

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
EMERGENCY PREPAREDNESS (GOHSEP); LOUISIANA STATE HISTORIC
PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION
& TOURISM (SHPO); ALABAMA-COUSHATTA TRIBE OF TEXAS (ACTT);
CHITIMACHA TRIBE OF LOUISIANA (CTL); CHOCTAW NATION OF
OKLAHOMA (CNO); JENA BAND OF CHOCTAW INDIANS (JBCI); MISSISSIPPI
BAND OF CHOCTAW INDIANS (MBCI); SEMINOLE TRIBE OF FLORIDA (STF);
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP) -
REGARDING FEMA'S HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

WHEREAS, the Federal Emergency Management Agency (FEMA), of the Department of Homeland Security, proposes to provide assistance with funds from the Hazard Mitigation Grant Program (HMGP) pursuant to Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5170c, and its implementing regulations, 44 CFR part 206, subpart N, to the Louisiana Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) in order that GOHSEP may provide funding to assist eligible Sub-Grantees as a result of damages from Hurricanes Katrina (DR-1603-LA), Rita (DR-1607-LA), Gustav (DR-1786-LA) and Ike (DR-1792-LA) in Louisiana (the Disasters); and

WHEREAS, the objective of HMGP is to accomplish long-term hazard mitigation measures that reduce the loss of life and property from future disasters; grants under HMGP are available statewide; and hazard mitigation activities funded may not necessarily relate to the damages caused by the Disasters; and

WHEREAS, FEMA, the Louisiana State Historic Preservation Officer (SHPO), GOHSEP, the Alabama-Coushatta Tribe of Texas (ACTT), the Caddo Nation (CN), the Chitimacha Tribe of Louisiana (CTL), the Choctaw Nation of Oklahoma (CNO), the Coushatta Tribe of Louisiana (CT), the Jena Band of Choctaw Indians (JBCI), the Mississippi Band of Choctaw Indians (MBCI), the Quapaw Tribe of Oklahoma (QTO), the Seminole Nation of Oklahoma (SNO), the Seminole Tribe of Florida (STF), and the Tunica-Biloxi Tribe of Louisiana (TBTL), and the Advisory Council on Historic Preservation (ACHP), executed a Programmatic Agreement on August 17, 2009 (2009 Statewide PA), to satisfy FEMA's responsibilities pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f *et seq.* (NHPA), for all Undertakings funded or assisted by FEMA in Louisiana as a result of Federally declared disasters; and

WHEREAS, this Louisiana HMGP Programmatic Agreement (LA HMGP PA) serves to fulfill the terms of the Gulf Coast Hazard Mitigation Grant Program Programmatic Agreement (Gulf Coast HMGP PA) executed on December 12, 2007. The LA HMGP PA is governed by the 2009 Statewide PA and is compatible with its goals. Unforeseen actions and any considerations unable to be addressed by the Stipulations of this LA HMGP PA shall be governed by the 2009 Statewide PA, which is the successor document the 2004 Statewide PA, the document which was

in effect at the time the Gulf Coast HMGP PA was executed. Stipulation VI of the Gulf Coast HMGP PA states that “Standard Undertakings will undergo review according to the terms of the 2004 Statewide PA until new State-Specific PAs are executed”; and

WHEREAS, for any consultations under review per the 2009 Statewide PA prior to the execution of this LA HMGP PA, FEMA may elect to complete the review under the 2009 Statewide PA or complete the review under the terms of this LA HMGP PA, once executed; and

WHEREAS, FEMA has determined that properties proposed for assistance by GOHSEP and subject to financial assistance from other federally-funded programs, such as the Louisiana Road Home Program funded by the U.S. Department of Housing and Urban Development (HUD) and administered by the Louisiana Office of Community Development (OCD), received other federal monies as compensation grants; and

WHEREAS, under Section 404 of the Stafford Act, *Mitigation* is defined as the effort to reduce loss of life and property by lessening the impact of disasters by funding program-eligible HMGP actions, while under Section 106 of the National Historic Preservation Act, *Mitigation* is implemented to compensate for adverse effects to a Historic Property. Because Section 404 and Section 106 regulations both use the term *Mitigation*, to avoid confusion in this LA HMGP PA, the term *Treatment Measures* will be used for Section 106 mitigation actions. All other uses of the term *Mitigation* are reserved for HMGP activities.

WHEREAS, FEMA, SHPO, Mississippi State Historic Preservation Officer (MS SHPO) and the ACHP executed the Gulf Coast HMGP PA to develop a framework for implementing a limited exception to federal program requirements (HMGP Limited Exception) that would apply to projects for eligible hazard mitigation actions initiated without prior FEMA Section 106 review, defined as “Pre-Effective Date Undertakings” and “Grace-Period Undertakings” in the Gulf Coast HMGP PA, and to identify and implement innovative approaches to Section 106 review of “Standard Undertakings” that will be initiated following FEMA’s Section 106 review; and

WHEREAS, the Gulf Coast HMGP PA, as originally executed and as amended, provides for the HMGP Limited Exception solely to properties funded under Hurricanes Katrina (DR-1603-LA) and Rita (DR-1607-LA), and that the HMGP Limited Exception does not apply to any other disasters nor any applications received by FEMA after December 31, 2010; and

WHEREAS, FEMA issued Disaster-Specific Guidance entitled *Eligibility Criteria for Limited Exception for Retroactive Approvals under the Hazard Mitigation Grant Program for Louisiana and Mississippi* (DSG) on January 15, 2008, to establish parameters to implement the HMGP Limited Exception and to define eligible mitigation actions and recipients for funding under the HMGP Limited Exception; and

WHEREAS, pursuant to Stipulations V.C.1, V.C.2, and VIII.A of the Gulf Coast HMGP PA and in consultation with Consulting Parties of the Gulf Coast HMGP PA, FEMA conducted a public outreach and education effort in Louisiana to provide information and guidance, including preservation-sensitive tools, techniques, and approaches whose adoption would result in the avoidance or minimization of adverse effects on historic properties; and

WHEREAS, FEMA's public outreach and education effort in Louisiana resulted in a media release on January 16, 2008, and February 19, 2008, consisting of a press release, fact sheets, and question/answer response sheets; public notices printed in the Times Picayune, Plaquemines Gazette, St. Bernard Voice, Lake Charles American Press, Leesville Daily Leader, The Advocate, Hammond Daily Star, and St. Tammany News on various dates between January 16, 2008, and February 17, 2008; a public notice printed in the February 2008 issue of Preservation Resource Center's (PRC's) *Preservation in Print*; website materials posted on www.fema.gov/gcro beginning on February 5, 2008; a historic preservation workshop held at the PRC on February 13, 2008; an article written jointly by FEMA and the National Trust for Historic Preservation (NTHP) titled *Rebuilding Historic Louisiana* in the March 2008 issue of PRC's *Preservation in Print*; and a public service announcement distributed to various media outlets on March 5, 2008; and

WHEREAS, FEMA posted notice on the Louisiana Department of Culture, Recreation, and Tourism (CRT) website on June 3, 2010, titled "Public Notice Regarding the Section 106 Review and the Development of the Louisiana State-Specific Hazard Mitigation Grant Program Programmatic Agreement (LA HMGP PA) - Seeking Public Comment" to provide information to the public on the development and implementation of this LA HMGP PA and provide 15 days for the public to comment on the CRT website or by mail and received no comments; and

WHEREAS, FEMA provided information to websites maintained by NTHP and PRC regarding the opportunity for the public to comment on the CRT website or mail comment to FEMA, and accordingly PRC posted this information; and

WHEREAS, Section 602 of the American Recovery and Reinvestment Act of 2009 (ARRA) states: "(t)he Administrator of the Federal Emergency Management Agency may not prohibit or restrict the use of funds designated under the hazard mitigation grant program for damage caused by Hurricanes Katrina and Rita if the homeowner who is an applicant for assistance under such program commenced work otherwise eligible for hazard mitigation grant program assistance under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c) without approval in writing from the Administrator."; and

WHEREAS, GOHSEP requested that FEMA address properties identified in ARRA in addition to the HMGP Limited Exception properties and FEMA, SHPO, the MS SHPO, and the ACHP executed the *First Amendment to the Programmatic Agreement Among the Federal Emergency Management Agency; Louisiana State Historic Preservation Officer; Mississippi State Historic Preservation Officer; and Advisory Council on Historic Preservation Regarding the Federal Emergency Management Agency's Hazard Mitigation Grant Program Exception (Gulf Coast HMGP PA)* on October 8, 2010; and

WHEREAS, FEMA has agreed to allow for the funding of properties identified in Section 602 of ARRA, defined as Post-Grace Period Undertakings in the First Amendment to the Gulf Coast HMGP PA, and may provide funding for those properties that meet FEMA HMGP Program eligibility requirements under Section 404 of the Robert T. Stafford Disaster Relief and

Emergency Assistance Act (42 U.S.C. 5170c). This funding is limited to homeowners whose residential properties received damage from Hurricanes Katrina and Rita only; and

WHEREAS, FEMA has determined that Pre-Effective Date Undertakings, Grace Period Undertakings, Post-Grace Period Undertakings, and Standard Undertakings (for which the Grantee has or will have documented Sub-Grantee participation and verified HMGP eligible activities and actions) funded under the HMGP may have effects on properties listed or eligible for listing in the National Register of Historic Places (NRHP) in all parishes of Louisiana; and

WHEREAS, in accordance with 36 CFR Part 800, FEMA has obligations to address these effects, including measures to avoid, minimize or resolve adverse effects for all eligible properties which will be adversely affected by Undertakings funded by FEMA; and

WHEREAS, all properties submitted to FEMA for funding will be submitted via Traditional applications or Large Scale Sub-Grantee applications. Traditional applications are submitted by Sub-Grantees and include a broad range of property types (such as residential, commercial, public, and private non-profit facilities) and a broad range of eligible HMGP mitigation activities and actions. Large-Scale Sub-Grantee applications are submitted by Agencies (including the Office of Community Development) and include a narrow range of property types (primarily residential properties) and a narrow range of eligible HMGP mitigation activities and actions. Both Traditional applications and Large Scale Sub-Grantee applications may contain HMGP Limited Exception properties, as well Post-Grace Period Undertakings; and

WHEREAS, due to the extraordinary circumstances of the Disasters and the need for property owners to undertake actions to mitigate their homes and properties from future damages in a timely fashion, some property owners proceeded with activities prior to the request for federal funds or federal review. Other homeowners are still awaiting federal review and federal funds to become available in order to move forward with their personal recovery and mitigation plan. Many of these properties, most of which are residential and are submitted via Large Scale Sub-Grantee applications, are located in or adjacent to historic properties and districts and will result in a range of effects, some of which may be adverse; and

WHEREAS, due to these circumstances, FEMA, in consultation with ACHP, SHPO, GOHSEP, Tribes who requested to be Consulting Parties to this LA HMGP PA, and the other Consulting Parties, will implement Programmatic Treatment Measures for HMGP Limited Exception properties, Post-Grace Period Undertakings, and all residential properties submitted via Large-Scale Sub-Grantee applications in lieu of traditional property-by-property reviews and treatments; and

WHEREAS, using Programmatic Treatment Measures to address HMGP Limited Exception properties in Louisiana, is specifically designed to fulfill Stipulation VII. E of the Gulf Coast HMGP PA which states: "Based on the level and extent of adverse effects caused in each State by the Undertakings, FEMA will work with Consulting Parties on a State-specific basis to craft innovative approaches to mitigation and/or treatment plans." Implementation of Programmatic Treatment Measures also fulfills FEMA's Section 106 responsibilities to consider any adverse

effects associated with Post-Grace Period Undertakings as per the First Amendment to the Gulf Coast HMGP PA; and

WHEREAS, SHPO, GOHSEP, MBCI, NTHP, PRC, and City of New Orleans Historic District Landmarks Commission (HDLC) suggested various Programmatic Treatment Measures in the LA HMGP PA; and

WHEREAS, to define the extent of Programmatic Treatment Measures, FEMA calculated an amount of no less than 1% and not to exceed 2% of the projected \$647 Million in anticipated HMGP funds to be obligated and developed Programmatic Treatment Measures with the Consulting Parties reflecting this amount; and

WHEREAS, FEMA and GOHSEP, in total, will expend monies on Programmatic Treatment Measures based on actual obligated monies and will only exceed the 1% threshold if a specific Programmatic Treatment Measure is unfinished when the 1% threshold is reached; and

WHEREAS, the use of an allocated amount based on a percentage formula is a direct response to extraordinary circumstances of these Disasters, and this methodology, endorsed by parties to this LA HMGP PA, shall not be considered a precedent for resolving adverse effects for future FEMA-funded Undertakings; and

WHEREAS, Undertakings submitted via Traditional Applications that do not meet the HMGP Limited Exception or Post-Grace Period Undertaking criteria, will be reviewed according to the Standard Review procedures per this LA HMGP PA; and

WHEREAS, Pursuant to the 2009 Statewide PA, Stipulation IX.A.2 and the Gulf Coast HMGP PA, Stipulation VII, FEMA, ACHP, SHPO, Participating Tribes, GOHSEP, and other Consulting Parties shall develop this LA HMGP PA to govern the resolution of anticipated adverse effects from HMGP Undertakings; and

WHEREAS, Pursuant to the May 2008 National Flood Insurance Program (NFIP) Floodplain Management Bulletin, Historic Structures, FEMA Document P-467-2, which provides an explanation of program requirement exemptions for designated historic structures, FEMA shall provide technical guidance to GOHSEP so that it, in turn, may inform Sub-Grantees and property owners of NFIP's special considerations granted to historic properties; and

WHEREAS, SHPO is consulting with FEMA to define and establish Areas of Potential Effects, identify and evaluate historic properties for NRHP eligibility, apply the criteria of adverse effect, and perform expedited Section 106 reviews, and was a Signatory to the 2009 Statewide PA, Gulf Coast HMGP PA, and is a Signatory to this LA HMGP PA; and

WHEREAS, pursuant to 36 CFR § 800.6(a)(1), FEMA notified the ACHP in a letter dated November 9, 2007, of the development of this LA HMGP PA and the ACHP advised FEMA that it would participate in its development and be a Signatory; and

WHEREAS, in accordance with 36 CFR § 800.6(c)(1), FEMA, SHPO, and ACHP are signatories with the authority to execute, amend, and terminate the LA HMGP PA; and

WHEREAS, GOHSEP, FEMA's Grantee, is receiving financial assistance from FEMA and providing monies and other assistance to eligible Sub-Grantees to carry out the Undertakings, was an Invited Signatory to the 2009 Statewide PA and is invited to sign this LA HMGP PA as an Invited Signatory; and

WHEREAS, the Alabama-Coushatta Tribe of Texas (ACTT), the Caddo Nation (CN), the Chitimacha Tribe of Louisiana (CTL), the Choctaw Nation of Oklahoma (CNO), the Coushatta Tribe of Louisiana (CT), the Jena Band of Choctaw Indians (JBCI), the Mississippi Band of Choctaw Indians (MBCI), the Quapaw Tribe of Oklahoma (QTO), the Seminole Nation of Oklahoma (SNO), the Seminole Tribe of Florida (STF), and the Tunica-Biloxi Tribe of Louisiana (TBTL) are Federally recognized sovereign Indian Nations that have a government-to-government relationship with the United States; may have ancestral interest, aboriginal interest, or tribal lands in Louisiana; attach religious and cultural significance to historic properties that may be affected by the Undertakings; and pursuant to 36 CFR § 800.4(c)(1) have special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance, therefore were jointly notified by FEMA and invited to consult in the development of this LA HMGP PA and these Indian tribes acknowledged FEMA's notice and/or provided no additional comments on the LA HMGP PA; and

WHEREAS, the ACTT, CNO, CTL, JBCI, MBCI, and STF (Participating Tribes), have participated in this consultation to develop this LA HMGP PA and are invited to sign as Invited Signatories; and

WHEREAS, FEMA will consult with the Participating Tribes to identify historic properties of religious and cultural significance to them that may be affected by the Undertakings in compliance with all applicable federal and state legal requirements; and

WHEREAS, in accordance with 36 CFR § 800.6(c)(2), Invited Signatories who actually sign this LA HMGP PA are signatories with the authority to amend and terminate the LA HMGP PA; and

WHEREAS, FEMA notified all sixty-four Parish Governments in the State of Louisiana of the development of this LA HMGP PA and invited them to consult in the development of this LA HMGP PA; and

WHEREAS, the following Parish Governments have participated in this consultation process: Calcasieu Parish Police Jury, City of New Orleans, Jefferson Parish and St. Tammany Parish and are invited to sign as a Concurring Party; and

WHEREAS, OCD, an eligible Sub-Grantee of GOHSEP, was notified by FEMA of the development of this LA HMGP PA, has participated in this consultation process, and is invited to sign as a Concurring Party; and

WHEREAS, HDLC, NTHP, PRC, the Louisiana Chapter of Documentation and Conservation of Building Sites and Neighborhoods of the Modern Movement US (DOCOMOMO/NOLA), the New Orleans Chapter of the American Institute of Architects (AIA), the Louisiana Landmarks Society (LLS), the Foundation for Historical Louisiana, and the Cane River National Heritage Area have been notified by FEMA and invited to consult in the development of this LA HMGP PA; and

WHEREAS, PRC and NTHP have participated in this consultation process and are invited to sign as a Concurring Party; and

WHEREAS, in accordance with 36 CFR § 800.6(c)(3), Concurring Parties are invited by FEMA to concur with the terms of the LA HMGP PA, and that refusal of any invited party to concur does not invalidate the LA HMGP PA; and

WHEREAS, in accordance with 36 CFR § 800.2(d) FEMA and the Consulting Parties to this LA HMGP PA shall seek and consider the views of the public in a manner that reflects the nature and complexity of the Undertakings, the potential of such actions to affect historic properties, the likely interest of the public in those effects, the public benefit in expending funds for treatment measures, confidentiality concerns of the Indian tribes, private individuals and businesses, and the relationship of the federal involvement to Undertakings; and

NOW, THEREFORE, FEMA, SHPO, ACHP, GOHSEP, and Participating Tribes agree that the Undertakings in Louisiana shall be implemented in accordance with the following Stipulations to satisfy FEMA's Section 106 responsibilities.

STIPULATIONS

FEMA and GOHSEP, to the extent of their legal authority, and in coordination with SHPO, ACHP, and Participating Tribes shall ensure that the following measures are implemented:

I. APPLICABILITY

A. Under the HMGP Limited Exception, as defined in the Gulf Coast HMGP PA, as amended, this LA HMGP PA addresses and applies to FEMA's Section 106 responsibilities for actions under four discreet categories:

1. The HMGP Limited Exception's Pre-Effective Date Undertakings, including:
 - Residential Properties,
 - Commercial Properties, and
 - Private-Non-Profit Organization Properties

Pre-Effective Date Undertakings are defined as specified projects with eligible hazard mitigation actions initiated without prior FEMA Section 106 review during the period August 29, 2005, to January 15, 2008, for Hurricane Katrina or September 23, 2005, to January 15, 2008, for Hurricane Rita. GOHSEP (Grantee) has documented Sub-Grantee participation and verified HMGP eligible activities

and actions for these projects. These Pre-Effective Date Undertakings did not undergo Section 106 review prior to obligation of FEMA funding, and are also known as “Work-In-Progress” projects or “WIPs”;

2. HMGP Limited Exception’s Grace Period Undertakings, including:
 - Residential Properties

Grace Period Undertakings are defined as specific projects with eligible hazard mitigation actions initiated without prior FEMA Section 106 review during the period January 16, 2008 to March 16, 2008, with the exclusion of historic properties owned by public agencies and Private Non-Profit (PNP) organizations for which the exception date ended January 15, 2008. The Grantee has documented Sub-Grantee participation and verified HMGP eligible activities and actions for these projects. These Grace Period Undertakings did not undergo Section 106 review prior to obligation of FEMA funding, and are also known as “Work-In-Progress” projects or “WIPs”. ;

3. HMGP Undertakings identified in the ARRA, also known as Post-Grace Period Undertakings include:
 - Residential Properties

Post-Grace Period Undertakings did not undergo Section 106 review prior to obligation of FEMA funding and are applicable only to homeowners whose residential properties were damaged by Hurricanes Katrina and Rita and who commenced work after March 16, 2008.

4. HMGP Standard Undertakings apply to all remaining projects in these Disasters for which the Grantee has documented Sub-Grantee participation and verified HMGP eligible activities and actions that will be initiated in all parishes of Louisiana following completion of FEMA’s Section 106 review.

B. Regardless of the four discreet categories above, the procedures set forth in the LA HMGP PA pertain to all HMGP applications submitted through 2010.

C. The LA HMGP PA defines two distinct methods for FEMA to meet its Section 106 responsibilities. Appendix E illustrates these two review paths.

1. **Standard Review Process Utilizing Standard Treatment Measures or Memorandum of Agreement to Resolve Adverse Effects:** FEMA’s Section 106 responsibilities for Standard Undertakings, typically submitted through Traditional applications, which include Residential properties, Commercial properties, Private Non-Profit properties and all Public properties that do not meet the criteria to be considered Pre-Effective Date Undertakings, will follow the Standard Review process outlined in Stipulations VI through XI of this LA HMGP PA. Additionally, it may be determined by FEMA through consultation that a property of any Undertaking type located within, adjacent to, or within 100

meters of the boundaries of archaeological sites recorded with SHPO and that are labeled eligible or undetermined eligible will undergo Standard Review as per Stipulations VI through VII and IX through XI of this LA HMGP PA.

2. **Programmatic Treatment Measures:** FEMA's Section 106 responsibilities for HMGP Limited Exception properties (including Pre-Effective Date and Grace Period Undertakings), Post-Grace Period Undertakings, and all residential properties submitted via Large-Scale Sub-Grantee applications will utilize the Programmatic Treatment Measures process outlined in Stipulation XII of this LA HMGP PA. At the time of the execution of this LA HMGP PA, there are no known Non-Residential Pre-Effective Date Undertakings. Additionally, the following exclusion applies: the use of Programmatic Treatment Measures for any property located within, adjacent to, or within 100 meters of the boundaries of an archaeological site recorded with SHPO and that is labeled eligible or undetermined eligible will be determined by FEMA on a case-by-case basis. FEMA may determine through consultation outlined in Stipulation IX.D that these properties will undergo Standard Review as per Stipulations VI through VII, and IX through XI of this LA HMGP PA.
- D. Archaeological Exclusion Properties: These are defined as properties located within, adjacent to, or within 100 meters of the boundaries of an archaeological site recorded with SHPO and that is previously determined as NR-eligible or of undetermined eligibility. It will be determined by FEMA through consultation outlined in Stipulation IX.D on a case-by-case basis, whether FEMA will meet its Section 106 responsibilities following the Standard Review Process or the use of Programmatic Treatment Measures.
- E. The LA HMGP PA applies to the full range of HMGP eligible hazard mitigation activities and actions, including but not limited to the following categories (with a detailed description of activities and actions in Appendix B):
1. Retrofitting of Existing Buildings
 2. Elevation
 3. Pilot Reconstruction
 4. Property Acquisition & Structure Demolition
 5. Property Acquisition & Structure Relocation
 6. Minor Localized Flood Reduction
 7. Infrastructure Protection/Retrofit
 8. Safe Rooms
 9. Dry Floodproofing
 10. Wet Floodproofing
 11. Soil Stabilization
 12. Wildfire Management
 13. 5% Initiative Projects
 14. Post Disaster Code Enforcement
 15. Hazard Mitigation Planning

- F. FEMA will utilize the review procedures outlined in this LA HMGP PA for any additional hazard mitigation activities, not outlined in Stipulation I.E, that become eligible for funding or should the scope of any of the existing categories change.

II. GENERAL

- A. Should FEMA determine that the Section 106 review for an Undertaking has been completed by FEMA or another federal agency that also has Section 106 responsibilities for said Undertaking, FEMA is not required to conduct an additional Section 106 review provided that FEMA confirms that the scope and effects of the Undertaking as previously reviewed has not changed and Tribal consultation in accordance with 36 CFR part 800 has been accomplished. FEMA will document these findings in order to demonstrate that the requirements of Section 106 have been satisfied. Should FEMA disagree with determinations made by another agency in the previous Section 106 review, or its resolution of adverse effects, FEMA will review the Undertaking in accordance with this LA HMGP PA.
- B. Time designations are in calendar days. The failure of any Consulting Party to comment during the time frames set in this LA HMGP PA will be treated by FEMA as concurrence with FEMA's findings and determinations, and FEMA may proceed to the next step in the review without taking additional steps to seek comments from that party.
- C. If a review period included in this LA HMGP PA ends on a Saturday, Sunday, or Federal holiday, the review period will be extended until the first business day following the Saturday, Sunday, or Federal holiday.
- D. The Consulting Parties will send and accept official notices, comments, requests for further information and documentation, and other communications required by this LA HMGP PA by e-mail. If the size of an e-mail message is unusually large or an e-mail is returned to a Sender because its size prevents delivery, the Sender will contact the recipient(s) and determine alternative methods to deliver the message and/or its attachments.
- E. Time frames for review will begin on the day an e-mail message and all required attachments are received, unless the Sender has a basis to know that the message was not received. These bases include, but are not limited to, returned messages stating that delivery has failed or knowledge that the recipient's electronic communications have been disrupted. The time frame for review does not begin until the next day if a message is sent after 4:00 p.m. Central time. The time frame for any request for review that is not sent by e-mail begins on the day that it is received by the reviewing Consulting Party. Time sensitive information that is not sent by e-mail should be sent by overnight mail, courier, or hand-delivered and the time frame for its review will be measured by the date on which the delivery is signed for by the agency or organization representing the Consulting Party.

- F. Responses are timely if they are sent by e-mail at any time during the days included within the time frame allowed for review. Responses sent by mail will be accepted as timely if they are postmarked by the last day allowed for the review.
- G. It is the responsibility of each Consulting Party to immediately inform FEMA of any changes to the name, address, e-mail address or phone number of respective Consulting Party point-of-contact. FEMA will forward this information to the Consulting Parties and will include the updated contact list in the annual report. The failure by any Consulting Party to this LA HMGP PA to notify FEMA of changes to their point-of-contact's information shall not be grounds for asserting that notice of a proposed action was not received. Any updates referenced in this stipulation shall not require amendment of the LA HMGP PA.
- H. The Consulting Parties acknowledge the importance of all comments, and FEMA will make reasonable accommodation to extend time frames for review if requested in advance.

III. ROLES AND RESPONSIBILITIES

A. FEMA Responsibilities

1. FEMA is the lead federal agency for all Section 106 consultations when FEMA monies are involved, unless FEMA and other participating federal agency/ies determine that it is appropriate to designate another federal agency to take the lead role. This determination and notification to the Consulting Parties will be made in writing.
2. FEMA shall use federal or contractor staff who meet the Secretary of the Interior's (SOI) Professional Qualification Standards (48 FR 44716, Sept. 1983), as determined by FEMA's Federal Preservation Officer (FPO) or designee, to develop determinations of NRHP eligibility and findings of effect required by this LA HMGP PA, and to implement Treatment Measures for which FEMA is the responsible agency.
3. Semi-Annual Report: On the last business day of January and July of each year, FEMA shall provide all Consulting Parties with a semi-annual report on this LA HMGP PA so long that this LA HMGP PA is in effect, unless the report due date is extended by FEMA in writing by agreement of the Signatories. This report shall include information as described in Stipulation XV of this LA HMGP PA.
4. Semi-Annual Consultation Meeting: FEMA shall convene a semi-annual meeting with the Consulting Parties to this LA HMGP PA to evaluate the effectiveness of this LA HMGP PA and the need for any modifications or amendments. As provided in Stipulation XV, this consultation meeting will occur no later than 60-

days after FEMA provides the Semi-Annual Report described in Stipulation XV. FEMA may determine to conduct the meeting via teleconference.

5. FEMA shall be responsible for the implementation of and funding of Programmatic Treatment Measures specified in Stipulation XII.D of this LA HMGP PA.
6. Upon request, FEMA shall forward project information and materials to individuals and organizations who have a demonstrated interest in the Undertaking and who may participate as Consulting Parties due to the nature of their historic preservation interests, and/or legal or economic relation to the Undertaking or affected properties. FEMA may withhold project information and materials if it determines, following consultation with the ACHP and any Indian tribe that may attach religious and cultural significance to historic properties that may be affected by the Undertaking, that disclosure of the information may cause a significant invasion of privacy, risk of harm to the historic property; or impede the use of a traditional religious site by practitioners, or other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties.
7. FEMA shall electronically update the Grantee, who in turn will notify the Sub-Grantee, of the status of all projects meeting "Programmatic Allowances" (Stipulation VI) and those in "Standard Review" (Stipulations VII-XI). This shall include the date the consultation began, any issues with the consultation, and the projected completion date.

B. SHPO Responsibilities

1. SHPO will provide available background data to FEMA regarding listed and eligible historic properties that may be affected by the Undertakings.
2. SHPO will review and comment on NRHP eligibility and effect determinations, as well as other Section 106 documentation, in consultation with FEMA in the timelines provided for in this LA HMGP PA. Large survey and analysis reports, and any effects determinations derived from them, will follow a standard SHPO 30-day review period.
3. SHPO will participate in reviews of Undertakings through site visits, meetings, reviews of project documentation, and consultation meetings as needed and any other roles appropriate to the completion of the goals of this LA HMPG PA..
4. SHPO will review and comment on the implementation of all Treatment Measures as stipulated in this LA HMGP PA and/or as requested by FEMA.

5. SHPO shall participate in the Semi-Annual Consultation Meetings described in Stipulation III.A.4 convened by FEMA to review effectiveness of the LA HMGP PA.

C. ACHP Responsibilities

1. ACHP will provide recommendations per Stipulation XIX and XX to address objections regarding implementation of the LA HMGP PA.
2. ACHP will advise FEMA on ACHP participation in project-specific Memoranda of Agreement (MOAs) to resolve adverse effects.
3. ACHP will participate in the Semi-Annual Consultation Meeting convened by FEMA to review the effectiveness of this LA HMGP PA.

D. GOHSEP Responsibilities

1. GOHSEP shall be responsible for fulfilling its obligations and assisting FEMA in implementing this LA HMGP PA accordance with its stipulations and terms.
2. GOHSEP shall coordinate with Sub-Grantees to ensure that adequate documentation is provided to FEMA for Section 106 review, and shall cooperate with FEMA to obtain additional information in a timely manner from the Sub-Grantee(s) as requested by FEMA.
3. GOHSEP shall ensure that all Sub-Grantees understand that failure to comply with the terms of this LA HMGP PA may jeopardize FEMA funding and/or participation in the Undertaking.
4. GOHSEP shall include the requirements in the Sub-Grantee Agreement between GOHSEP and each Sub-Grantee for FEMA assistance that specifically requires the Sub-Grantee to comply with this LA HMGP PA. GOHSEP shall ensure that the Sub-Grantee Agreement provides that construction-related activities applicable to Section 106 Standard Review Procedures cannot begin until the Sub-Grantee is notified in writing that the Undertaking is approved by FEMA and GOHSEP.
5. GOHSEP shall take all responsible steps to ensure that the Sub-Grantee completes all specified treatment measures, project-specific MOA commitments, and other agreed-upon measures required to resolve adverse effects for Sub-Grantees proposed Undertakings, as defined in this LA HMGP PA and documentation of such is delivered to GOHSEP who, in turn, will submit them to FEMA within the defined timeframes. If a Sub-Grantee does not meet its treatment measure(s) obligations or its treatment measure(s) funding responsibilities, GOHSEP will work with FEMA regarding the status of the project's program eligibility. Should FEMA, through GOHSEP, or other parties, determine that Sub-Grantee

commitments have not been fulfilled, FEMA will notify GOHSEP who, in turn, shall notify the Sub-Grantee that FEMA may initiate recoupment or deobligation of funding for the subject Undertaking.

6. In coordination with FEMA requests, GOHSEP will assure that Sub-Grantees make their best efforts to provide third party access to FEMA and/or its contractors to a property for the purposes of fulfilling the stipulations of this LA HMGP PA. Should the Sub-Grantee not provide third-party access to a property, GOHSEP will work with FEMA regarding the status of the project's program eligibility. Should FEMA determine that Sub-Grantee has not provided reasonable third-party access, then FEMA shall notify GOHSEP who, in turn, shall notify the Sub-Grantee that FEMA may initiate recoupment or deobligation of funding for the subject Undertaking.
7. GOHSEP shall notify FEMA as soon as practicable once GOHSEP has been notified by a Sub-Grantee of any changes to a scope of work. FEMA shall determine whether or not historic properties are affected. FEMA will reopen the Section 106 review pursuant to Stipulations VI through XI of this LA HMGP PA in the event it determines the changes may affect historic properties.
8. At the request of FEMA, GOHSEP shall assist FEMA in the preparation of the Semi-Annual report summarizing activities carried out under the terms of this LA HMGP PA. Such reports will serve as the basis for the Semi-Annual Consultation Meeting.
9. GOHSEP shall be responsible for the implementation of and funding of Programmatic Treatment Measures specified in Stipulation XII.D of this LA HMGP PA. GOHSEP shall use SOI-qualified staff or SOI-qualified private contractors to provide technical assistance on historic preservation issues.

E. Participating Tribe Responsibilities

1. Participating Tribes shall review FEMA's National Register eligibility determinations and effect findings, as well as other Section 106 documentation, and provide comments within the timeframes required by this LA HMGP PA.
2. Participating Tribes have determined that they have no interest in consulting on certain types or categories of Undertakings included in this LA HMGP PA. Consistent with Stipulation IV.D a Participating Tribe may notify FEMA if it elects to waive its opportunity to review and comment on additional types of Undertakings included in this LA HMGP PA.

F. Consulting and Concurring Party Responsibilities

1. A Consulting Party will be recognized by FEMA as a Concurring Party starting on the date the Consulting Party signs this LA HMGP PA as a Concurring Party and provides FEMA with a record of this signature.
2. Non-Signing Consulting Parties may identify resources of interest to them due to the nature of their historic preservation interest, and/or legal or economic relation to the Undertaking or affected historic property. Upon their request in writing, FEMA shall forward these requesting parties information and materials subject to FEMA's discretion as described in Stipulation III.A.6.
3. If a Concurring Party or Consulting Party does not provide comments during the timeframes provided for the review, FEMA may proceed to the next step in the review without taking additional steps to seek comments from such party.

IV. TRIBAL CONSULTATION

- A. Where applicable under this LA HMGP PA, consultation with Participating Tribes shall be undertaken in accordance with the 2009 Statewide PA, Stipulation III.B and XV.E and will acknowledge notifications of Tribal preferences for geographic areas of interest and Undertakings of interest as formally communicated to FEMA.
- B. FEMA recognizes that Tribes possess special expertise in assessing the NRHP eligibility of properties that may possess religious and cultural significance to them, including sites that may contain human remains and/or associated cultural items. Tribal representatives, traditional cultural authorities, or other religious/traditional practitioners of the Participating Tribes will cooperate with FEMA to provide available information for the assessment of historic properties that may have tribal religious and cultural significance. Such tribal representatives are not required to meet federal and/or state professional qualification standards in order to aid in historic property assessment.
- C. Participating Tribes may designate representative(s) to carry out the duties related to this LA HMGP PA. Participating Tribes shall notify FEMA in writing upon appointment of the designated representative(s) and the scope of the delegated responsibilities.
- D. To date and in accordance with the 2009 Statewide PA, Participating Tribes have determined and have notified FEMA in writing that they have no interest in consulting on certain types or categories of Undertakings included in this LA HMGP PA, but will notify FEMA in writing of any additions and/or modifications to these determinations in writing. The decision of a Participating Tribe to decline consultation on certain types or categories of Undertakings will not abrogate its ability to consult on any other types or categories of Undertakings.
- E. The CT, CTL, JBCI, and TBTL have reservation lands within the State of Louisiana, and FEMA will consult with these Tribes regarding Undertakings on their tribal lands

in accordance with 36 CFR § 800.2(c)(2)(i)(A). The TBTL and JBCI have assumed responsibilities under Section 101(d)(2) of NHPA and have a Tribal Historic Preservation Officer (THPO). As required by 36 CFR § 800.2(c)(2)(i)(A), FEMA shall consult with the TBTL and JBCI THPO in lieu of SHPO regarding Undertakings occurring on or affecting historic properties on its tribal lands. FEMA will consult with CT and CTL regarding Undertakings on their tribal lands in accordance with 36 CFR § 800.2(c)(2)(i)(B). An Indian tribe may enter into a separate Agreement to specify how it will carry out responsibilities including concerns over the confidentiality of information with FEMA under 36 CFR § 800.2(c)(2)(ii)(E).

- F. In making decisions regarding public disclosure, the Signatories shall abide by Stipulation III.A.6, Section 304 of NHPA and any other applicable laws.
- G. Contact names, mailing and shipping addresses, fax numbers, telephone numbers and e-mail addresses for Participating Tribes are listed in Appendix A. Participating Tribes must notify FEMA as described in Stipulation II.G of any changes to this information, and FEMA will update the information and notify other parties to this LA HMGP PA. This information may be updated without the need to amend this LA HMGP PA.

V. PUBLIC PARTICIPATION

- A. FEMA completed public outreach and participation activities which have been memorialized in “Whereas” clauses found in this LA HMGP PA.
- B. FEMA recognizes the public interest in all the Undertakings subject to this LA HMGP PA and will make reasonable efforts to inform the public of the progress of these Undertakings in a timely manner by posting the Semi-Annual Report on the Department of Culture, Recreation and Tourism (CRT) website and through other methods that FEMA deems reasonable and necessary. FEMA will ensure that public comments for Standard Reviews will allow for multiple methods of communicating and reasonable time for public comment.
- C. Members of the public may identify resources of interest to them due to the nature of their historic preservation interest, and/or legal or economic relation to the Undertaking or affected historic property. Upon their request in writing, FEMA shall forward these requesting parties information and materials subject to the limitations set out in Stipulations III.A.6 and IV.F.
- D. Public Outreach and Participation will be undertaken via applicable Project-Specific MOAs as per Stipulation XI.B and XI.C of this LA HMGP PA.
- E. FEMA shall accept responses to its requests for public comments through the U.S. mail, e-mail submittals, and via the CRT website.

- F. FEMA will identify and assign an SOI-qualified Point-of-Contact to the Consulting Parties regarding the implementation of Standard Treatment Measures (STMs), Project-Specific MOA Treatment Measures and Programmatic Treatment Measures required by this LA HMGP PA. Contact information for this individual will be provided by e-mail to the Consulting Parties within 30 days of the execution of this LA HMGP PA. FEMA will notify Consulting Parties by e-mail as soon as practicable of any changes to the contact information.

VI. PROGRAMMATIC ALLOWANCES

- A. FEMA shall determine if all the actions within the scope of an Undertaking are included in the Programmatic Allowances set forth in this LA HMGP PA, Appendix C. Upon such a determination, FEMA shall document it in the project file and may authorize funding for the Undertaking. This will complete the Section 106 review for the Undertaking unless an Unexpected Discovery or unforeseen effect to historic properties is reported.
- B. If an Undertaking is not composed entirely of the activities listed as Programmatic Allowances found in Appendix C, FEMA will conduct the applicable Standard Section 106 review for the Undertaking only with regard to the activities not addressed in the Programmatic Allowances.
- C. If Programmatic Allowances are not applicable, the Undertaking will be subject to the Standard Project Review outlined in Stipulations VI through XI of this LA HMGP PA.
- D. After FEMA documents a determination that all of the actions within the scope of an Undertaking are included in the Programmatic Allowances, it shall notify the Grantee electronically, who in turn shall notify the Sub-Grantee of Undertakings which FEMA has determined meet the Programmatic Allowances.

VII. DETERMINE APPLICABILITY, APE, AND COORDINATE SECTION 106 STANDARD REVIEW FOR ABOVE-GROUND AND ARCHAEOLOGICAL HISTORIC PROPERTIES

- A. Applicability
 - 1. These Standard Review procedures in this stipulation apply to those properties submitted via Traditional Applications and which meet the criteria below:
 - a. Are Residential and Non-Residential properties (e.g. those considered to be commercial or Private-Non Profit Organizations) that do not meet the HMGP Limited Exception criteria or the definitions outlined in Stipulation I.A.1 through 3 of this LA HMGP PA; or
 - b. Are Public properties; or

- c. Are Archaeological Exclusion Properties: Including those properties where FEMA determined in consultation with SHPO and Participating Tribes that the application of Programmatic Treatment Measures as outlined in Stipulation XII is not appropriate. The following properties may be submitted via Traditional applications and/or Large Scale Sub-Grantee applications:
 - i. Residential properties for which FEMA has not completed Section 106 review and work on the Undertaking has not commenced. Criteria for these properties are outlined in Stipulation I.A.4.
 - ii. Residential properties that meet the Pre-Effective Date, Grace Period and Post Grace Period Undertaking criteria outlined in Stipulation I.A.1 through 3
 - iii. Commercial and Private Non-Profit Organization properties that meet the Pre-Effective Date criteria outlined in Stipulation I.A.1
- 2. These standard review procedures apply to the full range of LA HMGP eligible hazard mitigation activities.
- 3. For all HMGP Undertakings which do not involve ground-disturbance or where ground disturbing activities meet Programmatic Allowances, but the property contains structures fifty years or older, FEMA shall consult with SHPO to complete the identification, evaluation, and assessment of effects on above-ground historic properties required by Section 106 and this LA HMGP PA with no further involvement of Participating Tribes unless FEMA determines there is an issue of public controversy or where policy and procedures set forth in this LA HMGP PA may be affected that requires additional outreach and consultation.

B. Area of Potential Effects (APE)

The APE shall be defined as follows:

- 1. HMGP Undertakings Limited to In-Kind Repair, Retrofit, or Rehabilitation: The APE shall be defined as the individual facility when an Undertaking is limited to: in-kind repair, as defined in 36 CFR §68.3(b)(6); retrofit; or rehabilitation, as defined in 36 CFR §68.2(b) of an individual facility's interior or exterior as defined in 44 CFR §206.201(c) with associated ground disturbance.
- 2. All other HMGP Undertakings: The APE shall be the subject property's tax parcel, unless the Undertaking is planned within a National Register Historic District, National Historic Landmark (NHL) District, National Register-Eligible Archaeological Site, or situated on a large tract of land in a rural area, wherein FEMA shall define and establish the APE in consultation with SHPO and

Participating Tribes. For establishing the APE where there are identified viewshed considerations, see Stipulation VIII.B.

3. Where the APE is not subject to the aforementioned definitions, the APE shall be established pursuant to Stipulation VIII.A of the 2009 LA Statewide PA that requires FEMA to define and establish the APE in consultation with SHPO and Participating Tribes.

C. Coordination with Grantee and Sub-Grantees

1. FEMA shall electronically update the Grantee, who in turn will notify the Sub-Grantee, of the status of all projects meeting “Programmatic Allowances” (Stipulation VI) and those in “Standard Review” (Stipulations VII-XI). This shall include the date the consultation began, any issues with the consultation, and the projected completion date.
2. Reporting by FEMA to the Grantee shall be completed bi-monthly as an Excel status report or equivalent agreed-upon electronic format.

VIII. SECTION 106 STANDARD REVIEW PROCEDURES SPECIFIC TO ABOVE-GROUND HISTORIC PROPERTIES

- A. Applicability: These Standard Review procedures in this Stipulation apply to above-ground property types, such as standing structures and historic districts, and Undertakings identified in Stipulation VII.A.1 through 3.
- B. Viewshed Considerations for APE in National Register-eligible or Listed Historic Districts: In addition to the steps to determine the APE set out in Stipulation VII.B, in National Register-eligible or listed Historic Districts, FEMA shall delineate the APE to include the Subject Property for the proposed Undertaking as well as structures in the vicinity which may border, be adjacent to, or located in the immediate vicinity of the Subject Property. FEMA’s SOI qualified staff will determine if a site visit is required to assess the unique circumstances of the Subject Property, to include the position of other structures within the APE relative to vegetation, site conditions and/or irregular street layouts that may influence the final APE. At a minimum, FEMA will require documentation of the APE to include at least three (3) photographs of the Subject Property, including two (2) oblique views of each corner of the main façade and one (1) elevation of the main façade. In addition, FEMA will require one (1) context/streetscape photo showing properties on either side of the Subject Property; one (1) context/streetscape photo showing approximately three (3) structures directly across the street. Additional photos may be needed, per the discretion of FEMA’s SOI qualified staff.
- C. Identification and Evaluation of Historic Properties within the APE: In accordance with 36 CFR § 800.4(b) and (c), FEMA shall determine, in consultation with SHPO,

if the APE, as defined in Stipulation VII.B of this LA HMGP PA contains historic properties that are listed, or eligible for listing, in the NRHP.

- D. Findings of No Historic Properties Affected: In accordance with 36 CFR § 800.4(d)(1), FEMA shall make a finding of “No Historic Properties Affected” if FEMA determines that no historic properties are present in the Above Ground APE or the Undertaking is designed to avoid all effects to character-defining features of the historic properties within the Above Ground APE. FEMA shall notify SHPO of its finding and provide the documentation specified in 36 CFR § 800.11(d) for a 15 day review and comment period. Unless SHPO objects in writing to the finding within 15 days, FEMA shall complete Section 106 review.
- E. Apply Criteria of Adverse Effect: If FEMA finds an Undertaking may affect identified above-ground historic properties, FEMA shall apply the Criteria of Adverse Effect per 36 CFR § 800.5(a). FEMA shall consult with SHPO to apply the Criteria of Adverse Effects, 36 CFR § 800.5(a)(1) and consider views provided by SHPO and any views of Consulting Parties and the public who have previously expressed an interest in the historic property, when it applies these Criteria. FEMA may consider the potential effects of the Undertaking on National Register-eligible or listed standing structures and other types of historic properties, such as traditional cultural properties, separately.
- F. Findings of No Adverse Effect
1. If FEMA determines that an Undertaking does not meet the Criteria of Adverse Effect, FEMA may finalize a finding of “No Adverse Effect” pursuant to 36 CFR § 800.5(b). FEMA shall consult with SHPO when it applies these Criteria, and will also consider the views of Consulting Parties who have expressed an interest in the property. FEMA shall notify SHPO and Consulting Parties who have expressed interest in the property of the “No Adverse Effect” finding and provide them with the supporting documentation specified in 36 CFR § 800.11(e). If SHPO and/or any notified Consulting Party do not object in writing to FEMA within the 15 day review and comment period, FEMA may complete its Section 106 review. If SHPO or any Consulting Parties who have expressed an interest in the property do not provide written comments to FEMA within the 15 day review and comment period, FEMA may assume that the party does not object to the determination.
 2. Should SHPO or an identified Consulting Party raise a timely objection to FEMA’s “No Adverse Effect” determination per 36 CFR § 800.5(c)(2), FEMA will consult with the objecting party or parties to address the objection. Should FEMA and the SHPO fail to agree on a FEMA finding of “No Adverse Effect”, FEMA shall proceed in accordance with Stipulation XIX of this LA HMGP PA.
- G. Strategies to Avoid or Minimize Adverse Effects

Whenever possible, FEMA, in coordination with SHPO, GOHSEP and Sub-Grantees will modify the Undertaking to avoid or minimize Adverse Effects or potential Adverse Effects on historic properties, . FEMA will coordinate any conditions through GOHSEP who, in turn, will coordinate with the Sub-Grantee to investigate the feasibility and prudence of any proposed modifications and take into account potential project budgetary constraints prior to authorizing any modifications. FEMA shall retain review and final approval authority for any project modifications. Examples of such modifications and conditions include, but are not limited to:

1. Introduction of small scale screening features, such as trellises, etc., that minimize visible changes.
2. Use of elements that simulate materials, features, finishes, and construction techniques compatible with historic materials, features, scale and proportions of historic properties.
3. Elevation plans that place an emphasis on preserving the historic character of an individual property and/or district by including elements, design features, and elevation techniques that insure physical and visual compatibility with existing materials, finishes, spatial relationships, and setting.
4. In communities that have architectural design or historic preservation regulations or guidelines, building and structure reconstructions that are consistent with such regulations or guidelines, or are compatible with the historic characteristics of surrounding settings and landscapes.
5. If such modifications and conditions are not possible, FEMA shall initiate consultation for Adverse Effects as cited in Stipulation VIII.H.

H. Findings of Adverse Effect

1. FEMA shall notify SHPO, ACHP, and Consulting Parties and members of the public who have expressed an interest in the historic property when it determines that the Undertaking may adversely affect a historic property and provide the documentation specified in 36 CFR § 800.11(e).
2. If SHPO, ACHP and/or Consulting Parties do not object in writing to FEMA within the 15 day review and comment period, FEMA may assume that SHPO, ACHP and/or the Consulting Parties do not object to the proposed Adverse Effect determination and FEMA shall proceed forward with the resolution of adverse effects as specified below.

I. Resolution of Adverse Effects

The resolution of Adverse Effects shall be achieved, in priority order, through the application of STMs in Stipulation X.E or when determined infeasible by FEMA shall occur through the development of project-specific MOAs per Stipulation XI.

IX. SECTION 106 REVIEW PROCEDURES SPECIFIC TO ARCHAEOLOGICAL HISTORIC PROPERTIES

- A. Applicability: These Standard Review procedures in this Stipulation apply to archaeological property types and Undertakings identified in Stipulation VII.A.1 through 3 of this LA HMGP PA.
- B. FEMA shall determine the APE in accordance with the definition of the APE in Stipulation VII.B of this LA HMGP PA.
- C. Consulting Parties to this LA HMGP PA agree that, as a best practice, Avoidance and Minimization is the **preferred** means of preventing adverse effects to archaeological properties that are eligible or listed in NRHP.
- D. Archaeological Exclusion Properties Review Procedures:
 - 1. FEMA will identify Archaeological Exclusion Properties defined in Stipulation I.D. FEMA will notify GOHSEP who in turn will notify the Sub-Grantee of the need to conduct a property-specific review at these locations.
 - 2. Once the Grantee has documented Sub-Grantee participation and verified HMGP eligible activities, FEMA will follow the steps outlined in Stipulation IX.D through I. to determine, in consultation with SHPO and Participating Tribes, whether the application of Programmatic Treatment Measures as outlined in Stipulation XII is appropriate.
 - 3. If it is determined that Programmatic Treatment Measures are not appropriate, FEMA will follow the steps outlined in Stipulations IX.J, X, and XI of this LA HMGP PA.
 - 4. All costs related to the implementation of STMs or treatment measures defined in Project-Specific MOAs will be funded from the Project budget of the Sub-Grantee
 - 5. Consulting Parties acknowledge that for those Archaeological Exclusion Properties that meet the criteria for Pre-Effective Date, Grace Period or Post Grace Period Undertakings, FEMA will engage in Section 106 identification, evaluation and resolution of adverse effects after the adverse effect, or potential adverse effect, has occurred. For those sites labeled “eligible” or “undetermined” in the State of Louisiana NRHP Eligibility Database, FEMA will conduct Identification and Evaluation efforts outlined in Stipulation IX.E. If the Evaluation results in a determination that the site is not eligible, and the original

determination was “undetermined”, FEMA will assume that the historic property was not eligible prior to the Undertaking. If the Evaluation results in a determination that the site is not eligible, and the original determination was “eligible”, FEMA may assume that the historic property was eligible prior to the Undertaking or will consult with SHPO and Participating Tribes regarding eligibility.

6. For those properties identified as Archaeological Exclusion Properties and for which work has not been initiated or completed, FEMA will notify GOHSEP who in turn shall notify the Sub-Grantee not to authorize work at that location until such time as the consultation process is complete and any adverse effects have been resolved. Once notified by FEMA that this process is complete, GOHSEP shall notify the sub-grantee that the required consultation and resolution of adverse effects process is complete, and that the Undertaking at the specified location may be initiated.

E. Identification and Evaluation for Properties within the Archaeological APE

1. FEMA shall review information to include, but not limited to, the project’s scope of work, Sub-Grantee supplied documentation, maps, and photographs. FEMA will review any available information from SHPO and Participating Tribes to facilitate the historic property identification and evaluation process.
2. In accordance with 36 CFR § 800.4(a)-(c), FEMA shall determine, in consultation with SHPO and Participating Tribes, if the Archaeological APE established in Stipulations VII.B and IX.B contains historic properties that are listed in, or eligible for listing in the NRHP.
3. FEMA may conduct additional subsurface investigations to confirm the NRHP eligibility of recorded archaeological sites, listed in the Louisiana Division of Archaeology’s National Register of Historic Places’ Eligibility Database (NRHP Eligibility Database), after reviewing the existing documentation in conjunction with the proposed Undertaking.
4. FEMA will not be required to conduct additional identification or re-evaluate eligibility for archaeological sites labeled as “ineligible” for the NRHP in the NRHP Eligibility Database. For these properties labeled as “ineligible”, Section 106 shall be considered complete and FEMA project funding may be authorized.
5. FEMA will review any available information from the SHPO and Participating Tribes to facilitate the historic property identification and evaluation process.
6. FEMA, in coordination with GOHSEP and Sub-Grantees, will conduct appropriate subsurface investigations as determined by FEMA in consultation with SHPO and Participating Tribes if the site may be of religious and cultural significance to them to determine eligibility for all previously recorded

archaeological sites identified as “undetermined” in the State of Louisiana NRHP Eligibility Database.

- F. Finding of No Historic Properties Affected for Archaeological Properties: In accordance with 36 CFR § 800.4(d)(1), FEMA shall make a finding of “No Historic Properties Affected” if FEMA determines that no historic properties are present in the Archaeological APE; or the Undertaking is designed to avoid all effects to the historic properties within the Archaeological APE. FEMA shall notify SHPO and Participating Tribes of its finding and provide the documentation specified in 36 CFR § 800.11(d) for a 15 day review and comment period. Unless SHPO and Participating Tribes object in writing to the finding within 15 days, FEMA shall complete Section 106 review.
- G. Apply Criteria of Adverse Effect for Archaeological Historic Properties: If FEMA finds an Undertaking may affect identified archaeological historic properties, FEMA shall apply the Criteria of Adverse Effect per 36 CFR § 800.5(a). An Adverse Effect is found when an Undertaking meets the Criteria of Adverse Effect per 36 CFR § 800.5(a)(1). FEMA shall consult with SHPO and Participating Tribes to apply the Criteria of Adverse Effect, 36 CFR § 800.5(a)(1), and consider views provided by SHPO, Participating Tribes, and any views of Consulting Parties and the public who have previously expressed an interest in the historic property, when it applies these Criteria. FEMA may consider the potential effects of the Undertaking on National Register-eligible or listed archaeological properties and traditional cultural properties separately.
- H. Findings of No Adverse Effect for Archaeological Historic Properties
1. If FEMA determines that an Undertaking does not meet the Criteria of Adverse Effect, FEMA may finalize a finding of “No Adverse Effect” pursuant to 36 CFR § 800.5(b). FEMA shall consult with SHPO, Participating Tribes, and Consulting Parties who have expressed an interest in the property when it applies these Criteria. FEMA shall notify SHPO, Participating Tribes and the Consulting Parties with the expressed interest in the property of the “No Adverse Effect” finding and provide them with the supporting documentation specified in 36 CFR § 800.11(e). If SHPO, Participating Tribes and/or Consulting Parties do not object in writing to FEMA within the 15 day review and comment period, FEMA may complete its Section 106 review. If SHPO, Participating Tribes, or Consulting Parties who have expressed interest in the property do not provide written comments to FEMA within the 15 day review and comment period, FEMA may assume that party does not object to the determination.
 2. Should SHPO, a Participating Tribe, or an identified Consulting Party raise a timely objection to FEMA’s “No Adverse Effect” determination per 36 CFR § 800.5(c)(2), FEMA will consult with the objecting party or parties to address the objection. Should the objection not be resolved, FEMA shall proceed in accordance with Stipulation XIX of this LA HMGP PA.

I. Strategies to Avoid or Minimize Adverse Effects for Archaeological Historic Properties

Whenever possible and in coordination with SHPO, Participating Tribes, GOHSEP and Sub-Grantees, FEMA shall condition projects with modifications to the Undertaking that minimize or avoid Adverse Effects or potential Adverse Effects on historic properties. FEMA will coordinate any conditions through GOHSEP, who in turn will coordinate with the Sub-Grantee to investigate the feasibility and prudence of any proposed modifications and take into account potential project budgetary constraints prior to authorizing any modifications. FEMA shall retain review and final approval authority for any project modifications. Examples of such modifications and conditions include, but are not limited to:

1. Project-specific design measures that avoid Adverse Effects to archaeological properties by incorporating preservation in place measures per existing ACHP guidance.
2. Proactive precautionary measures, in cooperation with GOHSEP and Sub-Grantees, to readily identify and/or prevent Adverse Effects on archaeological historic properties, including archaeological monitoring of ground disturbing activities, establishment of work buffer zones, and restrictions on heavy equipment use and construction techniques.
3. Prior to the performance of any ground-disturbing activity initiated by FEMA involving a recorded archaeological site categorized as “eligible” or “undetermined eligibility”, the following process will take place:
 - a. FEMA, in coordination with GOHSEP and the Sub-Grantee, shall conduct a site visit of the area subject to ground-disturbing activity to assess the recorded archaeological site in relation to the proposed activity.
 - b. FEMA, in coordination with SHPO and Participating Tribes will determine if further investigation and/or subsurface investigations are needed to refine the extent of the recorded site in relation to the proposed ground-disturbing activity. FEMA, in coordination with GOHSEP and Sub-Grantee, will conduct and document further investigation, if warranted, in order to prepare a Site Specific Treatment Plan.
 - c. FEMA will develop a Site Specific Treatment Plan, in consultation with SHPO, Participating Tribes, GOHSEP, and Sub-Grantees, which defines both a vertical and horizontal APE taking into consideration the distribution and relative density of deposits in relation to the proposed ground-disturbing activity. The Site Specific Treatment Plan

will detail restrictions or other measures that construction crews will implement that are designed to avoid Adverse Effects to the recorded archaeological site.

- d. If the Site Specific Treatment Plan is unable to address measures designed to avoid Adverse Effects, or if the Sub-Grantee is unable to comply with these restrictions, FEMA will initiate consultation for Adverse Effects.

J. Findings of Adverse Effect for Archaeological Historic Properties

1. FEMA shall notify SHPO, Participating Tribes, Consulting Parties and members of the public who have expressed an interest in the historic property when it determines that the Undertaking may Adversely Affect a historic property and provide the documentation specified in 36 CFR §800.11(e).
2. If SHPO, ACHP, Participating Tribes and/or Consulting Parties do not object in writing to FEMA within the 15 day review and comment period, FEMA may assume that SHPO, ACHP, Participating Tribes and/or the Consulting Parties do not object to the proposed Adverse Effect determination and FEMA shall proceed with the resolution of adverse effects as specified below.

- K. Resolution of Adverse Effects to Archaeological Historic Properties: The resolution of Adverse Effects shall be achieved, in priority order, through the application of STMs in Stipulation X, or when determined infeasible by FEMA, shall occur through the development of project-specific MOAs per Stipulation XI.

X. STANDARD TREATMENT MEASURES FOR PROPERTIES DEFINED IN STIPULATION VII. A. 1

- A. If FEMA determines that an Undertaking will adversely affect an historic property, it may propose to resolve adverse effects through application of a STM(s) set out in Stipulation X.E.
- B. Applicability
 1. The Standard Treatment Measures (STMs) are applicable to those properties defined in Stipulation VII.A.1 (a, b, c)
 2. STMs may be applicable to Archaeological Exclusion Properties if it is determined by FEMA, in consultation with SHPO and Participating Tribes, that this is an appropriate method for the resolution of adverse effects.
 3. FEMA may not propose to resolve adverse effects through STMs if the Undertaking may affect a known human burial or may adversely affect an NHL.

- C. FEMA will consult with GOHSEP and the Sub-Grantee prior to determining if the Adverse Effect will be addressed through STMs or through the development of a project-specific MOA. The following procedures will be followed:
1. If, after consultation with GOHSEP and the Sub-Grantee, FEMA determines to implement STMs or a project-specific MOA, it will request that the Sub-Grantee develop a short written description of feasible alternatives that may avoid or minimize the Adverse Effect and an explanation of why these alternatives are not being selected by the Sub-Grantee. FEMA will include the Sub-Grantee's short explanation of the feasible alternatives that may avoid the Adverse Effect and why these alternatives were not selected.
 2. Following consultation with GOHSEP and the Sub-Grantee, FEMA may propose to SHPO, and/or Participating Tribes, and Consulting Parties in writing that the Adverse Effects of an individual Undertaking are adequately resolved through implementation of one or more of the STMs set forth in Stipulation X.E and that an MOA will not be prepared. FEMA will include the Sub-Grantee's written description of feasible alternatives than may avoid or minimize the Adverse Effect and the explanation of why these alternatives were not selected by the Sub-Grantee in this notice.
 3. When STMs will be used in lieu of an MOA, FEMA will not provide ACHP with the Adverse Effect notice described in 36 CFR §800.6(a)(1).
 4. FEMA will initiate consultation under 36 CFR §800.6 to develop a project-specific MOA if one of the Signatories or Invited Signatories objects to the STM proposal within 15 days.
- D. All Section 106 costs related to the implementation of STMs or treatment measures defined in project-specific MOA's will be funded from the Sub-Grantee's project budget. GOHSEP shall ensure that the Sub-Grantee understands the process involved in completing all STMs or applicable MOA treatment measures. GOHSEP will be available to provide technical assistance, if requested by the Sub-Grantee, in assisting the Sub-Grantee to develop a proposed Scope-of-Work for FEMA to approve. After the proposed scope-of-work is approved by FEMA, the Sub-Grantee shall complete the STMs or the Stipulations in any Project-Specific MOA and provide GOHSEP and FEMA with written and/or photographic evidence of completion. FEMA will notify GOHSEP by e-mail within 15 days if the submittal materials do not conform to the approved SOW. GOHSEP shall coordinate with the Sub-Grantee in addressing FEMA's concerns within 7-days of being notified by FEMA, and shall notify FEMA as to whether or not the Sub-Grantee can revise the work to conform to the approved SOW. Should the Sub-Grantee not fulfill the requirements of the STMs, or any MOA Treatment Measures, GOHSEP will work with FEMA regarding the status of the project's program eligibility. Should FEMA determine that Sub-Grantee commitments have not been fulfilled, FEMA shall notify GOHSEP who, in turn, shall

notify the Sub-Grantee that FEMA may initiate recoupment or deobligation of funding for the subject Undertaking.

E. STMs for Archaeological and Above-Ground Historic Properties are as follows:

1. Digital photography of an individual historic property that complies with the National Park Service's National Register of Historic Places Photo Policy Fact Sheet found at:

http://www.nps.gov/history/nr/publications/guidance/Photo_Policy_final.doc

or subsequent revisions. A CD-ROM containing the digital versions of the photographs, an architectural description and brief history will be submitted to SHPO by FEMA prior to project implementation.

2. For individually listed National Register properties of State or National significance or NHLs, FEMA will consult with SHPO and/or the Secretary of the Interior a range of appropriate photo recordation formats, including the use of large-format photography. The photographs, a completed architectural description and a brief history of the property will be submitted to SHPO by FEMA prior to project implementation.
3. Digital photography of a building's surrounding streetscape or geographic context that complies with the National Register of Historic Places Photo Policy Fact Sheet found at:

http://www.nps.gov/history/nr/publications/guidance/Photo_Policy_final.doc

or subsequent revisions. A CD-ROM containing the digital versions of the photographs and a brief history of the historic property's neighborhood context will be submitted to SHPO by FEMA prior to project implementation.

4. Aesthetic camouflaging treatments such as use of veneers, paints, texture compounds and other surface treatments and/or use of sympathetic infill panels and landscaping features per the review and approval of a FEMA SOI-qualified Historic Architect.
5. Design review requiring architectural and engineering plans and specifications that will, to the greatest extent feasible, preserve the basic character of a building with regard to the design, scale, massing, and materials of the original building and/or the eligible or listed National-Register Historic District. It shall be the responsibility of the Sub-Grantee to submit design drawings in the earliest schematic stages as possible. To facilitate reviews by FEMA in consultation with SHPO, submission of architectural and engineering design drawings will be submitted by the Sub-Grantee, through GOHSEP, to FEMA at the 30% drawing phase and other phases as per FEMA written requests to GOHSEP/Sub-Grantee.
6. Preservation in Place of National Register-Listed or Eligible Archaeological sites to include preservation easements or preventative monitoring programs. Given the non-

renewable nature of archeological sites, it follows that if an archeological site can be practically preserved in place for future study or other use, FEMA may pursue this measure in consultation with GOHSEP, Sub-Grantee, SHPO and Participating Tribes.

7. A data recovery plan, developed in consultation with GOHSEP, Sub-Grantee, SHPO and Participating Tribes, to recover data that will be destroyed by ground disturbing activities that are part of the Undertaking.

XI. PROJECT SPECIFIC MEMORANDA OF AGREEMENT (MOA)

- A. FEMA will initiate consultation under 36 CFR §800.6 to develop a project-specific MOA if:
 1. The Undertaking may adversely affect an NHL;
 2. The Undertaking may affect a known human burial;
 3. FEMA elects to address adverse effects through a project-specific MOA;
 4. SHPO or an Invited Signatory objects to FEMA's proposal to address the effects of an Undertaking through STMs under Stipulation X.C.4; or
 5. A Signatory or Invited Signatory notifies FEMA in writing that the effects of a specific Undertaking cannot be sufficiently mitigated through STMs or the measures included in the PTMs set out in Stipulation XII.
- B. FEMA will notify the ACHP as described at 36 CFR §800.6(a)(1); provide the ACHP with the documentation specified in 36 CFR §800.11(e); and request that the ACHP determine if it will participate in the adverse effect consultation to develop a project specific MOA.
- C. FEMA shall also forward the documentation specified in 36 CFR §800.11(e) and invite the National Park Service Southeastern Regional Office in Atlanta, Georgia (NPS) to participate in the consultation to develop a project-specific MOA if the Undertaking may adversely affect an NHL as required by 36 CFR §800.10(c).
- D. FEMA will involve Consulting Parties as described in 36 CFR §800.6(a)(2); resolve the adverse effects following the process outlined in 36 CFR §800.6(b); and document the resolution of the adverse effect consultation through an MOA as described in 36 CFR §800.6(c).

XII. PROGRAMMATIC TREATMENT MEASURES

- A. Applicability of Section 106 Programmatic Treatment Measures
 1. Programmatic Treatment Measures apply to:

- a. All residential properties submitted through Large-Scale Sub-Grantee applications. Large-Scale Sub-Grantee applications will only include properties affected by Hurricanes Katrina and Rita.
- b. All residential, commercial and private non-profit organization properties that meet the criteria of Pre-Effective Date Undertakings submitted through Traditional applications and Large Scale Sub-Grantee applications. These properties were affected by Hurricanes Katrina and Rita only.
- c. All residential properties that meet the criteria of Grace Period Undertakings and Post Grace Period Undertakings submitted through Traditional applications and Large Scale Sub-Grantee applications. These properties were affected by Hurricanes Katrina and Rita only.
- d. Properties meeting any of the above criteria, which are Archaeological Exclusion Properties as defined in Stipulation I.D, and it was determined through consultation that the application of Programmatic Treatment Measures as outlined in Stipulation XII.D are appropriate. These properties may be submitted via Traditional applications and/or large scale sub-grantee applications.

2. Programmatic Treatment Measures: Applicability Exclusions

- a. Per Stipulation II.A, any Undertaking for which Section 106 review has already been completed by FEMA or another federal agency and is documented in a formal consultation letter will not be subject to Programmatic Treatment Measures provided that the scope and/or effects determination of the Undertaking as previously reviewed have not changed.
- b. Archaeological Exclusion Properties where it was determined through consultation that the application of Programmatic Treatment Measures as outlined in Stipulation XII.D is not appropriate, therefore adverse effects will be resolved through STMs and where deemed not possible by FEMA, Project-Specific MOAs.

B. General Conditions

1. The approved Programmatic Treatment Measures are a response to the extraordinary circumstances caused by Hurricanes Katrina and Rita and are designed to minimize risks and prepare for future disasters as well as forward public outreach and education initiatives.
2. To assist the Consulting Parties in better understanding and evaluating the nature and extent of adverse effects on residential historic properties associated with Undertakings that may be funded through HMGP, FEMA, GOHSEP and Sub-Grantees have presented quantitative information pertaining to these Undertakings

during the LA HMGP PA consultation process. This data gathering effort represents information on over 47,000 properties for which FEMA conducted preliminary identification and evaluation or complete Section 106 review, including those residential properties submitted via Traditional applications and Large Scale Sub-Grantee applications. This information was then used to provide information to constitute a representative sampling of projects that may be funded.

3. In order to define the extent of Programmatic Treatment Measures, FEMA calculated an amount of no less than 1% and not to exceed 2% of the projected \$647 Million in anticipated HMGP funds to be obligated and developed Programmatic Treatment Measures with the Consulting Parties reflecting this amount. These funds include monies obligated for both the Office of Community Development (Large Scale Sub-Grantee) applications and to Traditional Applications.
4. For the purposes of this LA HMGP PA, obligated funding is defined as those funds specific to the implementation of the Undertaking only and excludes funds that do not have the potential to cause adverse effects to historic properties such as administrative costs or community outreach activities. GOHSEP has reserved \$750 Million in FEMA funding for the Office of Community Development, of which 15% will be dedicated to Administrative Costs and \$100,000 to community outreach.
5. FEMA and GOHSEP, in total, will expend monies on Programmatic Treatment Measures based on actual obligated monies and will only exceed the 1% threshold if a specific Programmatic Treatment Measure is unfinished when the 1% threshold is reached.

C. Funding for the Programmatic Treatment Measures

1. FEMA and GOHSEP have committed to funding specified PTMs outlined in Stipulation XII.C.
2. Should additional FEMA monies be made available to GOHSEP after the execution of this LA HMGP PA, GOHSEP shall consult with the Consulting Parties to this LA HMGP PA and determine if Programmatic Treatment Measures are applicable to and will be utilized to resolve adverse effects associated with the newly funded Undertakings that meet the criteria in Stipulation XII.A.1 and 2.
 - a. Should it be determined that Programmatic Treatment Measures will be utilized, GOHSEP shall ensure that a minimum of a 1% and not to exceed 2% of actual obligated funding will be accounted for within the project budgets of the pertinent applications. Such costs are eligible costs under the HMGP Program. Additional PTMs will be determined in consultation with all Consulting Parties to this LA HMGP PA. Any additional PTMs

should, to the extent possible, build upon PTMs outlined in Stipulation XII.D. GOHSEP shall ensure that the Sub-Grantee(s) carry out these PTMs and the Sub-Grantee shall use staff who meet the SOI Professional Qualification Standards.

- b. Should it be determined that Programmatic Treatment Measures will not be utilized, all properties will be subject to the review process outlined in Stipulations VI through XI of this LA HMGP PA. Monies to resolve any identified adverse effects will be accounted for in the Project Budgets of Sub-Grantees.

D. Approved Section 106 Programmatic Treatment Measures under the LA HMGP PA

For the purpose of minimizing risks and preparing for future disasters as well as for public outreach and education, the following approved PTMs comprise three discreet categories: *General Programmatic Treatment Measures*; *Community Education and Outreach*; and *Documentation and Preparedness*. The Responsible Agency, as designated under each PTM shall ensure that the following measures are completed.

1. GENERAL PROGRAMMATIC TREATMENT MEASURES
FUNDED BY FEMA

SHPO LIAISON POSITION

FEMA will fund one (1) SHPO Liaison Position, whose duty station will be the Louisiana Recovery Office, to assist FEMA with carrying out the Agency's preservation responsibilities pursuant to Section 106 of the NHPA. The SHPO Liaison Position will assist with the resurvey efforts outlined in Stipulation XII.D. The necessity of this one (1) position will be reviewed on a Semi-Annual basis in conjunction with the Semi-Annual Consultations and issuance of the Semi-Annual report. Upon FEMA's initiation of resurvey efforts, this position will be guaranteed for at least one year, and thereafter funding will be based on a demonstrated need as determined through consultation between FEMA and SHPO. The individual must meet SOI professional qualifications for Architecture, Historic Architecture, Architectural History, History, or be under the direct supervision of an individual who meets the SOI professional qualifications as previously mentioned. The individual must also have working GIS experience.

2. COMMUNITY EDUCATION & OUTREACH TREATMENT MEASURES
FUNDED BY GOHSEP

a. COMMUNITY EDUCATION & OUTREACH FOR THE BUILT
ENVIRONMENT AND ARCHAEOLOGY PROGRAM

GOHSEP shall provide mitigation grant funds to SHPO through an Interagency Agreement (IA) to implement the Community Education and Outreach (CEO) for the Built Environment and Archaeology Program.

The IA will stipulate exactly what the particular responsibilities are for each Agency, and will include the detailed SOW to include each of the proposed activities. Prior to the execution of the IA, the detailed SOW will be submitted by GOHSEP to FEMA for a 15-day review and comment period. All comments received from FEMA after the 15-day review and comment period will be forwarded to GOHSEP and SHPO for review and consideration prior to the execution of the IA.

The SOW will include the following activities:

ACTIVITY #1: COMMUNITY EDUCATION, OUTREACH & PRESERVATION WORKSHOPS FOR THE BUILT ENVIRONMENT
SHPO will retain the services of a HP Specialist (HPS) who meets SOI Qualification Standards for Architecture or Historic Architecture, or Architectural History. Where a graduate degree is required, SHPO may substitute a baccalaureate degree in architecture, architectural history, historic preservation, art history, history, or cultural resource management with two years of professional level experience with a state historic preservation office or similar preservation office or firm with detailed knowledge of historic buildings and Section 106 Review. The individual may be a private consultant and/or an Agency employee for the purpose of organizing, developing, issuing and/or presenting a minimum of four (4) public workshops in conjunction with Participating Organizations. These workshops will be pertinent to local historic district homeowners and focus on the historic districts in Orleans Parish as well as those in parishes statewide. The workshops shall address historic features and design and relate them to “green issues.” The workshops will also address techniques and design options for retrofitting historic properties from the risk of future disasters while retaining character-defining architectural features. Pending available funding, the HPS will also conceive, develop, present and submit deliverables for a “Mitigated Virtual Demonstration Home” as described below:

Mitigated Virtual Demonstration Home: To help owners of historic homes protect their properties from the risk of future disasters while retaining character-defining architectural features, the HPS will utilize 3-D CAD/Visualization and/or Graphic Design Specialist to prepare a 12-page, double sided color booklet along with compatible web-based content, to include a 3-minute video illustrating “Best Historic Preservation Practices” for mitigating a historic house as per HMGP Undertaking types. The video shall be designed so that it may be linked to a PowerPoint presentation. The virtual house project primarily will be a vivid, graphic demonstration illustrating the use of historically-compatible design and construction means and methods for mitigating including rehabilitation efforts utilizing “green” products, while retaining the historic features in a way to dispel some of the directives being disseminated about historic buildings. This endeavor will include print and

web-based content with an emphasis on visual materials and tailored to the general public who may not have a preservation background.

Prior to completion and/or any public distribution, SHPO will submit all deliverables to GOHSEP, who will provide copies to FEMA and Participating Organizations for a 15-day review and comment period. All comments received will be documented by SHPO to a Comment-Response log which shall be submitted to FEMA, GOHSEP and Participating Organizations. GOHSEP and SHPO will consider all relevant comments before finalization of the document. Final documents will be disseminated to GOHSEP, FEMA and Participating Organizations to be used at their discretion for the public good.

ACTIVITY #2: COMMUNITY EDUCATION, OUTREACH & PRESERVATION FOR ARCHAEOLOGY

SHPO will retain the services of qualified individuals for the purpose of developing the public outreach deliverables of the alternative mitigation project which will include three inter-related and inter-connected efforts. Each of these deliverables, described below, will build upon the results of the FEMA funded mitigation projects described later in this agreement.

Each of these tasks, which are listed below will build upon the information and data presented in the others, and be cross-linked to each to provide an extended opportunity for learning and exploration. Prior to completion, all deliverables will be submitted by SHPO to GOHSEP, who will provide copies to FEMA and Participating Tribes for a 15-day review and comment period. All comments received will be documented by SHPO to a Comment-Response log which shall be submitted to FEMA, GOHSEP, and Participating Tribes. GOHSEP and SHPO will consider all relevant comments before finalization of the deliverables. Final approved documents will be disseminated by SHPO and used at their discretion for the public good.

Task #1: WEB-BASED FRAMEWORK

Development of a web-based framework for public information about Louisiana archaeology. It will present text, pictures, video, and/or other media as appropriate for the general public and students to learn about Louisiana's archaeological history and cultural heritage. This project will develop the basic architecture of the website, along with 25 to 35 individual pages to be included on it. The architecture will be designed to be easily expanded as additional pages become available through other sources.

Task #2: TEACHING MATERIALS

Development of six modules that can be downloaded by teachers from the SHPO website. The modules will be designed to provide information relevant to state grade level expectations and the Louisiana

Comprehensive Curriculum. The lessons will be linked to the Louisiana archaeology website discussed above and to the KnowLA essays described below where students and teachers can obtain additional information.

Task #3: KnowLA INFORMATION

Development of 15 to 20 essays discussing topics in Louisiana archaeology for inclusion in KnowLA. KnowLA is a project of the Louisiana Endowment for the Humanities to develop a comprehensive web-based encyclopedia of terms, people, events, etc. important in Louisiana.

Prior to completion, all deliverables will be submitted by SHPO to GOHSEP, who will provide copies to FEMA and Participating Tribes for a 15-day review and comment period. All comments received will be documented by SHPO to a Comment-Response log which shall be submitted to FEMA, GOHSEP, and Participating Tribes. GOHSEP and SHPO will consider all relevant comments before finalization of the deliverables. Final approved documents will be disseminated by SHPO and used at their discretion for the public good.

b. UPDATE STATE MULTHAZARD MITIGATION PLAN

GOHSEP will update the State Multihazard Mitigation plan to include information on cultural resources and historic preservation topics. GOHSEP will meet with SHPO staff at least once prior to developing the document to discuss and identify cultural resources issues in the state. Prior to the completion and/or public distribution, GOHSEP will submit all deliverables will be submitted by GOHSEP to FEMA, SHPO, Participating Tribes, interested Consulting Parties, and Participating Organizations for a 30-day review and comment period. All comments received will be documented by GOHSEP to a Comment-Response log which shall be submitted to FEMA, SHPO, Participating Tribes, interested Consulting Parties, and Participating Organizations. GOHSEP will consider all relevant comments before finalization of the document. A copy of the final documents will be distributed to FEMA, SHPO, Participating Tribes, interested Consulting Parties and Participating Organizations for their records. GOHSEP will also provide all parties with a brief summary regarding the distribution and availability of this document within the State of Louisiana.

**3. COMMUNITY EDUCATION & OUTREACH TREATMENT MEASURES
*FUNDED BY FEMA***

**ANALYSIS AND REPORTING OF EXISTING ARCHAEOLOGICAL
COLLECTIONS FOR OUTREACH MATERIALS**

In order to provide the general public with a greater understanding of the archaeological resources in Louisiana and in conjunction with implementing

Community Education and Outreach Treatment Measures funded by GOHSEP per Stipulation XII.D, FEMA shall analyze and report on eleven (11) existing excavated archaeological collections, with a total maximum of 430 boxes of material, currently housed at the University of New Orleans, Louisiana State University and Tulane University. Collections will be comprised of both historic and pre-historic sites and may include:

- i. *The Little Woods sites in NO (includes 16OR1, 16OR2, 16OR3, and 16OR4);*
- ii. *Big Oak site (16OR6) including only the WPA excavation;*
- iii. *Bayou Jasmine (16SJB2);*
- iv. *Tchefuncte (16ST1);*
- v. *Lafayette Mounds (16SM17);*
- vi. *400 Chartres (16OR467);*
- vii. *Spanish Fort (16OR19);*
- viii. *Hermann-Grima (16OR45), analysis of the 1996 excavation only;*
- ix. *Costa (16OR62);*
- x. *Cizek (16OR72);*
- xi. *Dufour-Baldwin (16OR126);*

The information developed from these analyses will be incorporated into the public outreach deliverables discussed above. Reporting and curation of each collection will be conducted according to the Louisiana Division of Archaeology standards found at:

<http://www.crt.state.la.us/archaeology/review/IntroReport.aspx>

FEMA will submit at a minimum a Draft and Final report to SHPO and Participating Tribes for a 30-day review and comment period, representing a good-faith effort to consider the aforementioned parties' views. FEMA will address all relevant SHPO and Participating Tribes comments prior to finalization of the reports.

4. DOCUMENTATION AND PREPAREDNESS FUNDED BY FEMA

a. DIGITIZATION OF STANDING STRUCTURES SURVEYS & NATIONAL REGISTER FILES

FEMA will scan up to 150,000 forms of SHPO's Standing Structure Surveys and National Register files which will allow SHPO and its constituents to utilize electronic data more efficiently and effectively for Section 106 Review, as part of a National Register designation, and/or for capturing statistical data for the State of Louisiana regarding its cultural resources. Prior to completion, all deliverables will be submitted by FEMA to SHPO for a 30-day review and comment period. SHPO and FEMA will codify in writing when the deliverables are handed over to SHPO in a final format that is acceptable. SHPO will be responsible for disseminating the digital information to the public and its constituents.

b. RESURVEY EXISTING NATIONAL REGISTER HISTORIC DISTRICTS

FEMA will utilize its existing survey methodology to conduct a GPS-based resource-level inventory (survey) resulting in the creation of geospatially referenced attribute data and associated photographs (GIS data). All GIS data collected will be transmitted to SHPO and HDLC to support the State's and the City of New Orleans's review and regulatory obligations.

FEMA will resurvey 7 National Register Historic Districts including: (1) Uptown; (2) Esplanade Ridge Extension (3) Holy Cross & Extensions; (4) Bywater & Extensions; (5) the Irish Channel; (6) Gentilly Terrace; and (7) South Lakeview.

- i. FEMA will take into consideration boundary extensions or reductions based the information gathered during the resurvey process. This information will be submitted by FEMA to SHPO in writing.
- ii. FEMA will work with SHPO to update the period of significance for each resurvey district. This information will be submitted by FEMA to SHPO in writing.
- iii. Prior to any completion and/or public distribution, all deliverables will be submitted by FEMA to SHPO for a 30-day review and comment period, representing a good-faith effort to consider SHPO's views. SHPO and FEMA will codify in writing when the deliverables are handed over to SHPO in a final format that is acceptable. SHPO will be responsible for disseminating this information to the public and its constituents. FEMA will also deliver final materials to the HDLC. HDLC will be responsible for disseminating this information to the public and its constituents.

c. PREPARE NATIONAL REGISTER HISTORIC DISTRICT NOMINATION FOR EDGEWOOD PARK

- i. In consultation with SHPO, FEMA determined that Edgewood Park is an eligible National Register Historic District in a letter dated December 8, 2005. FEMA will complete the formal nomination of Edgewood Park as a National Register Historic District.
- ii. FEMA will coordinate with SHPO to address any comments they may have about the nomination materials prior to presentation of the nomination at a Louisiana National Register Review Committee Meeting. The date of this meeting will be determined with coordination between the two parties. FEMA will coordinate with SHPO to complete the nomination materials once the nomination has been formally accepted by SHPO.

d. ARCHAEOLOGICAL TESTING OF CITY PARKS

FEMA will systematically survey up to 1,000 acres of City Parks within the City of New Orleans, Orleans Parish, and up to 1,000 acres of Fountainebleau State Park in St. Tammany Parish with the goal of identifying presence or absence of cultural resources on publically accessible lands. This will assist the SHPO and the State of Louisiana in identifying historic properties and cultural resources that may be affected by Disaster response and recovery activities, as well as aid in the development of cultural resource management and protection plans. Should the presence of archaeological materials be identified, and if FEMA has not already met its financial obligations for Programmatic Treatment Measures defined in Stipulation XII.B.3 through 5, FEMA will also conduct evaluation efforts to determine if the identified resources are eligible for the National Register of Historic Places. Survey, evaluation, reporting, and curation of artifacts will be conducted according to the Louisiana Division of Archaeology Standards found at:

<http://www.crt.state.la.us/archaeology/review/IntroReport.aspx>.

- i. SHPO will coordinate on behalf of FEMA with the City of New Orleans and State Parks to arrange scheduling and site access for FEMA to these parks.
- ii. FEMA will submit at a minimum a Draft and Final report to SHPO and Participating Tribes for a 30-day review and comment period, representing a good-faith effort to consider the aforementioned parties' views. FEMA will address all relevant SHPO and Participating Tribes comments prior to finalization of the reports.

XIII. CHANGES TO APPROVED SCOPES OF WORK

- A. Once notified by a Sub-Grantee, GOHSEP shall notify FEMA as soon as practicable if any changes were made to the scope of work. FEMA shall determine whether or not historic properties were affected by these changes. FEMA will reopen the Section

106 review pursuant to Stipulations VI through XI of this LA HMGP PA in the event FEMA determines the changes may adversely affect historic properties. FEMA will notify GOHSEP if the change in SOW does not change the Section 106 finding, document this determination to the file, and may authorize funding for the Undertaking without further Section 106 review.

XIV. NATIONAL HISTORIC LANDMARKS

- A. As described in Stipulation XI.C, FEMA shall forward the documentation specified in 36 CFR §800.11(e) and invite NPS to participate in the consultation to develop a project-specific MOA if the Undertaking may adversely affect an NHL as required by 36 CFR §800.10(c).
- B. FEMA shall invite the ACHP to participate in any adverse effect consultation to develop a project-specific MOA if the Undertaking may adversely affect an NHL as required by 36 CFR §800.6(a)(1)(i)(B). When the ACHP participates in the consultation, it will report the results to the FEMA Administrator and the SOI.
- C. To the maximum extent possible, FEMA shall undertake planning and actions as may be necessary to minimize harm to any NHL that may be directly and adversely affected by an Undertaking per Section 110(f) of the NHPA and 36 CFR §800.10(a).

XV. SEMI-ANNUAL REPORT

For the purpose of informing Consulting Parties of progress made, FEMA shall produce a Semi-Annual Report of Section 106 compliance actions carried out under this LA HMGP PA for as long as this Agreement is in effect per Stipulations XVIII.C and F.

- A. FEMA will prepare and distribute copies of its semi-annual reports for its actions to implement the LA HMGP PA on the last business day of January and July each year by e-mail to the Consulting Parties.
- B. The Semi-Annual Report will include, but not be limited to summary data on:
 - i. The number of residential properties funded under the PTMs to date.
 - ii. The number of non-residential properties that went through the Standard Review process.
 - iii. Any adverse effects or potential adverse effects addressed through STMs or project-specific MOAs.
 - iv. Summary of public input fielded and outreach measures fielded during the six-month reporting period.

- v. Summary of the execution of STMs, PTMs and treatments under any project-specific MOAs.
- C. FEMA will provide the Consulting Parties 30 days to comment on the Semi-Annual Report. FEMA will respond to any comment received from a Consulting Party during the 30 day comment period.
- D. FEMA will post the Semi-Annual Report to the CRT website for public review and comment.
- E. FEMA will convene a meeting of the Consulting Parties to discuss relevant comments on the Semi-Annual Report within 60 days of submittal. FEMA may determine to conduct the meeting via a telephone conference call. If no comments are received, FEMA may elect to not have a meeting.

XVI. UNEXPECTED DISCOVERIES

- A. As stipulated in the Subgrantee Agreement between GOHSEP and the Sub-Grantee, the Sub-Grantees will notify FEMA and GOHSEP if it appears a FEMA-funded Undertaking has affected a previously unidentified historic property or affected a known historic property in an unanticipated manner at the earliest possible time, but no later than (seventy-two) 72 hours, and the Sub-Grantee, through GOHSEP, will e-mail digital photographs to FEMA of the discovery or unforeseen effect with the notification. FEMA will notify and consult with SHPO and Participating Tribes as soon as practical to determine if further steps to evaluate the National Register eligibility and treatment of the property are necessary. FEMA will provide the Sub-Grantees and GOHSEP with the opportunity to participate in this consultation.
- B. Once the Sub-Grantee has notified FEMA and GOHSEP of the Undertaking affecting a previously unidentified property or known historic property in an unanticipated manner, GOHSEP shall instruct Sub-Grantee to stop construction activities after the Sub-Grantee reasonably assures that associated safety hazards are secured within the project area, and shall instruct the Sub-Grantee to take all reasonable measures to avoid or minimize harm to the property until FEMA has completed consultation to consider the effects of the Undertaking. FEMA will consult with the Sub-Grantee in determining appropriate protection measures, for which the Sub-Grantee will be responsible for implementing any additional measures identified during FEMA's consultation process.
- C. FEMA may, in consultation with SHPO and Participating Tribes, assume that a previously unidentified property may be eligible for the National Register. FEMA and SHPO will conclude this consultation if it is determined that the previously unidentified property is not eligible for the NRHP, or FEMA and SHPO determines that the unforeseen effect will not or does not have the potential to adversely affect a historic property. FEMA will notify GOHSEP and the Sub-Grantees within (five) 5

business days when this consultation is completed and work may be resumed in the area of the discovery.

- D. If FEMA and SHPO determine that further steps are necessary to evaluate or treat the unforeseen effect or the newly discovered property, FEMA shall work with SHPO, GOHSEP, the Sub-Grantees, and others, as appropriate, to agree on timeframes and determine ways to avoid, minimize, or mitigate any adverse effects. Any party to this consultation may request an on-site meeting to review the situation. At the conclusion of this consultation, FEMA will provide all parties that participated in the consultation with a written summary of the consultation and its resolution. This summary will be provided within ten days following the conclusion of the consultation and may be provided by e-mail.
- E. GOHSEP will require that the Sub-Grantee document any unexpected discovery with digital photographs, and shall maintain complete records documenting this entire review process, including the consultation, to ensure compliance with this LA HMGP PA. The Sub-Grantee will adhere to Stipulation XVI.A.
- F. Archaeological Deposits: The Sub-Grantee shall notify GOHSEP and FEMA immediately if archaeological deposits are discovered during the implementation of a FEMA funded Undertaking. This includes archaeological deposits found in tree root balls during removal.
 - 1. GOHSEP shall notify FEMA at the earliest possible time, but no later than (twenty-four) 24 hours after GOHSEP receives notification from the Sub-Grantee regarding the discovery of archaeological deposits (see Stipulation XVI.A).
 - 2. GOHSEP may request that the Sub-Grantee document the unexpected discovery in writing.
 - 3. Once notified by the Sub-Grantee, GOHSEP shall instruct the Sub-Grantee to stop construction activities in the vicinity of the archaeological deposits and shall require the Sub-Grantee to take all reasonable measures to avoid or minimize harm to the finds while also assuring that safety hazards are secured. The Sub-Grantee shall secure the area and restrict access to the deposits. GOHSEP shall inform the Sub-Grantee that work in the APE of the project shall not resume until FEMA completes consultation with SHPO and Participating Tribes to consider the effects of the Undertaking on the archaeological deposit. The Sub-Grantee may be instructed by FEMA and GOHSEP that work can resume in certain areas determined to be beyond the extent of the archeological deposit by a SOI-qualified FEMA archaeologist. Work in the area of the archaeological deposit may resume when FEMA completes its consultation to consider the effects of the Undertaking on the archaeological deposit and GOHSEP will ensure that the Sub-Grantee understands any additional measures identified during FEMA's consultation. In coordination with GOHSEP, should FEMA determine that Sub-

Grantee commitments have not been fulfilled, FEMA may initiate recoupment or deobligation of funding for the subject Undertaking.

4. FEMA will notify SHPO, Participating Tribes, and Concurring Parties and members of the public with a demonstrated preservation interest in the archaeological deposits at (seventy-two) 72 hours after FEMA is notified by GOHSEP. FEMA will initiate consultation with SHPO and Participating Tribes regarding the National Register eligibility of and the effects of the Undertaking on the archeological deposits.
 5. FEMA will follow the requirements of all applicable federal statutes and regulations, including NAGPRA, for discoveries on tribal and federal lands.
- G. Unmarked graves; Indications of a Burial; Burials; Human Remains; Burial Artifacts or Items of Cultural Patrimony on Tribal or Federal lands: If unmarked graves, burials, or human remains are identified during the implementation of a FEMA funded Undertaking on privately-owned lands or lands owned by a state or local governmental entity, the Sub-Grantee is required to comply with the Louisiana Unmarked Human Burial Sites Preservation Act (La. R.S. 8:671 et seq.) and, if applicable, the Louisiana Cemetery Law (La. R.S. 8). The provisions of NAGPRA apply to discoveries of unmarked graves, burials, human remains, burial artifacts or items of cultural patrimony on tribal or federal lands. The Sub-Grantee shall notify GOHSEP and FEMA immediately if any of the aforementioned features are identified.
1. Once notified by the Sub-Grantee, GOHSEP shall instruct the Sub-Grantee to stop work immediately in the vicinity of unmarked graves, indications of a burial, burials, human remains, burial artifacts or items of cultural patrimony on tribal or federal lands.
 2. Once notified by the Sub-Grantee, GOHSEP shall instruct the Sub-Grantee to immediately notify the appropriate law enforcement agency and may request that the Sub-Grantee document the discovery in writing.
 3. GOHSEP shall notify FEMA immediately and will report on the steps that have been taken to secure the site and notify the appropriate law enforcement agency and the Louisiana Division of Archaeology (LDOA), within the Louisiana Department of Culture, Recreation and Tourism, Office of Cultural Development.
 4. If the unmarked graves, indications of a burial, burial, human remains, or burial artifacts are not located on Tribal or Federal lands, the local law enforcement officials or coroner will assess the nature and age of the human skeletal remains. The Sub-Grantee shall notify the LDOA at 225-342-8170 within (seventy-two) 72 hours after the discovery. If the coroner or appropriate local official determines that the human skeletal remains are older than 50 years of age, the LDOA has jurisdiction over the remains. In cases where the human remains are determined to

be Native American, the LDOA shall notify and coordinate with the Tribes as required by the state law. FEMA will assist LDOA, as requested, to consult with Tribes, GOHSEP, and the Sub-Grantee, as appropriate. FEMA shall also follow the guidelines contained in the ACHP's 2007 "Policy Statement Regarding Burial Sites, Human Remains, and Funerary Objects."

5. In cases where unmarked graves, indications of a burial, burials, human remains, burial artifacts or items of cultural patrimony are discovered on Tribal or Federal lands and are determined to be Native American, FEMA shall consult as required by NAGPRA or ARPA or other federal laws to comply with this LA HMGP PA. FEMA shall also follow the guidelines contained in ACHP's *Policy Statement Regarding Burial Sites, Human Remains, and Funerary Objects* (2007).
6. The Sub-Grantee shall not resume work in the secured area around the unmarked graves, burials, human remains, indications of burials, burial artifacts, or items of cultural patrimony on Tribal or Federal lands until the requirements of the Louisiana Unmarked Human Burial Sites Preservation Act, the Louisiana Cemetery Law, and any other applicable laws, have been met. FEMA shall follow the guidelines contained in the State of Louisiana, Department of Justice, Attorney General Opinion 10-0258 dated December 10, 2010 and contained in Appendix E of this LA HMGP PA, and any other applicable opinions rendered by the State of Louisiana, Department of Justice, Attorney General that are applicable. Once notified by FEMA, GOHSEP shall notify the Sub-Grantee the required consultation is complete, and GOHSEP will take the necessary steps to ensure the Sub-Grantee understands additional measures may be required by LDOA, FEMA, or any other applicable laws, and that these measures may need to be completed in order to be considered eligible for FEMA funding.

XVII. ANTICIPATORY ACTIONS

- A. FEMA shall not grant assistance to a Grantee or Sub-Grantee who, with the intent to avoid the requirements of this LA HMGP PA or Section 106, has intentionally significantly adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allow such significant adverse effect to occur.
- B. The restrictions of Section 110(k) of the NHPA do not apply to the Pre-Effective Date, Grace Period or Post-Grace Period Undertakings as outlined in the Gulf Coast HMGP PA (as amended) and this LA HMGP PA. The restrictions of Section 110(k) do apply to all other Undertakings.
- C. If FEMA determines after consultation with the ACHP that circumstances justify granting such assistance despite an adverse effect created or permitted by a Grantee or Sub-Grantee, FEMA will complete consultation pursuant to Stipulations X or XI.

- D. FEMA, in consultation with the Grantee and Sub-Grantee, will ensure that all recipients of HMGP funds are apprised of the restrictions set forth in Section 110(k).

XVIII. AMENDMENTS, DURATION, AND TERMINATION

- A. Any Signatory or Invited Signatory who signs this LA HMGP PA may request that the Consulting Parties consider an amendment to this LA HMGP PA if circumstances change; if additional ways to streamline or improve implementation of this LA HMGP PA are identified; if any of the parties is not materially fulfilling their responsibilities under the terms of the LA HMGP PA; or if it appears that the effects of the Undertaking were not fully understood, considered and addressed by this LA HMGP PA.
- B. Request for amendment of the LA HMGP PA may be made by submittal of a letter of request from any Signatory or Invited Signatory to the other Signatories describing the suggested amendment. If the other Signatories agree with the suggested amendment in writing, the amendment will be effective on the date of signature by all of the Signatories or an alternative date provided by the terms of the amendment.
- C. Unless terminated or extended through written concurrence of all Signatories, this LA HMGP PA shall remain in effect from the date of execution until January 31, 2016 (expiration date) or unless FEMA, in consultation with all other Consulting Parties, determines that the terms of this LA HMGP PA have been satisfactorily fulfilled prior to the expiration date. Upon such determination, this LA HMGP PA shall terminate, and FEMA shall provide all Consulting Parties with written notice of the termination.
- D. Any Signatory or Invited Signatory who signs this LA HMGP PA may terminate this LA HMGP PA by providing 30 days' written notice to the other parties, provided that the parties shall consult during this period to seek amendment in accordance with Stipulation XIX or other actions that would prevent termination. If the LA HMGP PA is terminated, FEMA will conclude its Section 106 compliance for the Undertakings by requesting, considering, and responding to comments of the ACHP in accordance with 36 CFR § 800.7(c).
- E. Any Invited Signatory may withdraw from this LA HMGP PA by providing 30 days' written notice to the other parties, provided that the parties shall consult during this period to seek amendments or other actions that would prevent such withdrawal. Such withdrawal will not terminate or nullify this LA HMGP PA.
- F. This LA HMGP PA may be superseded by the execution of a subsequent Programmatic Agreement pursuant to 36 CFR § 800.14(b) that explicitly terminates or supersedes this LA HMGP PA.

XIX. DISPUTE RESOLUTION

- A. Should any Signatory object within the timeframes provided to any plans, specifications, or actions provided for review pursuant to this LA HMGP PA, FEMA shall consult further with the objecting party to seek resolution by the most expeditious and appropriate method.
- B. If FEMA determines that the objection of a Signatory cannot be resolved, FEMA shall forward all documentation relevant to the dispute to the ACHP, including FEMA's proposed resolution of the dispute. Within 15 days after receipt of all pertinent documentation, the ACHP shall:
 - 1. Advise FEMA that it concurs with FEMA's resolution of the dispute; or
 - 2. Provide FEMA with recommendations, which FEMA shall take into account in reaching a final decision regarding the dispute; or
 - 3. Notify FEMA that it shall comment pursuant to 36 CFR § 800.7(c), and proceed to comment. Any comment provided shall be taken into account by FEMA in accordance with 36 CFR § 800.7(c)(4).
- C. If the ACHP does not provide FEMA with comments or recommendations within 15 days, FEMA may assume that the ACHP does not object to its recommended approach and it shall proceed accordingly.
- D. Any recommendation or comment provided by ACHP shall be understood to pertain only to the subject of the dispute, and FEMA's responsibility to fulfill all actions that are not subject of the dispute shall remain unchanged.
- E. The Applicant will not be required to cease work on activities unrelated to the objection while the objection is being reviewed and resolved.
- F. FEMA shall notify the SHPO, Participating Tribes, ACHP, and any members of the public who raised an objection of its resolution within the 15 days following its resolution.
- G. If at any time during implementation of the measures stipulated in this LA HMGP PA, should an objection relevant to the implementation of this Agreement be raised by a member of the public, FEMA shall take the objection into account, notify the SHPO and Participating Tribes of the objection, and consult as needed with the objecting party, the SHPO, Participating Tribes, and the ACHP, prior to resolution of the objection.
- H. If SHPO or Participating Tribes do not agree with a FEMA determination of National Register eligibility, or if the ACHP or the SOI so request, FEMA may obtain a Determination of Eligibility from the Secretary pursuant to 36 CFR part 63.

- I. In cases where FEMA recommends a resource as Not Eligible for listing in the National Register and SHPO considers the resource as Eligible, FEMA may, per its discretion, assume the resource as Eligible for listing in the National Register without obtaining a determination of eligibility from the SOI.

XX. PUBLIC OBJECTIONS

- A. Should any individual member of the public, or organization representing the interests of the public, file timely and substantive objections to FEMA relevant to the implementation of this LA HMGP PA, FEMA shall take the objection into account, notify the appropriate signatories of the objection, and consult as needed with the objecting party and appropriate signatories, prior to resolution of the objection.

XXI. IMPLEMENTATION OF THIS LA HMGP PA

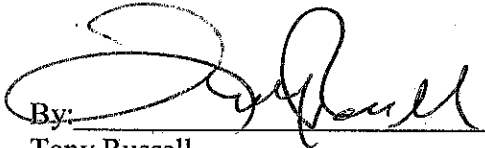
- A. This LA HMGP PA shall become effective immediately upon execution by all Signatory parties pursuant to 36 CFR § 800.6(c)(1). FEMA shall provide each Signatory Party with a complete copy of the LA HMGP PA including all signature pages.
- B. For the Invited Signatories, this LA HMGP PA shall be signed in counterparts, with a separate signature page for each Invited Signatory, and FEMA shall provide each Invited Signatory with a complete copy of the LA HMGP PA including all signature pages.
- C. For the concurring parties, this LA HMGP PA shall be signed in counterparts, with a separate signature page for each Concurring Party, and FEMA shall provide each Concurring Party with a complete copy of the LA HMGP PA including all signature pages.

EXECUTION AND IMPLEMENTATION OF THIS LA HMGP PA evidences that FEMA has afforded ACHP a reasonable opportunity to comment on the Undertaking; that FEMA has taken into account the effects of the Undertaking on historic properties; and that FEMA has satisfied its responsibilities under Section 106 of the National Historic Preservation Act and its implementing regulations.

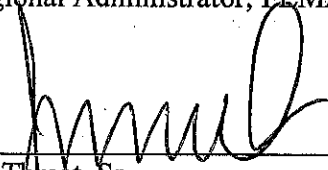
LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
EMERGENCY PREPAREDNESS (GOHSEP); LOUISIANA STATE HISTORIC
PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION
& TOURISM (SHPO); ALABAMA-COUSHATTA TRIBE OF TEXAS (ACTT);
CHITIMACHA TRIBE OF LOUISIANA (CTL); CHOCTAW NATION OF
OKLAHOMA (CNO); JENA BAND OF CHOCTAW INDIANS (JBCI); MISSISSIPPI
BAND OF CHOCTAW INDIANS (MBCI); SEMINOLE TRIBE OF FLORIDA (STF);
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA'S HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)

SIGNATORY:


FEDERAL EMERGENCY MANAGEMENT AGENCY

By: 
Tony Russell
Regional Administrator, FEMA Region VI

Date: 1/21/11

By: 
Joe Threat, Sr.
Acting Executive Director, Louisiana Recovery Office

Date: 1-21-2011

By: 
Katherine Zeringue
Environmental Liaison Officer, Louisiana Recovery Office

Date: 1-21-11

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA'S HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

SIGNATORY:

LOUISIANA STATE HISTORIC PRESERVATION OFFICER

By: 
Phil Hoggan
Deputy State Historic Preservation Officer

Date: 1-21-11

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
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LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA'S HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

SIGNATORY:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

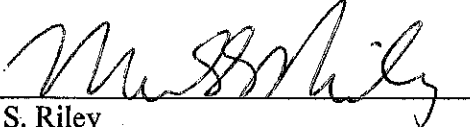
By: John M. Fowler
John M. Fowler
Executive Director
Advisory Council on Historic Preservation

Date: 1/31/11

LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA'S HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)

INVITED SIGNATORY:

LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
EMERGENCY PREPAREDNESS

By: 
Mark S. Riley
Chief of Staff, GOHSEP

Date: 1/21/11

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
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LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA's HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

INVITED SIGNATORY:

ALABAMA-COUSHATTA TRIBE OF TEXAS

By: _____
Carlos Bullock
Tribal Council Chairman

Date: _____

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA's HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

INVITED SIGNATORY:

CHITIMACHA TRIBE OF LOUISIANA

By: _____
John Paul Darden
Chief

Date: _____

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA'S HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

INVITED SIGNATORY:

CHOCTAW NATION OF OKLAHOMA

By: _____
Gregory Pyle
Chief

Date: _____

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA's HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

INVITED SIGNATORY:

JENA BAND OF CHOCTAW INDIANS

By: _____
B. Cheryl Smith
Chief

Date: _____

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA'S HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

INVITED SIGNATORY:

MISSISSIPPI BAND OF CHOCTAW INDIANS

By: _____
Beasley Denson
Miko

Date: _____

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA's HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

INVITED SIGNATORY:

SEMINOLE TRIBE OF FLORIDA

By: _____
Mitchell Cypress
Chairman

Date: _____

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA'S HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

CONCURRING PARTY:

NATIONAL TRUST FOR HISTORIC PRESERVATION

By: _____
Name:
Title:

Date: _____

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA'S HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

CONCURRING PARTY:

LOUISIANA OFFICE OF COMMUNITY DEVELOPMENT

By: *Lara Robertson*
Lara Robertson

Date: 1/21/2011

Office of Community Development-Disaster Recovery Unit, Deputy Director

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA'S HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

CONCURRING PARTY:

CALCASIEU PARISH

By: _____
Name:
Title:

Date: _____

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA'S HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

CONCURRING PARTY:

JEFFERSON PARISH

By: _____
Name:
Title:

Date: _____

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
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BAND OF CHOCTAW INDIANS (MBCI); SEMINOLE TRIBE OF FLORIDA (STF);
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA's HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

CONCURRING PARTY:

ST. TAMMANY PARISH

By: _____
Name:
Title:

Date: _____

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
EMERGENCY PREPAREDNESS (GOHSEP); LOUISIANA STATE HISTORIC
PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION
& TOURISM (SHPO); ALABAMA-COUSHATTA TRIBE OF TEXAS (ACTT);
CHITIMACHA TRIBE OF LOUISIANA (CTL); CHOCTAW NATION OF
OKLAHOMA (CNO); JENA BAND OF CHOCTAW INDIANS (JBCI); MISSISSIPPI
BAND OF CHOCTAW INDIANS (MBCI); SEMINOLE TRIBE OF FLORIDA (STF);
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA's HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

CONCURRING PARTY:

CITY OF NEW ORLEANS, LOUISIANA

By: _____
Name
Title

Date: _____

**LOUISIANA STATE-SPECIFIC PROGRAMMATIC AGREEMENT AMONG THE
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA);
LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
EMERGENCY PREPAREDNESS (GOHSEP); LOUISIANA STATE HISTORIC
PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION
& TOURISM (SHPO); ALABAMA-COUSHATTA TRIBE OF TEXAS (ACTT);
CHITIMACHA TRIBE OF LOUISIANA (CTL); CHOCTAW NATION OF
OKLAHOMA (CNO); JENA BAND OF CHOCTAW INDIANS (JBCI); MISSISSIPPI
BAND OF CHOCTAW INDIANS (MBCI); SEMINOLE TRIBE OF FLORIDA (STF);
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)
REGARDING FEMA'S HAZARD MITIGATION GRANT PROGRAM
(LA HMGP PA)**

CONCURRING PARTY:

PRESERVATION RESOURCE CENTER OF NEW ORLEANS

By: _____
Patricia Gay
Executive Director

Date: _____

APPENDIX A

CONTACT INFORMATION

Federal Emergency Management Agency (FEMA), Louisiana Recovery Office

Katherine Zeringue
Environmental Liaison Officer
Louisiana Recovery Office
1 Seine Court
New Orleans LA 70114

Kevin Jaynes, FEMA Region 6, Regional Environmental Officer

800 N. Loop 288, Federal Center
Denton, TX 76209
940-383-7224 office
940-383-7299 fax
kevin.jaynes@dhs.gov

Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP)

Mark A. Cooper, Director
7667 Independence Blvd.
Baton Rouge, LA 70806
225-925-7500
800-256-7036
225-925-7501 - fax
225-925-7502 - fax

State Historic Preservation Officer (SHPO)

Phil Boggan, Deputy SHPO
Department of Culture, Recreation and Tourism
Louisiana State Historic Preservation Office
1051 N. Third St.
Baton Rouge, LA 70804
225-342-8170
225-342-4880 – fax

Louisiana Office of Community Development (OCD)

Lara Roberts
OCD-DRU Deputy Director
P.O. Box 5098
Baton Rouge, LA 70821-5098

Advisory Council on Historic Preservation (ACHP)

John Fowler, Executive Director
1100 Pennsylvania Avenue NW, Suite 809
Washington, DC 20004
202-606-8503
202-606-5072 – fax

Alabama-Coushatta Tribe of Texas (ACTT)

Carlos Bullock, Tribal Council Chairman

Shipping Address:

571 State Park Rd. 56
Livingston, TX 77351
936-563-1100
936-563-1183 fax

Bryant Celestine, Historic Preservation Officer

celestine.bryant@actribe.org

936-563-1181
936-563-1183 fax

Chitimacha Tribe of Louisiana (CTL)

John Paul Darden, Chief
P.O. Box 661
Charenton LA 70523

Shipping Address:

155 Chitimacha Loop
Charenton LA 70523

Kimberly S. Walden, M.Ed., Cultural Director

kswalden@chitimacha.gov

337-923-9923
337-578-4323
337-923-6848 fax

Choctaw Nation of Oklahoma (CNO)

Gregory Pyle, Chief
P.O. Drawer 1210
Durant, OK 74702
800-522-6170

Shipping Address:

623 N. 16th
Durant, OK 73009

Terry Cole, Tribal Historic Preservation Officer
tcole@choctawnation.com
580-924-8280
580-920-3102 fax

Jena Band of Choctaw Indians (JBCI)

B. Cheryl Smith, Chief
P.O. Box 14
Jena, LA 71342
318-992-2717
318-992-8244 fax
chief@jenachoctaw.org

Shipping Address:
1052 Chanaha Hina St.
Trout, LA 71371

Michael L. Tarpley, Historic Preservation Officer
jbcconstruct@Aol.com

Mississippi Band of Choctaw Indians (MBCI)

Miko Beasley Denson
P.O. Box 6257
Philadelphia, MS 39350
601-656-5251
601-656-1992 - fax

Shipping Address:
101 Industrial Rd.
Choctaw, MS 39350

Kenneth H. Carleton, Historic Preservation Officer/Archaeologist
601.650.7316
601-562-0032 - cell
601-650-7454 - fax
kcarleton@choctaw.org

Seminole Tribe of Florida (STF)

Mitchell Cypress, Chairman
6300 Stirling Rd.
Hollywood FL 33024
800-683-7800

Shipping Address:
Same as Above

Williard Steele, THPO
Ah-tah-thi-ki Museum
HC-61, Box 21A
Clewiston FL 33440
863-902-1113
863-902-1117 (fax)
wsteele@semtribe.com

APPENDIX B

LA HMGP ELIGIBLE ACTIVITIES & ACTIONS

The majority of HMGP program eligible activities and actions fall into the specific categories and actions listed in this Appendix, but this action list is meant to be illustrative in nature and shall not be regarded as all inclusive or disqualify future actions and/or actions not considered in this Appendix from being project types eligible for FEMA funding.

RETROFITTING OF EXISTING BUILDINGS

Modifications to the structural elements of a building to reduce or eliminate the risk of future damage and to protect inhabitants. The structural elements of a building that are essential to protect in order to prevent damage include foundations, load-bearing walls, beams, columns, structural floors and roofs, and the connections between these elements. Retrofitting also includes modifications to the non-structural elements of a building or facility to reduce or eliminate the risk of future damage and to protect inhabitants. Non-structural retrofits may include the following: bracing of building contents to prevent damage, or the elevation of heating and ventilation systems.

Applicability

- Public
- Private-Non-Profit
- Residential
- Non-Residential

Actions

1. Building hardening
2. Modification to structural elements
3. Hurricane clips
4. Tie-down straps
5. Attic bracing
6. Cross bracing on pier and post foundations
7. Metal fasteners
8. Collar ties
9. Gussets
10. Installations of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs
11. Replacement windows, doors, and skylights
12. Replacement of window and door glazing
13. Window film
14. Exterior Protective shutters
15. Interior protective shutters
16. Storm screens/Hurricane screens
17. Screen drops
18. Storm Fabric/Hurricane Protective Fabric

19. Interior blast shields
20. Concealed anchoring of furniture
21. Bracing building contents
22. Strapping and anchoring of mechanical, electrical, and plumbing equipment
23. Elevation of heating and ventilating systems
24. Automatic gas shut off valves
25. Elevation of electrical panels
26. Elevating washer and dryer
27. Elevating furnace or water heater
28. Anchoring of fuel tanks
29. Bolting walls
30. Installing backflow valves
31. Strengthening of entry doors
32. Bracing of garage doors

ELEVATION

Physically raising an existing structure to an elevation at or above the Base Flood Elevation (BFE) or higher if required by FEMA or local ordinance. Structure elevation may be achieved through a variety of methods, including elevating on continuous foundation walls; elevating on open foundations, such as piles, piers, posts, or columns; and elevating on fill. Foundations must be designed to properly address all loads and effects, be appropriately connected to the floor structure above, and utilities must be properly elevated.

Applicability

- Public
- Private-Non-Profit
- Residential
- Non-Residential

Actions

1. Elevation on piers, columns, or piles
2. Elevation on continuous foundation
3. Elevation of slab
4. Slab separation
5. Elevation on fill
6. Second story conversion/attic buildout

PILOT RECONSTRUCTION

The construction of an improved, elevated building on the same site where an existing building and/or foundation has been partially or completely demolished or destroyed. In limited cases, the new building footprint may shift from the original location. Pilot reconstruction is only permitted if traditional structure elevation cannot be implemented. Activities that result in the construction of new living space at or above the BFE (or higher as required by local ordinance) will only be considered when consistent with the Pilot Reconstruction requirements. Pilot Reconstruction in Louisiana is permitted only under Hurricanes Katrina (DR-1603-LA) and Rita (DR-1607-LA).

Applicability

Public
Private-Non-Profit
Residential
Non-Residential

Actions

1. All activities associated with the demolition and rebuilding of code-compliant buildings and structures.
2. Establishment of staging areas

PROPERTY ACQUISITION & STRUCTURE DEMOLITION

The acquisition of an existing at-risk structure and, typically, the underlying land, and conversion of the land to open space through the demolition of the structure. The property must be deed-restricted in perpetuity to open space uses to restore and/or conserve the natural floodplain functions.

Applicability

Public
Private-Non-Profit
Residential
Non-Residential

Actions

1. All activities associated with acquiring and demolition of buildings and structures.
2. Establishment of staging areas
3. Grading and seeding
4. Removal of septic tanks (if not removed, floors and walls must be cracked or crumbled so the tank will not hold water, and be filled with sand or other clean fill).

PROPERTY ACQUISITION & STRUCTURE RELOCATION

The physical relocation of an existing structure to an area outside of a hazard-prone area, such as the Special Flood Hazard Area (SFHA) or a regulatory erosion zone and, typically, the acquisition of the underlying land. Relocation must conform to all applicable State and local regulations. The property must be deed-restricted in perpetuity to open space uses to restore and/or conserve the natural floodplain functions.

Applicability

Public
Private-Non-Profit
Residential
Non-Residential

Actions

1. All activities associated with the relocation of buildings and structures.
2. Establishment of staging areas

3. Grading and seeding
4. Removal of septic tanks (if not removed, floors and walls must be cracked or crumbled so the tank will not hold water, and be filled with sand or other clean fill).

MINOR LOCALIZED FLOOD REDUCTION

These projects may include the installation or modification of culverts and floodgates, minor floodwall systems that generally protect an individual structure or facility, stormwater management activities such as creating retention and detention basins, soil stabilization, vegetative management, and the upgrade of culverts to bridges. These projects must not duplicate the flood prevention activities of other Federal agencies and may not constitute a section of a larger flood control system.

Applicability

Public and Private

Actions

1. Flood walls
2. Flood and storm water diversions
3. Berms
4. Dikes
5. Dams
6. Flap-gates or flood gates
7. Culverts
8. Upgrade of culverts to bridges
9. Water and sanitary sewer systems protective measures
10. Upgrade pumping capacity
11. Bar screen cleaners
12. Widening of drainage waterways
13. Detention or retention basins
14. Vegetation management
15. Landslide stabilization
16. Erosion control
17. Bank Stabilization

INFRASTRUCTURE PROTECTION/RETROFIT

Measures to reduce risk to existing utility systems, roads, and bridges.

Applicability

Public and Private

Actions

1. Elevation of roads and bridges
2. Hardening of utility systems
3. Conversion of overhead power lines to underground
4. Elevation of pump stations and equipment

5. Improvements to or hardening of pump stations
6. Increasing capacity of pump stations.
7. Installation of cross-drainage
8. Relocation of roads and bridges

SAFE ROOMS

Safe room projects are designed to provide immediate live safety protection for people in public and private structures from tornado and severe wind events, including hurricanes in accordance with FEMA Publications 320 and 361. The term "Safe Room" only applies to extreme wind (combined tornado and hurricane) residential, non-residential, and community safe rooms; tornado community safe rooms; and hurricane community safe room. This type of project includes retrofits of existing facilities or new safe room construction projects, and applies to both single and multi-use facilities.

Applicability

- Public
- Private-Non-Profit
- Residential
- Non-Residential

Actions

1. Construction of new stand-alone facilities
2. Construction of new internal safe room
3. Retrofitting of existing facilities to FEMA 320/361 standards.

DRY FLOODPROOFING

Techniques applied to keep non-residential structures dry by sealing the structure to keep floodwaters out. Dry Floodproofing of residential structures is limited to Historic Structures and is permissible only when other techniques that would mitigate to the BFE would cause the structure to lose its status as defined a Historic Structure in 44 CFR § 59.1.

Applicability

- Non-Residential
- Residential for historic structures only

Actions

1. Bracing of walls to address hydrostatic and hydrodynamic forces
2. Sealing building to make it watertight or impermeable to floodwaters
3. Flood panels

WET FLOODPROOFING

Techniques designed to permit floodwaters to enter a structure to prevent or provide resistance to damage from flooding. Wet Floodproofing of a structure interior is intended to counteract hydrostatic pressure on the walls, surface and support systems of the structure by equalizing interior and exterior water levels during a flood.

Applicability

- Public
- Private-Non-Profit
- Residential
- Non-Residential

Actions

1. Providing openings to allow in water
2. Relocation of furnace and utilities
3. Installation of flood-resistant materials
4. Rearrangement of utility systems
5. Anchoring to resist flotation, collapse, and lateral movement

SOIL STABILIZATION

Projects to reduce risk to structures or infrastructure from erosion and landslides. These projects must not duplicate the activities of other Federal agencies.

Applicability

Public and Private

Actions

1. Installing geo-textiles
2. Sod stabilization
3. Installing vegetative buffer strips
4. Preserving mature vegetation
5. Decreasing slope angles
6. Stabilizing with rip rap, gabion baskets, and other means of slope anchoring

WILDFIRE MANAGEMENT

Projects to mitigate the risk to at-risk structures and associated loss of life from the threat of future wildfires.

Applicability

Public and Private

Actions

1. Defensible space activities that involve the creation of perimeters around structures
2. Structural protection through ignition-resistant construction activities
3. Hazardous fuels reduction activities

5% INITIATIVE PROJECTS

These projects provide an opportunity to fund mitigation actions that are consistent with the goals and objectives of the State and local Hazard Mitigation Plans and meet all HMGP program requirements, but for which it may be difficult to conduct a standard BCA to prove cost effectiveness.

Applicability

Public
Private-Non-Profit
Residential
Non-Residential

Actions

1. Warning systems
2. Generators
3. Communication systems and devices
4. Other equipment purchase and installation
5. Public awareness and education
6. GIS software and hardware and related equipment needed to help implementation of mitigation measures
7. 5% Tornado initiative (increase up to 10% for declared major disaster).
8. Use, evaluation and application of new, unproven mitigation techniques, technologies, methods, procedures, or products that are developmental or research-based
9. Other activities falling under goal of mitigation

POST-DISASTER CODE ENFORCEMENT

Projects designed to support the post-disaster rebuilding effort by ensuring that sufficient expertise is on hand to ensure appropriate codes and standards, including NFIP local ordinance requirements, are utilized and enforced. This shall include expertise in providing revisions to codes and standards where applicable.

HAZARD MITIGATION PLANNING

These planning projects include but are not limited to the development or update of local, Tribal, or State Multihazard Mitigation Plans

APPENDIX C PROGRAMMATIC ALLOWANCES

In accordance with Stipulation VI, Undertakings composed entirely of the following repair or construction activities do not require Section 106 review. If an Undertaking is not composed entirely of the activities listed below, FEMA will conduct the applicable Section 106 review only with regard to the activities that are not listed below. This list may be revised without amending this LA HMGP PA by a letter concurred with by FEMA, SHPO, and Participating Tribes.

When referenced in an Allowance, “in-kind” shall mean that it is either the same or a similar material, and the result shall match all physical and visual aspects, including form, color, and workmanship. “In-kind” mortar shall also match the strength, content, color, rake, joint width, and tooling of historic mortar.

When referenced in an Allowance “previously disturbed areas” shall mean the following: alterations to the soil such that the property and associated stratification no longer has the potential to yield specific data from the past.

- I. GROUND-DISTURBING ACTIVITIES AND SITE WORK** shall mean all work being performed in archeologically surveyed areas with no recorded eligible archeological site(s), or previously disturbed areas as documented by FEMA to the project file. Should an unexpected discovery be encountered, work must stop and compliance with Stipulation XVI is required.
- A. Ground-disturbing activities related to the repair, replacement, reinforcing or pouring of footings, foundations, retaining walls, other slope stabilization systems (e.g., gabion baskets, rip-rap), and utilities in existing utility right-of-ways (including sewer, water, drains, electric service or distribution, gas, communications, leaching systems, cesspools, and septic tanks). This Allowance refers to archeological review. The Allowance also applies to historic review of character-defining features of a historic property that is listed in or eligible for listing in the Register, when the work is in-kind.
 - B. Substantial in-kind repair, replacement, or upgrade of culvert systems within rivers, streams, or drainage ways, including any moderate increase in capacity. This Allowance also applies to related features of historic properties such as headwalls and wing walls that may be included in or eligible for inclusion in the Register, when the work is in-kind.
 - C. Repair, replacement, or hardening of utilities under existing improved roads or roadways, or within previously disturbed rights-of-way, and for repair, replacement, or hardening of above ground utilities where they are set in or immediately adjacent to their previous location.
 - D. Repair, replacement, or hardening of utilities under existing improved roads or roadways, or within previously disturbed rights-of-way, and for repair, replacement, or hardening of above ground utilities where they are set in or immediately adjacent to their previous location.

- E. Repair, replacement, or hardening of utilities under existing improved roads or roadways, or within previously disturbed rights-of-way, and for repair, replacement, or hardening of above ground utilities where they are set in or immediately adjacent to their previous location.
- F. In-kind repair or replacement of driveways, paths, trails, parking areas, and walkways.
- G. In-kind repair or replacement of fencing and freestanding exterior walls.
- H. Substantially in-kind repair or replacement of metal utilitarian structures (e.g., pump houses, storage buildings), including exposed pipelines. Modern materials may be used provided their finish is compatible with existing structures and the site. Structures such as bridges, water towers, and service and antenna towers shall not be considered utilitarian structures.
- I. Installation of temporary structures for uses such as classrooms, offices, or medical support facilities, except when located in historic districts or archeological areas.
- J. Installation of scaffolding, temporary barriers (e.g., chain link fences), polyethylene sheeting, or tarps, provided such work will not result in additional damage, irreversible alterations, or significant loss of historic fabric.
- K. In-kind repair or replacement of landscaping and utilities, such as paving, planters, trellises, irrigation, lighting, signs (e.g. street signs, traffic signs, and freestanding facility signage), retaining walls, ramps and steps. This allowance also includes flag poles, playgrounds, parks, above ground swimming pools, decks, and athletic field equipment/recreational structures and equipment (e.g., benches, bleachers, permanent seating, batting cages, score boards, basketball goals, picnic tables, playground equipment such slides and swing sets), Minor mitigation measures (e.g., increased in pole diameter, addition of new safety anchors) will be covered by this Allowance.
- L. In-kind repair, replacement, or upgrade to codes and standards of existing piers, docks, boat ramps, boardwalks, stands, gazebos, and dune crossovers, provided the new footprint would substantially match the pre-existing footprint.
- M. Debris collection from public rights of way and other public areas, transport, and disposal in existing licensed solid waste facilities. The Allowance does not include the establishment or expansion of debris staging or disposal areas. However it does apply to the use of temporary storage areas located in existing hard-topped or developed graveled areas with controlled drainage such as parking lots and roads provided other issues do not exist.
- N. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, in order to restore the facility to its pre-disaster condition. The sediment may be used to repair eroded banks or disposed of at an existing licensed or permitted spoil site.

- O. Dewatering of flooded developed areas or flooded buildings and structures by physical or mechanical means.
 - P. Placement of emergency beach berms seaward of improved property where severe erosion has occurred, with work performed under the authority of U.S. Army Corps of Engineers and/or a State environmental enforcement agency's permits for the sand deposit areas and upland or offshore borrow sites, including dredge spoil piles.
 - Q. Removal of woody debris, such as sticks, small limbs, and branches from cemeteries and archeological properties if heavy equipment or other machinery is not used.
 - R. Removal of root balls except from cemeteries, known archaeological sites or when there are unexpected finds.
 - S. *LA HMGP SPECIFIC: Wildfire management activities to include defensible space activities that involve the creation of perimeters and protection through ignition-resistant construction activities, and hazardous fuels reduction activities where all work is being performed in archaeologically surveyed areas with no recorded eligible archaeological site(s).*
- II. **BUILDINGS**, requiring repairs or replacement, when all work is consistent with *SOI Standards*, latest edition.
- A. Interior Work: Floors, Walls, Stairs, and Ceilings
 1. In-kind repair, replacement, restoration, preservation, protection, maintaining of materials, or features on interior work on floors, walls, stairs, and ceilings, or partial replacement of trim. The Allowance applies to repair of interior finishes, including plaster and wallboard, provided the repair is restricted to damaged areas and does not affect adjacent materials. The Allowance does not apply to substrates for decorative materials such as murals, glazed paint, gold leaf, etc.
 2. Replacement of damaged plaster and lath with drywall where the plaster is non character-defining detail, excluding properties individually listed on the National Register or contributing properties to NHL Historic Districts.
 3. Interior cleaning on non-porous surfaces using a weak solution of household bleach and water, mold remediation, or mold removal. The Allowance applies to interior finishes, including plaster and wallboard, provided the repair is restricted to damaged areas, does not affect adjacent materials, and character defining features are retained.
 4. In-kind repair or replacement of specialized finishes such as decorative painting, glazing, or gilding on flat or ornamental plaster; or repair or replacement of ornamental plaster, when such repair or replacement is undertaken by those experienced in such finish work. Damaged ornamental plaster shall be repaired or reattached when possible. Where severity of deterioration requires replacement, the

ornamental plaster shall be replaced in-kind; every effort shall be made to minimize the loss of additional historic fabric through use of the gentlest means of repair possible, and through adequate protection of undamaged areas. All repairs or replacements shall be made in accordance with *Preservation Brief*: 21 (Repairing Historic Flat Plaster-Walls and Ceilings); 23: (Preserving Historic Ornamental Plaster); and 28: (Painting Historic Interiors). When extensive damage to specialized finishes is involved (25% or more damage to an area), coordination with SHPO shall be conducted prior to approving and funding the project.

5. Repair or replacement of suspended or glued ceiling tile.
6. Installation of grab bars and other such minor interior modifications required for compliance with the Americans with Disabilities Act (ADA)
7. Non-destructive or concealed testing for hazardous materials (e.g., lead paint, asbestos, etc.) or for assessment of hidden damages.
8. Replacement of wood gymnasium floors with contemporary gym flooring materials.
9. Replacement of damaged vinyl floor tile or asbestos floor tile with contemporary floor tile of the same dimension and thickness, and similar texture or pattern.

B. Utilities, Mechanical, and Electrical Systems

1. Minor utility system work, including interior mechanical (e.g., HVAC), electrical, or plumbing work, which is limited to upgrading, or in-kind replacement. Historic fixtures, grilles, etc., where exposed to view, shall be repaired in-kind for the Allowance to apply. The Allowance shall not apply to installation of new exposed ductwork.
2. Replacement or installation of interior fire detection, fire suppression, or security alarm systems. The Allowance does not apply to surface mounted wiring, conduits, piping, etc., unless previously existing.
3. Elevation of HVAC and mechanical equipment as long as it is placed or located where it is not highly visible from the street, or if its installation does not result in significant loss of historic fabric, or character-defining details.
4. *LA HMGP SPECIFIC:*
 - a. *Elevation of generators, electrical panels, washers and dryers, and hot water heaters as long as they are placed or located where not highly visible from the street, or if installation does not result in significant loss of historic fabric, or character-defining details.*

C. Windows and Doors

1. In-kind repair or replacement of damaged or deteriorated windows, shutters, storm shutters, and doors including all hardware.
2. Replacement of windowpanes in-kind. Clear plate, double, laminated or triple insulating glazing can be used, provided it does not result in altering the existing window material or form. This Allowance does not apply to the replacement of existing archaic or decorative glass. Historic windows or glazing may be treated with clear window films.
3. *LA HMGP SPECIFIC:*
 - a. *In-kind repair or replacement of interior or exterior protective shutters, storm screens, screen drops, storm fabric, interior blast shields, and door glazing.*
 - b. *Removal of non-contributing, incompatible windows and doors which were replaced within the past fifty years and their replacement with new windows, doors and hardware which meets the SOI Standards for Rehabilitation.*
 - c. *Strengthening of entry doors and bracing of garage doors provided they do not result in altering the existing door form and appearance.*

D. Exterior Walls, Cornices, Porches, and Foundations

1. Cleaning, repair or repainting of surfaces, provided that destructive surface cleaning and preparation treatments are not used (e.g., water blasting, sandblasting, power sanding, chemical cleaning). Surface treatments must comply with the treatment approaches outlined in *Preservation Brief: 6 (Dangers of Abrasive Cleaning to Historic Buildings)*.
2. Partial in-kind replacement of porches, cornices, siding, balustrades, stairs, or trim.
3. In-kind repair or replacement of signs or awnings.
4. Installation of temporary stabilization bracing or shoring, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations to this or adjacent areas.
5. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view, and disturbed historic fabric is restored in-kind.
6. In-kind repair or reconstruction of concrete and masonry walls, columns, parapets, chimneys, or cornices, using compatible brick and mortar as previously described.

7. Bracing and reinforcing of walls, chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or removable in the future.
8. Strengthening and reinforcing of foundations and addition of foundation bolts, provided that visible new work is in-kind, and if required, mortar repair or replacement as previously described.
9. Repairs to and replacement of elements of curtain wall assemblies or exterior cladding that is hung on the building structure, usually from floor to floor, and when the color, size reflectivity and visual patterns are unaltered.

10. *LA HMGP SPECIFIC:*

- a. *Bracing and bolting of walls to address hydrostatic and hydrodynamic forces, provided the bracing is concealed from exterior view.*
- b. *Sealing a building or installing flood panels following the SOI Standards for Rehabilitation to make it watertight or impermeable to floodwaters. This allowance does not apply to the use of liquid sealants as water repellants on masonry buildings, unless the sealant is vapor permeable.*
- c. *Providing openings and installation of flood-resistant materials following the SOI Standards for Rehabilitation to allow in water in conjunction with dry Floodproofing.*
- d. *Anchoring of buildings to resist flotation, collapse, and lateral movement.*

E. Roofing

1. In-kind repair, replacement or strengthening of roofing, rafters, fascias, soffits, gutters, rafters or downspouts.
2. Replacement of three-tab asphalt shingles with dimensioned architectural shingles; replacement of cement asbestos shingles with asphalt-based shingles or other roofing of similar appearance to the original such as slate; replacement of corrugated asbestos panels with corrugated metal panels or other roofing of similar appearance to the original; replacement of untreated wood shingles or shakes with similar items of fire resistant wood; and in kind replacement of corrugated metal panels.
3. Repairs to a flat roof, including changes in roofing materials, where the repairs are not highly visible from the ground level.
4. In-kind replacement of metal roofing materials.
5. In-kind replacement of greenhouse glass panels.

F. Weatherproofing and Insulation

1. Caulking and weather-stripping to complement the color of adjacent surfaces or sealant materials.
2. In-kind replacement or installation of insulation systems, provided that existing interior plaster, woodwork, or exterior siding is not altered. The Allowance does not apply to urea formaldehyde foam insulation or any other thermal insulation containing water, when installed within wall cavities. It does not apply to exterior insulation finishing systems (EIFS) that do not include an adequate vapor and moisture drainage system, or work in enclosed spaces that are not finished.

G. Seismic, Tornado and Hurricane Upgrades

1. The installation of the following upgrades, provided that such upgrades are not visible on the exterior or within character-defining historic interiors: attic bracing, cross bracing on pier and post foundations; metal fasteners; collar ties; gussets; tie downs; strapping and anchoring of mechanical, electrical, and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs; and automatic gas shut off valves.
2. Replacement, repair or installation of lightning rods.
3. *LA HMGP SPECIFIC: The installation of the following upgrades, provided that such upgrades are not visible on the exterior or within character-defining historic interiors: modifications to non-character defining structural elements; installation of tie down straps, hurricane clips; anchoring of fuel tanks; installation of backflow valves; bracing of building contents.*

H. Building contents, repair or replacement, including furniture, interior cabinetry, countertops, bathroom fixtures, and equipment (e.g., medical equipment).

III. ROADS AND ROADWAYS

- A. Repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, number and width of lanes, shoulders, medians, curvature, grades, clearances, and side slopes.
 1. *LA HMGP SPECIFIC: This allowance also permits minor mitigation measures, such as those designed to harden exposed surfaces, including the application of gravel armoring to side slopes and ditches. This Allowance does not include recontouring or re-shaping of soils or the ground.*
- B. Repair of road composition finish course with materials to maintain pre-disaster size, traffic capacity, and load classifications of motor vehicles, including the reshaping and

compacting of roadbed soil and the repair of asphalt or concrete pavements. The Allowance does not apply to the repair of brick or stone paving, or the regrading of native materials to reconstruct the roadbed.

- C. Repair or replacement of traffic control devices such as traffic signs and signals, delineators, pavement markings, traffic surveillance systems.
- D. In-kind repair of road lighting systems, including period lighting fixture styles.
- E. In-kind repair of road appurtenances such as curbs, berms, fences, and sidewalks that are not brick or stone.
- F. In-kind repair of roadway safety elements such as barriers, guardrails, and impact-attenuation devices.
 - 1. *LA HMGP SPECIFIC: In the case of guardrails, the addition of safety end treatments is allowed.*
- G. Repairs to road slips and landslides that do not require grading of undisturbed soils on the up-hill side of the slip and that do not require work or staging areas in sites of properties where buildings or structures are more than 45 years old.
- H. Rebuilding or re-establishing an eroded or slumped roadbed on the downhill side of the road using such methods as lag and piling walls, gabions, rock fill, etc., when all work is contained within the right of way.
- I. Re-establishing and/or armoring of existing ditches.
- J. *LA HMGP SPECIFIC: Repair, replacement, upgrade or installation of culverts and arches beneath roads or within associated roadway drainage ditches, including any modest increase in capacity for mitigation purposes or to meet current codes and standards, provided that activities will not disturb previously undisturbed soils. Unless repairs are in kind, this allowance excludes such facilities that are of distinctive design or materials which have achieved historic significance or contribute to a historic district.*
- K. *LA HMGP SPECIFIC: Installation of speed bumps and/or enhanced curbs outside of viewshed of NHLs and individually-listed historic properties.*
- L. *LA HMGP SPECIFIC: Minor elevation (within 1'-0" of existing elevation) of roadway surface within existing right-of-way on existing alignment.*

IV. BRIDGES

- A. In-kind repairs of abutments, wing walls, piers, decks, and fenders, where no new construction is proposed.
- B. Repair or replacement of non-historic bridges where repair work, including the establishment and use of staging areas, does not exceed the existing road right of way.
- C. *LA HMGP SPECIFIC: Removal and/or replacement of flap-gates or flood gates, and bar screeners provided that activities will not disturb previously undisturbed soils.*
- D. *LA HMGP SPECIFIC: Elevation of non-historic bridges on existing foundations and footings.*

V. UTILITIES

- A. In urban or developed settings, replacement in situ or the relocation of existing utility poles between the edge of sidewalk and the road. Minor mitigation measures (e.g., increases in pole diameter) shall be covered by this Allowance.
- B. In rural settings, replacement of poles located along road shoulders. Minor mitigation measures (e.g., increased in pole diameter) shall be covered by this Allowance.
- C. In off-road alignments, replacement of power/utility poles within an established right of way that are either replaced in the same hole or replaced within 15 feet of existing poles; additions of new poles within the right of way, not to exceed 25 per mile; and relocation/realignment of segments of power lines to existing roadways or other previously disturbed rights of way. Projects involving more extensive replacement or realignment do not qualify under this Allowance. Minor mitigation measures (e.g., increases in pole diameter shall be covered by this Allowance.)
- D. Repair or replacement of damaged equipment, such as generators, switch boards, pumping equipment, etc.
- E. Collocation of communication equipment on existing telecommunication towers or buildings provided that the equipment is not located on National Register eligible or listed building or structure or located within the viewshed of a National Register eligible or listed districts. The installation may not create a substantial increase in the height or width of the tower or expansion of on-the-ground facilities that would include excavation outside the current tower site.
- F. Installation of warning or communications systems and similar devices within previously disturbed soils that are not adjacent to or on a National Register-eligible or listed building or structure or within the viewshed of a National Register eligible or listed district.
- G. *LA HMGP SPECIFIC: Installation of generators and similar devices within previously disturbed soils that are not adjacent to or on a National Register-eligible or listed*

building or structure or within the viewshed of a National Register eligible or listed district.

VI. AIRPORTS

- A. Repair of existing runways, taxiways, roadways, aprons and other hard surface facilities.
- B. In-kind repair of safety components, including beacons, on airport property.
- C. In-kind repair of existing beacons or other navigation aids not on airport property.

VI. RAILROADS, TROLLEY LINES, AND STREETCARS

- A. In-kind repair or replacement of safety components.
- B. Repair of crossings, gates, and signals.
- C. In-kind replacement and repair of existing track system.
- D. Repair of passenger loading areas.

VII. FEES AND SERVICES, shall be based upon:

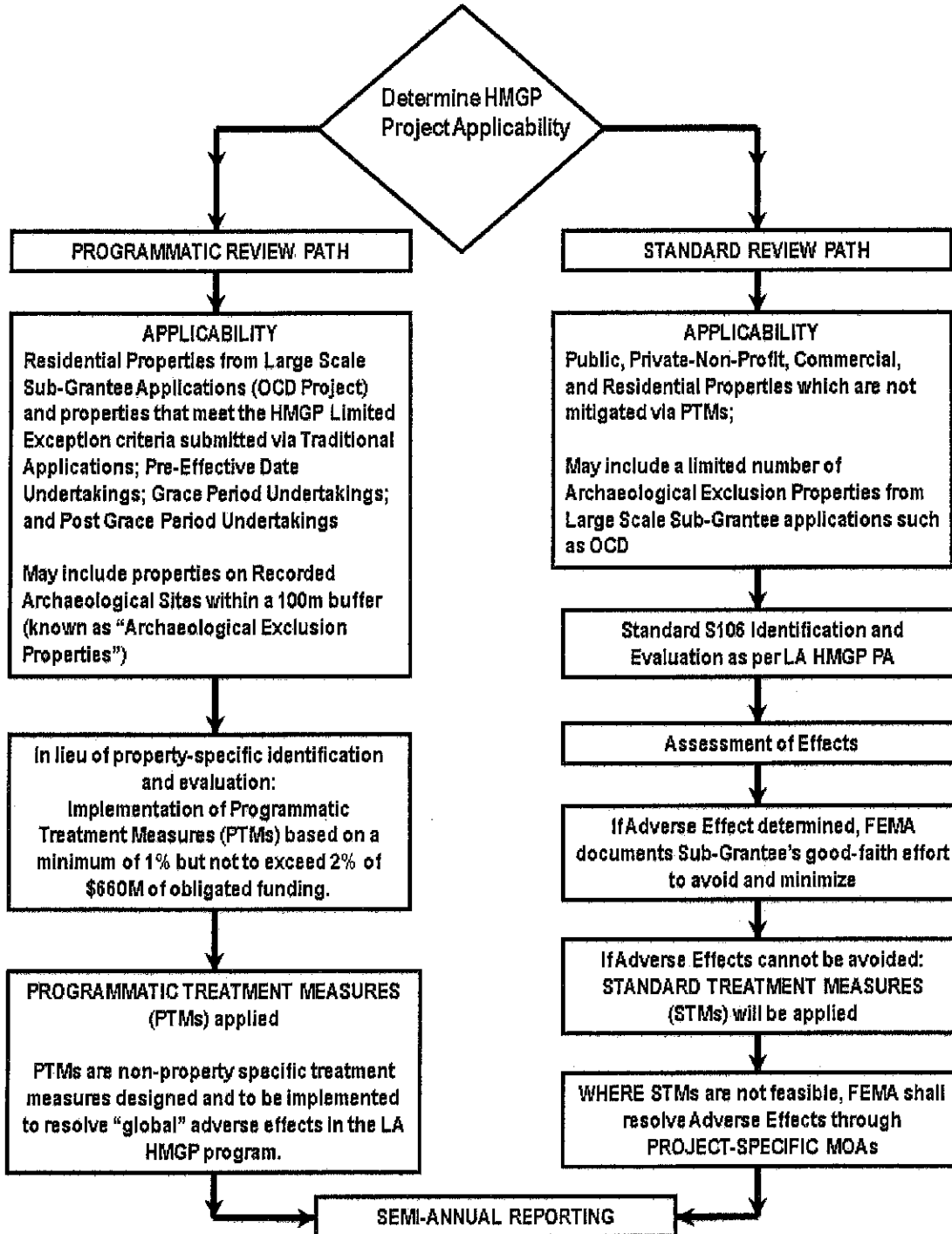
- A. Miscellaneous labor costs.
- B. Rental or purchase of vehicles or other motorized equipment.
- C. Builder's fees and dumpster rental.
- D. Fees for architectural and engineering or other design services provided the services shall not result in an adverse effect on a property listed in or eligible for the Register.
- E. Reimbursement of an Applicant's insurance deductible, not to exceed \$1,000.

VIII. VECTOR CONTROL

- A. Application of pesticides to reduce adverse public health effects, including aerial and truck mounted spraying.

APPENDIX D

S106 Review Paths for LA HMGP PA



APPENDIX E



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

DEC 10 2010
OPINION 10-0258

Ms. Katherine Zeringue
Environmental Liaison Officer
Federal Emergency Management Agency
FEMA-1603/1607/1786/1792-DR-LA
Louisiana Recovery Office
1 Seine Court
New Orleans, LA 70114

8-A-3 CEMETERIES

La. C.C. Arts. 1, 9
La. R.S. 8:1, *et seq.*, 8:304-306, 8:655, 8:671, *et seq.*, 25:933, 33:1565
25 U.S.C. § 3001, *et seq.*, 42 U.S.C. § 5121, *et seq.*
La. Atty. Gen. Op. Nos. 99-376, 08-0100, 08-0135, 08-0186, 09-0144, 10-0018, 10-0234

Discusses numerous questions related to the dedication of cemetery property under Louisiana law and the Louisiana Unmarked Human Burial Sites Preservation Act.

Dear Ms. Zeringue:

You have requested an opinion from this Office related to the interactions among the general Louisiana cemetery law (La. R.S. 8:1, *et seq.*), the Louisiana Unmarked Human Burial Sites Preservation Act ("Unmarked Burials Act") (La. R.S. 8:671, *et seq.*) and various planned or proposed Federal Emergency Management Agency ("FEMA") activities in post-Katrina New Orleans under the Stafford Act (42 U.S.C. § 5121, *et seq.*). Your request, which includes the numerous subparts set forth below, relates primarily to the following general factual scenario:

[FEMA] may provide funding for undertakings that are located on or in an area of an unmarked human burial or burials that will be funded by the 404 Program of the Hazard Mitigation Grant Program (HMGP) under the ... [Stafford Act]. These undertakings are likely to occur on privately-owned, residential property.

In light of the general requirements that FEMA is bound to follow, in many cases, the applicable laws of the State in which it is operating, you have asked the following eight questions about Louisiana's cemetery laws.

1. FEMA anticipates that it will be asked to fund the repair or construction of facilities that do not conform to cemetery uses and are located on a property containing a known family burial plot or an unmarked human burial. What is a reasonable way to determine the "immediate area where one or more human skeletal remains are found" as provided in La. R.S. 8:673 and establish a minimum acceptable buffer between a facility with a non-conforming use and the cemetery property?

2. Is a property owner required to seek removal of dedication for a portion of a property pursuant to La. R. S. 8:306 prior to constructing or repairing a facility that does not conform to a cemetery use if the facility will be located on a portion of the property outside of the immediate area of the cemetery or a known site with an unmarked human burial or burials but on land included in the title description for the property as it was recorded in the public records?
3. FEMA requires its applicants and subgrantees to conform to all federal and State laws. FEMA anticipates that it will receive requests for the reimbursements of the costs associated with the post-Katrina/Rita reconstruction of facilities on private property that do not conform to cemetery uses that will be sited on or near their pre-Katrina locations and are in the immediate area of known unmarked human burials. Is there an exception in the Cemetery Act that allows for the reconstruction of damaged nonconforming facilities on private property in the immediate area of a cemetery property?
4. Is the use of a facility constructed before the passage of the Cemetery Law in 1974 on a property that was once used as a cemetery "grandfathered" if the facility has continually remained in service, except for the few months immediately following Hurricanes Katrina and Rita? Would the facility be treated differently if it was constructed after the passage of the Cemetery Law? Can the use of a "grandfathered" facility be changed? Can such a facility be expanded? Would an expansion be acceptable if it does not require ground disturbance? What steps, if any, must FEMA require an applicant to take in order to ensure that the "grandfather" exception applied before FEMA approves funds for repair or expansion?
5. Can a FEMA applicant complete the construction or repair of a facility following the discovery of unmarked burial sites, human skeletal remains, or burial artifacts during construction if the provisions of the Unmarked Human Burial Sites Preservation Act are met and it is feasible to restore the burial site and avoid further disturbance of the human skeletal remains or burial artifacts, or is it necessary to first remove all human skeletal remains and request removal of the cemetery dedication through a court of competent jurisdiction prior to completing the project?
6. Do the provisions of the Cemetery Law apply if the remains of Hurricanes Katrina and Rita victims are discovered in the debris of a destroyed facility during the reconstruction or repair of the facility?
7. Who has jurisdiction over human skeletal remains from an unmarked burial site if they are less than fifty years old and are not the subject of a criminal investigation or legal inquiry?

8. Do the provisions of the Cemetery Law, such as the cemetery dedication, apply to a property if discovered buried human skeletal remains are removed from the property by the local law enforcement agency and will be treated as a criminal investigation or legal inquiry by the coroner?

Because each one of the above questions requires the analysis of disparate Louisiana laws and because the answers to each question are not necessarily dependant on the answers to any other question, they are each considered separately below.

1. **What is a reasonable way to determine the "immediate area where one or more human skeletal remains are found" as provided in La. R.S. 8:673 and establish a minimum acceptable buffer between a facility with a non-conforming use and the cemetery property?**

This office is aware of no specific legal guidance to determining the "immediate area" around human burials under La. R.S. 8:673. The legal provision to which you refer, La. R.S. 8:673, is a part of the Unmarked Burials Act. Neither that Act nor Louisiana cemetery law in general provides any guidance as to what the term "immediate area" means.¹ In addition, Louisiana law does not provide for nor does it require a buffer around burials or burial sites and nonconforming uses.² In this regard, it is the opinion of this office that questions related to what is the "immediate area where one or more human remains are found," in the absence of a specific legal definition of the term "immediate area," should be left to scientific determinations of potential impacts to any nearby burials. In other words, when considering what the appropriate buffer around human burials should be, this office is of the opinion that as long as the extent of the burial area is known (either through documentary evidence or through archaeological or remote sensing methods) an archaeologist can determine what a reasonable buffer would be in order that the burials are not impacted by any current or proposed activities nearby. It is our opinion that such a determination would satisfy the requirements of La. R.S. 8:673.

If, however, burials are anticipated to be impacted by any current or proposed activities, compliance with both the Unmarked Burials Act (i.e., submitting to the permitting process set forth therein) and the cemetery dedication provisions of La. R.S. 8:304-306 (discussed further below) would be required.³ However, it is

¹ No regulations have ever been promulgated under the Unmarked Burials Act. Thus, in addition to the lack of any guidance from the law itself, there are also no regulations concerning this question.

² For the purposes of this opinion, the term "conforming use" is synonymous with the term "cemetery purposes" as that term is used in La. R.S. 8:306.

³ The dedication provisions, La. R.S. 8:304-306, read as follows:

important to note that, as we opined in La. Atty. Gen. Op. No. 08-0100, the removal of the dedication for cemetery purposes need not be undertaken for an entire cemetery if the entire cemetery is not going to be impacted. The dedication need only be removed for the area that is going to be impacted by any current or proposed activities. *Id.*⁴

2. **Is a property owner required to seek removal of dedication for a portion of a property pursuant to La. R. S. 8:306 prior to constructing or repairing a facility that does not conform to cemetery use if the facility will be located on a portion of the property outside of the immediate area of the cemetery or a known site with an unmarked human burial or burials but on land included in the title description for the property as it was recorded in the public records?**

There is no clear legal requirement for such a removal under Louisiana law with one possible exception. In cases where the property in question has been legally recorded, either under La. R.S. 8:304(B)⁵ or simply under general rules related to

A. After property is dedicated to cemetery purposes pursuant to this Chapter, neither the dedication nor the title of a plot owner shall be affected by the dissolution of the cemetery authority, by nonuse on its part, by alienation of the property, or otherwise, except as provided in this Title.

* * *

§ 305. Rule against perpetuities, etc., inapplicable

Dedication to cemetery purposes pursuant to this title is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to and for the benefit of the general public.

§ 306. Removal of dedication; procedure

Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes unless and until the dedication is removed from all or any part of it by judgment of the district court of the parish in which the property is situated in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing to the board and by publication as hereinafter provided, and proof satisfactory to the court: (1) That no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed; and (2) That the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

⁴ We do believe that it is important to point out, as we did in La. Atty. Gen. Op. No. 08-0186, that, should portions of a cemetery be left intact, ingress and egress to the remaining portions of the cemetery must be maintained for visitation and maintenance purposes.

⁵ La. R.S. 8:304(B) reads:

An official act of dedication of cemetery property shall be filed with the clerk of the district court for the parish in which the cemetery is located and with the

recordation, as "cemetery property" but has never been used for the interment of human remains, it is our opinion that there is *prima facie* evidence of the presence of human remains on the property. In that event, it is further our opinion that La. R.S. 8:306 would require the removal of the explicit, recorded cemetery dedication provided for under that statute. Should there in fact be no burials in a particular area in which a dedication is in effect, but in which a nonconforming use is undertaken, it is our opinion that such an action would be a technical violation of the dedication provisions in the absence of the removal of a dedication from the property.

Although, beyond the one above-noted exception concerning recordation, there is no legal requirement to remove a cemetery dedication in the clear absence of human burials, in an abundance of caution and to ensure that the subject property has clear title – free from any defects that may result from an erroneous classification of the property as cemetery property – we recommend that, when faced with an unrecorded cemetery or a known unmarked human burial, La. R.S. 8:306 should be followed. If it is known that there are no burials present on the subject property, La. R.S. 8:306 would be a simple transaction before the proper court – one that would likely save the fee title owners potential problems in the future if any confusion arises as to the actual location of burials in relation to the subject property.⁶

3. Is there an exception in the Cemetery Act⁷ that allows for the reconstruction of damaged non-conforming facilities on private property⁸ in the immediate area of a cemetery property?

For the purposes of this question, it is our opinion that activities in the "immediate area" of cemetery property are controlled by our answer to Question 1 related to buffers. For all dedicated cemeteries under La. R.S. 8:304-306 (i.e., not the

Louisiana Cemetery Board. These requirements shall not apply to individual cemetery spaces within dedicated cemetery property. The provisions of this Subsection shall apply only to a cemetery established after June 21, 2008.

⁶ An important example of the security that this action provides is evident in La. Atty. Gen. Op. No. 10-0234, in which the subject property had already been put through the dedication-removal process prior to the specter arising of new burials being identified on the property. With the dedication on the property removed by a final judgment of a proper court, the identification of subsequent burials simply requires compliance with the Unmarked Burials Act, as the property is already undedicated.

⁷ The "Cemetery Act" to which you refer in your questions is the entirety of Title 8 of the Revised Statutes with the exception of Chapter 10-A of that title (which is the Unmarked Burials Act).

⁸ It is important to note that, in Louisiana, as in many other jurisdictions, the protections afforded to cemetery property under the law exist regardless of the classification of the property as public or private. La. R.S. 8:304-306 (no public/private distinction); La. R.S. 8:671, *et seq.* (specific inclusion of private property). See Ryan M. Seidemann, *NAGPRA at 20: What Have the States Done to Expand Human Remains Protections?*, 33(2) MUSEUM ANTHROPOLOGY 199 (2010). *Cf.*, 25 U.S.C. § 3001, *et seq.* (the companion federal legislation to many State burial protection laws does not apply to anything outside of federal and tribal land as it applies to *in situ* discoveries of human remains).

"immediate area", but rather the actual cemetery), there is no such exception under Louisiana law. In our opinion, it is of no moment that at some time in the past, a nonconforming use once existed on dedicated cemetery property.⁹ Under the current law, which was codified in 1974,¹⁰ which was jurisprudentially recognized at least as early as 1940,¹¹ and which was likely custom long before 1940,¹² nonconforming uses of dedicated cemetery property are not permitted under Louisiana law.¹³ Thus, it is our opinion that once a nonconforming use is no longer used or usable for its originally intended purpose (i.e., once it has to be partially or wholly reconstructed in order to function again), compliance with the dedication provisions is mandatory before any such reconstruction can begin.

4.a. Is the use of a facility constructed before the passage of the Cemetery Law in 1974 on a property that was once used as a cemetery "grandfathered" if the facility has continually remained in service, except for the few months immediately following Hurricanes Katrina and Rita?

In a footnote in La. Atty. Gen. Op. No. 10-0018, we stated the following:

It is also important to point out that, although the dedication of property to cemetery uses is an ancient legal concept, there have been, over time, many violations of this concept. However, nonconforming uses of cemetery property that predate the codification of this concept by the Louisiana Legislature in 1974 are likely "grandfathered" into compliance with current Louisiana law. In other words, notwithstanding any other law to the contrary, constructions on dedicated cemetery property pre-1974 are likely not violations of the law.

It is important to note that this statement was not part of the substantive opinion of this Office in La. Atty. Gen. Op. No. 10-0018. Rather it was simply dicta that was tangentially related to the substantive questions at issue therein. Now that the substance of that footnote has been presented as a formal question to this

⁹ See e.g., La. Atty. Gen. Op. No. 10-0018 (noting that the Thomy Lafon school in New Orleans was built atop a nineteenth century cemetery in the early to mid-twentieth century and that, although that nonconforming use may have been allowed at the time, it is inconsistent with the law since at least the 1940 Louisiana Supreme Court decision in *Humphreys v. Bennett Oil Co.*, 197 So. 222 (La. 1940), and the reuse of nonconforming uses cannot be undertaken now in the absence of compliance with the Unmarked Burials Act, the dedication provisions, or both).

¹⁰ La. R.S. 8:304-306 was part of the original Louisiana Cemetery Act, Acts 1974, No. 417.

¹¹ *Humphreys*, *supra*.

¹² La. Atty. Gen. Op. No. 10-0018; La. Atty. Gen. Op. No. 10-0234; Ryan M. Seidemann & Rachel L. Moss, *Places Worth Saving: A Legal Guide to the Protection of Historic Cemeteries in Louisiana and Recommendations for Additional Protection*, 55 LOY. L. REV. 449 (2009).

¹³ It is important to note that, unlike some other jurisdictions, custom holds a significant place as a source of Louisiana law. La. C.C. Art. 1.

Office through the current opinion request, we must modify that former dicta in light of the more comprehensive analysis contained, *infra*.

It is our opinion that there is no "grandfathering" contemplated under Louisiana law allowing a nonconforming use to be considered as a conforming use merely because it predated the codification of the dedication provisions in 1974. In other words, because we are of the opinion that there is no exception to the dedication provisions and because the dedication provisions existed as binding case law and custom prior to 1974, we conclude that nonconforming uses cannot be "grandfathered" into conformance.¹⁴

We acknowledge the scenario with regard to currently existing nonconforming uses. If a nonconforming use was constructed, innocently or not, on dedicated cemetery property, it is a violation of La. R.S. 304-306 and the antecedents to those laws. However, if the nonconforming use is a permanent or semi-permanent structure, it may now be virtually impossible to remove the nonconforming use (especially if that nonconforming use is still in use). In addition, in many cases (especially those cases where there is no record of the existence of a cemetery or burial), the construction of a nonconforming use may have obliterated any evidence of the existence of a cemetery on the property.¹⁵ These realities create obvious enforcement problems, making the removal of nonconforming uses under many circumstances virtually impossible.

However, when, as in the situations presented by your opinion, the nonconforming uses have ceased and must undergo reconstruction to be fit for any future use, it is easier to enforce the law and remove the nonconforming use. In other words, when it is known or likely that a cemetery or human burials have been subject to a nonconforming use, such nonconforming use should be removed, if practicable, subject to the applicable requirements of the Unmarked Burials Act.¹⁶

¹⁴ We are aware that some jurisdictions recognize analogous legal fictions for certain nonconforming uses in a zoning context. See e.g., Ala.Code 1975 § 4-6-7 (Alabama law grandfathering certain nonconforming uses around airports); A.C.A. § 14-363-206 (Arkansas law doing same); West's Ann.Cal.Gov.Code § 65863.4 (California law establishing a process to consider grandfathering certain nonconforming residential uses). However, due to the unique nature of cemeteries and due to the unambiguous absoluteness of the dedication provisions, we do not believe that the zoning analogy is appropriate in this context. See *Mothe Funeral Homes, Inc. v. United States*, 1995 WL 367939 (E.D.La. 1995) (noting the extremely unique nature of cemeteries under Louisiana law).

¹⁵ See e.g., *State of Louisiana v. Jetton*, Original Petition, Nineteenth Judicial District Court (filed Sept. 30, 2010) (noting that the conversion of a traditional cemetery to a nonconforming use obliterated surface traces of the cemetery).

¹⁶ In this regard, what we mean is that, if it is anticipated that human burials will be impacted by the removal of a nonconforming use and when those burials would otherwise be subject to the protections afforded in the Unmarked Burials Act, the removal of the nonconforming uses must proceed pursuant to the permitting requirements of the Unmarked Burials Act.

4.b. Would the facility be treated differently if it was constructed after the passage of the Cemetery Law?

Because we have opined, in answer to question 4.a. of this opinion, that construction before the codification of the dedication provisions in 1974 still requires conformance with a cemetery use, it is our further opinion that a post-1974 nonconforming use would be treated no differently than one occurring prior to 1974. In both instances, the use is nonconforming and is not permissible under the law.

4.c. Can the use of a "grandfathered" facility be changed?

Because we have above opined that there is no "grandfathering" under Louisiana law for nonconforming uses of dedicated cemetery property, it is our opinion, with one caveat, that a nonconforming use cannot be changed. In our opinion, the only acceptable change in use of a nonconforming structure under the dedication provisions would be to discontinue the nonconforming use. In this regard, it is our opinion that, absent a removal of the cemetery dedication, any currently nonconforming use could be converted to a cemetery use either in the form of a mausoleum or similar structure or a structure intended to service the continued use or maintenance of the property as a cemetery.¹⁷

4.d. Can such a facility be expanded?

For any existing nonconforming facility to be expanded, it is our opinion that several requirements must be met. First, if the cemetery dedication is to be removed, compliance with both La. R.S. 8:304-306 as well as the Unmarked Burials Act is required: A permit would have to be secured from the Division of Archaeology ("Division") under La. R.S. 8:671, *et seq.*, and, following the scientific removal of human remains under those laws, a petition to remove the cemetery dedication from the property must be submitted to and approved by a court of competent jurisdiction. To expand the existing nonconforming use, the removal of remains under the Unmarked Burials Act and the removal of the cemetery dedication must extend to the area slated for expansion as well as to the footprint of the existing nonconforming use.

Second, if the cemetery dedication is not to be removed, as noted above, the only acceptable expansion of a nonconforming use would be to create a structure that is intended to be used for "cemetery purposes" under La. R.S. 8:306. However, as we have noted previously, compliance with the dedication provisions in unmarked cemeteries (as defined in La. R.S. 8:673(5) and as interpreted in La. Atty. Gen. Op. No. 08-0135) also requires compliance with the

¹⁷ The uses noted here in the text as conforming uses are illustrative and are not meant to be exclusive. However, we are of the opinion that any such uses must be consistent with and in furtherance of the "cemetery use" of the property.

Unmarked Burials Act (i.e., the application for a permit from the Division). Upon compliance with both of these laws, expansion of a nonconforming use would be permissible in the "cleared"¹⁸ area, as that area would no longer be considered a cemetery for the purposes of La. R.S. 8:304-306.

4.e. Would an expansion be acceptable if it does not require ground disturbance?

The answer to this question hinges on a distinction between the dedication provisions of La. R.S. 8:304-306 and the Unmarked Burials Act. If no ground disturbance is to occur, it is our opinion that, unless there is surface evidence of the cemetery (i.e., grave markers, etc.), and no adverse impacts are anticipated from the solely surface activity at the site, the Unmarked Burials Act is not triggered. However, the same is not true for the dedication provisions. As noted above, unless and until human remains are properly removed from an area, that area's use is limited to activities that are consistent with a "cemetery purpose" under La. R.S. 8:306. Thus, it is our opinion that an expansion that does not cause ground disturbance would still be a violation of La. R.S. 8:306, absent a removal of the cemetery dedication pursuant to that law.

4.f. What steps, if any, must FEMA require an applicant to take in order to ensure that the "grandfather" exception applied before FEMA approves funds for repair or expansion?

Based upon our previously-stated opinions herein, this question is moot. Because there is no "grandfather" exception to the dedication provisions under La. R.S. 8:304-306, it is our opinion that, when human remains are at issue in a proposed project, FEMA only needs to comply with the dedication provisions and the Unmarked Burials Act.

5. Can a FEMA applicant complete the construction or repair of a facility following the discovery of unmarked burial sites, human skeletal remains, or burial artifacts during construction if the provisions of the Unmarked Human Burial Sites Preservation Act are met and it is feasible to restore the burial site and avoid further disturbance of the human skeletal remains or burial artifacts, or is it necessary to first remove all human skeletal remains and request removal of the cemetery dedication through a court of competent jurisdiction prior to completing the project?

¹⁸ In this regard, the word "cleared" is intended to refer to the geographic area from which human burials were removed pursuant to an Unmarked Burials Act permit and that is then the subject of a court ruling removing the dedication to cemetery purposes.

In response to this question, we refer you to La. Atty. Gen. Op. No. 10-0234 (footnotes included, but renumbered from original opinion), in which we have opined as follows:

[O]nce human remains have been interred in a piece of property, that property is forever dedicated as a cemetery.¹⁹ In addition, such property cannot be put to any use other than a "cemetery use" unless and until any and all human remains have been removed from the property and a court of competent jurisdiction issues an order removing the dedication.²⁰

Accordingly, it is our opinion that compliance with the Unmarked Burials Act alone does not obviate the need to remove the cemetery dedication on a particular piece of property. Compliance with the Unmarked Burials Act, pursuant to a properly-issued permit, ensures, from a scientific/archaeological perspective, that the archaeological resources represented by the human remains, burial artifacts, and burial sites are protected and/or properly analyzed and removed. In some instances, this may amount to leaving human remains in the ground when avoidance of disturbance is the appropriate course of action according to the Division.²¹ However, it is our opinion that, because the dedication provisions are absolute, the cemetery or burial in question would either have to be avoided or removed and a court of competent jurisdiction would have to issue a judgment pursuant to La. R.S. 8:306 for compliance with Louisiana law to be complete.

6. Do the provisions of the Cemetery Law apply if the remains of Hurricanes Katrina and Rita victims are discovered in the debris of a destroyed facility during the reconstruction or repair of the facility?

It is our opinion that the laws that are the subject of this opinion request, namely the dedication provisions and the Unmarked Burials Act, are not implicated when

¹⁹ It is important to note that, although La. R.S. 8:304(B), which was enacted in 2008, now requires the recordation of the existence of a cemetery in the public records (at the time that it is created), the absence of any recordation in the public records of any cemetery does not avoid compliance with these provisions. See generally *Humphreys v. Bennett Oil Corp.*, 197 So. 222 (La. 1940); *Thomas v. Mobley*, 118 So.2d 476 (La. Ct. App. 1 Cir. 1960). It is also important to note that Louisiana courts have held that the dedication of property as a cemetery is not subject to prescription. *Locke v. Lester*, 78 So. 2d 14, 16 (La. Ct. App 2 Cir. 1955).

²⁰ La. R.S. 8:306.

²¹ See e.g., Ryan M. Seidemann, DESCRIPTIVE BIOARCHAEOLOGICAL ANALYSIS OF HUMAN REMAINS EXCAVATED FROM THE CHARITY HOSPITAL CEMETERY (16OR175) FOR THE HURRICANE KATRINA MEMORIAL (2008) (This source discusses new construction in Charity Hospital I Cemetery in New Orleans. In this instance, human remains were allowed to remain in the ground underneath the new construction in the cemetery because the new construction was a consistent use of the property (a series of mausoleums to house the unidentified victims of Hurricane Katrina). Compliance with the Unmarked Burials Act in this situation was sufficient to satisfy Louisiana law because the property was not being put to a noncemetery use.).

the remains of modern disaster victims are encountered during reconstruction or debris operations. These provisions of Louisiana law contemplate the intentional interment, inurnment, or placement of human remains for the purposes of final disposition.²² The scenario contemplated by this question, in our opinion, is more analogous to a crime scene situation (which is discussed more fully, *infra*) and should be dealt with accordingly.²³

7. Who has jurisdiction over human skeletal remains from an unmarked burial site if they are less than fifty years old and are not the subject of a criminal investigation or legal inquiry?

It is apparent from the wording of this question that you are referring to the following language from the Unmarked Burials Act, specifically La. R.S. 8:680(C) and (D), which state:

C. Each law enforcement agency that receives notice of an unmarked burial site or human skeletal remains shall immediately notify the coroner of the parish where the site or remains are found. The law enforcement agency shall also notify the secretary through the division of archaeology within two business days of any discovery unless circumstances indicate that the death or burial is less than fifty years old or that there is need for a criminal investigation or legal inquiry by the coroner.

D. If the coroner finds that the unmarked burial site is over fifty years old and that there is no need for a legal inquiry by his office or for a criminal investigation, the secretary shall have jurisdiction of the site, human skeletal remains, and the burial artifacts.

These portions of the Unmarked Burials Act set the threshold age of a burial for coverage by the jurisdiction of the Division at fifty years or older.²⁴ In the event that an unmarked burial is determined not to be fifty years old and it is also determined that there is no "need for a criminal investigation or legal inquiry by the coroner,"²⁵ it is our opinion that such remains must be handled in accordance with the general provisions of La. R.S. 8:655²⁶ if the remains are identifiable and

²² See e.g., La. R.S. 8:1(2), which defines "burial" as "the *placement* of human remains in a grave" (emphasis added). The use of the term "placement" connotes an intentional act and not an act of nature as was presented by Hurricanes Katrina and Rita.

²³ La. R.S. 8:680 sets forth the requirements for notification to the proper law enforcement entities in the event of the inadvertent discovery of human remains.

²⁴ Accord, La. Atty. Gen. Op. No. 99-376.

²⁵ La. R.S. 8:680(C).

²⁶ La. R.S. 8:655 sets forth which individuals have the right to control the disposition of identified human remains, thus:

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have, in fact, been identified. Because the Division has no jurisdiction over such recent human remains, it is our opinion that these remains would be under the jurisdiction of the coroner unless and until a proper identification has been made such that the provisions of La. R.S. 8:655 may be applied. In the event that no such identification is possible or that the remains are otherwise unclaimed, it is the opinion of this Office that the default legal provisions related to the burial of paupers, La. R.S. 33:1565, would apply. That law provides, in pertinent part, as follows:

A. (1) Upon completion of an autopsy or completion of the coroner's investigation, if the investigation reveals that an autopsy is not required, the coroner shall release the body to the family or friends for burial.^[27]

(2) The coroner shall arrange for the burial of paupers, preferably by a Louisiana licensed funeral home. The burial expenses shall not exceed the actual cost of the service, and shall be paid by the parish or municipality in which the death occurred. ... The state or any municipality or parish may establish a maximum amount which it shall pay for individual burial expenses.^[28]

Thus, in answer to your question, it is the opinion of this Office that, should human skeletal remains be identified that are less than fifty years in age,²⁹ such

A. The right to control interment, as defined in R.S. 8:1(26), of the remains of a deceased person, unless other specific directions have been given by the decedent in the form of a written and notarized declaration, vests in and devolves upon the following in the order named:

- (1) The surviving spouse, if no petition for divorce has been filed by either spouse prior to the death of the decedent spouse.
- (2) A majority of the surviving adult children of the decedent, not including grandchildren or other more remote descendants.
- (3) The surviving parents of the decedent.
- (4) A majority of the surviving adult brothers and sisters of the decedent.
- (5) A majority of the adult persons respectively in the next degrees of kindred as established in Civil Code Article 880 *et seq.*

B. In the event that the decedent has made multiple declarations of interment, the last declaration shall control.

²⁷ This provision is consistent with La. R.S. 8:655, which would control once the release of the remains occurs.

²⁸ La. R.S. 33:1565(A).

²⁹ It should be noted, of course, that the "fifty years in age" as discussed herein does not refer to the actual chronological age of the deceased. Rather, this "age" refers more to a *terminus post quem* concept, or the latest knowable date of the deposition of the remains.

remains are not within the ambit of the Division and the Unmarked Burials Act. Rather, they are under the jurisdiction of the local coroner who has the duty to either dispose of those remains pursuant to La. R.S. 8:655 (if the individual can be and is positively identified) or pursuant to La. R.S. 33:1565 (if the individual is unidentifiable, unclaimed, or a pauper).³⁰

- 8. Do the provisions of the Cemetery Law, such as the cemetery dedication, apply to a property if discovered buried human skeletal remains are removed from the property by the local law enforcement agency and will be treated as a criminal investigation or legal inquiry by the coroner?**

The law does not speak directly to this question. However, it is clear from an *in pari materia* reading of the law related to cemetery dedication and the Unmarked Burials Act that the Legislature did not intend for crime scenes in Louisiana to inadvertently become dedicated cemetery property.

As noted above, the basic idea of cemetery dedication derives from La. R.S. 8:304-306. These provisions, when read together, suggest that the Legislature intended for the dedication to apply to intentionally-created cemeteries.³¹ Thus, it is our opinion that a dedicated cemetery is not created when human remains are discovered, but later are removed as part of an isolated criminal investigation. This is further supported by the Unmarked Burials Act, which, through La. R.S. 8:680, places the original jurisdiction for inadvertent discovery of human remains within the ambit of law enforcement entities. Only after a determination is made that a criminal investigation or legal inquiry is unnecessary is the jurisdiction over such remains (or the site, generally) transferred to the Division. Thus, based upon this statutorily-required series of events, it is our opinion that, if the location of human remains is under a criminal investigation or legal inquiry,³² unless and until the matter is referred to the jurisdiction of the Division based upon a

³⁰ It is important to note that, although the coroner may have jurisdiction over such remains and be responsible for their ultimate disposition, the costs of that disposition are not borne by the coroner. For a discussion of the duties of the coroner, political subdivisions, and the State with regard to the disposition of paupers' remains, see La. Atty. Gen. Op. No. 09-0144.

³¹ Although there is no doubt that those who would bury the remains of a murder victim can also be said to be "intentionally" creating the interment, the purpose for the interment is different from that envisioned by La. R.S. 8:304-306. In the former scenario, the purpose is to conceal the evidence of a crime; while in the latter, the purpose is to create a final resting place for the mortal remains of a human being. Although the act, itself, is similar, the motives are significantly different and thus, we believe, should be treated differently from a legal perspective.

³² This is excepting, of course, the scenario in which a crime victim's body is identified within a cemetery (but whose presence in the cemetery is unrelated to the intentional final disposition of that individual). In such a situation, clearly, the cemetery in which the remains are found does not lose its character as a dedicated cemetery; nor is the primary jurisdiction of law enforcement impinged upon merely because of the property's classification as a cemetery.

coroner's ultimate determination that the site is not a crime scene, the site remains a crime scene and not a dedicated cemetery.³³

Summary

Due to the length and complexity of this opinion, we here provide the following brief recapitulation of our major conclusions, which are fully analyzed above:

- We are aware of no specific legal guidance to determining what constitutes the "immediate area" around human burials under La. R.S. 8:673. In the absence of a specific legal definition of that term, the question of what constitutes a reasonable buffer around human burials such that any proposed activity will not adversely impact the remains is a scientific one, the answer to which should be determined by a qualified archaeologist.
- There is no legal requirement to remove a cemetery dedication from an area that does not actually contain human remains, with the following qualification: If the subject area has been included in a recorded cemetery or otherwise shown to be within a cemetery area on historic or modern documents or maps, even if no human remains are actually present, La. R.S. 8:306 mandates the removal of the cemetery dedication. Further, we recommend that, when in close proximity to a cemetery or to known unmarked human burials, La. R.S. 8:306 should also be followed.
- There is no exception in Louisiana law to allow for the reconstruction of a nonconforming use on dedicated cemetery property. If such a use exists, once the nonconforming use is no longer used or usable for its originally intended purpose, compliance with La. R.S. 304-306 is mandatory before any reconstruction can begin.
- Because there is no exception to the dedication provisions (La. R.S. 8:304-306) and because the dedication provisions existed as binding case law and custom prior to 1974, we conclude that nonconforming uses cannot be "grandfathered" into conformance.
- A nonconforming use constructed subsequent to the Cemetery Act in 1974 would be treated no differently than one constructed before 1974.

³³ This result is also consistent with common sense. It would be nonsensical for the simple presence of human remains (be they the remains of a murder victim, a disaster victim, or merely the remains of a death by natural causes) on a particular piece of property to trigger the dedication provisions and thus require court action to clear the title to the property for use for noncemetery purposes. This would be an absurd interpretation of the law of cemetery dedication in contravention of La. C.C. Art. 9.

- The only acceptable change in use of a nonconforming structure under the dedication provisions would be a change that brings the new use into compliance with the dedication provisions, which would be a use for "cemetery purposes" under La. R.S. 8:306.
- A nonconforming use may only be expanded by a removal of the cemetery dedication and, if applicable, compliance with the Unmarked Burials Act.
- Compliance with the Unmarked Burials Act alone does not obviate the need to remove the cemetery dedication on a particular piece of property.
- The dedication provisions and the Unmarked Burials Act are not implicated when the remains of modern disaster victims are encountered during reconstruction or debris operations.
- Human skeletal remains that are less than fifty years in age are not subject to the jurisdiction of the Division of Archaeology or the Unmarked Burials Act. Such remains are within the jurisdiction of the local coroner who has the duty to dispose of those remains pursuant to La. R.S. 8:655 or La. R.S. 33:1565, whichever is applicable.
- The Legislature did not intend for crime scenes to inadvertently become classified as dedicated cemetery property simply by virtue of the discovery of human remains.

We hope this sufficiently answers your inquiry; however, if we may be of further assistance please do not hesitate to contact our office.

Sincerely yours,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

By: 

RYAN M. SEIDEMANN
Assistant Attorney General

JDC/RMS/tp

cc: Charles R. McGimsey, Ph.D., Louisiana State Archaeologist
Lucy L. McCann, Director, Louisiana Cemetery Board