

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER,  
THE LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND  
EMERGENCY PREPAREDNESS,  
THE ALABAMA-COUSHATTA TRIBE OF TEXAS,  
THE CADDO NATION,  
THE CHITIMACHA TRIBE OF LOUISIANA,  
THE CHOCTAW NATION OF OKLAHOMA,  
THE COUSHATTA TRIBE OF LOUISIANA,  
THE JENA BAND OF CHOCTAW INDIANS,  
THE MISSISSIPPI BAND OF CHOCTAW INDIANS,  
THE QUAPAW TRIBE OF OKLAHOMA,  
THE SEMINOLE NATION OF OKLAHOMA,  
THE SEMINOLE TRIBE OF FLORIDA,  
THE TUNICA-BILOXI TRIBE OF LOUISIANA,  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**WHEREAS**, the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security (DHS) proposes to administer Federal programs (programs) including but not limited to the following: the Disaster Public Assistance (PA) program, Hazard Mitigation Grant Program (HMGP), Pre-disaster Hazard Mitigation (PDM), Federal Assistance to Individuals and Households (FAIH), Flood Mitigation Assistance (FMA) program, and the Grants Preparedness Directorate (GPD) program pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, U.S.C. §5121 et seq., (Stafford Act), and the implementing regulations contained in Title 44 Code of Federal Regulations (CFR) Part 206, the National Flood Insurance Reform Act of 1994 and the implementing regulations contained in 44 CFR Part 78; the Disaster Mitigation Act of 2000 and the implementing regulations; the Post-Katrina Emergency Management Reform Act of 2006; and such other Acts, implementing regulations or congressionally authorized programs as are passed from time to time; and

**WHEREAS**, FEMA has determined that the implementation of these programs in Louisiana will result in undertakings (undertakings) that may affect properties listed in or eligible for listing in the National Register of Historic Places (National Register), and FEMA has consulted with the Advisory Council on Historic Preservation (ACHP) and the Louisiana State Historic Preservation Officer (SHPO) pursuant to the regulations, 36 CFR Part 800, implementing Sections 106 and 110(f) of the National Historic Preservation Act (NHPA), 16 U.S.C. 470; and

**WHEREAS**, as a result of the implementation of FEMA programs, the State of Louisiana will receive financial and/or technical assistance from FEMA and will in turn provide monies and other assistance to eligible Grantees, Sub-Grantees, or Applicants, as defined by the programs, and as such the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) is responsible for administering current and future FEMA programs for the State of Louisiana and has participated in this consultation and been invited to enter into this Programmatic Agreement (Agreement); and

**WHEREAS**, FEMA has determined that the implementation of these programs in Louisiana may result in individual projects (undertakings) that have the potential to affect historic properties that may have religious and cultural significance to Federally recognized Indian Tribes on or off Tribal lands, including sites that may contain human remains and/or associated cultural items, and FEMA has invited the Alabama-Coushatta Tribe of Texas, Caddo Nation, Chitimacha Tribe of Louisiana, Choctaw Nation of Oklahoma, Coushatta Tribe of Louisiana, Jena Band of Choctaw Indians, Mississippi Band of Choctaw Indians, Quapaw Tribe of Oklahoma, Seminole Nation of Oklahoma, Seminole Tribe of Florida and Tunica-Biloxi Tribe of Louisiana (hereafter referred to collectively as "Tribes") to participate in the terms of this Agreement as signatory parties; and

**WHEREAS**, FEMA may invite additional Federally-recognized tribe(s) that may have sites of religious and cultural significance in Louisiana to be a consulting party or signatory to this Agreement in the future; and each of the provisions in this Agreement shall apply to this additional tribe(s); and

**WHEREAS**, Tribes have expertise to identify and evaluate historic properties with religious and cultural significance or other cultural resources of concern to them and have provided and may continue to provide information to FEMA on areas in the State of Louisiana that are of significance to them; and

**WHEREAS**, the ACHP has participated in this consultation process in accordance with 36 CFR Part 800, and is a signatory to this Agreement, pursuant to 36 CFR § 800.14(b)(2)(iii); and

**WHEREAS**, FEMA, GOHSEP, SHPO, THPO, Tribes, and ACHP acknowledge that the implementation of FEMA programs will be more efficient if a Programmatic Agreement, pursuant to 36 CFR §800.14(b)(2), is in place to specify procedures, to define the roles and responsibilities in the historic review process, to eliminate the need for SHPO/THPO, Tribes and ACHP review of certain routine activities with little or no potential to adversely affect historic properties, and to streamline reviews, so that the effects of undertakings on historic properties may be considered in a manner that minimizes delays to the delivery of FEMA assistance; and

**NOW, THEREFORE**, FEMA, GOHSEP, SHPO, THPO, Tribes, and ACHP agree that these FEMA programs in Louisiana shall be administered in accordance with the following Stipulations to satisfy FEMA's Section 106 responsibilities for all the resulting undertakings and effectively integrate historic preservation concerns with the needs of FEMA's undertakings. FEMA shall not fund any application for assistance under these programs until the review of individual undertakings is completed pursuant to this Agreement.

## STIPULATIONS

To the extent of its legal authority, FEMA in coordination with SHPO, THPO, Tribes, GOHSEP, and/or the Grantee, Sub-Grantee, or Applicant, shall ensure that the following measures be carried out:

### I. APPLICABILITY

- A. This Agreement applies to undertakings resulting from the FEMA programs in Louisiana, as defined in the Whereas clauses. This Agreement applies immediately to individual FEMA funded or assisted undertakings that are not currently under review on the date of execution of this Agreement. This Agreement supersedes the terms of the previously executed Statewide Programmatic Agreement (2004 Statewide Agreement), dated December 3, 2004, among FEMA, SHPO, the Louisiana Office of Homeland Security and Emergency Preparedness (now GOHSEP), and the ACHP, in accordance with Stipulation XIII of the 2004 Statewide Agreement.
- B. FEMA will assess the status of individual undertakings prepared in response to Presidential emergency or major disaster declarations (disasters) declared prior to the execution of this Agreement and which are under review at the time this Agreement is executed. FEMA may elect to complete the review of these individual undertakings following the process set in the 2004 Statewide Agreement, but will make all reasonable efforts to consult with Tribes as described in this Agreement. FEMA will review any changes to the scope of work for individual undertakings that were previously reviewed under the 2004 Statewide Agreement under the terms of this Agreement unless the terms of the Memorandum of Agreement for that undertaking specifically provide for an alternate review process.
- C. FEMA has determined that implementation of the following programs authorized by the Stafford Act that provide assistance to individuals and households do not have the potential to cause effects on historic properties; and FEMA has no further NHPA responsibilities for those undertakings, pursuant to 36 CFR §800.3(a)(1):
  1. Section 408. Federal Assistance to Individuals and Households (42 U.S.C. 5174) including temporary housing for disaster victims whose homes are uninhabitable; planning and rental assistance, but does not include ground-disturbing activities related to the construction of temporary housing sites;
  2. Section 410. Unemployment Assistance (42 U.S.C. 5177);
  3. Section 412. Food Coupons and Distribution (42 U.S.C. 5179);
  4. Section 415. Legal Services (42 U.S.C. 5182);
  5. Section 416. Crisis Counseling Assistance and Training (42 U.S.C. 5183); and

6. The Cora Brown Fund, to assist victims of natural disasters for those disaster-related needs that are not met by government agencies or private organizations (44 CFR §206.181).
- D. This Agreement will only apply to historic properties, including those yet to be identified, that retain National Register eligibility pursuant to 36 CFR Part 60, historic properties that may have Tribal religious and cultural significance, and properties that may be eligible for the National Register.
- E. FEMA shall conduct Section 106 review for individual undertakings in accordance with Stipulations VI, VII, VIII, IX, or X of this Agreement, as applicable:
  1. Emergency undertakings within the scope of Stipulation VI, will follow the process in that Stipulation. However, the terms of Stipulation VI do not apply to the long term planning, preparedness, or mitigation programs including Pre Disaster Mitigation (PDM), Hazard Mitigation Grant Program (HMGP), or Grants Preparedness Directorate (GPD);
  2. Undertakings that FEMA determines, in accordance with Stipulation VII.A, fall within the Allowances in Appendix C will not be subject to further Section 106 review;

## II. GENERAL

- A. When FEMA is designated as Lead Agency for an undertaking per 36 CFR § 800.2(a)(2), FEMA shall fulfill the collective Section 106 responsibilities for that undertaking for all Federal agencies that so designate.
- B. If another Federal program or Federal agency has reviewed and approved an undertaking in accordance with Section 106 of NHPA, FEMA has no further requirement for Section 106 review for that undertaking provided the scope of the undertaking was the same and has not changed. The Applicant and/or GOHSEP shall certify in writing to FEMA that there has been no change in the scope of work. FEMA will confirm with the other Federal agency that proper Tribal consultation has occurred and provide notice to the SHPO/THPO, Tribes, and ACHP.
- C. FEMA shall schedule, as appropriate, coordination activities as soon as practicable after a Presidential disaster declaration. These activities may include conference calls or meetings, which shall involve all signatories and other appropriate parties as determined by FEMA.
- D. All time designations will be in calendar days. If any party does not comment within the agreed upon time frames, FEMA may assume that party's concurrence with FEMA's determination, and shall notify all consulting parties of the action and proceed in accordance with this Agreement

### III. TRIBAL CONSULTATION

- A. When the implementation of FEMA programs activates the stipulations set forth in this Agreement, all designated Tribal contacts, as listed in Appendix A, will be notified of the nature of the emergency and invited to participate in consultation activities.
1. It is acknowledged that Tribes having reservation land within the State of Louisiana will be consulted in recognition of their sovereignty. For Tribes that have acquired their status in accordance with Section 101(d)(2) of NHPA and have a THPO, FEMA will consult and carry out its programs in accordance with applicable authorities and in recognition of Tribal sovereignty. Such a Tribe may require a separate Section 106 agreement for the expedited Section 106 review of undertakings that take place in, or affect historic properties within, their tribal lands as a result of a Presidentially-declared disaster. Such agreements will be negotiated in consultation with FEMA pursuant to 36 CFR § 800.2(c)(2)(ii)(E).
  2. Pursuant to Stipulation XV.E, a Signatory Tribe's decision not to participate in consultation on an individual undertaking will not affect its roles and rights under this Agreement regarding other undertakings.
- B. Except for those undertakings covered by Appendix C, FEMA shall consult with each Tribe on FEMA's undertakings for the entire State of Louisiana unless a Tribe has identified a more limited geographic area of interest in which case FEMA will consult with that Tribe only with regard to undertakings in that limited geographic area. For the purposes of this Agreement, Tribes have identified, and may update the information on geographic areas of interest to the Tribe by providing to FEMA either a list of Parishes containing these areas or a map delineating these areas. Such updates will be inserted by FEMA without the need to amend this Agreement per Stipulation XV.C. These lists and/or maps are included in Appendix B of this Agreement.
- C. Each Tribe that has not assumed the responsibilities of the SHPO for Section 106 on tribal lands under Section 101(d)(2) of NHPA may notify FEMA that it is declining to participate in consultation for any individual undertaking and is waiving its rights to execute a memorandum of agreement as set out in 36 CFR § 800.2(c)(2)(ii)(F). A Signatory Tribe's decision to decline to participate in consultation for an individual undertaking applies only to that specific undertaking and will not abrogate a Tribe's ability to consult on any other undertaking.
- D. FEMA shall keep the Tribes informed when pre-European or historic American Indian Cultural Sites are involved in undertakings or when undertakings may affect standing structures that may have significance to Tribes. American Indian Cultural Sites (AICS) are historic properties, including but not limited to, archaeological sites, locations, and other historic properties, in which features are culturally important to the Tribes, or items that are of American Indian origin, or in which there are American Indian burials, or Traditional Cultural Properties and Sacred Sites which are of religious and cultural significance to the

Signatory Tribes, or a traditional cultural property, as defined in National Register Bulletin 38, "Guidelines for Evaluating and Documenting Traditional Cultural Properties."

- E. FEMA shall ensure that its consultation with other consulting parties shall not include the dissemination of information that might risk harm to an AICS or that might impede the use of such a site by the Tribes in accordance with Section 304 of the NHPA and other applicable laws.
- F. FEMA shall update as necessary available names, mailing and shipping addresses, fax, telephone numbers and e-mail addresses for signatory party contacts. Such updates will be inserted by FEMA without the need to amend this Agreement per Stipulation XV.C. This information is included in Appendix A of this Agreement.

#### IV. ASSIGNED RESPONSIBILITIES

##### A. FEMA responsibilities:

1. FEMA shall use Federal, State, or contractor staff whose qualifications meet the Secretary of the Interior's (SOI) *Professional Qualifications Standards (Professional Qualifications)* defined in 36 CFR Part 61, Appendix A, as determined by FEMA's Federal Preservation Officer (FPO), for Section 106 review of individual FEMA funded undertakings pursuant to this Agreement.
2. In cases where FEMA requests that another Federal agency, a State agency, or the Applicant identify and evaluate historic properties on behalf of FEMA, as described in 36 CFR §800.4 (b-c), FEMA shall ensure that all work undertaken on its behalf is done by staff that meet SOI *Professional Qualifications*, as determined by FEMA's FPO.
3. FEMA shall provide all signatories with an annual report on this Agreement for the previous calendar year, on March 31st of each year that this Agreement is in effect unless the report due date is extended by agreement of the signatories. This report shall summarize activities that were reviewed using this Agreement, actions taken to implement this Agreement, and recommend any actions or revisions to be considered during the next calendar year. These parties shall review this information to determine if amendments are necessary.
4. FEMA shall confer annually with signatories to this Agreement to evaluate the effectiveness of the Agreement and the need for any modifications or amendments. As provided in Stipulation XV.A this consultation meeting will occur no later than 60-days after FEMA provides the annual report described in Stipulation IV.A.3.
5. FEMA shall maintain a current list of consulting parties to this Agreement with names, mailing and shipping addresses, fax, telephone numbers and available e-mail addresses in Appendix A. FEMA shall provide updates to Appendix A when changes in contact information occur and provide this information to all signatory and concurring parties.

FEMA may update Appendix A contact information without the need to amend this Agreement per Stipulation XV.C.

6. FEMA shall notify all signatories as soon as practicable of a Presidentially-declared disaster declaration and disaster-specific points of contact, and update the disaster status as appropriate.
7. FEMA will convene an initial disaster scoping meeting as soon as practicable after each Presidentially declared disaster to address disaster-specific issues and procedures.
8. FEMA shall ensure that all documentation resulting from undertakings reviewed pursuant to this Agreement shall be consistent with applicable SHPO or THPO guidelines and provide for SHPO/THPO and Tribal review.

B. SHPO responsibilities:

1. SHPO shall review FEMA's National Register eligibility determinations and FEMA's effect findings and provide comments within the timeframes required by this Agreement in Stipulations VI and XIII.
2. SHPO shall participate in an initial disaster scoping meeting for each Presidentially-declared disaster.
3. SHPO may delegate some or all of its responsibilities under this Agreement to liaison(s). Liaisons are not required to be members of SHPO staff. They shall serve as SHPO representatives with respect to the actions and decisions required by this Agreement. SHPO shall confer with FEMA about the selection of SHPO representatives, the scope of responsibilities delegated, the implementing procedures related to the actions and decisions delegated, and the agreement between FEMA and SHPO shall be formally documented.
4. SHPO shall notify the FEMA Region VI Environmental Officer within 30 days if contact information changes.
5. SHPO shall participate in annual review described in Stipulation IV.A.4. convened by FEMA to review effectiveness of the Agreement.

C. GOHSEP responsibilities:

1. GOHSEP shall include requirements in the Memorandum of Understanding (MOU) between GOHSEP and each Applicant for FEMA assistance that specifically require the Applicant to comply with this Agreement.
2. GOHSEP shall ensure that the MOU provides that construction-related activities cannot begin until the proposed project is approved by FEMA and GOHSEP.

3. GOHSEP shall ensure that the MOU requires the Applicant to notify GOHSEP immediately when proposed changes to an approved scope of work of an undertaking related to a historic property; unanticipated effects to known historic properties; and/or unexpected discoveries of archaeological deposits, burials, or human remains occur. The MOU shall require the Applicant to stop construction activities in the area in the case of an unanticipated effect to a known historic property or the unexpected discovery of archaeological deposits, burials, or human remains, and not resume construction until authorized by GOHSEP and FEMA. It also will require that the Applicant complies with the Louisiana Unmarked Human Burial Sites Preservation Act (R.S. 8:671 et seq.) if an unmarked grave, indications of a burial, or human remains are identified on privately-owned property or the property of a State or local governmental entity. GOHSEP will require the Applicant to notify both GOHSEP and FEMA if a discovery occurs on Federal or tribal land so that FEMA can comply with all applicable Federal statutes, including the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq.
4. GOHSEP shall ensure that all Applicants are fully informed about their responsibilities as stipulated in this Agreement. This includes providing Applicants with guidance about in-kind repairs, pursuant to *The Secretary of the Interior's Treatment of Historic Properties 1995 (Standards)*, 36 CFR Part 68, or most updated version, and ensuring that Applicants understand and acknowledge any additional stipulations placed on undertakings as a result of Section 106 consultation or other terms of this Agreement.
5. GOHSEP shall ensure that all documentation resulting from undertakings pursuant to this Agreement will be consistent with applicable SHPO guidelines for such documents where FEMA is not directly coordinating with SHPO.
6. GOHSEP shall ensure that all Applicants understand that failure to comply with the terms of this Agreement may jeopardize FEMA funding and/or participation in an undertaking.
7. GOHSEP shall assist FEMA in the preparation of an annual report summarizing activities carried out under the terms of this Agreement. Such reports will serve as the basis for the annual Agreement review.
8. GOHSEP shall notify the FEMA Region VI Environmental Officer within 30-days if contact information changes.
9. GOHSEP shall participate in an initial disaster scoping meeting for each Presidentially-declared disaster.

D. THPO/Tribal responsibilities:

1. Tribes shall be invited to participate in an initial disaster scoping meeting for each Presidentially-declared disaster. At any point during this process a Tribe may decide its level of involvement per Stipulation III.B.



2. Tribes shall review FEMA's National Register eligibility determinations and effect findings and provide comments within the timeframes required by this Agreement. Tribal leaders, and as appropriate, their representatives will meet the qualifications or standards as defined by their Tribes.
3. Tribal leader(s) and/or Tribal government(s) may designate a representative(s) including THPO, to carry out the duties related to the actions and decisions delegated by this Agreement. Tribes shall notify FEMA of the designated representative(s), and the scope of responsibilities delegated.
4. Tribes may provide written disaster-specific protocols to the FEMA Region VI Environmental Officer with tribal-specific consultation procedures and request their implementation for any Presidentially-declared disaster.
5. Tribes shall notify the FEMA Region VI Environmental Officer within 30 days if contact information changes.
6. Tribes will participate in the annual reviews convened by FEMA to review the effectiveness of this Agreement.

E. ACHP responsibilities:

1. ACHP will provide guidance and advisory information to resolve disputes that may occur during the implementation of this Agreement.
2. ACHP will advise FEMA if it will participate in consultations to resolve adverse effects.
3. ACHP shall consult with FEMA to address public objections or concerns raised by signatories regarding implementation of the Agreement.
4. ACHP will participate in the annual reviews convened by FEMA to review the effectiveness of this Agreement.

## V. COORDINATION

Following a Presidential emergency or major disaster declaration, FEMA, SHPO, THPO, Tribes and GOHSEP representatives shall participate in a disaster-specific historic preservation scoping meeting, where FEMA and GOHSEP shall provide guidance on program issues and processes. FEMA and GOHSEP, as appropriate, shall also present information regarding the Section 106 review process to all Applicants at the Applicants' briefings and kickoff meetings.

A. FEMA shall:

1. Consult with SHPO/THPO, Tribes and ACHP in the event of a disaster declaration to establish a process and preferred methods for conducting communications with all consulting parties and for obtaining consulting party responses.

2. Consult with other Federal agencies having jurisdiction for undertakings related to the programs to ensure compliance with applicable historic preservation laws and regulations for FEMA funded undertakings.
3. Consult with Tribes, and as appropriate, their THPO or representative(s) for undertakings related to programs to ensure compliance with applicable historic preservation laws and fulfill consultation responsibilities regarding Tribal properties of religious and cultural significance.
4. Notify Tribes by the most expeditious means regarding the scope of damage and potential effects on Tribal properties of religious and cultural significance that might be affected by the undertaking upon the initial disaster declaration. FEMA shall follow this initial notification with a written invitation to Tribes to assist FEMA in determining potential effects of the undertaking.
5. Pursuant to Stipulation X, when notified by the Applicant or GOHSEP of any proposed change to the approved scope of work for an undertaking related to a historic property, FEMA shall notify SHPO/THPO, Tribes, and other parties interested in the undertaking, as necessary, as soon as practicable to determine if the change will have an effect on the property. FEMA may authorize the Applicant to proceed with the change if it meets an Allowance in Appendix C. If FEMA determines that the change does not meet an Allowance, FEMA shall conduct further consultation pursuant to Stipulation VIII.
6. In the aftermath of a disaster, determine in consultation with SHPO/THPO and Tribes those historic properties that are standing structures and which may be program eligible, but have not retained National Register eligibility pursuant to 36 CFR Part 60. This Agreement will apply only to historic properties that retain National Register eligibility in the aftermath of a disaster, pursuant to 36 CFR Part 60. For standing structures, that FEMA, SHPO/THPO, and Tribes agree lacks integrity as defined in 36 CFR 60.4, FEMA shall conclude its Section 106 review for that undertaking and document the decision in the project file and these properties will not be considered in further Section 106 reviews. If FEMA, SHPO/THPO or a Tribe do not agree on whether a historic property has retained National Register eligibility, or if the ACHP or the SOI so request, FEMA may obtain a determination of eligibility from the Keeper of the National Register pursuant to 36 CFR Part 63.
7. Consult with SHPO/THPO and Tribes on developing a practical plan for involving members of the public in the Section 106 review process for specific projects. In doing so, FEMA shall seek and consider the views of the public and Tribal members in a manner that reflects the nature and complexity of the FEMA program, the undertaking and its potential to affect historic properties, the likely interest of the public in those effects, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking. FEMA, in consultation with SHPO/THPO and Tribes may invite interested groups or persons to participate as consulting parties in the Section 106 process in accordance with 36 CFR §800.3(f).

8. At the disaster-specific historic preservation scoping meeting discussed in Stipulation V, FEMA and SHPO will determine if new or updated historic property datasets will be created. If appropriate, FEMA will consult with SHPO to develop a written agreement describing the historic properties datasets or other types of data that will be transferred and a schedule for the transfer of this information.

B. SHPO shall:

1. Provide FEMA with available information about historic properties within the Presidentially-declared Disaster area, including:
  - a. historic properties listed in or previously determined eligible for the National Register through Federal agency compliance with Section 106 or by the Keeper of the National Register;
  - b. properties listed in the Louisiana Historic Standing Structures Survey and the Louisiana Division of Archaeology Archeological Site Files;
  - c. geographic areas with potential for archeological resources, areas where adequate cultural resource surveys have taken place, and areas where there are not likely to be archeological resources;
  - d. access to its Geographic Information System (GIS) database for historic properties.
2. Provide available listings of previously surveyed, or known but unevaluated structures, buildings, and archaeological sites within the declared Disaster area, and geographic areas within the affected area with a high potential for under-evaluated historic properties.
3. Identify SHPO staff or consultants to assist FEMA staff with its Section 106 responsibilities, and identify, in coordination with FEMA, specific activities that SHPO may perform at FEMA's request for specific projects.
4. Assist FEMA in identifying Federally recognized Tribes, located both within and outside the State of Louisiana, that have historic properties of religious and cultural significance in the state; or other individuals or organizations with a demonstrated interest in an undertaking affecting historic properties, due to the nature of their legal or economic relation to or their concern with the effects of the undertaking on the properties; and organizations in the declared Disaster area that have an interest in historic properties.
5. Assist local jurisdictions in the State of Louisiana in identifying staging and disposal sites for debris disposal and sites for chipping of vegetative debris, if applicable that will not have potential to cause effects on historic properties.

C. GOHSEP shall:

1. Pursuant to Stipulation X, notify FEMA as soon as practicable of any proposed change to the approved scope of work for an undertaking related to a historic property. FEMA shall then consult with SHPO/THPO and Tribes or authorize GOHSEP to consult with SHPO/THPO and Tribes to determine if the change will have an effect on the property. FEMA may authorize the Applicant to proceed with the change if it meets an Allowance or if, for a standing structure, the change can be modified to conform to the *Standards*. If FEMA determines that the change does not meet an Allowance, or if FEMA and SHPO or THPO and Tribes determine that the change cannot be modified to conform to the *Standards*, FEMA shall initiate adverse effect consultation pursuant to Stipulation IX.

D. Tribes, including THPO, shall:

1. Provide FEMA and SHPO with an awareness of unevaluated historic properties within the declared disaster area, and geographic areas within the affected area with a high potential for unidentified historic properties. The information provided by THPO and Tribes may be exempt from public knowledge and disclosure under the Freedom of Information Act (FOIA) by both Section 304 of NHPA and Section 9 of the Archeological Resources Protection Act (ARPA), or other applicable laws.
2. Identify THPO or Tribal staff or consultants to assist FEMA staff with its Section 106 responsibilities, and identify, in coordination with FEMA, specific activities that the THPO and/or Tribal staff may perform at FEMA's request for specific projects.
3. Provide information to FEMA and SHPO that defines the areas in the State of Louisiana which are of significance to them and provide written updates as appropriate per Stipulation III.B.

E. ACHP shall:

1. Provide guidance and advisory information to resolve disputes or address public comments that may occur during the implementation of this Agreement.
2. Provide information on preservation issues of concern, including consultation and policy guidance, within the declared Disaster area.

**VI. EXPEDITED PROJECT REVIEW FOR EMERGENCIES**

- A. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 of NHPA [36 CFR §800.12(d)].
- B. As a result of or in anticipation of a disaster, FEMA may be required to perform or authorize funding for emergency protective measures in response to an immediate threat to human health and safety or an immediate threat to improved property, which may adversely affect historic properties. For these and any other undertakings that the Federal Coordinating

Officer (FCO) determines are of an emergency nature as defined in Section 102(1) of the Stafford Act and which are not exempt from Section 106 review in accordance with Stipulation VI.A above, FEMA shall conduct the following expedited review:

1. The FCO shall certify in writing to SHPO/THPO and Tribes the need for FEMA to conduct an expedited review for individual undertakings. The expedited review period will begin at the time that FEMA determines an emergency action is required and will remain in effect for 30-days after the emergency declaration. Should FEMA find it necessary to extend the expedited review period beyond 30 days, FEMA shall, in 30-day increments, request an extension from ACHP in writing, and copy SHPO/THPO and Tribes on both the request and the ACHP response. FEMA shall immediately assume the ACHP's concurrence with the request for a 30-day extension until notified otherwise by the ACHP.
2. If FEMA determines that an emergency action may adversely affect a historic property, including one of religious and cultural significance to a Tribe, during this expedited review period, FEMA shall provide SHPO/THPO and Tribes with available information about the condition of the property, the proposed action, and any proposed treatment measures to address the adverse effect, requesting comments and recommendations from all relevant parties.
  - a. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic means.
  - b. SHPO/THPO and Tribes shall respond to any FEMA request for comments within 3 days after receipt of request and confirmation of contact with Tribal representatives.
  - c. If FEMA determines the nature of the emergency action warrants a shorter time period for SHPO/THPO and Tribal review, FEMA shall notify SHPO/THPO and Tribes immediately.
3. If FEMA does not accept the recommendations provided by SHPO/THPO and Tribes pursuant to this Stipulation, or if SHPO/THPO or Tribes object to FEMA's proposal to use the emergency review procedure and/or proposed treatment measures, FEMA shall consult with SHPO/THPO and Tribes to attempt to resolve the dispute.
  - a. If FEMA is unable to resolve the dispute, FEMA shall seek the ACHP's advice.
  - b. The ACHP shall provide its advice to FEMA within 3 days after receipt of FEMA's request.
  - c. If FEMA determines the nature of the emergency action warrants a shorter time period for ACHP review, FEMA shall notify the ACHP immediately.
  - d. FEMA will consider any timely advice from the ACHP before making a final decision on resolving the dispute.

4. Emergency actions may proceed without further review if FEMA determines that an emergency action would not adversely affect:
  - a. Any identified historic property; or
  - b. Tribal property of religious and cultural significance; or
  - c. Any property determined to be 45 years old or older.

FEMA may elect to consult with SHPO/THPO and Tribes on such a determination, if FEMA so desires. FEMA shall document its decision with a written record in the project file.

## VII. PROGRAMMATIC ALLOWANCES AND SMALL PROJECTS

- A. Programmatic Allowances: FEMA shall determine if all the actions within the scope of an undertaking are included in the Allowances in Appendix C. If so, FEMA shall document this determination in the project file and may authorize funding for the undertaking without further Section 106 review for it. If an undertaking is not composed entirely of the activities listed as Allowances in Appendix C, FEMA will conduct the applicable Section 106 review for the undertaking only with regard to the activities that are not so listed.
- B. Small Projects: FEMA shall determine if an undertaking is a "Small Project" under the PA program, as defined by 44 CFR 206.203(c)(2) (less than or equal to \$64,200 in FY 2009). FEMA may determine that a "Small Project" does not require further Section 106 review if it does not include ground-disturbing components inconsistent with the Programmatic Allowances in Appendix C, and the properties in its APE will be returned to pre-disaster condition, and these properties are not:
  - a. older than 45 years old; or
  - b. listed in or previously determined eligible for listing in the National Register based on the records provided by SHPO; or
  - c. listed in the Louisiana Historic Standing Structures Survey.

FEMA may approve funding for such "Small Project" after documenting its decision in writing in the project files.

## VIII. STANDARD PROJECT REVIEW

If an undertaking is not subject to Stipulation VI or VII, it will be subject to the following Standard Project Review:

- A. Area of Potential Effects (APE): The APE shall be defined as the individual facility when an undertaking is limited to in-kind repair, as defined at 36 CFR §68.3(b)(6), or rehabilitation, as defined at 36 CFR §68.2(b) of an individual facility's interior or exterior as defined in 44 CFR §206.201(c). FEMA shall define and establish the APE for all other undertakings in consultation with SHPO/THPO and Tribes.
- B. Identification and Evaluation of Historic Properties: In accordance with 36 CFR §800.4(b, c), FEMA shall determine, in consultation with SHPO/THPO and Tribes if the APE for undertakings other than in-kind repair and rehabilitation described above contains historic properties, including properties of religious and cultural significance to Tribes that are listed, or eligible for listing, in the National Register.
- C. Objections to a FEMA determination of NRHP eligibility: If SHPO/THPO or Tribes do not agree with a FEMA determination of National Register eligibility, or if the ACHP or the SOI so request, FEMA shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR Part 63.
- D. Finding 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 it determines that:
1. No historic properties are present in the APE; or
  2. The undertaking is designed to avoid all effects to the historic properties within the APE, including those that are archeological sites or properties of religious and cultural significance to Tribes.
- E. Review of FEMA's No Historic Properties Affected finding:
1. FEMA shall notify SHPO/THPO, Tribes, and all consulting parties of its finding and provide supporting documentation. Unless SHPO/THPO, Tribes, or any consulting party objects to this finding within 15-days after receipt, FEMA shall complete the Section 106 review and may approve funding.
  2. If SHPO/THPO objects within 15-days of an adequately documented finding, FEMA shall consult with the objecting party to resolve the disagreement; or elect to assess effects on the historic property or properties by applying the Criteria of Adverse Effect per VIII.E below; or forward the finding and supporting documentation to the ACHP and request that the ACHP review the finding pursuant to 36 CFR § 800.4(d)(1)(iv)(A) through (d)(1)(iv)(C).
- F. Apply Criteria of Adverse Effect: If FEMA finds an undertaking may affect identified historic properties, including properties of religious and cultural significance to Tribes or if SHPO or THPO or Tribes object to the finding of "no historic properties affected" within 15 days of receipt, FEMA shall apply the Criteria of Adverse Effect, pursuant to 36 CFR §800.5(a). FEMA shall consider any views provided by SHPO/THPO, Tribes, any consulting parties, and the public when it applies these Criteria. FEMA may consider the potential

effects of the undertaking on National Register eligible or listed standing structures, archaeological properties, and traditional cultural properties separately. However, the assessment of adverse effects process is not complete until all historic properties affected by the undertaking, including those that may have Tribal religious and cultural significance, have been evaluated and the SHPO/THPO, Tribes, and any consulting parties have had the opportunity to review and comment on FEMA's determination.

1. If FEMA determines that an undertaking does not meet the Criteria of Adverse Effect, FEMA shall propose a finding of "no adverse effect" pursuant to 36 CFR §800.5(b). FEMA shall notify SHPO/THPO, Tribes, and consulting parties, if any, of this finding and provide supporting documentation pursuant to 36 CFR §800.5(c).
  - a. Standing Structures: If SHPO/THPO or Tribes or any consulting party objects to the finding of "no adverse effect" for a proposed undertaking on a standing structure FEMA may request through GOHSEP that the Applicant revise the scope of work to conform to the *Standards*. FEMA also shall ensure that the revised scope of work is reviewed for funding eligibility. If the scope of work is modified to address the objections to the satisfaction of FEMA, FEMA shall consult with SHPO/THPO, Tribes, and any consulting parties, and provide relevant documentation. Unless SHPO/THPO, Tribes, or any consulting party objects within 15 days after receipt, FEMA shall proceed with funding the undertaking assuming concurrence with its "No Adverse Effect" determination.
  - b. Archaeological Sites and/or Traditional Cultural Properties: If SHPO/THPO or Tribes or any consulting party objects to the finding of "no adverse effect" for a proposed undertaking on an archaeological site or traditional cultural property, FEMA may request that the Applicant identify feasible alternatives to the undertaking. FEMA shall ensure that such alternatives are reviewed for funding eligibility. FEMA shall consult with SHPO/THPO, Tribes, GOHSEP, and any consulting parties, to review the Applicant's alternatives. If the scope of work is modified to avoid or minimize adverse effects to the archaeological site or traditional cultural property to the satisfaction of FEMA, FEMA shall consult with SHPO/THPO, Tribes and any consulting party on the revised scope of work and provide relevant documentation. Unless SHPO/THPO, Tribes, or any consulting party objects within 15 days after receipt, FEMA shall proceed with funding the undertaking assuming concurrence with its "No Adverse Effect" determination.
2. If SHPO/THPO, a Tribe, or other consulting party objects to FEMA's "no adverse effect" determination and upon FEMA's reexamination of information provided by the objecting party, FEMA agrees that the undertaking will have an adverse effect, FEMA shall initiate consultation to resolve the adverse effect in accordance with Stipulation IX.
3. If an undertaking cannot be modified to address objections to FEMA's "no adverse effect" determination, FEMA shall initiate consultation to resolve the adverse effect in accordance with Stipulation IX.



## IX. RESOLUTION OF ADVERSE EFFECTS TO HISTORIC PROPERTIES

- A. If FEMA finds that an undertaking may adversely affect a historic property, FEMA shall consult with the Signatories and Invited Signatories to determine if the undertaking will be addressed with a Memorandum of Agreement (MOA) developed in accordance with 36 CFR §800.6 or through a Secondary Programmatic Agreement (Secondary Agreement) developed in accordance with 36 CFR § 800.14(b)(3). Following this decision FEMA shall notify SHPO/THPO, Tribes, and all other consulting parties, as well as provide the ACHP with an adverse effect notice, including documentation in accordance with 36 CFR §800.11(e).
1. Memorandum of Agreement (MOA): FEMA shall develop a MOA in accordance with 36 CFR §800.6 to outline measures to minimize or mitigate adverse effects on historic properties. FEMA shall consult with SHPO/THPO, Tribes, GOHSEP, ACHP, if participating, and any other consulting parties to consider reasonable alternate treatment measures that serve an equivalent or greater benefit to FEMA, other Federal agencies, SHPO, Tribes, or the public in lieu of standard measures such as recordation, curation, relocation, or elevation or archeological data recovery, while promoting the preservation of historic properties. Alternate measures may include, but are not limited to, preservation planning, interpretive programs, and development or enhancement of a historic property database using GIS.
  2. Secondary Programmatic Agreement: FEMA, SHPO/THPO, Tribes, GOHSEP, and ACHP, if participating, and other consulting parties may consult in accordance with 36 CFR § 800.14(b)(3) to develop a Secondary Programmatic Agreement to identify programmatic conditions and treatment measures to govern the resolution of anticipated adverse effects from certain complex project situations for an undertaking or for multiple, similar undertakings.
- B. FEMA shall involve the public in the resolution of adverse effects in accordance with 36 CFR §800.6(a)(4).
- C. When an undertaking has the potential to adversely affect a National Historic Landmark (NHL), FEMA shall notify the National Park Service Southeastern Regional Office in Atlanta, Georgia in addition to SHPO/THPO, and Tribes. If FEMA determines that the undertaking will result in an adverse effect, FEMA shall invite the SOI and the ACHP to participate in the consultation to resolve the adverse effect. When the ACHP participates in consultation concerning a NHL, it shall report the outcome of the review process to the FEMA Administrator and the SOI.
- D. Once an MOA or Secondary Programmatic Agreement is executed, FEMA may proceed with funding the undertaking. If an MOA or Secondary Programmatic Agreement cannot be executed, FEMA may conclude the Section 106 review process in accordance with 36 CFR § 800.7 and then proceed with funding the undertaking.

## X. CHANGES TO APPROVED SCOPE OF WORK

- A. GOHSEP shall require the Applicant to notify it immediately when there are proposed changes to an approved scope of work for an undertaking related to a historic property in its MOU with the Applicant. When notified by an Applicant, GOHSEP shall notify FEMA as soon as possible of any proposed change to the approved scope of work for an undertaking related to a historic property. GOHSEP shall also direct the Applicant not to implement the changes to the proposed scope of work until GOHSEP notifies the Applicant that the consultation required by this Agreement is completed.
- B. FEMA may authorize the Applicant to proceed with the change if FEMA determines that it meets an Allowance; or if, for a standing structure, the change is modified to conform to the *Standards*.
- C. If FEMA determines that the change does not meet an Allowance, or that changes to the proposed scope of work for a standing structure cannot be modified to conform to the *Standards*, or will cause additional effects to a historic property that is an archaeological site or a traditional cultural property, FEMA shall consult with, or authorize GOHSEP to consult with, SHPO/THPO and Tribes and the Applicant to determine if the change will have an effect on the historic property and to address the effect.
- D. If FEMA determines that the change to the approved scope of work will adversely affect a historic property, FEMA shall initiate adverse effect consultation pursuant to Stipulation IX or, if the undertaking is already covered by an MOA or Secondary Programmatic Agreement, proceed in accordance with such agreement.
- E. FEMA will notify GOHSEP when the consultation to review changes to the approved scope of work is completed and GOHSEP will ensure that the Applicant implements any revisions to the requested change to the scope of work to comply with this Agreement.

## XI. UNEXPECTED DISCOVERIES

- A. Previously Unidentified Properties or Unexpected Effects: GOHSEP shall require its Applicants to notify it immediately if it appears that a FEMA funded undertaking has affected a previously unidentified property or affected a known historic property in an unanticipated manner. This requirement will be included in the MOU between GOHSEP and the Applicant.
  - 1. GOHSEP shall require the Applicant to stop construction activities in the vicinity of the discovery and shall require the Applicant to take all reasonable measures to avoid or minimize harm to the property until GOHSEP notifies the Applicant that FEMA has completed consultation to consider the effects of the undertaking on the previously unidentified property or unexpected effects and GOHSEP takes the necessary steps to ensure that the Applicant will implement any additional measures identified during FEMA's consultation.

2. GOHSEP may request that the Applicant document the unexpected discovery in writing.
3. GOHSEP shall notify FEMA the earliest possible time, but no later than 24 hours after GOHSEP notification regarding the previously unidentified property or unexpected effects.
4. FEMA shall notify SHPO/THPO, Tribes, and other parties that may have an interest in the previously unidentified property or unexpected effects at the earliest possible time, but no later than 72 hours after FEMA is notified by GOHSEP. FEMA will initiate consultation with SHPO/THPO and Tribes regarding the National Register eligibility of the previously unidentified property and the effects of the undertaking on historic properties.

B. Archaeological Deposits: GOHSEP shall require its Applicants to notify it immediately if archaeological deposits are uncovered during the implementation of a FEMA funded undertaking. This includes archaeological deposits found in tree root balls during removal.

1. GOHSEP shall require the Applicant to stop construction activities in the vicinity of the archaeological deposits and shall require the Applicant to take all reasonable measures to avoid or minimize harm to the finds. The Applicant shall secure the area and restrict access to the deposits. GOHSEP shall inform the Applicant that work in the APE of the project will not be resumed until FEMA completes consultation to consider the effects of the undertaking on the archaeological deposit. The Applicant may be instructed by FEMA and GOHSEP that work can be resumed in areas determined to be beyond the extent of the archeological deposit by an archaeologist who meets the *Professional Qualifications*. Work in the area of the archaeological deposit may be resumed when FEMA has completed consultation to consider the effects of the undertaking on the archaeological deposit and GOHSEP takes the necessary steps to ensure that the Applicant will implement any additional measures identified during FEMA's consultation.
2. GOHSEP may request that the Applicant document the unexpected discovery in writing.
3. GOHSEP shall notify FEMA the earliest possible time, but no later than 24 hours after GOHSEP notification regarding the discovery of archaeological deposits.
4. FEMA will notify SHPO/THPO, Tribes, and other parties that may have an interest in the archaeological deposits at 72 hours after FEMA is notified by GOHSEP. FEMA will initiate consultation with SHPO/THPO and 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.

C. Unmarked Graves, Burials, or Human Remains: 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 Applicant is required to comply with the Louisiana Unmarked Human Burial Sites Preservation Act (R.S. 8:671 et seq.). The provisions of NAGPRA apply to discoveries of unmarked graves, burials, human remains, or items of cultural patrimony on Tribal or Federal lands. GOHSEP shall require its Applicants to notify GOHSEP immediately if unmarked graves, burials, human remains, burial artifacts, or items of cultural patrimony are identified.

1. GOHSEP shall require its Applicants to stop work immediately in the vicinity of the unmarked grave, indications of a burial, human remains, or burial artifacts and to secure the area.
2. GOHSEP shall require the Applicant to immediately notify the appropriate law enforcement agency and may request that the Applicant 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 grave(s), 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 Applicant shall notify the LDOA at 225-342-8170 within 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. FEMA shall require the Applicant to comply with the Louisiana Unmarked Human Burial Sites Preservation Act (R.S. 8:671 et seq.) and other applicable laws. 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 Applicant, as appropriate.
5. In cases where the human remains 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 Agreement. FEMA shall also follow the guidelines contained in the ACHP's 2007 "Policy Statement Regarding Burial Sites, Human Remains, and Funerary Objects."
6. The Applicant shall not resume work in the secured area around the unmarked grave, indications of a burial, human remains, burial artifacts, or items of cultural patrimony until the requirements of the Louisiana Unmarked Human Burial Sites Preservation Act, and any other applicable laws, have been met and GOHSEP notifies the Applicant that the required consultation is complete and GOHSEP will take the necessary steps to ensure that the Applicant will implement any additional measures required by LDOA, FEMA, or any applicable law.

- D. Consultations to Address All Other Unexpected Discoveries: FEMA will consult with SHPO/THPO, Tribes, GOHSEP, the Applicant, and other consulting parties regarding unexpected discoveries in accordance with Stipulation VIII. Parties that participate in a consultation regarding the treatment of all other unexpected discoveries shall mutually agree upon timeframes for the consultation. FEMA will initiate the consultation process by providing all consulting parties with written recommendations that take into account the discovery's eligibility for the National Register and the effect of the undertaking on the unexpected discovery. If SHPO/THPO or Tribes do not object to FEMA's recommendations within the agreed upon timeframe, FEMA may request that the Applicant modify the scope of work as necessary to implement the recommendations. If SHPO/THPO or Tribes object to FEMA's recommendations, or if the scope of work cannot be modified, FEMA shall initiate consultation to resolve the adverse effect in accordance with Stipulation IX.

## **XII. CURATION OF ARTIFACTS**

- A. FEMA and GOHSEP shall ensure that all records produced during the course of the survey, testing, and any data recovery operations from the implementation of its undertakings are curated at a facility that meets the standards of, and in accordance with, the provisions of 36 CFR Part 79, "Curation of Federally Owned and Administered Archeological Collections," and any applicable law.
1. FEMA and GOHSEP shall make every reasonable effort to ensure that the materials resulting from survey, testing, or data recovery from the implementation of its undertakings are curated at a facility that meets the standards of, and in accordance with the provisions of 36 CFR 79. In cases where the survey, testing, or data recovery are conducted on private land, any recovered materials shall remain the property of the property owner and shall be returned to them. In such instances, FEMA and GOHSEP shall encourage property owners to donate artifacts to an appropriate entity for curation, public display, and educational uses. In cases where the property owner declines to accept responsibility for the recovered materials and requests to transfer ownership of the recovered materials to another public entity, FEMA and GOHSEP will ensure curation of the materials in accordance with SHPO guidelines.
  2. In cases where cultural materials are recovered during the course of FEMA undertakings on Tribal lands in Louisiana, the recovered materials are the property of the Tribe, and FEMA will ensure that the materials are provided to the Tribe.
  3. All human remains shall be dealt with according to the Louisiana Unmarked Human Burial Sites Preservation Act (R.S. 8:671 et seq.) and other applicable laws and Stipulation XI.C of this Agreement.

## **XIII. ANTICIPATORY ACTIONS**

- A. FEMA shall not grant assistance to an Applicant who, with intent to avoid the requirements of this Agreement or Section 106 of NHPA, has intentionally significantly and adversely

affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed such significant adverse effect to occur; except that, after consultation with the ACHP, FEMA may determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the Applicant and shall complete consultation for the undertaking pursuant to Stipulation IX. FEMA shall notify the Applicant, SHPO/THPO and Tribes of the results of its consultation with the ACHP.

- B. FEMA shall specifically advise GOHSEP of this Stipulation and shall require that GOHSEP advise its applicants in writing that they may not initiate construction (including deconstruction) or any ground-disturbing activities on projects for which they are seeking Federal funding prior to compliance with this Agreement. GOHSEP also shall advise its applicants that they may jeopardize Federal funding if construction activities are initiated beyond the design phase and prior to compliance with this Agreement.

#### **XIV. DISPUTE RESOLUTION**

- A. Should any Signatory object within the timeframes provided to any plans, specifications, or actions provided for review pursuant to this Agreement, FEMA shall consult further with the objecting party to seek resolution by the most expeditious and appropriate method.
- B. Disputes regarding FEMA's determinations of National Register eligibility shall be resolved following Stipulation VIII.C.
- C. 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).
- D. 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.
- E. 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.

- F. The Applicant will not be required to cease work on activities unrelated to the objection while the objection is being reviewed and resolved.
- G. FEMA shall notify the SHPO/THPO, Tribes, ACHP, and any members of the public who raised an objection of its resolution within the 15 days following its resolution.
- H. If at any time during implementation of the measures stipulated in this Agreement, 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/THPO and Tribes of the objection, and consult as needed with the objecting party, the SHPO/THPO, Tribes, and the ACHP, prior to resolution of the objection.

#### **XV. DURATION, SEVERABILITY, AMENDMENTS, WITHDRAWAL, AND TERMINATION**

- A. Duration: Unless terminated according to Stipulation XV.G. below or extended through an amendment per Stipulation XV.C, this Agreement shall remain in effect from the date of its execution through December 31, 2016 provided that the annual meeting described in Stipulation IV.A.4 occurs within 60-days following FEMA's submission of the Annual Report described in Stipulation IV.A.3..
- B. Severability: In the event any provision of this Agreement shall be deemed contrary to, or in violation of, any applicable existing law or regulation of the United States of America or the Tribes affixing their signatures hereto, or the State of Louisiana, only the conflicting provisions shall be deemed null and void, and the remaining provisions of the Agreement shall remain in effect.
- C. Amendments: Any Signatory may request in writing that the Agreement be amended. An amendment to this Agreement may be specific to a disaster. A Signatory may also request an amendment if a Signatory determines that the terms of the Agreement cannot be carried out. Within 21 calendar days of such a written request, FEMA will convene a meeting of the Signatories and Invited Signatories to consider this request. The Signatories and Invited Signatories will make a good faith effort to amend the Agreement prior to any Signatory taking steps to terminate it. An amendment will go into effect when signed by FEMA, GOHSEP, SHPO, and the ACHP. An amendment will go into effect with regards to a Tribe once it has been signed by the Tribe.
- D. Amendments by Tribes: Any Tribe may, for matters related to tribal interests and issues, request an amendment to this Agreement that is specific to their tribe or tribal concerns. Any such amendments shall be specific to the applicable tribe and will require the agreement of the requesting tribe, FEMA, GOHSEP, SHPO, and ACHP only.
- E. Decline to Participate by Tribes: A Tribe may notify FEMA in writing that it is declining to participate in the Agreement for a specific disaster or undertaking or type of undertakings. The request by a Tribe to decline to participate in a specific disaster, undertaking, or type of undertaking shall not be construed by any party as Withdrawal from the Agreement or

Termination by that Tribe. FEMA will notify any Tribe that has declined to participate for a disaster, undertaking, or type of undertaking of any Unexpected Discoveries of historic properties, including unmarked graves, burials, or human remains that may have associations with the Signatory Tribe pursuant to Stipulation XI.

- F. Withdrawal by Tribes: A Tribe may, for matters related to tribal interests and issues, provide a 30-day written notice to FEMA, GOHSEP, SHPO, and ACHP, that it is fully withdrawing from participation in the Agreement. Following such a withdrawal, FEMA will review undertakings that take place on the land of that Tribe, or that may affect historic properties within that tribal land, or may affect historic properties of religious and cultural significance to the Tribe in accordance with 36 CFR §§ 800.3 through 800.7 or an applicable alternative under 36 CFR § 800.14. Withdrawal from this Agreement by a Tribe does not terminate the Agreement. A Tribe that has withdrawn from the Agreement may at any time that this Agreement remains in effect notify FEMA, GOHSEP, SHPO, and ACHP in writing that it has rescinded its notice withdrawing from participation in the Agreement.
- G. Termination by Tribe: A Tribe may terminate the applicability of this Agreement on its tribal lands by providing 30 days written notice to FEMA, GOHSEP, SHPO, and ACHP. After such a termination, all undertakings that take place on its tribal land or may affect historic properties within its tribal land will be reviewed in accordance with 36 CFR §§ 800.3 through 800.7, or an applicable alternative under 36 CFR § 800.14. These tribe-specific terminations do not terminate the Agreement with regard to other Signatories or undertakings.
- H. Termination of Agreement: FEMA, GOHSEP, SHPO, or ACHP may terminate this Agreement by providing 30 days written notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. If this Agreement is terminated, FEMA will comply with 36 CFR Part 800.3 through 800.7 or with an applicable alternative under 36 CFR § 800.14.
- I. Termination by Subsequent Agreement: This Agreement may be terminated without further consultation by the execution of a subsequent Agreement that explicitly terminates or supersedes its terms, or by FEMA's implementation of Program Alternatives, pursuant to 36 CFR §800.14.

## **XVI. EXECUTION AND IMPLEMENTATION OF PROGRAMMATIC AGREEMENT**

- A. This Agreement shall be executed in counterparts, with a separate page for each signatory, and FEMA shall ensure that each party is provided with a fully executed copy. This Agreement will become effective on the date of the last signature by FEMA, GOHSEP, SHPO and the ACHP. The Agreement will go into effect with regards to a Tribe once it has been signed by the Tribe.
- B. FEMA programs authorized by Congress in the future may be included under this Agreement, without amending this Agreement if FEMA notifies GOHSEP, SHPO/THPO,



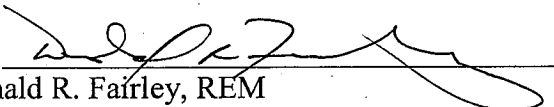
Tribes, and ACHP in writing that it intends to review undertakings that are funded or otherwise authorized by such a program under the terms of this Agreement; and GOHSEP, SHPO/THPO, Tribes, and ACHP do not object in writing to FEMA's proposal to include the program under this Agreement within 30-days of FEMA's written notice FEMA may assume concurrence.

**EXECUTION AND IMPLEMENTATION** of this Programmatic Agreement evidences that FEMA has afforded the ACHP a reasonable opportunity to comment on its administration of all aforementioned programs pursuant to the Stafford Act, the National Flood Insurance Reform Act, the Disaster Mitigation Act, and the Post-Katrina Emergency Management Reform Act and further evidences that FEMA has satisfied its Section 106 responsibilities for all individual undertakings of these programs.


**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER,  
THE LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND  
EMERGENCY PREPAREDNESS,  
THE ALABAMA-COUSHATTA TRIBE OF TEXAS,  
THE CADDO NATION,  
THE CHITIMACHA TRIBE OF LOUISIANA,  
THE CHOCTAW NATION OF OKLAHOMA,  
THE COUSHATTA TRIBE OF LOUISIANA,  
THE JENA BAND OF CHOCTAW INDIANS,  
THE MISSISSIPPI BAND OF CHOCTAW INDIANS,  
THE QUAPAW TRIBE OF OKLAHOMA,  
THE SEMINOLE NATION OF OKLAHOMA,  
THE SEMINOLE TRIBE OF FLORIDA,  
THE TUNICA-BILOXI TRIBE OF LOUISIANA,  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**SIGNATORY:**

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

By:   
Donald R. Fairley, REM  
Environmental Officer  
Region VI

Date: 7/1/09

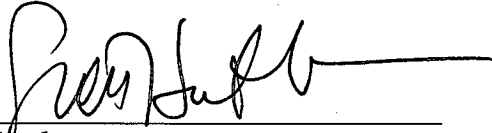
By:   
Gary Jones  
Acting Regional Administrator  
Region VI

Date: 7-6-09

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER,  
THE LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND  
EMERGENCY PREPAREDNESS,  
THE ALABAMA-COUSHATTA TRIBE OF TEXAS,  
THE CADDO NATION,  
THE CHITIMACHA TRIBE OF LOUISIANA,  
THE CHOCTAW NATION OF OKLAHOMA,  
THE COUSHATTA TRIBE OF LOUISIANA,  
THE JENA BAND OF CHOCTAW INDIANS,  
THE MISSISSIPPI BAND OF CHOCTAW INDIANS,  
THE QUAPAW TRIBE OF OKLAHOMA,  
THE SEMINOLE NATION OF OKLAHOMA,  
THE SEMINOLE TRIBE OF FLORIDA,  
THE TUNICA-BILOXI TRIBE OF LOUISIANA,  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**SIGNATORY:**

**LOUISIANA STATE HISTORIC PRESERVATION OFFICER**

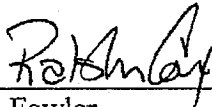

By:   
\_\_\_\_\_  
Scott Hitcheson  
Louisiana State Historic Preservation Officer  
Louisiana Office of Cultural Development

Date: 7/21/09

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER,  
THE LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND  
EMERGENCY PREPAREDNESS,  
THE ALABAMA-COUSHATTA TRIBE OF TEXAS,  
THE CADDO NATION,  
THE CHITIMACHA TRIBE OF LOUISIANA,  
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THE SEMINOLE TRIBE OF FLORIDA,  
THE TUNICA-BILOXI TRIBE OF LOUISIANA,  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**SIGNATORY:**

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

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

Date: 8/17/09

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER,  
THE LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND  
EMERGENCY PREPAREDNESS,  
THE ALABAMA-COUSHATTA TRIBE OF TEXAS,  
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THE SEMINOLE TRIBE OF FLORIDA,  
THE TUNICA-BILOXI TRIBE OF LOUISIANA,  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**INVITED SIGNATORY:**

**LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND EMERGENCY  
PREPAREDNESS**

By: \_\_\_\_\_

Paul Rainwater

Governor's Authorized Representative

Governor's Office of Homeland Security and Emergency Preparedness

Date: 7/21/09

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER,  
THE LOUISIANA GOVERNOR'S OFFICE OF HOMELAND SECURITY AND  
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AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**INVITED SIGNATORY:**

**ALABAMA-COUSHATTA TRIBE OF TEXAS**

By: \_\_\_\_\_  
Carlos Bullock, Chairman

Date: \_\_\_\_\_

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
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AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION.**

**INVITED SIGNATORY:**

**CADDO NATION**

By: \_\_\_\_\_  
LaRue Parker, Chairperson

Date: \_\_\_\_\_

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
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AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**INVITED SIGNATORY:**

**CHITTMACHA TRIBE OF LOUISIANA**

By: \_\_\_\_\_  
Lonnie Martin, Chief

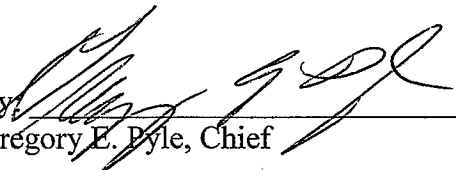
Date: \_\_\_\_\_



**PROGRAMMATIC AGREEMENT  
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AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**INVITED SIGNATORY:**

**CHOCTAW NATION OF OKLAHOMA**

By   
\_\_\_\_\_  
Gregory E. Pyle, Chief

Date: 7/27/09

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
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AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**INVITED SIGNATORY:**

**COUSHATTA TRIBE OF LOUISIANA**

By: \_\_\_\_\_  
Kevin Sickey, Chairman

Date: \_\_\_\_\_

**PROGRAMMATIC AGREEMENT  
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THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**INVITED SIGNATORY:**

**JENA BAND OF CHOCTAW INDIANS**

By: \_\_\_\_\_  
Christine Norris, Chief

Date: \_\_\_\_\_

**PROGRAMMATIC AGREEMENT  
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THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**INVITED SIGNATORY:**

**MISSISSIPPI BAND OF CHOCTAW INDIANS**

By: \_\_\_\_\_  
Miko Beasley Denson

Date: \_\_\_\_\_

**PROGRAMMATIC AGREEMENT  
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THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**INVITED SIGNATORY:**

**QUAPAW TRIBE OF OKLAHOMA**

By: \_\_\_\_\_  
John Berrey, Chairman

Date: \_\_\_\_\_

**PROGRAMMATIC AGREEMENT  
AMONG  
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THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**INVITED SIGNATORY:**

**SEMINOLE NATION OF OKLAHOMA**

By: \_\_\_\_\_  
Enoch Kelly Haney, Principal Chief

Date: \_\_\_\_\_

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
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AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**INVITED SIGNATORY:**

**SEMINOLE TRIBE OF FLORIDA**

By: \_\_\_\_\_  
Mitchell Cypress, Chairman

Date: \_\_\_\_\_

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
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AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**INVITED SIGNATORY:**

**TUNICA-BILOXI TRIBE OF LOUISIANA**

By: \_\_\_\_\_  
Earl J. Barbry, Sr., Chairman

Date: \_\_\_\_\_



**APPENDIX A  
CONTACT INFORMATION**

**Federal Emergency Management Agency (FEMA)**

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Gary Jones  
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940-898-5325 - fax

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**Advisory Council on Historic Preservation (ACHP)**

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**Alabama-Coushatta Tribe of Texas (ACTT)**

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**Caddo Nation (CN)**

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**Chitimacha Tribe of Louisiana (CTL)**

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**Choctaw Nation of Oklahoma (CNO)**

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**Coushatta Tribe of Louisiana (CT)**

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**Jena Band of Choctaw Indians (JBCI)**

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**Mississippi Band of Choctaw Indians (MBCI)**

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**Quapaw Tribe of Oklahoma (QTO)**

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918-542-4694 - fax

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Steven Ward, Attorney  
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**Seminole Nation of Oklahoma (SNO)**

*Wewoka Agency*

Enoch Kelly Haney, Principal Chief

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Pare Bowlegs, Historic Preservation Officer

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**Seminole Tribe of Florida (STF)**

Mitchell Cypress, Chairman

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Hollywood, FL 33024

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*Shipping Address:*

Same As Above

Willard Steele, THPO

Ah-tah-thi-ki Museum

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Clewiston, FL 33440

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**Tunica-Biloxi Tribe of Louisiana (TBTL)**

Earl J. Barbry, Sr., Chairman

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Marksville, LA 71351

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318-253-9791 - fax

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*Shipping Address:*

151 Melacon Dr.

Marksville, LA 71351

Earl Barbry, Jr., Cultural Director

318-253-8174, ext. 6450

318-253-7711 - fax

[earlii@tunica.org](mailto:earlii@tunica.org)

**APPENDIX B**  
**TRIBAL AREAS OF INTEREST IN THE STATE OF LOUISIANA**

*INFORMATION TO BE PROVIDED BY TRIBES PER III.B*

**I. Alabama-Coushatta Tribe of Texas (ACTT) Areas of Interest:**

- A. Acadia, Allen, Ascension, Beauregard, Bossier, Caddo, Calcasieu, De Soto, East Baton Rouge, Evangeline, Grant, Iberville, Jefferson, Jefferson Davis, Livingston, Natchitoches, Orleans, Point Coupee, Red River, Sabine, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Vernon, and West Baton Rouge parishes

**II. Caddo Nation (CN) Areas of Interest:**

- A. Avoyelles, Bienville, Bossier, Caddo, Caldwell, Claiborne, Catahoula, Concordia, De Soto, Grant, Jackson, LaSalle, Lincoln, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Sabine, Union, Vernon, Webster, and Winn parishes.

**III. Chitimacha Tribe of Louisiana (CTL) Areas of Interest:**

- A. Acadia, Ascension, Assumption, East Baton Rouge, Iberia, Iberville, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, Terrebonne, Vermilion, and West Baton Rouge parishes.

**IV. Choctaw Nation of Oklahoma (CNO) Areas of Interest:**

- A. All parishes.

**V. Coushatta Tribe of Louisiana (CT) Areas of Interest:**

- A. All parishes.

**VI. Jena Band of Choctaw Indians (JBCI) Areas of Interest:**

- A. All parishes.

**VII. Mississippi Band of Choctaw Indians (MBCI) Areas of Interest:**

- A. All parishes.

**VIII. Quapaw Tribe of Oklahoma (QTO) Areas of Interest:**

- A. Bossier, Caddo, Claiborne, De Soto, East Carroll, Lincoln, Madison, Morehouse, Orleans, Ouachita, Red River, Richland, Union, Webster, and West Carroll parishes.



**IX. Seminole Nation of Oklahoma (SNO) Areas of Interest:**

- A. Ascension, Concordia, East Baton Rouge, East Carroll, East Feliciana, Iberville, Jefferson, Livingston, Madison, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. James, St. John the Baptist, Tensas, West Baton Rouge, and West Feliciana parishes.

**X. Seminole Tribe of Florida (STF) Areas of Interest:**

- A. Ascension, Concordia, East Baton Rouge, East Carroll, East Feliciana, Iberville, Jefferson, Livingston, Madison, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. James, St. John the Baptist, Tensas, West Baton Rouge, and West Feliciana parishes.

**XI. Tunica-Biloxi Tribe of Louisiana (TBTL) Areas of Interest:**

- A. All parishes.

## APPENDIX C PROGRAMMATIC ALLOWANCES

In accordance with Stipulation VII, 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 Agreement by a letter concurred with by FEMA, GOHSEP, SHPO/THPO, and 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.

- 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. Should an unexpected discovery be encountered, work must stop and compliance with Stipulation XI 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. In-kind repair or replacement of driveways, paths, trails, parking areas, and walkways.
  - E. In-kind repair or replacement of fencing and freestanding exterior walls.
  - F. 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.

- G. Installation of temporary structures for uses such as classrooms, offices, or medical support facilities, except when located in historic districts or archeological areas.
- H. 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.
- I. 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.
- J. 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.
- K. 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.
- L. 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.
- M. Dewatering of flooded developed areas or flooded buildings and structures by physical or mechanical means.
- N. 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.
- O. 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.
- P. Removal of root balls except from cemeteries, known archeological sites or when there are unexpected finds.

**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.

## 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.

## 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.

#### E. Roofing

1. In-kind repair, replacement or strengthening of roofing, rafters, fascias, soffits, gutters, rafters or downspouts.
2. Replacement of three-tab asphalt singles 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.

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.
- 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.
- 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.

#### **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.

#### **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., increased 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 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, 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.