate of the loan or loan subsidy; and

(12) a statement describing the administration of the loan pool by the lending institution, including that the lending institution shall:

(a) receive and deposit the MSRLF contributions into the loan pool and, within five working days after receipt of a payment from the borrower, transfer to the division its share of any collections, including interest due to the division; and

(b) service and manage the loan or loan subsidy and collateral according to customary and prudent lending practices; and

(c) be responsible for all aspects of loan origination, servicing, collections, and security; and

(d) document the loan or loan subsidy in the form a promissory note, loan agreement, mortgage and other security agreements(s) that may be required by the lending institution; and

- (e) require that the promissory note, mortgage and other loan documents provide that events of default include the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the standards, or comply with the development agreement and covenants and deed restrictions; and
- (f) ensure that the original priority of the mortgage extends to each subsequent disbursement of loan proceeds to the borrower; and
- (g) provide the division with copies of all documents pertaining to the loan or loan subsidy; and
- (h) monitor the borrower's maintenance of any insurance required on the collateral, payment of all taxes, fees and other charges assessed or otherwise imposed upon the collateral; and
- (i) promptly notify the committee and division of any event of default existing for more than thirty days, and of other significant information relating to the loan; and
- (j) upon notification of a default, consult with the division as to the appropriate course of action and take such agreed upon action with the prior written approval of the division; and
- (13) a statement that the lending institution shall execute and deliver satisfactions, endorsements, receipts, discharges or releases as may be necessary in the proper serving and collection of the loan or loan subsidy; the lending institution shall not modify or supplement any documents associated with the loan or loan subsidy, agree to any extension of time or waiver or forgiveness of debt, take or permit any action that will release the borrower or any guarantor from any obligation or liability with regard to the loan, or impair the validity or priority of the lending institution's or committee's interest in the collateral unless the lending institution obtains the committee's prior written consent; and
- (14) a statement permitting payment of charges related to loan origination, closing, and other service charges incurred by the lending institution in its administration of the loan pool, to be paid from loan funds contributed by the lending institution; and
- (15) a statement describing the committee and division's right to have access to loan or loan subsidy records in the possession of the lending institution; and
- (16) a statement describing all terms of the loan or loan subsidy issued from the loan pool, including:
 - (a) a detailed description of all repair, restoration or rehabilitation for the project as approved by the division and any modifications, exhibits or additional documents as approved by the division and the lending institution; and
 - (b) a statement that the restoration, rehabilitation, or repair must be completed within two years from the date the loan is approved by the division and closed by the lending institution; and
 - (c) a statement that the term of the loan or loan subsidy shall be five years and interest and principal shall be paid in equal installments no less than annually with the first installment due within one year of the date the loan is closed by the lending institution; this statement shall also provide that the loan shall be amortized over a period not to exceed twenty years, with a balloon payment due at the end of the five year term; in lieu of a balloon payment, the lending institution may purchase the remaining loan amount due to the division; and
 - (d) a statement that the loan or loan subsidy shall be secured by the collateral; and
 - (e) a statement that all restoration, rehabilitation, or repair shall be completed in conformity with the MSRL fund standards for rehabilitation as determined by the division; and
 - (f) a statement that failure by the borrower to comply with the standards shall be an event of default under the promissory note and the mortgage; and
 - (g) a statement that the division shall notify the borrower of any noncompliance with the standards, that the borrower has a specific period of time to cure the noncompliance, and if the default is not cured the division shall notify the lending institution of the default and the lending institution shall pursue appropriate remedies as stated in the loan participation agreement, promissory note or mortgage; and
 - (h) a statement that the lending institution shall condition the closing of the loan or loan subsidy upon the borrower's execution of a development agreement and covenants and deed restrictions with the committee, as described in Subsection F of 12.21.3.13 NMAC of these regulations; and that if the loan is repaid prior to the expiration of five years from the date the loan or loan subsidy is closed by the lending institution, the covenants and deed restrictions shall not be extinguished and shall remain in effect until the termination date of the development agreement and covenant and deed restriction; and a requirement that this provision be contained in the mortgage and all other documents evidencing security for the loan or loan subsidy; and
 - (i) a statement that the promissory note, mortgage, and any other documents pertaining to security for the loan or loan subsidy shall include provisions stating that the borrower's default in connection with any loan, loan subsidy or other obligation secured by a lien superior to the mortgage or development agreement and covenants and deed restrictions shall constitute an event of default of the mortgage and loan agreement; the division

and the lending institution shall have the right (but not the obligation) to cure any default in connection with superior liens and charge the costs of curing to the borrower; and

(j) a statement requiring that a construction sign acknowledging the assistance of the MSRL, division and the lending institution, or other participating party, shall be displayed prominently at the project being restored, rehabilitated or repaired; and

(k) a statement requiring the lending institution to require the borrower to maintain financial records regarding the project throughout the term of the loan or loan subsidy and shall make such records available to the lending institution and the division upon request; and

(17) a statement regarding the lending institution's transfer of payments to the division, including any interest, in conformity with the division's share of participation in the loan pool; and

(18) a statement regarding quarterly reports to the participating parties from the lending institution concerning the project's financial and restoration, rehabilitation or repair status; and

(19) a statement identifying the name and street address of individuals to whom written notice of matters concerning the project shall be addressed and directed; and

(20) a statement describing the applicable law that governs the loan participation agreement; and

(21) a statement providing for severability, non-assignability, amendment of the loan participation agreement, and

(22) a statement regarding execution of the loan participation agreement in counterparts; and duly witnessed signatory lines of the parties.

F. Development agreement and covenants and deed restrictions: The committee shall enter into a development agreement and covenants and deed restrictions with the property owner/borrower to govern the restoration, rehabilitation, or repair of a project. The development agreement and covenants and deed restrictions shall contain the following:

(1) the names and street addresses of the parties, including the property owner's heirs, successors and assigns and the date the agreement is executed; and

(2) recitals, including a statement that all covenants and deed restrictions shall run with the land for no less than a period of five years, shall bind all future owners and occupants of the property during that time, and be recorded; and

(3) covenants applicable to the property owner and that pertain to the owner's obligations to do or refrain from doing specified activities that affect the condition of the restoration, rehabilitation or repaired property; and

(4) a statement that nothing in the development agreement prohibits the owner from obtaining financial assistance from sources other than the MSRL fund, provided that the lien of the covenants and deed restrictions shall not be made subordinate to any mortgage or other lien interest made in connection with other financial assistance without the committee's approval; and

(5) a statement that the standard of review for compliance with the covenants and deed restrictions or review of construction, alteration, repair, maintenance, or casualty damage, shall be the MSRL standards and any applicable state or local standards; and

(6) a statement that the division determines the applicability of the standards and the application of alternative standards that the division determines to be reasonable; and

(7) a provision regarding casualty damage or destruction to the property; and

(8) covenants applicable to the committee and that pertain to conveyance, assignment or transfer of its interest in the development agreement; and

(9) a provision regarding inspection of the property; and

(10) a provision describing the division's remedies to correct violations of the development agreement and covenants and deed restrictions; and

(11) a provision regarding notice from the owner to the committee in the event the owner proposes to sell the property; and

(12) a requirement that as long as the covenants and deed restrictions run with the land, the owner shall insert the covenants and deed restrictions in any subsequent deed or other legal instrument by which the owner divests itself of either the fee simple title to, or its possessory interest in the property; and

(13) a provision regarding recording of the development agreement and covenants and deed restrictions; and

(14) provisions regarding subordination of subsequent mortgages and the rights of the division with respect to senior liens, which shall require that:

(a) the covenants and deed restrictions shall have priority over all mortgages, other rights affecting the property including tax liens, which are granted after execution and recording of the development agreement; and

(b) the covenants and deed restrictions shall not be extinguished or terminate upon a mortgagee taking title to the property within five years of the date of closing of the loan, as a result of foreclosure or otherwise; and

(c) that the borrower's default in connection with any loan or other obligation secured by a lien superior to the mortgage or lien of the covenants and deed restrictions shall constitute an event of default of the covenants and deed restrictions, and that the division or lending institution shall have the right to cure any such default and charge the costs of curing to the borrower; and

(d) if a mortgage grants to a mortgagee the right to receive proceeds of a condemnation proceeding arising from an exercise of eminent domain as to any part of the property or the right to receive insurance proceeds as a result of any casualty, hazard or accident occurring to or about the property, the mortgagee shall have a superior claim to the insurance and condemnation proceeds and entitled to the same in preference to the division until the mortgage is paid off and discharged, notwithstanding that the mortgage is subordinate in priority to the covenants and deed restrictions; and

(e) if a mortgagee has received an assignment of the leases, rents and profits of the property as security or additional security for a loan, the mortgagee shall have a superior claim to the leases, rents and profits of the property and shall be entitled to receive same in preference to the division until said mortgagee's debt is paid off, notwithstanding that the mortgage is subordinate to the covenants and deed restrictions; and

(f) until a mortgagee or purchaser at foreclosure obtains ownership of the property following foreclosure of its mortgage or deed in lieu of foreclosure, the mortgagee or purchaser shall have no obligation, debt or liability under the covenants and deed restrictions; and

(15) a statement of the name and street address of the individuals to whom written notice is to be directed; and

(16) a requirement that upon the request of the division, the owner shall provide evidence of compliance with terms of the development agreement and covenants and deed restrictions; and

(17) provisions regarding evidence of compliance, and interpretation and enforcement of the development agreement and covenants and deed restrictions; and

(18) an expiration date of the development agreement and covenants and deed restrictions, and duly witnessed and notarized signature lines of the owner and the division.

G. Promissory note:

(1) A promissory note signed by the borrower and evidencing the loan or loan subsidy may be required by the lending institution. With the inclusion of the requirement of Paragraph (2) of Subsection G of 12.21.3.13 NMAC below, the form of the note and its terms shall be determined by the lending institution using customary and prudent lending practices by lending institutions in New Mexico.

(2) The promissory note shall include a provision that events of default include without limitation, the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the standards, or comply with the development agreement and covenants and deed restrictions.

H. Mortgage:

(1) A mortgage evidencing the security interest for the loan or loan subsidy may be required by the lending institution. With the inclusion of the requirement in Paragraph (2) of Subsection H of 12.21.3.13 NMAC below, the form of the mortgage and its terms shall be determined by the lending institution using customary and prudent lending practices for lending institutions in New Mexico.

(2) The mortgage shall include a provision that events of default include without limitation, the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the standards, or comply with the development agreement and covenants and deed restrictions.

I. Loan agreement:

(1) A loan agreement evidencing the loan or loan subsidy may be required by the lending institution. With the inclusion of the requirement in Paragraph (2) of Subsection G of 12.21.3.13 NMAC below, the form of the agreement and its terms shall be determined by the lending institution using customary and prudent lending practices for lending institutions in New Mexico.

(2) The mortgage shall include a provision that events of default include without limitation, the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the standards, or comply with the development agreement and covenants and deed restrictions.

[12.21.3.13 NMAC - N, 12/15/08]

12.21.3.14 PRIORITY RANKING OF MAIN STREET PROJECTS AND PRELIMINARY LOAN APPLICATION FORM:

A. The committee in consultation with the division shall annually review and adopt a system for priority ranking of criteria applied to loan applications in a regular public meeting of the MSRLC. The priority ranking will assist the committee and the division in the review of applications and in funding decisions.

B. The division shall provide annual public notice of the availability of loans or loan subsidies from the main street revolving loan fund and the availability of a main street preliminary loan application form from the division.

C. A preliminary loan application form shall consist of the street address of the property, the names and street addresses of the parties, and their tax identification; the status of the property in a main street district per Subsection E of 12.21.3.7 NMAC, ownership, existence of legal protections, application date, description of proposed work, photographs, statement of condition, drawings or plans when required to describe work, and cost estimates of rehabilitation, restoration, or repairs, project start and completion dates, agreement to provide financial information per Paragraph (9) of Subsection B of 12.21.3.10 NMAC, and signature and date lines for the applicants. It will also include a certification page with a statement that the division has reviewed the project according to the priority ranking and the MSRL standards and recommends the project to the committee for approval, approval with conditions, denial, or tabling the application pending further information, division staff and committee signature and date lines.

[12.21.3.14 NMAC - N, 12/15/08]

12.21.3.15 LENDING INSTITUTION'S PROCEDURES:

A. After approval by the committee of a preliminary loan application form and identification of a lending institution, the designated officer of the lending institution will advise the property owner of any additional documentation required by the lending institution.

B. Applicants will be notified in writing by the lending institution regarding its determination to approve or disapprove a loan for a project. The designated officer of the lending institution will advise the borrower of the amount, terms and conditions of the loan.

C. Approval of a loan or loan subsidy from the loan pool will be made in accordance with the lending institutions customary and prudent lending practices.

[12.21.3.15 NMAC - N, 12/15/08]

12.21.3.16 PROPERTY OWNER'S COLLATERAL SECURITY INTEREST:

A. The sufficiency of the collateral security interest in a main street property whose repair, rehabilitation or restoration is to be funded with funds from the main street revolving loan fund and lending institution(s) shall be determined by the participating lending institution(s) in accordance with the customary and prudent lending practices.

B. The offer of collateral security in the form of an assignment to the state of New Mexico and the committee, of a first mortgage, second mortgage, or assignment of lease, shall be commensurate with risk and approved by the division in consultation with the lending institution.

[12.21.3.16 NMAC - N, 12/15/08]

12.21.3.17 LENDING INSTITUTION'S LOAN PROCESSING FEES AND RELATED CHARGES:

Recording, title, credit report fees and costs charged by the lending institution(s) participating in the loan for a project shall not be paid with MSRL contributions to the loan pool.

[12.21.3.17 NMAC - N, 12/15/08]

12.21.3.18 MSRL LOAN AMOUNT AND REPAYMENT BY PROPERTY OWNER:

A. The amount of MSRL funds contributed to the loan pool shall not exceed \$75,000 for any one project except if granted by a waiver of the committee at a public meeting.

B. The property owner of an approved project will repay the loan or loan subsidy in monthly installments. Payment on the interest and principal shall be in accordance with Subparagraph (c) of Paragraph (16) of Subsection C of 12.21.3.13 NMAC of these regulations.

[12.21.3.18 NMAC - N, 12/15/08]

12.21.3.19 MSRL STANDARDS FOR REHABILITATION: The committee shall review architectural applications for conformance with the following MSRL standards:

A. Rehabilitation standards for all eligible projects applying to the program provide the applicant with guidance on maintaining the architectural, design, historic, and main street character of the property, during and after the contracted restoration, rehabilitation, repair and work necessary to meet code requirements.

B. The following standards have been adopted by the committee as the standards for rehabilitation for eligible properties.

(1) A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

(2) The historic character of a property will be retained and preserved. The removal of distinctive materials or alterations of features, spaces, and spatial relationships that characterize a property will be avoided.

(3) Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

(4) Changes to a property that have acquired historic significance in their own right will be retained and preserved.

(5) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

(6) Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and where possible materials. Replacement of missing features will be substantiated by documentary and physical evidence.

(7) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(8) Archaeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(9) New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

(10) New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

[12.21.3.19 NMAC - N, 12/15/08]

12.21.3.20 COMPLIANCE WITH MSRL STANDARDS, INSPECTION AND REPORTING REQUIREMENTS:

A. All rehabilitation, restoration, repair and preservation of projects funded by a loan or loan subsidy from the main street revolving loan fund shall be governed by the MSRL standards as applicable.

B. The committee may require professional design, architectural or engineering services for any rehabilitation, restoration, repair and preservation projects funded by a loan or loan subsidy from the main street revolving loan fund.

C. All plans and specifications, when required, shall be approved by the committee and the division prior to commencement of rehabilitation, restoration, repair and preservation of a project. The committee or its architectural subcommittee may also review project plans and specifications.

D. The committee may direct the division to review a project in progress at any time upon notice to the property owner and may require correction of any work not conforming to the standards or approved plans and specifications. The division will review all completed projects to ensure conformity with the standards and the approved application, plans and specifications.

E. Written progress reports on projects undergoing rehabilitation, restoration, repair and preservation shall be submitted by the property owner to the division with a request for a draw and after a division inspection of work. Reports shall include a detailed description of progress to date, a status report for the entire project and a financial summary.

[12.21.3.20 NMAC - N, 12/15/08]

12.21.3.21 AGREEMENT PROVISION VARIANCES: The requirements described in any section of these regulations may be subject to variance in accordance with the agreement and negotiations of the parties. Changes or divergence from the provisions described therein are within the discretion of the committee and the division.

[12.21.3.21 NMAC - N, 12/15/08]

HISTORY OF 12.21.3 NMAC: [RESERVED]