

**SECONDARY PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY; THE LOUISIANA STATE
HISTORIC PRESERVATION OFFICER OF THE
DEPARTMENT OF CULTURE, RECREATION & TOURISM;
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION;
THE CITY OF NEW ORLEANS; AND THE
UNITED STATES ARMY CORPS OF ENGINEERS
REGARDING THE DEMOLITION OF PRIVATELY OWNED
RESIDENTIAL BUILDINGS WITHIN ORLEANS PARISH DAMAGED
AS A RESULT OF HURRICANES KATRINA AND RITA**

WHEREAS, the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security proposes to administer Federal disaster assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121-5206, (Stafford Act) as a result of Hurricanes Katrina (DR-1603-LA) and Rita (DR-1607-LA) in August and September 2005 (Disasters), and the City of New Orleans (the City) intends to use FEMA Public Assistance Program (Program) funding to demolish and remove numerous privately owned residential buildings (Buildings) that the City has determined are an imminent threat to public health and safety (Undertaking), and FEMA has determined these buildings or the archeological resources below or adjacent to them may be listed in or eligible for listing in the National Register of Historic Places (historic properties); and

WHEREAS, FEMA, the Louisiana Office of Homeland Security and Emergency Preparedness (LOHSEP), the Louisiana State Historic Preservation Officer of the Department of Culture, Recreation & Tourism (SHPO), and the Advisory Council on Historic Preservation (ACHP), executed a Programmatic Agreement (Statewide PA) on December 3, 2004, to satisfy FEMA's responsibilities pursuant to 36 CFR Part 800, the regulations implementing Section 106 and Section 110(f) of the National Historic Preservation Act (16 U.S.C. § 470f) (NHPA), for all Undertakings funded as a result of such Disasters; and

WHEREAS, FEMA, SHPO, and ACHP acknowledge that executing a Secondary Programmatic Agreement (Secondary PA) pursuant to Stipulation VIII.A.2. of the Statewide PA to identify programmatic conditions and define treatment measures to address the Adverse Effects related to the Undertaking will streamline further consultation, thereby allowing FEMA to meet its obligation under Section 106 as well as minimizing delays to its delivery of the Program; and

WHEREAS, the Chitimacha Tribe of Louisiana (CTL), the Jena Band of Choctaw Indians (JBC), the Mississippi Band of Choctaw Indians (MBCI), and the Tunica-Biloxi Tribe of Louisiana (TBTL) are all Federally recognized sovereign Indian Nations, which have a government-to-government relationship with the United States and an interest in the area surrounding and including the entirety of Orleans Parish, Louisiana, and have requested to participate in the Secondary PA; and

WHEREAS, FEMA and the CTL, the JBC, the MBCI, and the TBTL have determined and acknowledge that implementation of the Program will result in activities that may affect historic properties such as, but not limited to, American Indian cultural sites, which include Traditional Cultural Properties (TCPs), properties that are of religious and cultural significance to the Tribes,

and sacred sites including burials that may contain human remains and/or associated cultural items; and

WHEREAS, the CTL, the JBC, the MBCI, and the TBTL have expertise to identify and evaluate historic properties, TCPs, sacred sites, or other cultural resources, which are of religious and cultural significance to them, and the Tribal representatives, Traditional Cultural Authorities, or other religious/traditional practitioners need not meet Federal and/or state standards; and

WHEREAS, FEMA and the Tribes agree to consult in identifying and considering historic properties in Orleans Parish that may be affected by the Undertaking, and FEMA shall comply with all applicable Federal and state legal requirements; and

WHEREAS, FEMA has tasked the U.S. Army Corps of Engineers (USACE) to implement the Undertaking, and FEMA therefore has invited USACE to participate in this Secondary PA as an Invited Signatory; and

WHEREAS, the City is the subgrantee of FEMA's Program, and FEMA therefore has invited the City to participate in this Secondary PA as an Invited Signatory; and

WHEREAS, the City of New Orleans Historic District Landmarks Commission (HDLC), the Preservation Resource Center of New Orleans (PRC), the Louisiana Landmarks Society (LLS), and the National Trust for Historic Preservation (NTHP) have been invited to participate in the consultation for this Secondary PA as Concurring Parties; and

WHEREAS, in keeping with 36 CFR §800.2(d) of the Section 106 regulations, FEMA shall seek and consider the views of the public in a manner that reflects the nature and complexity of this 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; and

WHEREAS, through a prior and separate consultation, FEMA and SHPO have consulted regarding the National Register eligibility of Buildings that the Disasters moved into the public right-of-way and have determined that these Buildings did not possess National Register eligibility, thus concluding FEMA's Section 106 responsibilities for these Buildings; and

WHEREAS, the consulting parties recognize that the exact number of Buildings subject to this Undertaking is unknown, but will begin with an initial list (List) of Buildings that the City has determined to be an imminent threat to public health and safety and that it proposes to demolish with FEMA funds; and

WHEREAS, the City has prepared in cooperation with FEMA a "Plan for Demolition and Debris Removal for the City of New Orleans" (Plan), and FEMA has approved this Plan, which provides an approach to how the City proposes to demolish buildings that constitute an imminent threat; and

NOW, THEREFORE, FEMA, SHPO, ACHP, the City, and the USACE agree that the Undertaking shall be implemented in accordance with the following Stipulations to satisfy

FEMA's Section 106 responsibilities. FEMA shall not approve funding of an Undertaking that may affect a historic property until the Undertaking is reviewed pursuant to this Secondary PA.

STIPULATIONS

To the extent of its legal authority, and in coordination with SHPO, the City and USACE, FEMA shall require that the following measures be implemented:

I. APPLICABILITY

- A. This Secondary PA applies to activities related to the proposed Undertaking within Orleans Parish (Area of Potential Effects), which were damaged as a result of the Disasters. As part of its Section 106 identification and evaluation responsibilities, FEMA, in consultation with the SHPO, has determined that the Carrollton, Broadmoor, Esplanade Ridge, Bywater and Holy Cross National Register Historic Districts within the City of New Orleans are eligible to have their current boundaries expanded, and has identified the Edgewood Park and Pontchartrain Park historic districts as eligible for listing in the National Register. In accordance with Public Participation requirements of the Section 106 process and Stipulation V of this PA, FEMA shall notify the public and request comments for a 14-day period about the newly eligible and expanded districts and request additional information regarding other areas or neighborhoods in Orleans Parish that may have historic significance.
- B. All time designations shall be in calendar days. If any party fails to comment, that party's concurrence for compliance with the Secondary PA shall be assumed.
- C. For the purposes of this Secondary PA, should FEMA and SHPO disagree on the National Register eligibility of a Building, or should FEMA or SHPO be unable to reach a conclusion about eligibility within the time stipulated, FEMA shall choose to treat the Building as eligible for listing in the National Register.

II REVIEW PROCESS FOR FEMA UNDERTAKINGS

- A. The City shall provide the List to FEMA.
 - 1. FEMA's Public Assistance Program shall review this List to verify if the Buildings submitted by the City meet the City of New Orleans Amendment to the International Building Code (Code) definition of "Imminent Danger" as stated in Section 104 of the Code in its entirety. FEMA reserves the right to conduct on-site inspections of Buildings proposed for demolition to determine their condition. The City shall also provide FEMA with the completed Residential Structural Assessment form and a photograph of each Building on the List in digital format in the form of a Microsoft® Access database or Microsoft® Excel spread sheet.
- B. The consultation process to determine National Register eligibility of each Building on the List and to comply with Section 106 shall be as follows:

1. Upon receipt of the List, FEMA shall conduct a Historic Building Survey of the Buildings on the List to gather information to be used to assess National Register eligibility of the Buildings.
2. Within 10 days of receipt of the List, FEMA and SHPO shall consult to determine which buildings meet the definition of “collapsed” contained in Appendix A. If FEMA and SHPO disagree about the condition of such buildings, FEMA shall treat these buildings as not collapsed and review them in accordance with Stipulation II.B.3. All buildings that FEMA and SHPO concur have collapsed shall require no further review. FEMA shall forward the addresses and GPS locations of these buildings to the City’s Department of Safety and Permits. This same information shall be provided to the consulting parties and the public. That accomplished, FEMA shall have completed its Section 106 responsibilities for these buildings.
3. Upon FEMA and SHPO’s determination of which buildings are not collapsed, FEMA shall notify the public and the consulting parties and seek their comments for a 15-day comment period as part of FEMA’s Section 106 public participation and identification and evaluation responsibilities. This notification shall serve to assist FEMA in gathering information about the historic significance of those Buildings that have not previously been determined National Register-eligible individually or as contributing Buildings in a historic district. Any comments provided to FEMA shall be considered by FEMA and SHPO in evaluating National Register eligibility.
4. Within 10 days of the close of the 15-day comment period, FEMA and SHPO shall consult to determine which of the Buildings retain their National Register-listed status or are eligible for listing, using the information gathered in the Historic Building Survey and comments submitted by the consulting parties and members of the public.
5. For all the non-collapsed Buildings that FEMA and SHPO agree do not retain enough historic integrity to be National Register eligible, or do not meet the National Register criteria and thus are exempted from further review, FEMA shall forward a compilation of their addresses and GPS locations to the City’s Department of Safety and Permits. FEMA shall also notify the other consulting parties and the public. This shall complete FEMA’s Section 106 responsibilities for these Buildings.
6. FEMA and SHPO then shall compile a written list of all Buildings that they have determined retain enough historic integrity to be National Register-eligible. For these Buildings, FEMA shall seek input from the public and the consulting parties on alternatives to the adverse effect of the proposed Undertaking for a 15-day period. Any time during the 15-day period or during the following 7-day period referenced below in Stipulation II.B.7., FEMA and the consulting parties may convene a meeting with the City to ensure that the proposed alternatives to demolition are adequately considered.

7. Within 7 days after the close of the 15-day comment period, FEMA shall provide the City with a written copy of the responses received by FEMA from the public and any of the consulting parties including proposed alternatives to demolition. The City shall use these written responses in its consideration of alternatives to demolition. If alternatives are proposed, the City shall provide FEMA with a specific written response to each alternative proposed for a Building. FEMA shall provide the consulting parties and the public with the City's written responses within 7 days of receipt of this information.
8. FEMA shall satisfy its Section 106 compliance responsibilities for this Secondary PA after:
 - a. The completion of the Public Participation activities outlined above;
 - b. The City has provided written notification regarding its decisions for each proposed alternative; and
 - c. The completion of the appropriate pre-demolition treatment measures if applicable, and the post-demolition treatment measures outlined in Appendix B.
9. If, after its review of alternatives, the City determines that demolition of a Building is no longer proposed, then the Section 106 review process is concluded for that Building. This shall complete FEMA's Section 106 responsibilities for that Building.
10. The City may proceed with demolition after the City's completion of the written notification requirements regarding its decision about each Building, and FEMA's completion of the appropriate pre-demolition treatment measures outlined in Appendix B, if applicable, and FEMA shall provide written notification to the City indicating that those treatment measures have been satisfied.

III. TREATMENT MEASURES

- A. The treatment measures described in Appendix B of the Secondary PA have been approved by the consulting parties as activities to address the Adverse Effects of the Undertaking on Buildings that FEMA and SHPO have determined retain enough historic integrity to be National Register-eligible and potential Adverse Effects of the Undertaking on archeological resources below or adjacent to the Buildings.
- B. FEMA, following consultation with the SHPO, the City, and other consulting parties, may develop a Memorandum of Agreement (MOA) to identify project-specific treatment measures not stipulated in Appendix B of the Secondary PA for any specific historic property or properties subject to the Undertaking.

IV. NATIONAL HISTORIC LANDMARKS

- A. When an Undertaking would adversely affect a National Historic Landmark (NHL), FEMA also shall invite the ACHP and the Secretary of the Interior (Secretary) to participate in consultation.

V. PUBLIC PARTICIPATION

- A. FEMA shall use various media outlets to implement its Public Participation process. These outlets shall be the following: *Baton Rouge Advocate*; *New Orleans Times*

Picayune; Atlanta Constitution; Houston Chronicle; USA Today; the Louisiana Cultural Recreation & Tourism (CRT) Website; the City's Website; the NTHP Website; and the PRC list serve.

- B. FEMA shall accept responses to its requests for public comments through the U.S. mail and email submittals to the CRT website.

VI. ANTICIPATORY ACTIONS

- A. FEMA shall not grant assistance to the City should the City or those acting on its behalf engage in anticipatory actions with the intent to avoid the requirements of this Secondary PA or Section 106 of NHPA. Anticipatory actions are defined as intentionally, significantly, adversely affecting a historic property to which FEMA's assistance would relate, or having legal power to prevent it, allowing such significant adverse effect to occur.
- B. After consultation with the SHPO and ACHP, however, 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 II of this Secondary PA.

VII. TRIBAL CONSULTATION

- A. FEMA has consulted with the CTL, the JBC, the MBCI, and the TBTL recognizing FEMA's government-to-government relationship with each of these tribes and has invited them to concur in this Secondary PA. Pursuant to Stipulation IX.A., additional tribes may choose in the future to concur in the Secondary PA, and each of the provisions in Stipulation VII shall apply to these Tribes as well as those already listed here.
- B. FEMA shall keep the CTL, the JBC, the MBCI, and the TBTL informed and up-to-date where all pre-European or historic American Indian cultural sites are involved in this Undertaking. The extent and timing of these updates shall be worked out with each Tribal representative.
- C. Should historic properties of religious and cultural significance to the CTL, the JBC, the MBCI, and the TBTL be discovered, consultation may be extended to include future management, protection, and preservation of American Indian cultural sites.
- D. FEMA shall ensure that its consultation with other consulting parties, including the City, shall not include the dissemination of information that might risk harm to an American Indian cultural site or that might impede the use of that site by the CTL, the JBC, the MBCI, and the TBTL in accordance with Section 304 of the NHPA and other applicable laws.
- E. The Points of Contact for the Tribes are:
 - 1. Chitimacha Tribe of Louisiana:
Kimberly Walden
Cultural Director
P.O. Box 661
Charenton, LA 70523
Phone: 337-923-9923

Cell: 337-578-4323
kswalden@chitimacha.gov

2. Jena Band of Choctaw Indians:
The Honorable Christine Norris
Chief, Jena Band of Choctaw Indians
P.O. Box 14
Jena, LA 71342
Tel: (318) 992-2717
chief@jenachoctaw.org
3. Mississippi Band of Choctaw Indians:
Kenneth H. Carleton
THPO/Archeologist
P.O. Box 6257
Choctaw, MS 39350
Phone: 601-650-7316
Cell: 601-562-0032
kcarleton@choctaw.org
4. Tunica-Biloxi Tribe of Louisiana:
Earl J. Barbry, Jr.
Cultural Director
P.O. Box 1589
Marksville, LA 71351
Phone: 318-253-9767
earlii@tunica.org

VIII. ARCHEOLOGY

- A. The City and USACE shall ensure compliance with the Lower-Impact Demolition Stipulations in Appendix C. FEMA shall ensure that the stipulations are made explicit in the demolition contract documents. FEMA Program staff shall conduct a joint briefing with the City and USACE to reinforce the legal obligation to comply with the Lower-Impact Demolition Stipulations. In addition, FEMA Historic Preservation Staff shall be responsible for conducting on-site education briefings, as discussed in Appendix C.
- B. FEMA shall verify compliance with the Lower-Impact Demolition Stipulations contained in Appendix C. FEMA's oversight activities shall be guided by the boundaries delineated in the preliminary Archeological Probability Zone Map for Orleans Parish of May 3, 2006 (Map), currently utilized by FEMA and SHPO, which is contained in Appendix D. FEMA shall provide electronic copies of the Map to signatory and concurring parties. Upon request, FEMA shall also provide 48-inch by 36-inch paper copies of the Map. The boundaries indicate areas of low, moderate, and high probability for the presence of archeological resources. In anticipation that adverse effects may not always be avoidable, FEMA shall be responsible for any refinement of the Map pursuant to

Appendix B (B)(4).

1. Prior to demolition, FEMA historic preservation staff shall conduct cursory inspections of demolition sites in the high probability zone to identify readily visible archeological features. If features are located, archeologists shall document the features and immediately notify USACE Quality Assurance/Quality Control Monitors (QA/QC Monitors) so that demolition crews may implement adequate measures to avoid impacts to the features.
 2. The oversight (field inspections) shall be conducted at **25 percent** of the demolition sites on the List. The allocation of this **25 percent** sample shall be as follows: **47 percent** in the high probability zone, **37 percent** in the moderate probability zone, and **16 percent** in the low probability zone. The archeological probability zones are illustrated on the Map in Appendix D.
 3. If FEMA observes violations of the Lower-Impact Demolition Stipulations, FEMA shall request that the USACE official on-site cease demolition activities until the effects of the Undertaking can be assessed through intensive visual inspection. If adverse effects are observed, FEMA shall consult with SHPO and other consulting parties, as necessary.
 4. If during the course of work, FEMA archeological monitors observe significant or potentially significant findings as a result of activities associated with the Undertaking, the FEMA archeological monitors shall treat the findings as stipulated in Section VIII.D. If a FEMA archeological monitor determines that a findings assessment will require a discontinuation of work greater than one hour in duration, the archeological monitor is responsible for promptly notifying the USACE official on-site regarding the delay. If after the initial one hour findings assessment, the archeologist has determined more evaluation time will be necessary at this location, the archeologist shall promptly convey this to the USACE official on-site.
 5. At demolition locations potentially involving asbestos materials, USACE contractors shall establish a safety perimeter beyond which archeological monitors shall not be permitted to cross without first obtaining the appropriate training and personal protective equipment (PPE). Archeologists shall have formal asbestos training, a pulmonary fitness examination, and may be required to wear a full respirator and a Tyvek suit. If an archeological monitor needs to cross the safety perimeter, the monitor shall approach the USACE official on site and notify them of the need to access the demolition site. The USACE official on site shall have all equipment inside the work zone stop work so that the archeologist may conduct a brief inspection. If the archeologist observes no significant findings, then the archeologist will leave the restricted zone and the work may resume. If the archeologist determines significant or potentially significant findings are present, they shall be treated in accordance with Stipulations VIII.B.4. and VIII.D.
- C. In cases where demolitions occur on recorded archeological sites, FEMA shall consult with SHPO and other consulting parties, as necessary, to develop site-specific treatment

plans. FEMA shall conduct background research and verify present site condition to develop site-specific avoidance measures and assess their feasibility in consultation with USACE. FEMA shall not be responsible for development of treatment plans or monitoring at archeological sites that have been determined ineligible for the National Register.

D. When unexpected discoveries, including archeological artifacts and human remains, are uncovered during the Undertaking, these shall be treated in accordance with Stipulation VIII.B.4. and the following:

1. If, in the course of the Undertaking, dense amounts of intact archeological deposits in urban areas or broad artifact scatters in rural areas are uncovered, USACE shall ensure that its contractors shall immediately stop work in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the finds. USACE shall ensure that the archeological findings are secured and access to the sensitive area is restricted. In such cases, USACE shall immediately inform FEMA and the City of the discovery. Within 24 hours of the USACE notification, FEMA shall notify the SHPO, the CTL, the JBC, the MBCI, and the TBTL of the findings. USACE shall ensure that its contractors shall not proceed with work until FEMA has completed consultation with the SHPO and other consulting parties, as necessary. FEMA shall notify USACE when work may resume.
2. If human skeletal remains are uncovered during the Undertaking, USACE shall direct their contractor to stop work immediately in the vicinity of the discovery. USACE shall immediately notify FEMA, the City, the New Orleans Police Department, and the Orleans Parish Coroner's Office of the discovery. Within twenty-four hours of the USACE notification, FEMA shall then notify and coordinate with the CTL, the JBC, the MBCI, and the TBTL. The local law enforcement officials shall assess the nature and age of the human skeletal remains. The City shall notify the Louisiana Unmarked Burial Sites Board by contacting the Louisiana Division of Archeology at 225-342-8170 within seventy-two hours of the discovery. If the coroner determines that the human skeletal remains are older than 50 years of age, the Louisiana Unmarked Burial Sites Board has jurisdiction over the remains. FEMA shall take the lead in working with USACE, the City, the CTL, the JBC, the MBCI, and the TBTL the Board, and consulting parties to ensure compliance with the Louisiana Unmarked Human Burial Sites Preservation Act (R.S. 8:671 *et seq.*) and other applicable laws. In addition, FEMA shall follow guidelines set forth by the ACHP in its "Human Remains Policy."
3. In cases where the human remains are determined to be American Indian, FEMA shall hold a consultation meeting about the remains with the JBC, the MBCI, the CTL, and the TBTL and representatives of the State of Louisiana, as necessary. Such a consultation meeting shall include a site visit to review the situation.

IX. AMENDMENTS, DURATION, AND TERMINATION

- A. This Secondary PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment shall be effective on the date of the signature by the final signatory.
- B. Unless terminated, this Secondary PA shall remain in effect from the date of implementation until FEMA, in consultation with all other consulting parties, determines that the terms of this Secondary PA have been satisfactorily fulfilled. Upon such determination, this Secondary PA shall terminate, and FEMA shall provide all other consulting parties with written notice of the determination and termination.
- C. FEMA, the SHPO, or the ACHP may terminate this Secondary PA by providing 30 days' written notice to the other parties, provided that the parties shall consult during this period to seek amendments or other actions that would prevent termination. Termination of this Secondary PA shall require compliance with Stipulations VII and VIII of the Statewide PA for each individual Undertaking.
- D. This Secondary PA may be terminated by the implementation of a subsequent Programmatic Agreement pursuant to 36 CFR Part 800.14(b) that explicitly terminates or supersedes this Secondary PA.

X. DISPUTE RESOLUTION

- A. Should any signatory or concurring party object within the timeframes provided to any plans, specifications, or actions provided for review pursuant to this Secondary PA, FEMA shall consult further with the objecting party to seek resolution.
- B. If FEMA determines that the dispute 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;
 - 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) with reference to the subject of the dispute.
- C. If the ACHP does not provide FEMA with comments or recommendations within 7 days, FEMA may assume that the ACHP does not object to its recommended approach and it shall proceed accordingly.
- D. Any recommendation or comment provided by ACHP shall be understood to pertain only to the subject of the dispute, and FEMA's responsibility to fulfill all actions that are not subject of the dispute shall remain unchanged.

XI. IMPLEMENTATION OF THIS SECONDARY PROGRAMMATIC AGREEMENT

- A. This Secondary PA shall become effective immediately upon signature by all signatory parties. FEMA shall provide each signatory party with a complete copy of the Secondary PA including all signature pages.
- B. For the concurring parties, this Secondary PA shall be executed in counterpart, with a separate signature page for each concurring party, and FEMA shall provide each concurring party with a complete copy of the Secondary PA including all signature pages.
- C. Execution of this Secondary PA by all signatory parties and implementation by FEMA evidences that FEMA has taken into account the effects of the Undertaking on historic properties.

SIGNATORIES:

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: 
Gil Jamieson, Deputy Director, Gulf Coast Recovery

Date: 24 May 06

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


Date: 18 May 2006

**LOUISIANA STATE HISTORIC PRESERVATION OFFICE OF THE DEPARTMENT
OF CULTURE, RECREATION & TOURISM**

By: 
Pam Breaux, State Historic Preservation Officer

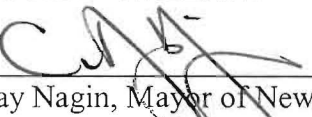
Date: 24 May 2006

U.S. ARMY CORPS OF ENGINEERS

By: 
Dwight W. Pearson, Colonel, Engineer, LA-RFO Commander (FWD)

Date: 24 MAY 2006

CITY OF NEW ORLEANS

By: 
C. Ray Nagin, Mayor of New Orleans

Date: 5-30-06

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: 
John M. Fowler, Executive Director

Date: 5/31/06

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RESIDENTIAL BUILDINGS WITHIN ORLEANS PARISH DAMAGED
AS A RESULT OF HURRICANES KATRINA AND RITA**

CONCURRING PARTIES:

CHITIMACHA TRIBE OF LOUISIANA

By: 
Alton D. LeBlanc, Jr., Chairman

Date: 06-14-06

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CONCURRING PARTIES:

JENA BAND OF CHOCTAW INDIANS

By: _____
Christine Norris, Principal Chief

Date: _____

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CONCURRING PARTIES:

MISSISSIPPI BAND OF CHOCTAW INDIANS

By: Phillip Martin
Phillip Martin, Chief

Date: 6/27/06

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CONCURRING PARTIES:

TUNICA-BILOXI TRIBE OF LOUISIANA

By: 
Earl J. Barbry, Sr., Tribal Chairman

Date: 6/29/06

**SECONDARY PROGRAMMATIC AGREEMENT AMONG
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CONCURRING PARTIES:

CITY OF NEW ORLEANS HISTORIC DISTRICT LANDMARKS COMMISSION

By: 

C. Elliott Perkins, Acting Executive Director

Date: 6/12/06

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CONCURRING PARTIES:

PRESERVATION RESOURCE CENTER OF NEW ORLEANS

By: Patricia H. Gay
Patricia H. Gay, Executive Director

Date: 6-15-06

**SECONDARY PROGRAMMATIC AGREEMENT AMONG
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CONCURRING PARTIES:

LOUISIANA LANDMARKS SOCIETY


By: 
Sara S. Orton, Advocacy Chair

Date: 06/05/06

**SECONDARY PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY; THE LOUISIANA STATE
HISTORIC PRESERVATION OFFICER OF THE
DEPARTMENT OF CULTURE, RECREATION & TOURISM;
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION;
THE CITY OF NEW ORLEANS; AND THE
UNITED STATES ARMY CORPS OF ENGINEERS
REGARDING THE DEMOLITION OF PRIVATELY OWNED
RESIDENTIAL BUILDINGS WITHIN ORLEANS PARISH DAMAGED
AS A RESULT OF HURRICANES KATRINA AND RITA**

CONCURRING PARTIES:

NATIONAL TRUST FOR HISTORIC PRESERVATION

By:  _____
Richard Moe, President

Date: Nov. 27, 2006

APPENDIX A

Definition of “Collapsed” for use in New Orleans Historic Building Surveys

For the purpose of FEMA’s Section 106 compliance, any Building that is determined to be collapsed, and thus ineligible for listing in the National Register of Historic Places, must exhibit at least one of the three apparent physical conditions listed below:

1. The roof structure or one or more floors of the Building must have come to rest on the floor below, otherwise known as “pancaking”;
2. The exterior walls of the Building must have racked or otherwise shifted to the degree that one or more stories of the Building stand less than two thirds of their original height; or
3. At least fifty percent of the corners on non-adjacent sides of the Building must have failed. One fallen façade does **not** constitute collapse of a building.

APPENDIX B

Treatment Measures for Section 106 Compliance

A. Pre-demolition Treatment Measures

(1) Recordation: FEMA shall ensure that all Buildings that are eligible for listing or are listed in the National Register of Historic Places and are to be demolished shall be digitally photographed as a Treatment Measure. The digital photography must comply with the following requirements, which are from the National Park Service's (NPS's) March 2005 Photo Policy Expansion for the National Register of Historic Places and National Historic Landmarks Survey <http://www.cr.nps.gov/nr/policyexpansion.htm>:

- The photographs must meet the NPS Photo Expansion Policy 75-year permanence standard.
- Image files must be saved as uncompressed Tagged Image File Format (TIF) files on CD-R media.
- Paper prints must follow the "Acceptable Ink and Paper Combinations for Digital Images" guidelines in the Photo Expansion Policy.
- Image size must be 1600x1200 pixels at 300 pixels per inch (ppi) or larger.
- Images must be saved in 8-bit (or larger) color format.
- Images of each Building must include:
 - A view of the principal façade, an oblique view, two contextual views, and close-ups of any unique architectural features;
 - Address followed by name of the Historic District, if applicable;
 - Parish and state where Building is located;
 - Date of photograph;
 - Description of view including direction of camera; and
 - Name of photographer.

FEMA shall prepare four sets of documents (including photographic prints, CD-ROM containing the digital versions of the photographs and the electronic survey data). FEMA shall submit two of the four sets to the Louisiana State Historic Preservation Office (SHPO) in Baton Rouge. FEMA shall submit the remaining two sets of documents to the Tulane University Southeastern Architectural Archives in New Orleans.

(2) Architectural Salvage: FEMA and USACE, in coordination with the City, shall determine the feasibility of soliciting and managing a contract for deconstruction and salvage of selective architectural elements and other materials from buildings determined by FEMA and SHPO to have retained enough historic integrity in order to be listed in or eligible for listing in the National Register of Historic Places, prior to such buildings being demolished. Should FEMA, USACE, and the City implement a deconstruction and salvage plan, they shall ensure that these activities not occur at or below grade in order to avoid

affecting unevaluated archeological resources. Other consulting parties to this Secondary PA may choose to assist in overseeing salvage and deconstruction activities.

B. Post-demolition Treatment Measures

(1) Resurvey Existing Historic Districts: FEMA has developed a survey and evaluation technique implementing the use of highly accurate (+/- 3 meter) Global Positioning Systems (GPS) equipment to survey and document Buildings that may be demolished by the City of New Orleans. Locational attribute information collected as part of this survey meet draft national standards as defined by NPS for cultural resource spatial data, as mandated in OMB Circular A-16, and can be incorporated into the existing SHPO Geographic Information System (GIS). The data collected, aside from an extremely accurate location, includes information that can be readily incorporated into a SHPO/ HDLC survey form, for both Buildings and archeological sites. It also includes digital photographs of each Building surveyed.

The GPS survey and documentation of Building resulting in the creation of the GIS GeoDatabase allow FEMA to meet its requirements to follow the draft Federal spatial data standards, and shall assist the SHPO in complying with those draft standards, allowing the SHPO to better communicate and share data with any Federal agency. Implementing the proposed FEMA GeoDatabase also allows FEMA to link the existing SHPO database of historic resources to the FEMA generated locations and attribute information. This allows for digital transfer of information from the SHPO to FEMA, and vice versa. This linkage can also be established between the FEMA data and the local Historic District Commissions, the City of New Orleans databases, and any other potential partners for the SHPO.

As part of this process, FEMA also shall support as a Treatment Measure the resurveying of the existing Mid-City, Central City, Carrollton, New Marigny, Lower Garden District, Esplanade Ridge, Faubourg Marigny, and Parkview National Register Historic Districts using the GPS methodology described above.

(2) Geo-referencing Existing Materials: FEMA shall scan and geo-reference historic maps and aerial images so they can be incorporated into SHPO, FEMA and City GIS. The geo-referenced maps will facilitate in the identification of above and below-ground historic properties and in predictive modeling. Examples of maps that are under consideration for geo-referencing include: Plan of the City and Suburbs of New Orleans from an actual Survey made in 1815; a Map of the State of Louisiana with part of the Mississippi Territory, from Actual Survey, by William Darby, 1816; Jacques Tanesse, 1817; “Topographical Map of New Orleans and its Vicinity, Embracing a distace [sic] of twelve miles up, and eight and three quarter miles down the Mississippi River and Part of Lake Pontchartrain,” Charles Zimple, 1834; a Map of the Second Judicial District La. Comprising the Pariches [sic] of St. James, Ascension, Assumption, Interior Lafourche and Terre Bonne [Portion], by A. J. Powell, 1841; Mississippi River Commission map, 1874; Hardee's map of New Orleans, 1878; Atlas of the City of New Orleans [commonly referred to as the “Robinson Atlas”], E. Robinson and R. H. Pidgeon, 1883; and the Sanborn Insurance Maps for Orleans Parish at 20-year intervals between the 1880s and the 1950s. Aerial photographs of New Orleans dating from 1946 and 2005 (post-Katrina) have been geo-referenced.

Once complete, a copy of the data sets referenced above shall reside with FEMA, SHPO and the City; this means that each agency shall have (1) a raw copy of the scanned map, (2) a geo-referenced copy of the scanned map, and (3) metadata relating to both the original creation of the paper map and the digitization process. In addition, the scanned data shall be given to the institutions where the data originated.

To facilitate background research for the identification and evaluation of archeological resources, FEMA proposes to develop Archeological Survey Area Maps based upon existing SHPO data scanned as part of this Treatment Measure. These GIS data layers shall delineate areas that have been surveyed for archeological resources and record the Archeological Survey Number assigned by the Louisiana Division of Archaeology. They shall become part of the data set housed and maintained at the SHPO's offices in Baton Rouge, Louisiana, and utilized by researchers through a subscription service. This data set shall be held and up-dated exclusively by the Division of Archaeology (pursuant to Section 101 (b)(3)(a) of NHPA), but shall be available to FEMA at the time of any future disasters.

(3) Digitization of HDLC's Database: With few exceptions, HDLC's database is paper-based. As a treatment measure, FEMA shall support digitizing HDLC's database by incorporating the historic resources within the historic districts into FEMA's existing effort to create a cultural resource GIS. To accomplish this, FEMA shall resurvey the Buildings within the Lower Garden District, Esplanade Ridge and Faubourg Marigny National Register Historic Districts, which overlap local historic districts. FEMA shall incorporate the GPS locations and attribute information into its GeoDatabase structure, which meets Federal spatial data standards. FEMA shall also incorporate the existing GIS data describing the resources within the Bywater and Holy Cross districts, collected through the U.S. Army Corps of Engineers, into this same GeoDatabase. Through FEMA, NPS shall provide, or facilitate providing ESRI's ArcGIS 9.x software licenses to HDLC, to allow HDLC to use the data provided, as well as communicate with the City of New Orleans GIS, and the SHPO GIS. HDLC shall be the primary owner of these licenses and they can be incorporated into the existing City Enterprise-wide GIS plan. Through FEMA, NPS shall also provide a two-day training class to HDLC staff to ensure that the data and GIS licenses can be incorporated into the daily activities of HDLC.

(4) Refinement of the Preliminary Archeological Probability Zone Map for Orleans Parish of May 3, 2006: FEMA, in consultation with SHPO, the CTL, the JBC, the MBCI, the TBTL, and other consulting parties, shall determine a methodology to improve the accuracy and utility of the Preliminary Archeological Probability Zone Map for Orleans Parish of May 3, 2006 (Map), which is contained in Appendix D. This refinement will increase a user's ability to determine the location and nature of previously unrecorded archeological sites and the potential affects of similar undertakings.

The methodology shall include:

- The additional scanning and geo-referencing of relevant historic maps described above in B.(2);
- A justification of historical resources used to build, expand, and refine the Map; and
- A historical narrative which relates chronically discrete settlement patterns to the probability zones

A stratified sample shall be derived from the initial 25 percent oversight (field inspections) list. This stratified sample will total **15 percent** of the demolition sites on the List and will be subject to intensive field examination by professional archeologists. The allocation of this **15 percent** sample shall be as follows: **78 percent in the high probability zone, 15 percent in the moderate probability zone, and 7 percent in the low probability zone.** The archeological probability zones are illustrated on the Map in Appendix D.

The purpose of these intensive field examinations is to determine the following:

- The effectiveness of the Lower-Impact Demolition Stipulations;
- An assessment of effects to archeological resources as a result of the Undertaking; and
- The identification and recordation of archeological resources.

After the conclusion of the field inspections and intensive field examinations, FEMA, the SHPO, and other consulting parties shall evaluate the results of that work to determine whether this initial approach is appropriate for future lists of proposed demolitions submitted by the City.

(5) Archive Public Participation Records: FEMA shall ensure that the Public Participation summaries and the appropriate materials accumulated as a result of the Public Participation process are placed in an appropriate archival facility in Louisiana such as the State Archives.

APPENDIX C

Lower-Impact Demolition Stipulations

USACE shall ensure that all Lower-Impact Demolition Stipulations are made explicit in contract documents and that USACE contractors shall not initiate ground-disturbing work prior to receiving approval from a FEMA Public Assistance representative. Failure to comply with the Lower-Impact Demolition Stipulations may jeopardize the City's receipt of Federal funding.

FEMA shall provide professional archeologists to conduct on-sight educational briefings for FEMA Debris Monitors, USACE Quality Assurance/Quality Control Monitors, and USACE contracted heavy-equipment operators. These briefings shall reiterate the Lower-Impact Demolition Stipulations and provide guidance on the nature of potential archeological findings. Guidance shall include providing these individuals with access to physical examples of archeological artifacts, and images of artifacts and features in pamphlet format. This pamphlet is intended to be used as a visual reference cue for feature and artifact identification.

FEMA shall conduct oversight inspections of selective demolition sites to verify compliance with Lower-Impact Demolition Stipulations (see Stipulation VIII.B). This shall include inspection of all demolition sites within areas determined to have a high probability for archeological resources in accordance with the Preliminary Archeological Probability Zone Map for Orleans Parish of May 3, 2006 (see Appendix D).

- **General Approach:**

- Major demolition activities, including placement of equipment, shall be confined to areas where soils have been previously disturbed by activities, such as site development, construction, surface grading, landscaping, utility trenching, etc. USACE shall identify areas of obvious soil disturbance and direct their contractor to work within these areas.
- When heavy equipment is not in use, it shall be staged on hard or firm surfaces where equipment is not susceptible to sinking. Paved surfaces shall be used to the fullest extent possible, but streets shall not be used for this purpose.
- Tracked vehicles and/or large-tired equipment shall be used whenever possible to reduce the depth of soil disturbance and minimize soil compaction **to a depth of eight (8) inches or less.**
- USACE shall ensure that its contractors shall not operate heavy equipment on wet soils if the equipment begins to sink **more than eight (8) inches below the current ground surface.** Heavy equipment may be operated in the rain, but USACE shall ensure that its contractors shall pay special attention to equipment sinkage, as noted above.
- Shearing off structural features at the ground-surface is strongly encouraged so that further soil disturbance is minimized.
- There shall be no salvage of architectural materials from below-grade.
- Excavation of on-site materials and burial of debris are not permitted.

- **Activity Specific Guidelines:**

- Treatment of Utilities:

- Utility lines shall be disconnected and capped. Extraction of utility lines is not an eligible FEMA cost. In cases where there are no shut-off valves, limited excavation within the utility rights-of-way shall be required to cap these service lines. To limit unnecessary ground disturbance, excavation shall be limited to the existing ROW to the greatest extent feasible.

- Footing and Pier Removal:

- If it is absolutely necessary to remove footings and piers to ensure public health and safety, the soil disturbance caused by these activities should be limited to a depth no greater than six (6) inches below the footing or pier to be extracted. The excavation shall not exceed a 3-foot lateral width from the footing or pier being extracted.

- Slab Removal:

- Slab removal is only an eligible FEMA cost if the slab, or portions thereof, present a public health and safety threat (i.e. broken and angled upward). FEMA anticipates that slab removal will be a rare occurrence and eligibility calls shall be made by an FEMA official. If slab removal is funded by FEMA, the slab shall not be removed through excavation. It will be hoisted off the lot, and USACE shall ensure that its contractors shall make every effort to limit any soil disturbance necessary to facilitate this process.

- Void and/or Feature filling

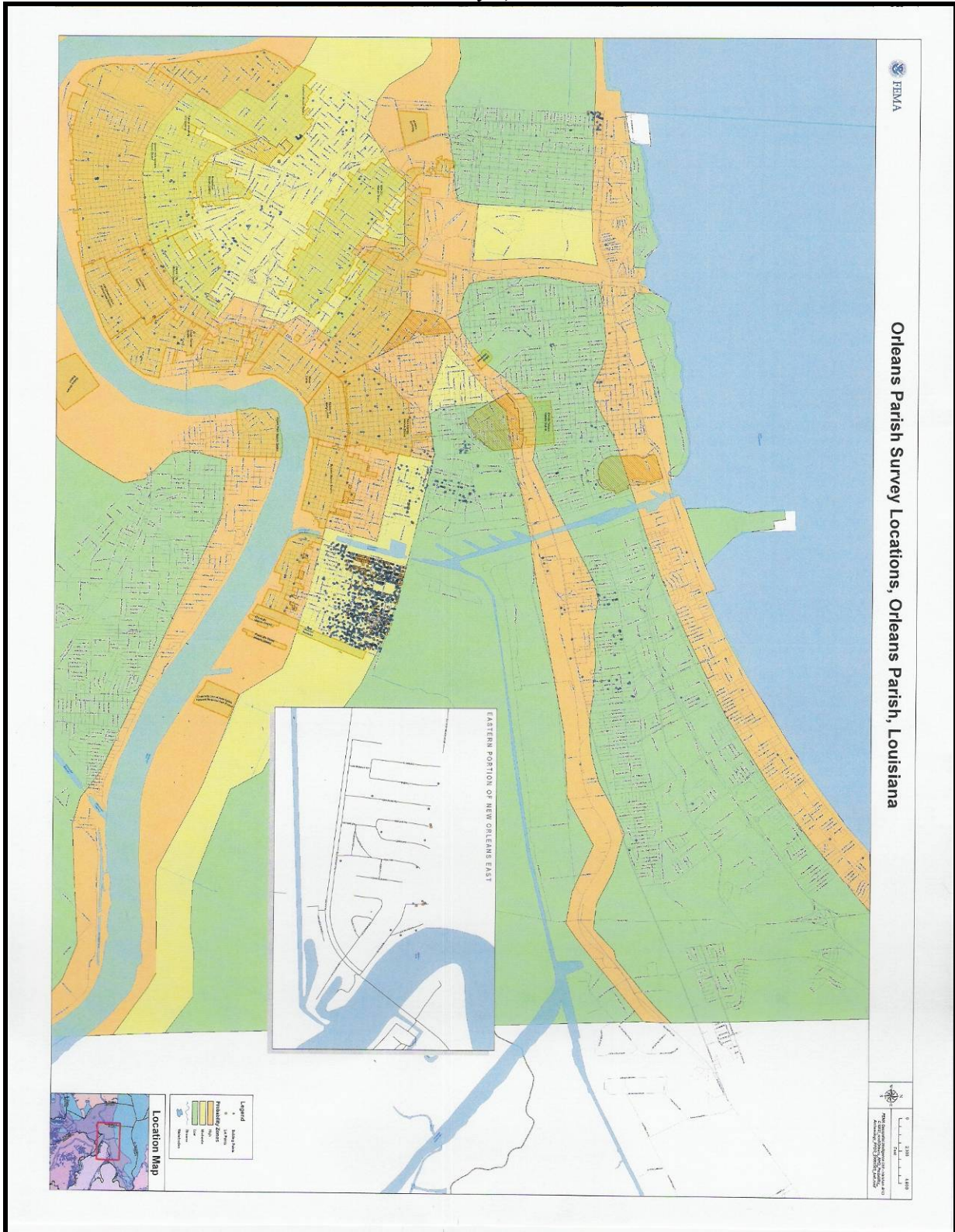
- Any voids which require filling because they are a “health and safety issue” shall be filled with clean fill from off-site. Whenever possible this shall be a sand matrix, however sand is not required. These voids may include, but are not limited to, those created as the result of exposing cisterns, privies, wells, and/or basement-like depressions.

- Surface Grading and Site Clean-Up:

- USACE shall ensure that its contractors shall limit site grading to within the first six (6) inches of the existing surface elevation (e.g., side walk level, driveway level, slab level, etc.). USACE shall ensure that its contractors use light equipment (e.g., small “Bobcats,” hand tools, etc.) to complete final site clean-up.

APPENDIX D

***Preliminary Archeological Probability Zone Map for Orleans Parish
May 3, 2006***



APPENDIX E

Flow Chart for Section 106 Review of the Undertaking

Basic flowchart of City of New Orleans's requests to demolish Privately Owned Residential Buildings with FEMA funding, in accordance with provisions of Section 106 Secondary Programmatic Agreement among FEMA, the City, SHPO, ACHP, and the USACE. NOTE: As a simplified illustration of the process that FEMA shall use to comply with Section 106 of NHPA, this flowchart is **not** a substitute for the requirements outlined in Secondary Programmatic Agreement. For further information about the process, please refer to Secondary Programmatic Agreement.

