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FEMA'S HISTORIC PRESERVATION PROGRAM



DESK REFERENCE

Emergency Management Institute
Federal Emergency Management Agency

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Glossary of Relevant Environmental and Historic Preservation Acronyms

36 CFR 800	NHPA Regulations
40 CFR 1500	NEPA Regulations
44 CFR 10	FEMA Environmental Considerations Regulations
44 CFR 9	FEMA Floodplains and Wetlands Regulations
ACHP	Advisory Council for Historic Preservation
APE	Area of Potential Effects
BFE	Baseline Flood Elevation
BMP	Best Management Practices
CAA	Clean Air Act
CATEX	Categorical Exclusion (NEPA)
CBRA	Coastal Barrier Resources Act
CDBG	Community Development Block Grant (HUD)
CEQ	Council on Environmental Quality
CERCLA	Comprehensive Environmental Resource Compensation and Liability Act
CRS	Cultural Resources Survey
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DFO	Disaster Field Office
ELO	Environmental Liaison Officer
EO	Executive Order
EO 11988	Floodplains
EO 11990	Wetlands
EO 12898	Environmental Justice
EO	Environmental Officer (for FEMA)
EPA	Environmental Protection Agency
ESA	Endangered Species Act
FCO	Federal Coordinating Officer
FONSI	Finding of No Significant Impact
FMA	Flood Mitigation Assistance
FPO	Federal Preservation Officer (for FEMA)
FWPCA	Federal Water Pollution Control Act
FWS	Fish and Wildlife Service
GIS	Geographic Information Systems
HABS	Historic American Buildings Survey
HAER	Historic American Engineering Record
H&H	Hydraulics and Hydrology
HMGP	Hazard Mitigation Grant Program
HUD	Housing and Urban Development
MOA	Memorandum of Agreement
NEPA	National Environmental Policy Act
NHL	National Historic Landmark
NHPA	National Historic Preservation Act (1966, with amendments)
NMFS	National Marine Fisheries Service

*National Historic Preservation Act Desk Reference
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NPS	National Park Service
NR	National Register of Historic Places
NRCS	National Resources Conservation Service
PA	Public Assistance Program
RCRA	Resource Conservation and Recovery Act
REO	Regional Environmental Officer
Section 106	Historic Preservation Review (NHPA)
Section 404	Hazard Mitigation Grant Program (Stafford Act)
Section 404 Permit	Dredge and Fill Permit (CWA)
Section 406	Public Assistance Program (Stafford Act)
Section 7	Endangered Species Review/Consultation (ESA)
SHPO/THPO	State (or Tribal) Historic Preservation Office
SR	State Register of Historic Places
STATEX	Statutory Exclusion (NEPA)
TCP	Traditional Cultural Properties
T&E	Threatened and Endangered
USACE	U.S. Army Corps of Engineers
USGS	U.S. Geological Survey

Glossary of Relevant Definitions

Adverse Effect: Harm to historic properties directly or indirectly caused by a Federal agency's action. The adverse effect may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association. The regulations set forth adverse effect criteria in 36 CFR Part 800.5.

Advisory Council for Historic Preservation (Council): An independent Federal agency composed of a nineteen-member council, which advises the President and Congress on historic preservation issues and administers the provisions of Section 106 of the National Historic Preservation Act.

Alternate Procedures: The processes that agencies are authorized to develop and substitute for all or part of the standard Section 106 process in accordance with 36 CFR §800.14(a). The Advisory Council must approve the procedures as being consistent with Section 106.

Area of Potential Effects (APE): The geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist. This area always includes the actual site of the undertaking, and may also include other areas where the undertaking will cause changes in land use, traffic patterns, or other aspects that could affect historic properties.

Concurring Party: Organizations, groups or individuals who are consulted as part of the Section 106 process and who agree with the consensus of the consulting parties on the method to be used to resolve the adverse effects of a Federal undertaking. Although concurring parties may sign an agreement, they cannot amend or terminate it.

Consulting Party: Organizations, groups or individuals who have consultative roles in the Section 106 process. According to 36 CFR Part 800, any of the following may be a consulting party: State Historic Preservation Officer/Tribal Historic Preservation Officer; Indian tribes and Native Hawaiian organizations; representatives from local governments; applicants for federal assistance; the public or other individuals or organizations with a legal or economic relation to the undertaking or a demonstrated interest in the undertaking's effects on historic properties.

Contributing Property: A building, site, structure, or object which adds to the historic associations, historic architectural qualities or archaeological values for which a historic district is significant because it: was present during the period of significance; relates to the documented significance of the property and possesses historic integrity or is capable of yielding important information about the period; or, it independently meets National Register criteria.

Criteria for Evaluation: The nomination process for the National Register for Historic Places identifies four criteria that describe how properties are significant for their associations with important events or persons, for their importance in design or construction, or for their information potential. In order to be listed on the National Register, a property must be shown to be significant for one or more of the four Criteria for Evaluation.

- **Criterion A – Events:** Properties can be eligible for the National Register if they are associated with events that have made a significant contribution to the broad patterns of our history.
- **Criterion B – Person:** Properties can be eligible for the National Register if they are associated with the lives of persons significant in our past.
- **Criterion C – Design/Construction:** Properties can be eligible for the National Register if they embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.
- **Criterion D – Information Potential:** Properties can be eligible for the National Register if they have yielded, or may be likely to yield, information important in prehistory or history.

Criteria Considerations: Under the four Criteria for Evaluation, cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance in the past fifty years shall not be considered eligible for the National Register. However, these properties will qualify if they are integral parts of historic districts that do qualify or they fall into certain special categories. For a description of these categories, see National Register Bulletin #15 entitled “How to Apply the National Register Criteria for Evaluation.”

Cultural Resources Survey (CRS): A survey of the cultural resources in a State, which usually involves the collection of background research on the property, fieldwork that includes photographic and architectural documentation of the resource and a written description of the property, and the reporting and curation of this information. The survey is normally conducted as part of the State Inventory of Cultural Resources.

Curation: A treatment used by FEMA to avoid, minimize or mitigate the adverse effects of a Federal action on historic properties. This measure removes certain features or architectural elements from a property for re-use or permanent curation at a museum or other facility.

Data Recovery: A treatment used by FEMA to avoid, minimize, or mitigate the adverse effects of a Federal action on historic properties. This measure, which obtains and recovers information about the historic property, specifically pertains to archaeological sites adversely impacted by a FEMA undertaking. As a result of 1999 revisions to the Section 106 regulations, new guidance has been issued by the Advisory Council on

Historic Preservation on the treatment of historic and prehistoric archeological resources. When a FEMA-assisted project may impact one or more archeological sites listed, or eligible for listing, in the National Register of Historic Places, FEMA must consider the impacts to such sites. Appropriate treatments may include preservation in place for future study or use, recovery or partial recovery of archeological data, or any combination of these other measures. Under the 1999 changes to 36 CFR Part 800, the Council has issued a “Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites.” Under this regulatory change, a Phase III data recovery effort at such a site, which was previously considered as having a “no adverse effect” on this type of historic property, is now viewed as having an “adverse effect” on this type of resource.

Determination of Eligibility: Under the National Historic Preservation Act (NHPA), properties that are either on or eligible for the National Register of Historic Places trigger Federal review under Section 106. Eligible historic properties meet one or more of the National Register Criteria for Evaluation and may be nominated to the National Register at a future date. If a property is not listed or previously determined eligible for the National Register prior to the FEMA undertaking, FEMA must make a determination of eligibility for the property.

Environmental Liaison Officer (ELO): The Environmental Liaison Officer serves as an arm of the Federal Coordinating Officer (FCO) in a disaster and is responsible for ensuring compliance with environmental and historic preservation review activities among all of FEMA's Public Assistance, Individual Assistance, and Mitigation Programs. The ELO position is staffed by the Regional Environmental Officer (REO) or his/her support staff. In disasters where there is no Special Considerations Liaison, the ELO often assumes many of the Special Considerations Liaison's responsibilities for addressing historic and environmental issues in the Public Assistance Program.

Evaluation: The process by which the significance and integrity of a historic property are judged and eligibility for National Register listing is determined.

Federal Assistance to Individuals and Households: FEMA program(s) to provide financial assistance, and, if necessary, services, to individuals and households in the State who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means.

Federal Preservation Officer (FPO): Official designated by the head of each Federal agency to be responsible for coordinating the agency's activities under the National Historic Preservation Act.

Federal Undertaking: Serving as the trigger for the Section 106 review under the National Historic Preservation Act (NHPA), an undertaking is any Federal project, activity, or program that involves the expenditure of Federal money and can result in changes in the character or use of historic properties. The project, activity, or program

must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. These activities may include construction, rehabilitation and repair projects, demolition, licenses, permits, loans, loan guarantees, grants, Federal property transfers and many other types of Federal involvement.

Flood Mitigation Assistance (FMA): FEMA's Flood Mitigation Assistance provides funding to assist States and communities in implementing measures to reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes and other structures insurable under the National Flood Insurance Program. Flood Mitigation Assistance was created as part of the National Flood Insurance Reform Act of 1994 (42 U.S.C 4101) with the goal of reducing or eliminating claims under the National Flood Insurance Program. Flood Mitigation Assistance is a pre-disaster grant program. The two types of grants funded under Flood Mitigation Assistance are planning grants and project grants. This FEMA program is one for which FEMA's Historic Preservation Programmatic Agreement is applicable.

Geographic Information System (GIS): A computer system for capturing, storing, checking, integrating, manipulating, analyzing and displaying data related to positions on the Earth's surface. Typically, a Geographical Information System is used for handling maps of one kind or another. These might be represented as several different layers where each layer holds data about a particular kind of feature. Each feature is linked to a position on the graphical image of a map. GIS is becoming an important tool in promoting coordinated efforts between emergency management and historic preservation.

HABS/HAER: The Historic American Buildings Survey (HABS) is the oldest Federal preservation program. Established in 1933 by the National Park Service as a make-work program for jobless architects and photographers in the Depression, the program's mission is to create a lasting archive of American historic architecture. In 1969, the Historic American Engineering Record (HAER) began as a companion program to document structures of technological and engineering significance. The program established qualitative standards for both architectural and photographic documentation and it directs the placement of the archives in the Library of Congress. FEMA often applies these standards when using recordation as a treatment measure.

Hazard Mitigation Grant Program (HMGP): The Hazard Mitigation Grant Program (HMGP) was created in November 1988, by Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The HMGP assists States and local communities in implementing long-term hazard mitigation measures following a major disaster declaration. The Program's objectives are: to prevent future losses of lives and property due to disasters; to implement State or local hazard mitigation plans; to enable mitigation measures to be implemented during immediate recovery from a disaster; and to provide funding for previously identified mitigation measures that benefit the disaster area. This FEMA program is one for which FEMA's Historic Preservation Programmatic Agreement is applicable.

Historic Context: Information about historic trends and properties grouped by an important theme in the prehistory or history of a community, State, or the nation during a particular period of time. Organized by theme, place, and time, they provide a framework for determining the significance of a property and its eligibility for National Register listing.

Historic District: A historic district is a National Register (or often State and local) designation referring to either historic properties having a number of resources that are relatively equal in importance, such as a neighborhood, or large acreage properties with a variety of historic resources.

Historic Preservation Specialist: Historic Preservation Specialists are technical experts who identify and evaluate historic properties, apply the Secretary of the Interior's Standards and Guidelines to proposed projects, and negotiate and draft agreement documents. They may work with FEMA program staff, other specialists, and the applicant and the State Historic Preservation Office/Tribal Historic Preservation Office (SHPO/THPO) to bring a scope of work into conformance with the Standards or Guidelines.

Historic Property: A historic property is any prehistoric or historic building, site, district, structure or object. For the purposes of National Register nominations and eligibility, a historic property does not include intangible values, cultural events, or skilled or talented individuals.

Historic Review: The process of taking into account whether a federal action will have an effect on any property which is included in or may be eligible for the National Register of Historic Places. Historic Review is synonymous with Section 106 review.

Identification: Process through which information is gathered about historic properties in the Area of Potential Effects (APE) in order to identify the National Register Evaluation Criteria and determine eligibility for their listing on the National Register.

Indian Tribe: An Indian tribe, band, nation or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (Source: 36 CFR Part 800)

In-kind Repair: In-kind repair refers to work that returns a facility to its pre-disaster condition and substantially matches the original form, workmanship and materials.

Integrity: The authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's prehistoric or historic period. Historic integrity is the composite of seven qualities, including location, design, setting, materials, workmanship, feeling and association. It is an important qualification for National Register listing.

Keeper of the National Register: The person in the National Park Service responsible for administering the National Register of Historic Places program and maintaining a database of the completed nominations.

Locally Designated Cultural Resources: Historic properties nominated at the local level through a historic preservation ordinance or a local preservation/historical organization.

Memorandum of Agreement (MOA): The agreement, resulting from consultation, that outlines measures FEMA will take to avoid or reduce effects on historic properties as the agency carries out its undertaking. The MOA is signed by the agency, the State Historic Preservation Officer/Tribal Historic Preservation Officer, and the Advisory Council for Historic Preservation, if participating. Other consulting parties assigned responsibilities in the Agreement must also be signatories.

National Flood Insurance Program: The program created by Congress to make federally-backed flood insurance available in communities that agree to adopt and enforce floodplain management ordinances to reduce future flood damage.

National Historic Preservation Act (NHPA): In response to the rapid loss of historic resources from urban renewal in the 1950s and 60s, Congress passed this Act in 1966 to ensure that Federal agencies, including FEMA, consider historic properties in their project planning and execution, and encourage States to begin their own historic preservation programs. The primary components of the Act are: the adoption of the National Register for Historic Places as the official list of historic properties; the creation of the Advisory Council for Historic Preservation and State Historic Preservation Offices; the requirement of Federal agencies to establish historic preservation programs, designate a Federal Preservation Officer, and consider the effects of Federal undertakings on historic properties.

National Historic Landmark (NHL): Districts, sites, buildings, structures, and objects found to possess national significance in illustrating or representing the prehistory and history of the United States. Designated by the Secretary of the Interior, NHLs comprise less than four percent of the properties listed in the National Register. Section 110(f) of the National Historic Preservation Act and 36 CFR §800.10 outline special requirements for undertakings affecting NHLs.

National Park Service (NPS): The Service is responsible for performing many of the responsibilities specifically vested in the Secretary of the Interior under the National Historic Preservation Act (NHPA). The Service maintains a large cultural resources professional staff with expertise in the broad range of historic preservation activities authorized under the Act.

National Register of Historic Places (NR): The national list of districts, sites, buildings, structures and objects significant in American history, architecture,

archaeology, engineering and culture, maintained by the Secretary of the Interior under authority of Section 101 (a)(1)(A) of the National Historic Preservation Act.

Non-contributing Property: A non-contributing building, site, structure, or object does not add to the historic associations, historic architectural qualities, or archaeological values for which a historic district is significant because it: was not present during the period of significance; does not relate to the documented significance of the property and does not possess historic integrity or is not capable of yielding important information about the period; or, it does not independently meet National Register criteria.

Pre-disaster Mitigation: FEMA program(s) to provide technical and financial assistance to States and local governments to assist in the implementation of predisaster hazard mitigation measures that are cost-effective and are designed to reduce injuries, loss of life, and damage and destruction of property, including damage to critical services and facilities under the jurisdiction of the States or local governments.

Prehistoric: A term that refers to the period prior to recorded history. In American society, prehistoric refers to the period prior to the arrival of Europeans in the New World because few documents or records exist to supplement any physical evidence that may exist.

Preservation: A treatment to a historic property which is specifically the act or process of applying measures to sustain the existing form, integrity and material of a building or structure, and the existing form or vegetative cover of a site. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.

Professional Qualification Standards: Criteria set forth in the *Secretary's Standards* (48 FR 44739) and 36 CFR Part 61 Appendix A that define minimum education and experience required to perform identification, evaluation, registration and treatment activities associated with historic properties.

Programmatic Agreement: An agreement to outline the roles and responsibilities of Federal and State partners and streamlines the review process. The Programmatic Agreement is typically developed for a large or complex project or a class of undertakings that would otherwise require numerous individual requests for Council comments under Section 106. Under the National Historic Preservation Act (NHPA), the Programmatic Agreement replaces the Section 106 process outlined in 36 CFR Part 800.

Project Impact: A FEMA pre-disaster mitigation program with the goal of bringing communities together, in a collaborative effort, to take actions that prepare for and protect against natural disasters. This program is one for which FEMA's Historic Preservation Programmatic Agreement is applicable.

Protection: A treatment to a historic property, which is specifically the act or process of applying measures designed to affect the physical condition of a property by defending or guarding it from deterioration, loss, or attack, or to cover or shield the property from danger or injury. In the case of buildings or structures, such treatment is generally of a temporary nature and anticipates future historic preservation treatment; in the case of archaeological sites, the protective measure may temporary or permanent.

Public Assistance (PA): The purpose of the Public Assistance Program is to provide Federal assistance programs in the form of grants to State and local governments, tribal organizations, eligible private non-profit organizations, and other public entities for losses and needs sustained in disasters. Eligible projects include debris removal, emergency protective measures and permanent restoration. This program is one for which FEMA's Historic Preservation Programmatic Agreement is applicable.

Public Participation: The involvement of parties in the Section 106 consultation process who may be concerned with the possible effects of an agency action on historic properties. This involvement is outlined in the Section 106 regulations that govern the historic review process.

Recordation and Documentation: One of FEMA's measures for treating the adverse effects of an undertaking, recordation and documentation is process of conducting fieldwork and background research for a property, including measured drawings, photographs, an architectural description and a historic narrative. This information is then filed with the State Historic Preservation Office (SHPO) or other archive, as identified in the Memorandum of Agreement (MOA).

Regional Environmental Officer (REO): In the Regional Office, the Regional Environmental Officer is responsible for ensuring compliance with environmental and historic preservation review activities among all of FEMA's Public Assistance, Individual Assistance, and Mitigation Programs.

Rehabilitation: One of FEMA's measures for treating the adverse effects of an undertaking, rehabilitation is the process of returning a historic property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of a property which are significant to its historical, architectural and cultural values.

Relocation: One of FEMA's measures for treating the adverse effects of an undertaking, relocation is an option for individual property owners when technically and financially feasible. While it is preferred to keep a property in its historic context, when possible, relocation often provides the opportunity to satisfy the needs and concerns of all parties involved.

Restoration: A treatment measure for a historic property, restoration is the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time.

Scoping Meeting: The Scoping Meeting occurs immediately following a disaster declaration or prior to the implementation of other FEMA programs. Led by the ELO and including the SHPO/THPO and State Emergency Management Agency, the meeting establishes points of contact and relevant protocols for the implementation of the Section 106 for FEMA disaster assistance and the implementation of other FEMA programs.

Secondary Programmatic Agreement: An agreement that allows similar projects with multiple applicants to be approved without further review of the SHPO/THPO or Council. Types of projects that may be covered by such an Agreement include elevation of multiple structures above or out of flood levels, repair of roads and improvements to existing culverts.

Secretary of the Interior's Standards for Archaeology and Historic Preservation: Professional standards that address results to be achieved by Federal agencies when planning for the identification, evaluation, registration, and treatment of historic properties.

Secretary of the Interior's Standards for Rehabilitation: These standards constitute the section of the overall preservation project standards that addresses the most prevalent treatment (in 36 CFR 67) of a property which are significant to its historic, architectural, and cultural values.

Secretary of the Interior's Standards for the Treatment of Historic Properties: The Standards are a series of concepts about maintaining, repairing and replacing historic materials, as well as designing new additions or making alterations; as such, they cannot, in and of themselves, be used to make essential decisions about which features of a historic property should be saved and which might be changed. But once an appropriate treatment is selected, the Standards provide philosophical consistency to the work.

Section 106: The review process established under Section 106 of the National Historic Preservation Act (NHPA) that addresses results to be achieved by Federal agencies when planning for the identification, evaluation, registration, and treatment of historic properties. The NHPA under Section 106 requires that every Federal agency "take into account" how each of its undertakings could affect historic properties. An agency must also afford the Council a reasonable opportunity to comment on the agency's project.

Section 110: This section of the National Historic Preservation Act (NHPA) outlines the guidelines for Federal agency responsibilities concerning historic preservation. Specifically, the Section sets standards for establishing a historic preservation program within the agency and integrating historic preservation issues into the ongoing programs and missions of the Federal agency.

Significance: Historic significance is the importance of a property to the history, architecture, archaeology, engineering, or culture of a community, State, or the nation.

Historic significance is based on four criteria (see *Criterion A, B, C, D* above) and is an important qualification for National Register listing.

Special Considerations: FEMA's Public Assistance program uses the term *Special Considerations* to describe issues other than program eligibility that affect the scope of work and funding for a project. Special Considerations include hazard mitigation and insurance in the Public Assistance Program, as well as compliance with federal laws and regulations pertaining to floodplain management, the environment and historic preservation.

Special Considerations Liaison: The Special Considerations Liaison is the person who coordinates special considerations issues in a disaster within the Public Assistance Program, including compliance with environmental and historic laws and regulations. The Special Considerations Liaison works closely with the ELO to facilitate the scoping process, identify historic review issues and perform other duties depending on the nature of the disaster.

State Historic Preservation Officer (SHPO): In cooperation with Federal agencies, SHPOs are responsible for directing and conducting a comprehensive statewide survey of historic properties and maintaining inventories of such properties under Section 101 (b)(3). These State officials maintain important information on historic properties in inventories and in Comprehensive Statewide Historic Preservation Plans, and are required to have qualified preservation professionals on staff. Federal agencies are directed in Section 110 of the NHPA to cooperate with SHPOs in establishing programs to locate, inventory, and nominate historic properties to the National Register. The SHPO has a different name in each State and is located either as a separate department or as a program within another State office.

State Inventory of Cultural Resources: Based on State Cultural Resource Surveys (CRSs), the State Inventory is a listing of all historic resources in the State, including those of local or regional significance. This inventory is the responsibility of the State Historic Preservation Office (SHPO).

State Register of Historic Places: Based on State Cultural Resource Surveys (CRSs) and the State Inventory of Cultural Resources, States maintain a list of historic properties of State significance. Although the State Registers contain National Register properties, they usually contain more properties and are based on different criteria than the National Register. Designated by a State Review Board and administered by the State Historic Preservation Officer, State Registers are often the first hurdle for obtaining National Register status for historic properties.

Temporary Housing: As part of the Federal Assistance to Individuals and Households, temporary housing includes the short term placement of manufactured housing or use of existing fixed housing units to provide shelter for renters and homeowners whose primary residences were damaged or destroyed by disaster, or who face displacement from their homes.

Traditional Cultural Property (TCP): A property eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that are rooted in that community and are important in maintaining the continuing cultural identity of the community. An example of a TCP is a location associated with the traditional beliefs of a Native American group about its origins, its cultural history or the nature of the world. Federal agencies must treat TCPs as historic properties under Section 106. For further guidance, see National Register Bulletin #38 entitled "Guidelines for Evaluating and Documenting Traditional Cultural Properties."

Treatment: A measure used by a Federal agency to avoid, reduce, minimize, or mitigate the adverse effects that a Federal undertaking may have on a historic property. Although there are some treatment measures that are typically used by the agency (see *Recordation and Documentation; Data Recovery; Curation; Relocation*), FEMA is not limited to these measures and can use any measure upon which the involved parties agree. Treatment does not have to have a direct impact on the adverse effect for a specific historic property, but may include educational and planning tools or other measures to promote historic preservation awareness and practice in a community.

Tribal Government: The recognized governing body of an Indian Tribe, band, nation, pueblo, village, or community, including any Alaska Native Village defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688). (Source: FEMA Tribal Policy)

Tribal Historic Preservation Officer (THPO): The tribal equivalent to a State Historic Preservation Office. These tribes will assume a role parallel to that of state government in administering the national program on their reservations. Tribes will tailor the program to accommodate tribal values and address tribal priorities. The 1992 Amendments to the National Historic Preservation Act recognized the tribes' growing capabilities in historic preservation and the tribes' rightful place in the national program. Specifically, the 1992 Amendments provide for tribes, at their request, to assume responsibilities for such functions as identifying and maintaining inventories of culturally significant properties, nominating properties to the National Register of Historic Places, conducting Section 106 review of Federal agency projects on tribal lands and administering educational programs on the importance of preserving historic properties.

Tribal Lands: All lands within the exterior boundaries of any Indian reservation and all dependent Indian communities. (Source: 36 CFR Part 800)

Tribal Liaison Officer: A FEMA job title that is part of the Tribal Program in the Preparedness, Training & Exercises Directorate. The position, located in each FEMA region, is responsible for coordinating with American Indian Tribes, Alaska Natives and Native Hawaiians to resolve historic preservation and cultural resources issues associated with FEMA actions that may affect properties of significance to tribes, whether on or off tribal lands.

36 CFR 800: The Federal Regulations of the Advisory Council on Historic Preservation (Council), entitled “Protection of Historic Properties,” that govern the Section 106 process of the National Historic Preservation Act (NHPA). The Council published new regulations governing this process, which went into effect on January 11, 2001.

Historic Preservation Internet Resources

Federal Agencies

Federal Emergency Management Agency (FEMA) (<http://www.fema.gov>)

The main website for the Federal Emergency Management Agency.

- *Public Assistance Program* (<http://www.fema.gov/r-n-r/pa/>)
The Public Assistance Program provides supplemental Federal disaster grant assistance for the repair, replacement, or restoration of disaster-damaged, publicly owned facilities and the facilities of certain Private Non-Profit (PNP) organizations. The Federal share of assistance is not less than 75% of the eligible cost for emergency measures and permanent restoration. The State determines how the non-Federal share (up to 25%) is split with the applicants.

Policies

(<http://www.fema.gov/r-n-r/pa/9500toc.htm>)

Publications/Guidance

(<http://www.fema.gov/r-n-r/pa/padocs.htm>)

Appeals Database

(http://www.fema.gov/r-n-r/pa/appeals/search_form.cfm)

Special Considerations Form

(<http://www.fema.gov/r-n-r/pa/appfrm2.htm#sc>)

Historic Review Assessment for Determination of Effect

(<http://www.fema.gov/r-n-r/pa/appfrm2.htm#sc>)

- *Hazard Mitigation Grant Program* (<http://www.fema.gov/mit/grant.htm>)
Authorized under Section 404 of the Stafford Act, the Hazard Mitigation Grant Program (HMGP) administered by the Federal Emergency Management Agency (FEMA) provides grants to States and local governments to implement long-term hazard mitigation measures after a major disaster declaration. The purpose of the program is to reduce the loss of life and property due to natural disasters and to enable mitigation measures to be implemented during the immediate recovery from a disaster. FEMA can fund up to 75% of the eligible costs of each project. Eligible applicants are State and local governments, Native American tribes, and certain non-profit organizations.

Policies/Guidance (<http://www.fema.gov/mit/unit8.pdf>)

- *Environmental and Historic Preservation Programs*
(<http://www.fema.gov/mit/ep/>)
FEMA's Environmental, Historic Preservation and Cultural Resources Programs consist of two distinct elements: 1) The Environmental Program and 2) the Historic Preservation and Cultural Resources Program.

Environmental Program (<http://www.fema.gov/mit/ep/overview.htm>)

The Environmental Program provides assistance to FEMA's programs, States and communities to efficiently deliver disaster services in a manner that ensures that we address all applicable environmental laws and Executive Orders. The program provides the guidance, tools and support so that decision makers can integrate environmental concerns into their disaster preparedness, mitigation, response, and recovery decisions.

Historic Preservation Program (<http://www.fema.gov/r-n-r/hpindex.htm>)

The goal of FEMA's Historic Preservation and Cultural Resources Program is to address the needs of communities in preparing for, mitigating, responding and recovering from the devastating effects disasters may have on historic properties and cultural resources while meeting FEMA's primary mission of reducing the loss of life and property to all types of hazards.

While a considerable portion of this program focuses on satisfying FEMA's responsibilities under the National Historic Preservation Act and other related laws, the program also provides a wide range of technical and educational assistance to communities in partnership with other federal agencies and private national cultural heritage organizations. This assistance ranges from developing informational brochures on disaster aid for cultural institutions, to providing assistance in the salvage of water-damage museum collections, to helping communities develop ways to protect their heritage from future disasters.

- *Regional Environmental/Historic Preservation Resources*
 - Region V (<http://www.fema.gov/reg-v/r5env1.htm>)
 - Region VI (<http://www.fema.gov/reg-vi/env/index.htm>)
 - Region VIII (<http://www.fema.gov/reg-viii/env/>)
 - Region IX (<http://www.fema.gov/reg-ix/env/>)
 - Region X (http://www.fema.gov/reg-x/env_index.htm)

- *Environmental and Historic Review Bulletin Board* (<http://166.112.193.64:1200/>)
Available only within the FEMA firewall, the Bulletin Board provides information to FEMA staff on environmental and historic preservation compliance issues, upcoming training opportunities and sample environmental or historic preservation documents.

- *GIS (Geographic Information Systems) Interactive Mapping* (<http://gisactivemaps.fema.gov>) Available only within the FEMA firewall, this mapping capability provides FEMA staff with a significant amount of readily-available data, including the listing of properties on the National Register for Historic Places. Although the interactive mapping has limitations on usability, it is helpful to get a snapshot of various attributes of an area.
 - Includes data on current and past disaster declarations
 - Includes data layers on historic properties

Advisory Council on Historic Preservation (<http://www.achp.gov>)

The Advisory Council on Historic Preservation is the independent federal agency that provides policy guidance to the President on historic preservation issues. In addition, the Council implements the Section 106 regulations (Protection of Historic Properties: 36 CFR Part 800).

- *Protection of Historic Properties (36 CFR Part 800)*
(<http://www.achp.gov/regs.html>)
- *Section 106 Guidance* (<http://www.achp.gov/usersguide.html>)
- *Advisory Council Training* (<http://www.achp.gov/training.html>)
- *Federal, State and Tribal Programs* (<http://www.achp.gov/programs.html>)
- *Prominent Section 106 Cases*
- *Federal Historic Preservation Case Law*
(<http://www.achp.gov/book/COVER1.html>)
- *Contacts* (<http://www.achp.gov/staff.html>)

National Park Service (<http://www.nps.gov>)

The National Park Service has a number of programs related to historic and cultural resources, all of which contain important reference materials, technical information, databases or contacts.

- *National Register* (<http://www.cr.nps.gov/nr>)
National Register Information System (NRIS) Database
National Register Bulletins/Publications
- *National Historic Landmarks* (<http://www.cr.nps.gov/nhl/>)
National Historic Landmark (NHL) Search
Assistance in finding additional information concerning NHLs
- *Heritage Preservation Services* (<http://www.cr.nps.gov/hps/>)
Cultural Resource Mapping and GIS
(<http://www.cr.nps.gov/hps/gis/index.htm>)
Federal Agency Preservation Assistance Program
(http://www.cr.nps.gov/hps/pad/fapa_p.htm)
Technical Preservation Services for Historic Buildings
(<http://www.cr.nps.gov/hps/tps/index.htm>)
Preservation Briefs
(<http://www.cr.nps.gov/hps/tps/briefs/presbhom.htm>)
Secretary of the Interior's Standards for the Treatment of Historic Properties (<http://www.cr.nps.gov/hps/tps/secstan1.htm>)
Tribal Preservation Program (<http://www.cr.nps.gov/hps/tribal/index.htm>)
Tribal Historic Preservation Offices
(<http://www.cr.nps.gov/hps/tribal/thpo.htm>)

- *Archeology and Ethnography Program* (<http://www.cr.nps.gov/aad/>)
 - Archeology Technical Briefs (<http://www.cr.nps.gov/aad/aepubs.htm>)
 - Federal Archeology Program (<http://www.cr.nps.gov/aad/fedarch.htm>)
 - National Archeological Database (<http://www.cr.nps.gov/aad/nadb.htm>)

- *Laws, Regulations and Standards related to Cultural Resources*
(<http://www.cr.nps.gov/linklaws.htm>)
 - National Historic Preservation Act, as amended through 2000
(<http://www2.cr.nps.gov/laws/NHPA1966.htm>)
 - Archeological and Historic Preservation Act
(<http://www2.cr.nps.gov/laws/archpreserv.htm>)
 - NAGPRA
(<http://www.cast.uark.edu/other/nps/nagpra/nagpra.dat/lgm003.html>)
 - American Indian Religious Freedom Act of 1978
(<http://www2.cr.nps.gov/laws/religious.htm>)
 - Curation of Federally-Owned and Administered Archeological Collections
(36 CFR Part 79) (<http://www.cr.nps.gov/aad/36cfr79.htm>)
 - Executive Order 13007: Indian Sacred Sites
(<http://www.nara.gov/fedreg/eo1996.html#13007>)

- *Historic American Buildings Survey/Historic American Engineering Record*
(HABS/HAER) (<http://www.cr.nps.gov/habshaer/>)
 - View and Search Collections
(<http://www.cr.nps.gov/habshaer/coll/index.htm>)
 - Publications on HABS/HAER Standards
(<http://www.cr.nps.gov/habshaer/pubs/standard.htm>)

- *Cultural Resource Management Publications* (CRM)
(<http://www.cr.nps.gov/crm/>)

- *National Center for Preservation Technology and Training*
(<http://www.ncptt.nps.gov/>)
 - Clearinghouse on preservation information
(http://www.ncptt.nps.gov/pttinfo_about_fs.stm)

General Services Administration's NEPA Call-In

(<http://hydra.gsa.gov/pbs/pt/call-in/nepa.htm>)

NEPA Call-In is GSA's National Environmental Policy Act (NEPA) information clearinghouse and research service. NEPA Call-In provides technical assistance and information to GSA personnel and approved GSA contractors in understanding and implementing the complex requirements of NEPA and related environmental initiatives and regulations.

- *Environmental Resource Library* (<http://hydra.gsa.gov/pbs/pt/call-in/erl.htm>)
 - Laws and Regulations
 - Sample Memoranda of Agreement
 - Sample NHPA Letters

National Organizations and Programs

National Trust for Historic Preservation (<http://www.nthp.org>)

Originally chartered through the National Historic Preservation Act, the National Trust is a historic preservation advocacy organization now funded entirely through private funds and memberships.

- *Forum On-line (members only)* (<http://forum.nthp.org/>)
- *Preservation Books* (<http://www.preservationbooks.org/>)

National Association of Tribal Historic Preservation Officers (no website)

The National Association of Tribal Historic Preservation Officers (NATHPO) is a fairly new organization representing the interests of the Tribal Historic Preservation Officers. At this point, not all THPOs are members of NATHPO.

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National Conference of State Historic Preservation Officers

(<http://www.sso.org/ncshpo/>)

The National Conference of State Historic Preservation Officers (NCSHPO), like NATHPO, represents the interests of the State Historic Preservation Officers.

- *SHPO and DSHPO List* (<http://www.sso.org/ncshpo/shpolist.htm>)
- *State Preservation Legislation On-line*
(<http://www.ncsl.org/programs/arts/statehist.htm>)

National Preservation Institute (<http://www.npi.org>)

The National Preservation Institute (NPI) is a nonprofit organization offering specialized information, continuing education, and professional training for the management, development, and preservation of historic, cultural, and environmental resources.

- *Seminars* (<http://www.npi.org/seminars.html>)

Save America's Treasures (<http://www.saveameericastreasures.org/>)

To focus public attention on the importance of our national heritage and the need to save our treasures at risk, in early 1998 the White House Millennium Council teamed with the National Trust for Historic Preservation to establish *Save America's Treasures*. The program is a national effort to protect America's threatened cultural treasures, including significant documents, works of art, maps, journals, and historic structures that document and illuminate the history and culture of the United States. *Save America's Treasures* is dedicated to identifying and rescuing the enduring symbols of American tradition that define us as a nation.

Heritage Preservation (<http://www.heritagepreservation.org/>)

Heritage Preservation works to ensure the preservation of America's collective heritage for present and future generations. Its programs and publications provide advice and guidance on the proper care and maintenance of

- historic documents
- books and archives
- works of art
- photographs
- architecture
- monuments
- anthropological artifacts
- historic objects and family heirlooms
- natural science specimens

It works with its members--the nation's leading museums, libraries and archives, historic preservation organizations and historical societies--to inform the public of the need to preserve our collective heritage.

- *National Task Force on Emergency Response*
(<http://www.heritagepreservation.org/PROGRAMS/taskfer.htm>)

The American Institute for Conservation of Historic and Artistic Works (AIC)
(<http://aic.stanford.edu/>)

The American Institute for Conservation of Historic and Artistic Works (AIC) is the national membership organization of conservation professionals dedicated to preserving the art and historic artifacts of our cultural heritage for future generations.

- Disaster Recovery (<http://aic.stanford.edu/disaster/>)

Architecture

- American Institute of Architects (<http://www.aiaonline.com>)
- American Society of Landscape Architects (<http://www.asla.org/asla>)
- Architecture Research Institute (<http://www.architect.org>)
- University of Nevada, las Vegas, Web Resources: Architecture (<http://library.nevada.edu/arch/rsrce/webrsrce/contents.html>)
“Topics covered by this guide include architecture, building and construction, design, housing, planning, preservation, facility management, energy and the environment, and landscape architecture. Types of listings range from discussion groups to electronic publications to databases -- and of course a wide variety of web sites. This is a selective guide. Links to more comprehensive link collections are included.”

Archeology

- *Archaeological Institute of America* (<http://www.archaeological.org>)
- *Archeology on the Net* (<http://www.serve.com/archeology>)
- *ArchNet* (<http://spirit.lib.uconn.edu/ArchNet>)

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National Historic Preservation Act of 1966, as amended through 2000
[With annotations]

[This Act became law on October 15, 1966 (Public Law 89-665; 16 U.S.C. 470 et seq.). Subsequent amendments to the Act include Public Law 91-243, Public Law 93-54, Public Law 94-422, Public Law 94-458, Public Law 96-199, Public Law 96-244, Public Law 96-515, Public Law 98-483, Public Law 99-514, Public Law 100-127, Public Law 102-575, Public Law 103-437, Public Law 104-333, Public Law 106-113, Public Law 106-176, Public Law 106-208, and Public Law 106-355. This description of the Act, as amended, tracts the language of the United States Code except that (in following common usage) we refer to the "Act" (meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code. This description also excludes some of the notes found in the Code as well as those sections of the amendments dealing with completed reports. Until the Code is updated through the end of the 106th Congress, the Code citations for Sections 308 and 309 are speculative.]

AN ACT to Establish a Program for the Preservation of Additional Historic Properties throughout the Nation, and for Other Purposes.

Section 1

[16 U.S.C. 470 — Short title of the Act]

- (a) This Act may be cited as the "National Historic Preservation Act".

[Purpose of the Act]

- (b) The Congress finds and declares that - —
- (1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;
 - (2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;
 - (3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;
 - (4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;
 - (5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;
 - (6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

- (7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 2

[16 U.S.C. 470-1 — Declaration of policy of the Federal Government]

It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to —

- (1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;
- (2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments;
- (3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;
- (4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;
- (5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and
- (6) assist State and local governments, Indian tribes and Native Hawaiian organizations and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

TITLE I

Section 101

[16 U.S.C. 470a(a) — National Register of Historic Places, expansion and maintenance]

- (a) (1) (A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture. Notwithstanding section 1125(c) of Title 15 [of the U.S. Code], buildings and structures on or eligible for inclusion on the National Register of Historic Places (either individually or as part of a historic district), or designated as an individual landmark or

as a contributing building in a historic district by a unit of State or local government, may retain the name historically associated with the building or structure.

[National Historic Landmarks, designation]

- (B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on December 12, 1980 [the date of enactment of the National Historic Preservation Act Amendments of 1980], shall be deemed to be included on the National Register as of their initial listing for purposes of this Act. All historic properties listed in the Federal Register of February 6, 1979, as "National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National historic Landmarks of national historic significance as of their initial listing as such in the Federal Register for purposes of this Act and the Act of August 21, 1935 (49 Stat.666) [16 U.S.C. 461 to 467]; except that in cases of National Historic Landmark districts for which no boundaries have been established, boundaries must first be published in the Federal Register.

[Criteria for National Register and National Historic Landmarks and regulations]

- (2) The Secretary in consultation with national historic and archaeological associations, shall establish or revise criteria for properties to be included on the National Register and criteria for National Historic Landmarks, and shall also promulgate or revise regulations as may be necessary for —
- (A) nominating properties for inclusion in, and removal from, the National Register and the recommendation of properties by certified local governments;
 - (B) designating properties as National Historic Landmarks and removing such designation;
 - (C) considering appeals from such recommendations, nomination, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);
 - (D) nominating historic properties for inclusion in the World Heritage List in accordance with the terms of the Convention concerning the Protection of the World Cultural and Natural Heritage;
 - (E) making determinations of eligibility of properties for inclusion on the National Register; and
 - (F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National Register, for designation as a National Historic Landmark or for nomination to the World Heritage List.

[Nominations to the National Register]

- (3) Subject to the requirements of paragraph (6), any State which is carrying out a program approved under subsection (b) of this section, shall nominate to the Secretary properties

which meet the criteria promulgated under subsection (a) of this section for inclusion on the National Register. Subject to paragraph (6), any property nominated under this paragraph or under section 110 (a)(2) of this Act shall be included on the National Register on the date forty-five days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves such nomination within such forty-five day period or unless an appeal is filed under paragraph (5).

[Nominations from individuals and local governments]

- (4) Subject to the requirements of paragraph (6) the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if such property is located in a State where there is no program approved under subsection (b) of this section. The Secretary may include on the National Register any property for which such a nomination is made if he determines that such property is eligible in accordance with the regulations promulgated under paragraph (2). Such determinations shall be made within ninety days from the date of nomination unless the nomination is appealed under paragraph (5).

[Appeals of nominations]

- (5) Any person or local government may appeal to the Secretary a nomination of any historic property for inclusion on the National Register and may appeal to the Secretary the failure or refusal of a nominating authority to nominate a property in accordance with this subsection.

[Owner participation in nomination process]

- (6) The Secretary shall promulgate regulations requiring that before any property or district may be included on the National Register or designated as a National Historic Landmark, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of an historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the National Register or designated as a National Historic Landmark until such objection is withdrawn. The Secretary shall review the nomination of the property or district where any such objection has been made and shall determine whether or not the property or district is eligible for such inclusion or designation, and if the Secretary determines that such property or district is eligible for such inclusion or designation, he shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official and the owner or owners of such property, of his determination. The regulations under this paragraph shall include provisions to carry out the purposes of this paragraph in the case of multiple ownership of a single property.

[Regulations for curation, documentation, and local government certification]

- (7) The Secretary shall promulgate, or revise, regulations —
 - (A) ensuring that significant prehistoric and historic artifacts, and associated records,

subject to section 110 of this Act [16 U.S.C. 470h-2], the Act of June 27, 1960 (16 U.S.C. 469c), and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) are deposited in an institution with adequate long-term curatorial capabilities;

- (B) establishing a uniform process and standards for documenting historic properties by public agencies and private parties for purposes of incorporation into, or complementing, the national historic architectural and engineering records within the Library of Congress; and
- (C) certifying local governments, in accordance with subsection (c)(1) of this section and for the allocation of funds pursuant to section 103 (c) of this Act [16 U.S.C. 470c(c)].

[Review threats to eligible and listed properties and recommend action]

- (8) The Secretary shall, at least once every 4 years, in consultation with the Council and with State Historic Preservation Officers, review significant threats to properties included in, or eligible for inclusion on, the National Register, in order to —
 - (A) determine the kinds of properties that may be threatened;
 - (B) ascertain the causes of the threats; and
 - (C) develop and submit to the President and Congress recommendations for appropriate action.

[16 U.S.C. 470a(b) — State Historic Preservation Programs]

- (b) (1) The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the National Trust for Historic Preservation, shall promulgate or revise regulations for State Historic Preservation Programs. Such regulations shall provide that a State program submitted to the Secretary under this section shall be approved by the Secretary if he determines that the program

[Designation of the State Historic Preservation Officer (SHPO)]

- (A) provides for the designation and appointment by the Governor of a "State Historic Preservation Officer" to administer such program in accordance with paragraph (3) and for the employment or appointment by such officer of such professionally qualified staff as may be necessary for such purposes;

[Designation of the State Review Board]

- (B) provides for an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and
- (C) provides for adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register.

[Review of State programs]

- (2) (A) Periodically, but not less than every 4 years after the approval of any State program under this subsection, the Secretary, in consultation with the Council on the appropriate provisions of this Act, and in cooperation with the State Historic Preservation Officer, shall evaluate the program to determine whether it is consistent with this Act.
- (B) If, at any time, the Secretary determines that a major aspect of a State program is not consistent with this Act, the Secretary shall disapprove the program and suspend in whole or in part any contracts or cooperative agreements with the State and the State Historic Preservation Officer under this Act, until the program is consistent with this Act, unless the Secretary determines that the program will be made consistent with this Act within a reasonable period of time.
- (C) The Secretary, in consultation with State Historic Preservation Officers, shall establish oversight methods to ensure State program consistency and quality without imposing undue review burdens on State Historic Preservation Officers.
- (D) At the discretion of the Secretary, a State system of fiscal audit and management may be substituted for comparable Federal systems so long as the State system —
 - (i) establishes and maintains substantially similar accountability standards; and
 - (ii) provides for independent professional peer review.

The Secretary may also conduct periodic fiscal audits of State programs approved under this section as needed and shall ensure that such programs meet applicable accountability standards.

[SHPO responsibilities]

- (3) It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program and to —
 - (A) in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;
 - (B) identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;
 - (C) prepare and implement a comprehensive statewide historic preservation plan;
 - (D) administer the State program of Federal assistance for historic preservation within the State;
 - (E) advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;
 - (F) cooperate with the Secretary, the Advisory Council on Historic Preservation, and other

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Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;

- (G) provide public information, education, and training, and technical assistance in historic preservation;
- (H) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c) of this section;
- (I) consult with the appropriate Federal agencies in accordance with this Act on —
 - (i) Federal undertakings that may affect historic properties; and
 - (ii) the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties; and
- (J) advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.

[Arrangements with nonprofit organizations]

- (4) Any State may carry out all or any part of its responsibilities under this subsection by contract or cooperative agreement with any qualified nonprofit organization or educational institution.

[Approval of existing programs]

- (5) Any State historic preservation program in effect under prior authority of law may be treated as an approved program for purposes of this subsection until the earlier of —
 - (A) the date on which the Secretary approves a program submitted by the State under this subsection, or
 - (B) three years after October 30, 1992 [the date of the enactment of the National Historic Preservation Act Amendments of 1992].

[Contracts or cooperative agreements with State Historic Preservation Officers]

- (6) (A) Subject to subparagraphs (C) and (D), the Secretary may enter into contracts or cooperative agreements with a State Historic Preservation Officer for any State authorizing such Officer to assist the Secretary in carrying out one or more of the following responsibilities within that State —
 - (i) Identification and preservation of historic properties.
 - (ii) Determination of the eligibility of properties for listing on the National Register.
 - (iii) Preparation of nominations for inclusion on the National Register.

- (iv) Maintenance of historical and archaeological data bases.
- (v) Evaluation of eligibility for Federal preservation incentives.

Nothing in this paragraph shall be construed to provide that any State Historic Preservation Officer or any other person other than the Secretary shall have the authority to maintain the National Register for properties in any State.

(B) The Secretary may enter into a contract or cooperative agreement under subparagraph (A) only if —

- (i) the State Historic Preservation Officer has requested the additional responsibility;
- (ii) the Secretary has approved the State historic preservation program pursuant to subsection (b)(1) and (2) of this section;
- (iii) the State Historic Preservation Officer agrees to carry out the additional responsibility in a timely and efficient manner acceptable to the Secretary and the Secretary determines that such Officer is fully capable of carrying out such responsibility in such manner;
- (iv) the State Historic Preservation Officer agrees to permit the Secretary to review and revise, as appropriate in the discretion of the Secretary, decisions made by the Officer pursuant to such contract or cooperative agreement; and
- (v) the Secretary and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying out such responsibility.

(C) For each significant program area under the Secretary's authority, the Secretary shall establish specific conditions and criteria essential for the assumption by State Historic Preservation Officers of the Secretary's duties in each such program.

(D) Nothing in this subsection shall have the effect of diminishing the preservation programs and activities of the National Park Service.

[16 U.S.C. 470a(c) — Certification of local governments]

(c) (1) Any State program approved under this section shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this Act and provide for the transfer, in accordance with section 103(c) of this Act [16 U.S.C. 470c(c)], of a portion of the grants received by the States under this Act, to such local governments. Any local government shall be certified to participate under the provisions of this section if the applicable State Historic Preservation Officer, and the Secretary, certifies that the local government —

(A) enforces appropriate State or local legislation for the designation and protection of historic properties;

- (B) has established an adequate and qualified historic preservation review commission by State or local legislation;
- (C) maintains a system for the survey and inventory of historic properties that furthers the purposes of subsection (b) of this section;
- (D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and
- (E) satisfactorily performs the responsibilities delegated to it under this Act.

Where there is no approved State program, a local government may be certified by the Secretary if he determines that such local government meets the requirements of subparagraphs (A) through (E); and in any such case the Secretary may make grants-in-aid to the local government for purposes of this section.

[Participation of certified local governments in National Register nominations]

- (2) (A) Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission. The commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and his recommendation to the state Historic Preservation Officer. Except as provided in subparagraph (B), after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to subsection (a) of this subsection. The State may expedite such process with the concurrence of the certified local government.
- (B) If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless within thirty days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the State. If such an appeal is filed, the State shall follow the procedures for making a nomination pursuant to subsection (a) of this section. Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.
- (3) Any local government certified under this section or which is making efforts to become so certified shall be eligible for funds under the provision of section 103 (c) of this Act [16 U.S.C. 470c(c)], and shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the Secretary deems necessary or advisable.

[Definitions]

- (4) For the purposes of this section the term —

- (A) "**designation**" means the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of a local government; and
- (B) "**protection**" means a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic properties designated pursuant to this subsection.

[16 U.S.C. 470a(d) — Establish program and regulations to assist Indian tribes]

- (d)
 - (1) (A) The Secretary shall establish a program and promulgate regulations to assist Indian tribes in preserving their particular historic properties. The Secretary shall foster communication and cooperation between Indian tribes and State Historic Preservation Officers in the administration of the national historic preservation program to ensure that all types of historic properties and all public interests in such properties are given due consideration, and to encourage coordination among Indian tribes, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic properties.
 - (B) The program under subparagraph (A) shall be developed in such a manner as to ensure that tribal values are taken into account to the extent feasible. The Secretary may waive or modify requirements of this section to conform to the cultural setting of tribal heritage preservation goals and objectives. The tribal programs implemented by specific tribal organizations may vary in scope, as determined by each tribe's chief governing authority.
 - (C) The Secretary shall consult with Indian tribes, other Federal agencies, State Historic Preservation Officers, and other interested parties and initiate the program under subparagraph (A) by not later than October 1, 1994.

[Indian Tribes may assume State Historic Preservation Officer functions]

- (2) A tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with subsections (b)(2) and (b)(3) of this section, with respect to tribal lands, as such responsibilities may be modified for tribal programs through regulations issued by the Secretary if —
 - (A) the tribe's chief governing authority so requests;
 - (B) the tribe designates a tribal preservation official to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or as a tribal ordinance may otherwise provide;
 - (C) the tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;
 - (D) the Secretary determines, after consultation with the tribe, the appropriate State Historic Preservation Officer, the Council (if the tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 106 of this Act), and other tribes, if any, whose tribal or aboriginal lands may be affected by conduct of the tribal preservation program —

- (i) that the tribal preservation program is fully capable of carrying out the functions specified in the plan provided under subparagraph (C);
 - (ii) that the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer; and
 - (iii) that the plan provides, with respect to properties neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe, at the request of the owner thereof, the State Historic Preservation Officer, in addition to the tribal preservation official, may exercise the historic preservation responsibilities in accordance with subsections (b)(2) and (b)(3) of this section; and
- (E) based on satisfaction of the conditions stated in subparagraphs (A), (B), (C), and (D), the Secretary approves the plan.
- (3) In consultation with interested Indian tribes, other Native American organizations and affected State Historic Preservation Officers, the Secretary shall establish and implement procedures for carrying out section 103(a) of this Act with respect to tribal programs that assume responsibilities under paragraph (2).
- (4) At the request of a tribe whose preservation program has been approved to assume functions and responsibilities pursuant to paragraph (2), the Secretary shall enter into contracts or cooperative agreements with such tribe permitting the assumption by the tribe of any part of the responsibilities referred to in subsection (b)(6) of this section on tribal land, if —
- (A) the Secretary and the tribe agree on additional financial assistance, if any, to the tribe for the costs of carrying out such authorities;
 - (B) the Secretary finds that the tribal historic preservation program has been demonstrated to be sufficient to carry out the contract or cooperative agreement and this Act; and
 - (C) the contract or cooperative agreement specifies the continuing responsibilities of the Secretary or of the appropriate State Historic Preservation Officers and provides for appropriate participation by —
 - (i) the tribe's traditional cultural authorities;
 - (ii) representatives of other tribes whose traditional lands are under the jurisdiction of the tribe assuming responsibilities; and
 - (iii) the interested public.
- (5) The Council may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 106 of this Act, if the Council, after consultation with the tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic properties consideration equivalent to those afforded by the Council's regulations.

[Traditional religious and cultural properties may be eligible for listing in the National Register]

- (6) (A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.
- (B) In carrying out its responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).
- (C) In carrying out his or her responsibilities under subsection (b)(3) of this section, the State Historic Preservation Officer for the State of Hawaii shall —
- (i) consult with Native Hawaiian organizations in assessing the cultural significance of any property in determining whether to nominate such property to the National Register;
 - (ii) consult with Native Hawaiian organizations in developing the cultural component of a preservation program or plan for such property; and
 - (iii) enter into a memorandum of understanding or agreement with Native Hawaiian organizations for the assessment of the cultural significance of a property in determining whether to nominate such property to the National Register and to carry out the cultural component of such preservation program or plan.

[16 U.S.C. 470a(e) — Grants to States]

- (e) (1) The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this Act.

[Grants to the National Trust]

- (2) The Secretary may administer grants to the National Trust for Historic Preservation in the United States, chartered by Act of Congress approved October 26, 1949 (63 Stat. 927) [16 U.S.C. 468], consistent with the purposes of its charter and this Act.

[Direct grants for threatened National Historic Landmarks, demonstration projects, training, and displacement prevention]

- (3) (A) In addition to the programs under paragraphs (1) and (2), the Secretary shall administer a program of direct grants for the preservation of properties included on the National Register. Funds to support such program annually shall not exceed 10 per centum of the amount appropriated annually for the fund established under section 108 of this Act. These grants may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer —
- (i) for the preservation of National Historic Landmarks which are threatened with demolition or impairment and for the preservation of historic properties of World Heritage significance,

- (ii) for demonstration projects which will provide information concerning professional methods and techniques having application to historic properties,
- (iii) for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation, and
- (iv) to assist persons or small businesses within any historic district included in the National Register to remain within the district.

[Grants or loans to Indian tribes and non-profit ethnic or minority organizations for preserving cultural heritage]

- (B) The Secretary may also, in consultation with the appropriate State Historic Preservation Officer, make grants or loans or both under this section to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage.
- (C) Grants may be made under subparagraph (A)(i) and (iv) only to the extent that the project cannot be carried out in as effective a manner through the use of an insured loan under section 104 of this Act.

[Grants for religious properties]

- (4) Grants may be made under this subsection for the preservation, stabilization, restoration, or rehabilitation of religious properties listed in the National Register of Historic Places, provided that the purpose of the grant is secular, does not promote religion, and seeks to protect those qualities that are historically significant. Nothing in this paragraph shall be construed to authorize the use of any funds made available under this section for the acquisition of any property referred to in the preceding sentence.

[Direct grants to Indian tribes and Native Hawaiian organizations]

- (5) The Secretary shall administer a program of direct grants to Indian tribes and Native Hawaiian organizations for the purpose of carrying out this Act as it pertains to Indian tribes and Native Hawaiian organizations. Matching fund requirements may be modified. Federal funds available to a tribe or Native Hawaiian organization may be used as matching funds for the purposes of the tribe's or organization's conducting its responsibilities pursuant to this section.

[Direct grants to Micronesia, Marshall Islands, and Palau]

- (6) (A) As a part of the program of matching grant assistance from the Historic Preservation Fund to States, the Secretary shall administer a program of direct grants to the Federated States of Micronesia, the Republic of the Marshall Islands, the Trust Territory of the Pacific Islands, and upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau (referred to as the Micronesian States) in furtherance of the Compact of Free Association between the United States and the Federated States of Micronesia and the Marshall Islands, approved by the Compact of Free Association Act of 1985 (48 U.S.C. 1681 note), the Trusteeship Agreement for the

Trust Territory of the Pacific Islands, and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled “Joint Resolution to approve the ‘Compact of Free Association’ between the United States and Government of Palau, and for other purposes” (48 U.S.C. 1681 note). The goal of the program shall be to establish historic and cultural preservation programs that meet the unique needs of each Micronesian State so that at the termination of the compacts the programs shall be firmly established. The Secretary may waive or modify the requirements of this section to conform to the cultural setting of those nations.

- (B) The amounts to be made available to the Micronesian States shall be allocated by the Secretary on the basis of needs as determined by the Secretary. Matching funds may be waived or modified.

[16 U.S.C. 470a(f) — Prohibition on compensating intervenors]

- (f) No part of any grant made under this section may be used to compensate any person intervening in any proceeding under this Act.

[16 U.S.C. 470a(g) — Guidelines for Federal agency responsibilities]

- (g) In consultation with the Advisory Council on Historic Preservation, the Secretary shall promulgate guidelines for Federal agency responsibilities under section 110 of this Act.

[16 U.S.C. 470a(h) — Preservation standards for federally owned properties]

- (h) Within one year after December 12, 1980 [the date of enactment of the National Historic Preservation Act Amendments of 1980], the Secretary shall establish, in consultation with the Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of the General Services Administration, professional standards for the preservation of historic properties in Federal ownership or control.

[16 U.S.C. 470a(i) — Technical advice]

- (i) The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning, professional methods and techniques for the preservation of historic properties and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students.

[16 U.S.C. 470a(j) — Develop and implement a comprehensive preservation education and training program]

- (j) (1) The Secretary shall, in consultation with the Council and other appropriate Federal, tribal, Native Hawaiian, and non-Federal organizations, develop and implement a comprehensive preservation education and training program.

- (2) The education and training program described in paragraph (1) shall include —

- (A) new standards and increased preservation training opportunities for Federal workers

- involved in preservation-related functions;
- (B) increased preservation training opportunities for other Federal, State, tribal and local government workers, and students;
- (C) technical or financial assistance, or both, to historically black colleges and universities, to tribal colleges, and to colleges with a high enrollment of Native Americans or Native Hawaiians, to establish preservation training and degree programs; and
- (D) coordination of the following activities, where appropriate, with the National Center for Preservation Technology and Training —
 - (i) distribution of information on preservation technologies;
 - (ii) provision of training and skill development in trades, crafts, and disciplines related to historic preservation in Federal training and development programs; and
 - (iii) support for research, analysis, conservation, curation, interpretation, and display related to preservation.

Section 102

[16 U.S.C. 470b(a) — Grant requirements]

- (a) No grant may be made under this Act —
 - (1) unless application therefore is submitted to the Secretary in accordance with regulations and procedures prescribed by him;
 - (2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) [16 U.S.C. 4601-4];
 - (3) for more than 60 percent of the aggregate costs of carrying out projects and programs under the administrative control of the State Historic Preservation Officer as specified in section 101(b)(3) of this Act in any one fiscal year;
 - (4) unless the grantee has agreed to make such reports, in such form and containing such information as the Secretary may from time to time require;
 - (5) unless the grantee has agreed to assume, after completion of the project, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and
 - (6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable.

Except as permitted by other law, the State share of the costs referred to in paragraph (3) shall be contributed by non-Federal sources. Notwithstanding any other provision of law, no grant made pursuant to this Act shall be treated as taxable income for purposes of the Internal

Revenue Code of 1986 [Title 26 of the U.S. Code].

[16 U.S.C. 470b(b) — Waiver for the National Trust]

- (b) The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this Act to the National Trust for Historic Preservation in the United States.

[16 U.S.C. 470b(c) — State limitation on matching]*

*[*Technically, subsection (c) was repealed and replaced by two subsection “d”s]*

- (c*) No State shall be permitted to utilize the value of real property obtained before October 15, 1966 [the date of approval of this Act], in meeting the remaining cost of a project for which a grant is made under this Act.

[16 U.S.C. 470b(d) — Availability of funds]

- (d) The Secretary shall make funding available to individual States and the National Trust for Historic Preservation as soon as practicable after execution of a grant agreement. For purposes of administration, grants to individual States and the National Trust each shall be considered to be one grant and shall be administered by the National Park Service as such.

[16 U.S.C. 470b(e) — Administrative Costs]

- (e) The total administrative costs, direct and indirect, charged for carrying out State projects and programs may not exceed 25 percent of the aggregate costs except in the case of grants under section 101(e)(6) of this Act.

Section 103

[16 U.S.C. 470c(a) — Basis for apportionment of grants]

- (a) The amounts appropriated and made available for grants to the States for the purposes of this Act shall be apportioned among the States by the Secretary on the basis of needs as determined by him.

[16 U.S.C. 470c(b) — Apportionment basis, notice, reapportionment, etc.]

- (b) The amounts appropriated and made available for grants to the States for projects and programs under this Act for each fiscal year shall be apportioned among the States as the Secretary determines to be appropriate.

The Secretary shall notify each State of its apportionment under this subsection within thirty days following the date of enactment of legislation appropriating funds under this Act. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection. The Secretary shall analyze and revise as necessary the method of apportionment. Such method and any revision thereof shall be published by the Secretary in the Federal Register.

[16 U.S.C. 470c(c) — Requirements for certified local government pass-through subgrants]

- (c) A minimum of 10 per centum of the annual apportionment distributed by the Secretary to each State for the purposes of carrying out this Act shall be transferred by the State, pursuant to the requirements of this Act, to local governments which are certified under section 101(c) of this Act for historic preservation projects or programs of such local governments. In any year in which the total annual apportionment to the States exceeds \$65,000,000, one half of the excess shall also be transferred by the States to local governments certified pursuant to section 101(c) of this Act.

[16 U.S.C. 470c(d) — Guidelines for State distribution to certified local governments]

- (d) The Secretary shall establish guidelines for the use and distribution of funds under subsection (c) of this section to insure that no local government receives a disproportionate share of the funds available, and may include a maximum or minimum limitation on the amount of funds distributed to any single local government. The guidelines shall not limit the ability of any State to distribute more than 10 per centum of its annual apportionment under subsection (c) of this section, nor shall the Secretary require any State to exceed the 10 per centum minimum distribution to local governments.

Section 104

[16 U.S.C. 470d(a) — Insured loans for National Register]

- (a) The Secretary shall establish and maintain a program by which he may, upon application of a private lender, insure loans (including loans made in accordance with a mortgage) made by such lender to finance any project for the preservation of a property included on the National Register.

[16 U.S.C. 470d(b) — Requirements]

- (b) A loan may be insured under this section only if —
- (1) the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;
 - (2) the amount of the loan, and interest rate charged with respect to the loan, do not exceed such amount, and such a rate, as is established by the Secretary, by rule;
 - (3) the Secretary has consulted the appropriate State Historic Preservation Officer concerning the preservation of the historic property;
 - (4) the Secretary has determined that the loan is adequately secured and there is reasonable assurance of repayment;
 - (5) the repayment period of the loan does not exceed the lesser of forty years or the expected life of the asset financed;
 - (6) the amount insured with respect to such loan does not exceed 90 per centum of the loss sustained by the lender with respect to the loan; and
 - (7) the loan, the borrower, and the historic property to be preserved meet other terms and conditions as may be prescribed by the Secretary, by rule, especially terms and conditions

relating to the nature and quality of the preservation work.

[Interest rates]

The Secretary shall consult with the Secretary of the Treasury regarding the interest rate of loans insured under this section.

[16 U.S.C. 470d(c) — Limitation on loan authority]

- (c) The aggregate unpaid principal balance of loans insured under this section and outstanding at any one time may not exceed the amount which has been covered into the Historic Preservation Fund pursuant to section 108 of this Act and subsections (g) and (i) of this section, as in effect on December 12, 1980 [the date of the enactment of the Act], but which has not been appropriated for any purpose.

[16 U.S.C. 470d(d) — Assignability and effect]

- (d) Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

[16 U.S.C. 470d(e) — Method of payment for losses]

- (e) The Secretary shall specify, by rule and in each contract entered into under this section, the conditions and method of payment to a private lender as a result of losses incurred by the lender on any loan insured under this section.

[16 U.S.C. 470d(f) — Protection of Government's financial interests; foreclosure]

- (f) In entering into any contract to insure a loan under this section, the Secretary shall take steps to assure adequate protection of the financial interests of the Federal Government. The Secretary may —
- (1) in connection with any foreclosure proceeding, obtain, on behalf of the Federal Government, the property securing a loan insured under this title; and
 - (2) operate or lease such property for such period as may be necessary to protect the interest of the Federal Government and to carry out subsection (g) of this section.

[16 U.S.C. 470d(g) — Conveyance of foreclosed property]

- (g) (1) In any case in which a historic property is obtained pursuant to subsection (f) of this section, the Secretary shall attempt to convey such property to any governmental or nongovernmental entity under such conditions as will ensure the property's continued preservation and use; except that if, after a reasonable time, the Secretary, in consultation with the Advisory Council on Historic Preservation, determines that there is no feasible and prudent means to convey such property and to ensure its continued preservation and use, then the Secretary may convey the property at the fair market value of its interest in such property to any entity without restriction.

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- (2) Any funds obtained by the Secretary in connection with the conveyance of any property pursuant to paragraph (1) shall be covered into the historic preservation fund, in addition to the amounts covered into such fund pursuant to section 108 of this Act and subsection (i) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

[16 U.S.C. 470d(h) — Fees]

- (h) The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this section. Any such fees shall be covered into the Historic Preservation Fund, in addition to the amounts covered into such fund pursuant to section 108 of this Act and subsection (g) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

[16 U.S.C. 470d(i) — Loans to be considered non-Federal funds]

- (i) Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned upon the use of non-Federal funds by the recipient for payment of any portion of the costs of such project or activity.

[16 U.S.C. 470d(j) — Appropriation authorization]

- (j) Effective after the fiscal year 1981 there are authorized to be appropriated, such sums as may be necessary to cover payments incurred pursuant to subsection (e) of this section.

[16 U.S.C. 470d(k) — Prohibition against acquisition by Federal Financing Bank]

- (k) No debt obligation which is made or committed to be made, or which is insured or committed to be insured, by the Secretary under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

Section 105

[16 U.S.C. 470e — Recordkeeping]

The beneficiary of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the disposition by the beneficiary of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

Section 106

[16 U.S.C. 470f — Advisory Council on Historic Preservation, comment on Federal undertakings]

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in

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or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

Section 107

[16 U.S.C. 470g — Exemption of White House, Supreme Court, and Capitol]

Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

Section 108

[16 U.S.C. 470h — Establishment of Historic Preservation Fund; authorization for appropriations]

To carry out the provisions of this Act, there is hereby established the Historic Preservation Fund (hereafter referred to as the "fund") in the Treasury of the United States.

There shall be covered into such fund \$24,400,000 for fiscal year 1977, \$100,000,000 for fiscal year 1978, \$100,000,000 for fiscal year 1979, \$150,000,000 for fiscal year 1980 and \$150,000,000 for fiscal year 1981 and \$150,000,000 for each of fiscal years 1982 through 2005, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469) as amended (43 U.S.C. 1338), and/or under section 7433(b) of Title 10, notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: *Provided*, That appropriations made pursuant to this paragraph may be made without fiscal year limitation.

Section 109

[16 U.S.C. 470h-1(a) — Donations to the Secretary]

- (a) In furtherance of the purposes of this Act, the Secretary may accept the donation of funds which may be expended by him for projects to acquire, restore, preserve, or recover data from any district, building, structure, site, or object which is listed on the National Register of Historic Places established pursuant to section 101 of this Act, so long as the project is owned by a State, any unit of local government, or any nonprofit entity.

[16 U.S.C. 470h-1(b) — Expenditure of donated funds]

- (b) In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; and the expressed intentions of the donor. Funds expended under this subsection shall be made available without regard to the matching requirements established by section 102 of this Act, but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 108 of this Act.

[16 U.S.C. 470h-1(c) — Transfer of funds donated for the National Park Service]

- (c) The Secretary is hereby authorized to transfer unobligated funds previously donated to the

Secretary for purposes of the National Park Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with the provisions of this Act.

Section 110

[16 U.S.C. 470h-2(a) — Federal agencies' responsibility to preserve and use historic properties]

- (a) (1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency in accordance with Executive Order No. 13006, issued May 21, 1996 (61 Fed. Reg. 26071). Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g) of this Act, any preservation, as may be necessary to carry out this section.

[Each Federal agency to establish a preservation program to protect and preserve historic properties in consultation with others]

- (2) Each Federal agency shall establish (unless exempted pursuant to Section 214) of this Act, in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure —
- (A) that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register;
- (B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 106 of this Act and gives special consideration to the preservation of such values in the case of properties designated as having National significance;
- (C) that the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning;
- (D) that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; and
- (E) that the agency's procedures for compliance with section 106 of this Act —
- (i) are consistent with regulations issued by the Council pursuant to section 211 of this Act;
- (ii) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic

Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and

- (iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3002(c)).

[16 U.S.C. 470h-2(b) — Recordation of historic properties prior to demolition]

- (b) Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a) of this Act, in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

[16 U.S.C. 470h-2(c) — Designation of Federal agency preservation officers]

- (c) The head of each Federal agency shall, unless exempted under section 214 of this Act, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this Act. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 101(h) of this Act.

[16 U.S.C. 470h-2(d) — Conduct of agency programs consistent with Act]

- (d) Consistent with the agency's mission and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act.

[16 U.S.C. 470h-2(e) — Transfer of surplus Federal historic properties]

- (e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

[16 U.S.C. 470h-2(f) — Federal undertakings affecting National Historic Landmarks]

- (f) Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

[16 U.S.C. 470h-2(g) — Preservation activities as an eligible project cost]

- (g) Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this Act, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit.

[16 U.S.C. 470h-2(h) — Preservation awards program]

- (h) The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts not to exceed \$1,000 and provide citations for special achievements to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the President of the United States to any citizen of the United States recommended for such award by the Secretary.

[16 U.S.C. 470h-2(i) — Applicability of National Environmental Policy Act]

- (i) Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.], and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

[16 U.S.C. 470h-2(j) — Disaster waivers]

- (j) The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

[16 U.S.C. 470h-2(k) — Anticipatory demolition]

- (k) Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106 of this Act, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

[16 U.S.C. 470h-2(l) — Documentation of Federal agency Section 106 decisions]

- (l) With respect to any undertaking subject to section 106 of this Act which adversely affects any property included in or eligible for inclusion in the National Register, and for which a Federal agency has not entered into an agreement pursuant to regulations issued by the Council, the head of such agency shall document any decision made pursuant to section 106 of this Act. The head of such agency may not delegate his or her responsibilities pursuant to such section. Where a section 106 of this Act memorandum of agreement has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all of its parts.

Section 111

[16 U.S.C. 470h-3(a) — Lease or exchange of Federal historic property]

- (a) Notwithstanding any other provision of law, any Federal agency after consultation with the Council, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes, and may lease an historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately insure the preservation of the historic property.

[16 U.S.C. 470h-3(b) — Use of proceeds]

- (b) The proceeds of any lease under subsection (a) of this section may, notwithstanding any other provision of law, be retained by the agency entering into such lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to such property or other properties which are on the National Register which are owned by, or are under the jurisdiction or control of, such agency. Any surplus proceeds from such leases shall be deposited into the Treasury of the United States at the end of the second fiscal year following the fiscal year in which such proceeds were received.

[16 U.S.C. 470h-3(c) — Management contracts]

- (c) The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and insure adequate preservation of historic property.

Section 112

[16 U.S.C. 470h-4(a) — Each Federal agency is to protect historic resources through professionalism of employees and contractors]

- (a) Each Federal agency that is responsible for the protection of historic resources, including archaeological resources pursuant to this Act or any other law shall ensure each of the following —
- (1) (A) All actions taken by employees or contractors of such agency shall meet professional standards under regulations developed by the Secretary in consultation with the Council, other affected agencies, and the appropriate professional societies of the disciplines involved, specifically archaeology, architecture, conservation, history, landscape architecture, and planning.
- (B) Agency personnel or contractors responsible for historic resources shall meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of the disciplines involved. The Office of Personnel Management shall revise qualification standards within 2 years after October 30, 1992, [the date of enactment of the 1992 Amendments to this Act] for the disciplines involved, specifically archaeology, architecture,

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conservation, curation, history, landscape architecture, and planning. Such standards shall consider the particular skills and expertise needed for the preservation of historic resources and shall be equivalent requirements for the disciplines involved.

[Maintaining permanent databases]

- (2) Records and other data, including data produced by historical research and archaeological surveys and excavations are permanently maintained in appropriate data bases and made available to potential users pursuant to such regulations as the Secretary shall promulgate.

[16 U.S.C. 470h-4(b) — Secretary to promulgate guidelines to owners about protecting and preserving historic resources]

- (b) In order to promote the preservation of historic resources on properties eligible for listing in the National Register, the Secretary shall, in consultation with the Council, promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this Act include plans to —
 - (1) provide information to the owners of properties containing historic (including architectural, curatorial, and archaeological) resources with demonstrated or likely research significance, about the need for protection of such resources, and the available means of protection;
 - (2) encourage owners to preserve such resources intact and in place and offer the owners of such resources information on the tax and grant assistance available for the donation of the resources or of a preservation easement of the resources;

[Encourage protection of Native American cultural items and properties]

- (3) encourage the protection of Native American cultural items (within the meaning of section 2 (3) and (9) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3001 (3) and (9))) and of properties of religious or cultural importance to Indian tribes, Native Hawaiians, or other Native American groups; and

[Conduct archeological excavations to meet Federal standards, allow access to artifacts for research, consult with Indian tribe or Native Hawaiian organization if related items likely]

- (4) encourage owners who are undertaking archaeological excavations to —
 - (A) conduct excavations and analyses that meet standards for federally-sponsored excavations established by the Secretary;
 - (B) donate or lend artifacts of research significance to an appropriate research institution;
 - (C) allow access to artifacts for research purposes; and
 - (D) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under section 3(a)(2) (B) or (C) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3002(a)(2) (B) and (C)), given notice to and consult with such Indian tribe or Native Hawaiian organization.

Section 113

[16 U.S.C. 470h-5(a) — Study to report ways to control illegal trafficking in]

- (a) In order to help control illegal interstate and international traffic in antiquities, including archaeological, curatorial, and architectural objects, and historical documents of all kinds, the Secretary shall study and report on the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities.

[16 U.S.C. 470h-5(b) — Consultation]

- (b) In conducting the study described in subsection (a) of this section the Secretary shall consult with the Council and other Federal agencies that conduct, cause to be conducted, or permit archaeological surveys or excavations or that have responsibilities for other kinds of antiquities and with State Historic Preservation Officers, archaeological, architectural, historical, conservation, and curatorial organizations, Indian tribes, Native Hawaiian organizations, and other Native American organizations, international organizations and other interested persons.

[16 U.S.C. 470h-5(c) — Report]

- (c) Not later than 18 months after October 30, 1992 [the date of enactment of this section], the Secretary shall submit to Congress a report detailing the Secretary's findings and recommendations from the study described in subsection (a) of this section.

[16 U.S.C. 470h-5(d) — Funding authorization]

- (d) There are authorized to be appropriated not more than \$500,000 for the study described in subsection (a) of this section, such sums to remain available until expended.

TITLE II

Section 201

[16 U.S.C. 470i(a) — Advisory Council on Historic Preservation; membership]

- (a) There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation which shall be composed of the following members:
- (1) a Chairman appointed by the President selected from the general public;
 - (2) the Secretary of the Interior;
 - (3) the Architect of the Capitol;
 - (4) the Secretary of Agriculture and the heads of four other agencies of the United States (other than the Department of the Interior), the activities of which affect historic preservation, designated by the President;
 - (5) one Governor appointed by the President;
 - (6) one mayor appointed by the President;

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- (7) the President of the National Conference of State Historic Preservation Officers;
- (8) the Chairman of the National Trust for Historic Preservation;
- (9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archaeology, and other appropriate disciplines;
- (10) three at-large members from the general public, appointed by the President; and
- (11) one member of an Indian tribe or Native Hawaiian organization who represents the interests of the tribe or organization of which he or she is a member, appointed by the President.

[16 U.S.C. 470i(b) — Designees]

- (b) Each member of the Council specified in paragraphs (2) through (8) other than (5) and (6) of subsection (a) of this section may designate another officer of his department, agency, or organization to serve on the Council in his stead, except that, in the case of paragraphs (2) and (4), no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities may be so designated.

[16 U.S.C. 470i(c) — Term of office]

- (c) Each member of the Council appointed under paragraph (1), and under paragraphs (9) through (11) of subsection (a) of this section shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall serve for terms of one to four years, as designated by the President at the time of appointment, in such manner as to insure that the terms of not more than two of them will expire in any one year. The members appointed under paragraphs (5) and (6) shall serve for the term of their elected office but not in excess of four years. An appointed member may not serve more than two terms. An appointed member whose term has expired shall serve until that member's successor has been appointed.

[16 U.S.C. 470i(d) — Vacancies]

- (d) A vacancy in the Council shall not affect its powers, but shall be filled not later than sixty days after such vacancy commences, in the same manner as the original appointment (and for the balance of any unexpired terms). The members of the Advisory Council on Historic Preservation appointed by the President under this Act as in effect on the day before December 12, 1980 [the enactment of the National Historic Preservation Act Amendments of 1980], shall remain in office until all members of the Council, as specified in this section, have been appointed. The members first appointed under this section shall be appointed not later than one hundred and eighty days after December 12, 1980 [the enactment of the National Historic Preservation Act Amendments of 1980].

[16 U.S.C. 470i(e) — Vice Chairman]

- (e) The President shall designate a Vice Chairman, from the members appointed under paragraphs (5), (6), (9), or (10). The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

[16 U.S.C. 470i(f) — Quorum]

- (f) Nine members of the Council shall constitute a quorum.

Section 202

[16 U.S.C. 470j(a) — Duties of Council]

- (a) The Council shall —
- (1) advise the President and the Congress on matters relating to historic preservation; recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;
 - (2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;
 - (3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;
 - (4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;
 - (5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;
 - (6) review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this Act; and
 - (7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

[16 U.S.C. 470j(b) — Annual and special reports]

- (b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this Act.

Section 203

[16 U.S.C. 470k — Information from agencies]

The Council is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of this title of the Act; and each such department, bureau, agency, board, commission, office, independent establishment or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

Section 204

[16 U.S.C. 470l — Compensation of members]

The members of the Council specified in paragraphs (2), (3), and (4) of section 201(a) shall serve without additional compensation. The other members of the Council shall receive \$100 per diem when engaged in the performance of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

Section 205

[16 U.S.C. 470m(a) — Executive Director]

- (a) There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman with the concurrence of the Council. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

[16 U.S.C. 470m(b) — General Counsel and other attorneys]

- (b) The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint such other attorneys as may be necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, including enforcement of agreements with Federal agencies to which the Council is a party, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

[16 U.S.C. 470m(c) — Appointment and compensation of staff]

- (c) The Executive Director of the Council may appoint and fix the compensation of such officers and employees in the competitive service as are necessary to perform the functions of the Council at rates not to exceed that now or hereafter prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5 [United States Code]: *Provided, however,* That the Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed five employees in the competitive service at rates not to exceed that now or hereafter prescribed for the highest rate of grade 17 of the General Schedule under section 5332 of Title 5 [United States Code].

[16 U.S.C. 470m(d) — Appointment and compensation of additional personnel]

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- (d) The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and the Classification Act of 1949 [chapter 51 and subchapter III of chapter 53 of Title 5, U.S. Code].

[16 U.S.C. 470m(e) — Expert and consultant services]

- (e) The Executive Director of the Council is authorized to procure expert and consultant services in accordance with the provisions of section 3109 of title 5 [United States Code].

[16 U.S.C. 470m(f) — Financial and administrative services]

- (f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the Secretary of the Interior: *Provided*, That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 5514(b)) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. 1513(d), 1514) shall apply to appropriations of the Council: *And provided further*, That the Council shall not be required to prescribe such regulations.

[16 U.S.C. 470m(g) — Use of funds, personnel, facilities, and services]

- (g) Any Federal agency may provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the agency, with such funds, personnel, facilities, and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. Any funds provided to the Council pursuant to this subsection must be expended by the end of the fiscal year following the fiscal year in which the funds are received by the Council. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties and may also receive donations of moneys for such purpose, and the Executive Director is authorized, in his discretion, to accept, hold, use, expend, and administer the same for the purposes of this Act.

Section 206

[16 U.S.C. 470n(a) — International Centre for the Study of the Preservation and Restoration of Cultural Property; authorization]

- (a) The participation of the United States as a member of the International Centre for the Study of the Preservation and Restoration of Cultural Property is hereby authorized.

[16 U.S.C. 470n(b) — Members of official delegation]

- (b) The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation, the members of the official delegation which will participate in the activities of the Centre on behalf of the United States. The Secretary of State shall appoint the members of the

official delegation from the persons recommended to him by the Council.

[16 U.S.C. 470n(c) — Authorization for membership payment]

- (c) For the purposes of this section there is authorized to be appropriated an amount equal to the assessment for United States membership in the Centre for fiscal years 1979, 1980, 1981, and 1982: *Provided*, That no appropriation is authorized and no payment shall be made to the Centre in excess of 25 per centum of the total annual assessment of such organization. Authorization for payment of such assessment shall begin in fiscal year 1981, but shall include earlier costs.

Section 207

[16 U.S.C. 470o — Transfer of personnel, funds, etc. to the Council]

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, programmed, or available or to be made available by the Department of the Interior in connection with the functions of the Council, as the Director of the Office of Management and Budget shall determine, shall be transferred from the Department to the Council within 60 days of the effective date of this Act [Pub. L. 94-422, September 28, 1976].

Section 208

[16 U.S.C. 470p — Rights of Council employees]

Any employee in the competitive service of the United States transferred to the Council under the provisions of this section shall retain all rights, benefits, and privileges pertaining thereto held prior to such transfer.

Section 209

[16 U.S.C. 470q — Exemption from Federal Advisory Committee Act]

The Council is exempt from the provisions of the Federal Advisory Committee Act (86 Stat. 770), and the provisions of subchapter II of chapter 5 and chapter 7, of Title 5 [U.S. Code] [the Administrative Procedure Act (80 Stat. 381)] shall govern the operations of the Council.

Section 210

[16 U.S.C. 470r — Direct Submission to the Congress]

No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Council voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Council shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

Section 211

[16 U.S.C. 470s — Regulations for Section 106; local government participation]

The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of this Act in its entirety. The Council shall, by regulation, establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 106 of this Act which affect such local governments.

Section 212

[16 U.S.C. 470t(a) — Council appropriation authorization]

- (a) The Council shall submit its budget annually as a related agency of the Department of the Interior. There are authorized to be appropriated for purposes of this title not to exceed \$4,000,000 for each fiscal year 1997 through 2005.

[16 U.S.C. 470t(b) — Concurrent submission of budget to Congress]

- (b) Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources.

Section 213

[16 U.S.C. 470u — Reports from Secretary at request of Council]

To assist the Council in discharging its responsibilities under this Act, the Secretary at the request of the Chairman, shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects.

Section 214

[16 U.S.C. 470v — Exemptions for Federal activities from provisions of the Act]

The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of this Act when such exemption is determined to be consistent with the purposes of this Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties.

Section 215

[16 U.S.C. 470v-1 — Reimbursement from State and local agencies, etc.]

Subject to applicable conflict of interest laws, the Council may receive reimbursements from State and local agencies and others pursuant to agreements executed in furtherance of the purposes of this Act.

TITLE III

Section 301

[16 U.S.C. 470w — Definitions]

As used in this Act, the term —

- (1) **"Agency"** means agency as such term is defined in section 551 of title 5 [United States Code].
- (2) **"State"** means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and, upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau.
- (3) **"Local government"** means a city, county, parish, township, municipality, or borough, or any other general purpose political subdivision of any State.
- (4) **"Indian tribe"** or **"tribe"** means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act [43 U.S.C. 1602], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- (5) **"Historic property"** or **"historic resource"** means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource.
- (6) **"National Register"** or **"Register"** means the National Register of Historic Places established under section 101 of this Act.
- (7) **"Undertaking"** means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including —
 - (A) those carried out by or on behalf of the agency;
 - (B) those carried out with Federal financial assistance;
 - (C) those requiring a Federal permit license, or approval; and
 - (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.
- (8) **"Preservation"** or **"historic preservation"** includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities, or any combination of the foregoing activities.
- (9) **"Cultural park"** means a definable area which is distinguished by historic resources and

land related to such resources and which constitutes an interpretive, educational, and recreational resource for the public at large.

- (10) "**Historic conservation district**" means an area which contains
- (A) historic properties,
 - (B) buildings having similar or related architectural characteristics,
 - (C) cultural cohesiveness, or
 - (D) any combination of the foregoing.
- (11) "**Secretary**" means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.
- (12) "**State Historic Preservation Review Board**" means a board, council, commission, or other similar collegial body established as provided in section 101(b)(1)(B) of this Act —
- (A) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law),
 - (B) a majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archaeology, architectural history, architecture, folklore, cultural anthropology, curation, conservation, and landscape architecture, and
 - (C) which has the authority to —
 - (i) review National Register nominations and appeals from nominations;
 - (ii) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;
 - (iii) provide general advice and guidance to the State Historic Preservation Officer; and
 - (iv) perform such other duties as may be appropriate.
- (13) "**Historic preservation review commission**" means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 101(c)(1)(B) of this Act, and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among —
- (A) professionals in the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation, and landscape architecture, or related disciplines, to the extent such professionals are available in the community concerned, and
 - (B) such other persons as have demonstrated special interest, experience, or knowledge in

history, architecture, or related disciplines and as will provide for an adequate and qualified commission.

(14) "**Tribal lands**" means —

- (A) all lands within the exterior boundaries of any Indian reservation; and
- (B) all dependent Indian communities.

(15) "**Certified local government**" means a local government whose local historic preservation program has been certified pursuant to section 101(c) of this Act.

(16) "**Council**" means the Advisory Council on Historic Preservation established by section 201 of this Act.

(17) "**Native Hawaiian**" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(18) "**Native Hawaiian organization**" means any organization which —

- (A) serves and represents the interests of Native Hawaiians;
- (B) has as a primary and stated purpose the provision of services to Native Hawaiians; and
- (C) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians.

The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupuna O Hawai'i Nei, an organization incorporated under the laws of the State of Hawaii.

Section 302

[16 U.S.C. 470w-1 — Authority to expend funds for purposes of this Act]

Where appropriate, each Federal agency is authorized to expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this Act, except to the extent appropriations legislation expressly provides otherwise.

Section 303

[16 U.S.C. 470w-2(a) — Donations to Secretary; money and personal property]

- (a) The Secretary is authorized to accept donations and bequests of money and personal property for the purposes of this Act and shall hold, use, expend, and administer the same for such purposes.

[16 U.S.C. 470w-2(b) — Donations of less than fee interests in real property]

- (b) The Secretary is authorized to accept gifts or donations of less than fee interests in any historic

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property where the acceptance of such interests will facilitate the conservation or preservation of such properties. Nothing in this section or in any provision of this Act shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose.

Section 304

[16 U.S.C. 470w-3(a) — Confidentiality of the location of sensitive historic resources]

- (a) The head of a Federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may —
- (1) cause a significant invasion of privacy;
 - (2) risk harm to the historic resources; or
 - (3) impede the use of a traditional religious site by practitioners.

[16 U.S.C. 470w-3(b) — Access Determination]

- (b) When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to subsection (a) of this section, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.

[16 U.S.C. 470w-3(c) — Consultation with the Advisory Council]

- (c) When the information in question has been developed in the course of an agency's compliance with section 106 or 110(f) of this Act, the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b) of this section.

Section 305

[16 U.S.C. 470w-4 — Attorneys' fees]

In any civil action brought in any United States district court by any interested person to enforce the provisions of this Act, if such person substantially prevails in such action, the court may award attorneys' fees, expert witness fees, and other costs of participating in such action, as the court deems reasonable.

Section 306

[16 U.S.C. 470w-5(a) — National Center for the Building Arts]

- (a) In order to provide a national center to commemorate and encourage the building arts and to preserve and maintain a nationally significant building which exemplifies the great achievements of the building arts in the United States, the Secretary and the Administrator of the General Services Administration are authorized and directed to enter into a cooperative agreement with the Committee for a National Museum of the Building Arts, Incorporated, a

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nonprofit corporation organized and existing under the laws of the District of Columbia, or its successor, for the operation of a National Museum for the Building Arts in the Federal Building located in the block bounded by Fourth Street, Fifth Street, F Street, and G Street, Northwest in Washington, District of Columbia. Such museum shall —

- (1) collect and disseminate information concerning the building arts, including the establishment of a national reference center for current and historic documents, publications, and research relating to the building arts;
- (2) foster educational programs relating to the history, practice and contribution to society of the building arts, including promotion of imaginative educational approaches to enhance understanding and appreciation of all facets of the building arts;
- (3) publicly display temporary and permanent exhibits illustrating, interpreting and demonstrating the building arts;
- (4) sponsor or conduct research and study into the history of the building arts and their role in shaping our civilization; and
- (5) encourage contributions to the building arts.

[16 U.S.C. 470w-5(b) — Cooperative agreement]

- (b) The cooperative agreement referred to in subsection (a) of this section shall include provisions which
 - (1) make the site available to the Committee referred to in subsection (a) of this section without charge;
 - (2) provide, subject to available appropriations, such maintenance, security, information, janitorial and other services as may be necessary to assure the preservation and operation of the site; and
 - (3) prescribe reasonable terms and conditions by which the Committee can fulfill its responsibilities under this Act.

[16 U.S.C. 470w-5(c) — Grants to Committee]

- (c) The Secretary is authorized and directed to provide matching grants-in-aid to the Committee referred to in subsection (a) of this section for its programs related to historic preservation. The Committee shall match such grants-in-aid in a manner and with such funds and services as shall be satisfactory to the Secretary, except that no more than \$500,000 may be provided to the Committee in any one fiscal year.

[16 U.S.C. 470w-5(d) — Site renovation]

- (d) The renovation of the site shall be carried out by the Administrator with the advice of the Secretary. Such renovation shall, as far as practicable —
 - (1) be commenced immediately,

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- (2) preserve, enhance, and restore the distinctive and historically authentic architectural character of the site consistent with the needs of a national museum of the building arts and other compatible use, and
- (3) retain the availability of the central court of the building, or portions thereof, for appropriate public activities.

[16 U.S.C. 470w-5(e) — Annual report]

- (e) The Committee shall submit an annual report to the Secretary and the Administrator concerning its activities under this section and shall provide the Secretary and the Administrator with such other information as the Secretary may, from time to time, deem necessary or advisable.

[16 U.S.C. 470w-5(f) — Definition of "building arts"]

- (f) For purposes of this section, the term "**building arts**" includes, but shall not be limited to, all practical and scholarly aspects of prehistoric, historic, and contemporary architecture, archaeology, construction, building technology and skills, landscape architecture, preservation and conservation, building and construction, engineering, urban and community design and renewal, city and regional planning, and related professions, skills, trades, and crafts.

Section 307

[16 U.S.C. 470w-6(a) — Effective date of regulations]

- (a) No final regulation of the Secretary shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

[16 U.S.C. 470w-6(b) — Congressional disapproval of regulations]

- (b) The regulation shall not become effective if, within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the regulation promulgated by the Secretary dealing with the matter of _____, which regulation was transmitted to Congress on _____," the blank spaces therein being appropriately filled.

[16 U.S.C. 470w-6(c) — Inaction by Congress]

- (c) If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided for.

[16 U.S.C. 470w-6(d) — Definitions]

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- (d) For the purposes of this section-
- (1) continuity of session is broken only by an adjournment sine die; and
 - (2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

[16 U.S.C. 470w-6(e) — Effect of Congressional inaction]

- (e) Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such regulation.

Section 308

[16 U.S.C. 470w-7(a) — National historic light station program]

- (a) In order to provide a national historic light station program, the Secretary shall —
- (1) collect and disseminate information concerning historic light stations, including historic lighthouses and associated structures;
 - (2) foster educational programs relating to the history, practice, and contribution to society of historic light stations;
 - (3) sponsor or conduct research and study into the history of light stations;
 - (4) maintain a listing of historic light stations; and
 - (5) assess the effectiveness of the program established by this section regarding the conveyance of historic light stations.

[16 U.S.C. 470w-7(b) — Conveyance of Historic Light Stations]

- (b) (1) Not later than 1 year after the date of the enactment of this section, the Secretary and the Administrator shall establish a process and policies for identifying, and selecting, an eligible entity to which a historic light station could be conveyed for education, park, recreation, cultural, or historic preservation purposes, and to monitor the use of such light station by the eligible entity.
- (2) The Secretary shall review all applications for the conveyance of a historic light station, when the agency with administrative jurisdiction over the historic light station has determined the property to be 'excess property' as that term is defined in the Federal Property Administrative Services Act of 1949 (40 U.S.C. 472(e)), and forward to the Administrator a single approved application for the conveyance of the historic light station. When selecting an eligible entity, the Secretary shall consult with the State Historic Preservation Officer of the State in which the historic light station is located.
- (3) (A) Except as provided in subparagraph (B), the Administrator shall convey, by quitclaim deed, without consideration, all right, title, and interest of the United States in and to the historic light station, subject to the conditions set forth in subsection (c) after the

Secretary's selection of an eligible entity. The conveyance of a historic light station under this section shall not be subject to the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) or section 416(d) of the Coast Guard Authorization Act of 1998 (Public Law 105-383).

- (B) (i) Historic light stations located within the exterior boundaries of a unit of the National Park System or a refuge within the National Wildlife Refuge System shall be conveyed or sold only with the approval of the Secretary.
- (ii) If the Secretary approves the conveyance of a historic light station referenced in this paragraph, such conveyance shall be subject to the conditions set forth in subsection (c) and any other terms or conditions the Secretary considers necessary to protect the resources of the park unit or wildlife refuge.
- (iii) If the Secretary approves the sale of a historic light station referenced in this paragraph, such sale shall be subject to the conditions set forth in subparagraphs (A) through (D) and (H) of subsection (c)(1) and subsection (c)(2) and any other terms or conditions the Secretary considers necessary to protect the resources of the park unit or wildlife refuge.
- (iv) For those historic light stations referenced in this paragraph, the Secretary is encouraged to enter into cooperative agreements with appropriate eligible entities, as provided in this Act, to the extent such cooperative agreements are consistent with the Secretary's responsibilities to manage and administer the park unit or wildlife refuge, as appropriate.

[16 U.S.C. 470w-7(c) — Terms of Conveyance]

- (c) (1) The conveyance of a historic light station shall be made subject to any conditions, including the reservation of easements and other rights on behalf of the United States, the Administrator considers necessary to ensure that —
 - (A) the Federal aids to navigation located at the historic light station in operation on the date of conveyance remain the personal property of the United States and continue to be operated and maintained by the United States for as long as needed for navigational purposes;
 - (B) there is reserved to the United States the right to remove, replace, or install any Federal aid to navigation located at the historic light station as may be necessary for navigational purposes;
 - (C) the eligible entity to which the historic light station is conveyed under this section shall not interfere or allow interference in any manner with any Federal aid to navigation, nor hinder activities required for the operation and maintenance of any Federal aid to navigation, without the express written permission of the head of the agency responsible for maintaining the Federal aid to navigation;

- (D) the eligible entity to which the historic light station is conveyed under this section shall, at its own cost and expense, use and maintain the historic light station in accordance with this Act, the Secretary of the Interior's Standards for the Treatment of Historic Properties, 36 CFR part 68, and other applicable laws, and any proposed changes to the historic light station shall be reviewed and approved by the Secretary in consultation with the State Historic Preservation Officer of the State in which the historic light station is located, for consistency with 36 CFR part 800.5(a)(2)(vii), and the Secretary of the Interior's Standards for Rehabilitation, 36 CFR part 67.7;
 - (E) the eligible entity to which the historic light station is conveyed under this section shall make the historic light station available for education, park, recreation, cultural or historic preservation purposes for the general public at reasonable times and under reasonable conditions;
 - (F) the eligible entity to which the historic light station is conveyed shall not sell, convey, assign, exchange, or encumber the historic light station, any part thereof, or any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, including but not limited to any lens or lanterns, unless such sale, conveyance, assignment, exchange or encumbrance is approved by the Secretary;
 - (G) the eligible entity to which the historic light station is conveyed shall not conduct any commercial activities at the historic light station, any part thereof, or in connection with any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, in any manner, unless such commercial activities are approved by the Secretary; and
 - (H) the United States shall have the right, at any time, to enter the historic light station conveyed under this section without notice, for purposes of operating, maintaining, and inspecting any aid to navigation and for the purpose of ensuring compliance with this subsection, to the extent that it is not possible to provide advance notice.
- (2) Any eligible entity to which a historic light station is conveyed under this section shall not be required to maintain any Federal aid to navigation associated with a historic light station, except any private aids to navigation permitted under section 83 of title 14, United States Code, to the eligible entity.
 - (3) In addition to any term or condition established pursuant to this subsection, the conveyance of a historic light station shall include a condition that the historic light station, or any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, including but not limited to any lens or lanterns, at the option of the Administrator, shall revert to the United States and be placed under the administrative control of the Administrator, if —
 - (A) the historic light station, any part thereof, or any associated historic artifact ceases to be available for education, park, recreation, cultural, or historic preservation purposes for the general public at reasonable times and under reasonable conditions which shall be set forth in the eligible entity's application;
 - (B) the historic light station or any part thereof ceases to be maintained in a manner that ensures its present or future use as a site for a Federal aid to navigation;

- (C) the historic light station, any part thereof, or any associated historic artifact ceases to be maintained in compliance with this Act, the Secretary of the Interior's Standards for the Treatment of Historic Properties, 36 CFR part 68, and other applicable laws;
- (D) the eligible entity to which the historic light station is conveyed, sells, conveys, assigns, exchanges, or encumbers the historic light station, any part thereof, or any associated historic artifact, without approval of the Secretary;
- (E) the eligible entity to which the historic light station is conveyed, conducts any commercial activities at the historic light station, any part thereof, or in conjunction with any associated historic artifact, without approval of the Secretary; or
- (F) At least 30 days before the reversion, the Administrator provides written notice to the owner that the historic light station or any part thereof is needed for national security purposes.

[16 U.S.C. 470w-7(d) — Description of Property]

- (d) (1)(1) The Administrator shall prepare the legal description of any historic light station conveyed under this section. The Administrator, in consultation with the Commandant, United States Coast Guard, and the Secretary, may retain all right, title, and interest of the United States in and to any historical artifact, including any lens or lantern, that is associated with the historic light station and located at the light station at the time of conveyance. Wherever possible, such historical artifacts should be used in interpreting that station. In cases where there is no method for preserving lenses and other artifacts and equipment in situ, priority should be given to preservation or museum entities most closely associated with the station, if they meet loan requirements.
- (2) Artifacts associated with, but not located at, the historic light station at the time of conveyance shall remain the personal property of the United States under the administrative control of the Commandant, United States Coast Guard.
- (3) All conditions placed with the quitclaim deed of title to the historic light station shall be construed as covenants running with the land.
- (4) No submerged lands shall be conveyed under this section.

[16 U.S.C. 470w-7(e) — Definitions]

- (e) For purposes of this section:
 - (1) The term “**Administrator**” shall mean the Administrator of General Services.
 - (2) The term “**historic light station**” includes the light tower, lighthouse, keepers dwelling, garages, storage sheds, oil house, fog signal building, boat house, barn, pumphouse, tramhouse support structures, piers, walkways, underlying and appurtenant land and related real property and improvements associated therewith; *provided* that the 'historic light station' shall be included in or eligible for inclusion in the National Register of Historic Places.

- (3) The term “**eligible entity**” shall mean:
- (A) any department or agency of the Federal Government; or
 - (B) any department or agency of the State in which the historic light station is located, the local government of the community in which the historic light station is located, nonprofit corporation, educational agency, or community development organization that —
 - (i) has agreed to comply with the conditions set forth in subsection (c) and to have such conditions recorded with the deed of title to the historic light station; and
 - (ii) is financially able to maintain the historic light station in accordance with the conditions set forth in subsection (c).
- (4) The term “**Federal aid to navigation**” shall mean any device, operated and maintained by the United States, external to a vessel or aircraft, intended to assist a navigator to determine position or safe course, or to warn of dangers or obstructions to navigation, and shall include, but not be limited to, a light, lens, lantern, antenna, sound signal, camera, sensor, electronic navigation equipment, power source, or other associated equipment.
- (5) The term “**Secretary**” means the Secretary of the Interior.

Section 309

[16 U.S.C. 470w-8(a) — Historic Light Station Sales]

- (a) In the event no applicants are approved for the conveyance of a historic light station pursuant to section 308, the historic light station shall be offered for sale. Terms of such sales shall be developed by the Administrator of General Services and consistent with the requirements of section 308, subparagraphs (A) through (D) and (H) of subsection (c)(1), and subsection (c)(2). Conveyance documents shall include all necessary covenants to protect the historical integrity of the historic light station and ensure that any Federal aid to navigation located at the historic light station is operated and maintained by the United States for as long as needed for that purpose.

[16 U.S.C. 470w-8(b) — Net sale proceeds]

- (b) Net sale proceeds from the disposal of a historic light station —
- (1) located on public domain lands shall be transferred to the National Maritime Heritage Grant Program, established by the National Maritime Heritage Act of 1994 (Public Law 103-451) within the Department of the Interior; and
 - (2) under the administrative control of the Coast Guard shall be credited to the Coast Guard's Operating Expenses appropriation account, and shall be available for obligation and expenditure for the maintenance of light stations remaining under the administrative control of the Coast Guard, such funds to remain available until expended and shall be available in addition to funds available in the Operating Expense appropriation for this purpose.

There are hereby authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to carry out this Act.

TITLE IV

Section 401

[16 U.S.C. 470x — National initiative to coordinate and promote research, distribute information and provide training about preservation skills and technologies]

The Congress finds and declares that, given the complexity of technical problems encountered in preserving historic properties and the lack of adequate distribution of technical information to preserve such properties, a national initiative to coordinate and promote research, distribute information, and provide training about preservation skills and technologies would be beneficial.

Section 402

[16 U.S.C. 470x-1— Definitions]

For the purposes of this title —

- (1) The term "**Board**" means the National Preservation Technology and Training Board established pursuant to section 404 of this Act.
- (2) The term "**Center**" means the National Center for Preservation Technology and Training established pursuant to section 403 of this Act.
- (3) The term "**Secretary**" means the Secretary of the Interior.

Section 403

[16 U.S.C. 470x-2(a) — Establish a National Center for Preservation Technology and Training]

(a) There is hereby established within the Department of the Interior a National Center for Preservation Technology and Training. The Center shall be located at Northwestern State University of Louisiana in Natchitoches, Louisiana.

[16 U.S.C. 470x-2(b) — Purposes of Center]

- (b) The purposes of the Center shall be to —
- (1) develop and distribute preservation and conservation skills and technologies for the identification, evaluation, conservation, and interpretation of prehistoric and historic resources;
 - (2) develop and facilitate training for Federal, State and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the preservation field;
 - (3) take steps to apply preservation technology benefits from ongoing research by other agencies and institutions;

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- (4) facilitate the transfer of preservation technology among Federal agencies, State and local governments, universities, international organizations, and the private sector; and
- (5) cooperate with related international organizations including, but not limited to the International Council on Monuments and Sites, the International Center for the Study of Preservation and Restoration of Cultural Property, and the International Council on Museums.

[16 U.S.C. 470x-2(c) — Programs]

- (c) Such purposes shall be carried out through research, professional training, technical assistance, and programs for public awareness, and through a program of grants established under section 405 of this Act.

[16 U.S.C. 470x-2(d) — Executive Director]

- (d) The Center shall be headed by an Executive Director with demonstrated expertise in historic preservation appointed by the Secretary with advice of the Board.

[16 U.S.C. 470x-2(e) — Assistance from Secretary]

- (e) The Secretary shall provide the Center assistance in obtaining such personnel, equipment, and facilities as may be needed by the Center to carry out its activities.

Section 404

[16 U.S.C. 470x-3(a) — Establish a Preservation Technology and Training Board]

- (a) There is established a Preservation Technology and Training Board.

[16 U.S.C. 470x-3(b) — Duties]

- (b) The Board shall —
 - (1) provide leadership, policy advice, and professional oversight to the Center;
 - (2) advise the Secretary on priorities and the allocation of grants among the activities of the Center; and
 - (3) submit an annual report to the President and the Congress.

[16 U.S.C. 470x-3(c) — Membership]

- (c) The Board shall be comprised of —
 - (1) The Secretary, or the Secretary's designee;
 - (2) 6 members appointed by the Secretary who shall represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations; and

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- (3) 6 members appointed by the Secretary on the basis of outstanding professional qualifications who represent major organizations in the fields of archaeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

Section 405

[16 U.S.C. 470x-4(a) — Grants for research, information distribution and skill training]

- (a) The Secretary, in consultation with the Board, shall provide preservation technology and training grants to eligible applicants with a demonstrated institutional capability and commitment to the purposes of the Center, in order to ensure an effective and efficient system of research, information distribution and skills training in all the related historic preservation fields.

[16 U.S.C. 470x-4(b) — Grant Requirements]

- (b)
 - (1) Grants provided under this section shall be allocated in such a fashion to reflect the diversity of the historic preservation fields and shall be geographically distributed.
 - (2) No grant recipient may receive more than 10 percent of the grants allocated under this section within any year.
 - (3) The total administrative costs, direct and indirect, charged for carrying out grants under this section may not exceed 25 percent of the aggregate costs.

[16 U.S.C. 470x-4(c) — Eligible applicants]

- (c) Eligible applicants may include Federal and non-Federal laboratories, accredited museums, universities, non-profit organizations; offices, units, and Cooperative Park Study Units of the National Park System, State Historic Preservation Offices, tribal preservation offices, and Native Hawaiian organizations.

[16 U.S.C. 470x-4(d) — Standards]

- (d) All such grants shall be awarded in accordance with accepted professional standards and methods, including peer review of projects.

[16 U.S.C. 470x-4(e) — Authorization of appropriations]

- (e) There is authorized to be appropriated to carry out this section such sums as may be necessary.

Section 406

[16 U.S.C. 470x-5(a) — Center may accept grants, donations, and other Federal funds; may enter into contracts and cooperative agreements]

- (a) The Center may accept —
 - (1) grants and donations from private individuals, groups, organizations, corporations, foundations, and other entities; and

- (2) transfers of funds from other Federal agencies.

[16 U.S.C. 470x-5(b) — Contracts and cooperative agreements]

- (b) Subject to appropriations, the Center may enter into contracts and cooperative agreements with Federal, State, local, and tribal governments, Native Hawaiian organizations, educational institutions, and other public entities to carry out the Center's responsibilities under this title of the Act.

[16 U.S.C. 470x-5(c) — Authorization of appropriations]

- (c) There are authorized to be appropriated such sums as may be necessary for the establishment, operation, and maintenance of the Center. Funds for the Center shall be in addition to existing National Park Service programs, centers, and offices.

Section 407

[16 U.S.C. 470x-6 — Improve use of existing NPS centers and regional offices]

In order to improve the use of existing National Park Service resources, the Secretary shall fully utilize and further develop the National Park Service preservation (including conservation) centers and regional offices. The Secretary shall improve the coordination of such centers and offices within the National Park Service, and shall, where appropriate, coordinate their activities with the Center and with other appropriate parties.

[Addendum]

[National Historic Preservation Act Amendments of 1980, Public Law 96-515, December 12, 1980, 94 Stat. 3000]

This addendum contains related legislative provisions enacted in the National Historic Preservation Act Amendments of 1980 but that are not part of the National Historic Preservation Act.]

Section 401

[16 U.S.C. 470a-1(a) — International activities and World Heritage Convention]

- (a) The Secretary of the Interior shall direct and coordinate United States participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, approved by the Senate on October 26, 1973, in cooperation with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation. Whenever possible, expenditures incurred in carrying out activities in cooperation with other nations and international organizations shall be paid for in such excess currency of the country or area where the expense is incurred as may be available to the United States.

[16 U.S.C. 470a-1(b) — Nominations of properties to World Heritage List]

- (b) The Secretary of the Interior shall periodically nominate properties he determines are of international significance to the World Heritage Committee on behalf of the United States. No property may be so nominated unless it has previously been determined to be of national significance. Each such nomination shall include evidence of such legal protections as may be

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necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection). Before making any such nomination, the Secretary shall notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

[16 U.S.C. 470a-1(c) — Concurrence of non-Federal property]

- (c) No non-Federal property may be nominated by the Secretary of the Interior to the World Heritage Committee for inclusion on the World Heritage List unless the owner of the property concurs in writing to such nomination.

Section 402

[16 U.S.C. 470a-2 — International Federal activities affecting historic properties]

Prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects.

36 CFR PART 800—Protection of Historic Properties

Subpart A—Purposes and Participants

Sec.

[800.1 Purposes.](#)

[800.2 Participants in the Section 106 process.](#)

Subpart B—The Section 106 Process

[800.3 Initiation of the Section 106 process.](#)

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[800.8 Coordination with the National Environmental Policy Act.](#)

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Subpart C—Program Alternatives

[800.14 Federal agency program alternatives.](#)

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[800.16 Definitions.](#)

[Appendix A to Part 800—Criteria for Council involvement in reviewing individual Section 106 cases](#)

Authority: 16 U.S.C. 470s.

Subpart A—Purposes and Participants

Sect. 800.1 Purposes.

(a) *Purposes of the section 106 process.* Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

(b) *Relation to other provisions of the act.* Section 106 is related to other provisions of the act designed to further the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect

actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the section 106 process. Guidelines, policies, and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

(c) *Timing.* The agency official must complete the section 106 process “prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license.” This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The agency official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

Sec. 800.2 Participants in the Section 106 process.

(a) *Agency official.* It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) *Professional standards.* Section 112(a)(1)(A) of the act requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) *Lead Federal agency.* If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) *Use of contractors.* Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) *Consultation.* The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other

requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation. The Council encourages the agency official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) *Council*. The Council issues regulations to implement section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to agency officials on individual undertakings and programs that affect historic properties.

(1) *Council entry into the section 106 process*. When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) *Council assistance*. Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) *Consulting parties*. The following parties have consultative roles in the section 106 process.

(1) *State historic preservation officer*.

(i) The State historic preservation officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taking into consideration at all levels of planning and development.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with Sec. 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to Sec. 800.3(f)(3).

(2) *Indian tribes and Native Hawaiian organizations*.

(i) *Consultation on tribal lands*.

(A) *Tribal historic preservation officer*. For a tribe that has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the tribal historic preservation officer (THPO) appointed or designated in accordance with the act is the official representative for the purposes of section 106. The agency official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(B) *Tribes that have not assumed SHPO functions.* When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the THPOs are given throughout subpart B of this part, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.

(ii) *Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.* Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(A) The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

(B) The Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets, or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies, or limits the exercise of any such rights.

(C) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes. The agency official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(D) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(E) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an agency official that specifies how they will carry out responsibilities under this

part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The agency official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.

(F) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act may notify the agency official in writing that it is waiving its rights under Sec. 800.6(c)(1) to execute a memorandum of agreement.

(3) *Representatives of local governments.* A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.

(4) *Applicants for Federal assistance, permits, licenses, and other approvals.* An applicant for Federal assistance or for a Federal permit, license, or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government-to-government relationships with Indian tribes.

(5) *Additional consulting parties.* Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

(d) *The public.*

(1) *Nature of involvement.* The views of the public are essential to informed Federal decisionmaking in the section 106 process. The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) *Providing notice and information.* The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decisionmaking.

(3) *Use of agency procedures.* The agency official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

Subpart B—The Section 106 Process

Sec. 800.3 Initiation of the section 106 process.

(a) *Establish undertaking.* The agency official shall determine whether the proposed Federal action is an undertaking as defined in Sec. 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) *No potential to cause effects.* If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

(2) *Program alternatives.* If the review of the undertaking is governed by a Federal agency program alternative established under Sec. 800.14 or a programmatic agreement in existence before January 11, 2001, the agency official shall follow the program alternative.

(b) *Coordinate with other reviews.* The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the agency official may use information developed for other reviews under Federal, State, or tribal law to meet the requirements of section 106.

(c) *Identify the appropriate SHPO and/or THPO.* As part of its initial planning, the agency official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The agency official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The agency official shall then initiate consultation with the appropriate officer or officers.

(1) *Tribal assumption of SHPO responsibilities.* Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to [section 101\(d\)\(2\) of the act](#), consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe to request the SHPO to participate in the section 106 process in addition to the THPO.

(2) *Undertakings involving more than one State.* If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking actions that would conclude the section 106 process under this subpart.

(3) *Conducting consultation.* The agency official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties.

(4) *Failure of the SHPO/THPO to respond.* If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the

SHPO/THPO re-enters the Section 106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.

(d) *Consultation on tribal lands.* Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the agency official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting historic properties on tribal lands.

(e) *Plan to involve the public.* In consultation with the SHPO/THPO, the agency official shall plan for involving the public in the section 106 process. The agency official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with Sec. 800.2(d).

(f) *Identify other consulting parties.* In consultation with the SHPO/THPO, the agency official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The agency official may invite others to participate as consulting parties as the section 106 process moves forward.

(1) *Involving local governments and applicants.* The agency official shall invite any local governments or applicants that are entitled to be consulting parties under Sec. 800.2(c).

(2) *Involving Indian tribes and Native Hawaiian organizations.* The agency official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) *Requests to be consulting parties.* The agency official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/ THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, determine which should be consulting parties.

(g) *Expediting consultation.* A consultation by the agency official with the SHPO/THPO and other consulting parties may address multiple steps in Secs. 800.3 through 800.6 where the agency official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in Sec. 800.2(d).

Sec. 800.4 Identification of historic properties.

(a) *Determine scope of identification efforts.* In consultation with the SHPO/THPO, the agency official shall:

- (1) Determine and document the area of potential effects, as defined in Sec. 800.16(d);
- (2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;
- (3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the

area, and identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to Sec. 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to Sec. 800.11(c).

(b) *Identify historic properties.* Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/ THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects.

(1) *Level of effort.* The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's standards and guidelines for identification provide guidance on this subject. The agency official should also consider other applicable professional, State, tribal, and local laws, standards, and guidelines. The agency official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) *Phased identification and evaluation.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts. The agency official may also defer final identification and evaluation of historic properties if it is specifically provided for in a memorandum of agreement executed pursuant to Sec. 800.6, a programmatic agreement executed pursuant to Sec. 800.14(b), or the documents used by an agency official to comply with the National Environmental Policy Act pursuant to Sec. 800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the agency official shall proceed with the identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

(c) *Evaluate historic significance.*

(1) Apply National Register criteria. In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's standards and guidelines for evaluation, the agency official shall apply the National Register criteria (36

CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) *Determine whether a property is eligible.* If the agency official determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility.

(d) *Results of identification and evaluation.*

(1) *No historic properties affected.* If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in Sec. 800.16(i), the agency official shall provide documentation of this finding, as set forth in Sec. 800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking. If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(2) *Historic properties affected.* If the agency official finds that there are historic properties which may be affected by the undertaking or the SHPO/THPO or the Council objects to the agency official's finding under paragraph (d)(1) of this section, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with Sec. 800.5.

Sec. 800.5 Assessment of adverse effects.

(a) *Apply criteria of adverse effect.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(1) *Criteria of adverse effect.* An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic

property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(2) *Examples of adverse effects.* Adverse effects on historic properties include, but are not limited to:

- (i) Physical destruction of or damage to all or part of the property;
- (ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines;
- (iii) Removal of the property from its historic location;
- (iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;
- (v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;
- (vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and
- (vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

(3) *Phased application of criteria.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to Sec. 800.4(b)(2).

(b) *Finding of no adverse effect.* The agency official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (a)(1) of this section or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) *Consulting party review.* If the agency official proposes a finding of no adverse effect, the agency official shall notify all consulting parties of the finding and provide them with the documentation specified in Sec. 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) *Agreement with finding.* Unless the Council is reviewing the finding pursuant to Sec. 800.5(c)(3), the agency official may proceed if the SHPO/THPO agrees with the finding. The agency official shall carry out the undertaking in accordance with Sec. 800.5(d)(1). Failure of the SHPO/THPO to respond within 30 days from receipt of the finding shall be considered agreement of the SHPO/THPO with the finding.

(2) *Disagreement with finding.*

(i) If the SHPO/THPO or any consulting party disagrees within the 30-day review period, it shall specify the reasons for disagreeing with the finding. The agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(ii) The agency official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30-day review period specify the reasons for disagreeing with the finding and request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(iii) If the Council on its own initiative so requests within the 30-day review period, the agency official shall submit the finding, along with the documentation specified in Sec. 800.11(e), for review pursuant to paragraph (c)(3) of this section. A Council decision to make such a request shall be guided by the criteria in appendix A to this part.

(3) *Council review of findings.* When a finding is submitted to the Council pursuant to paragraph (c)(2) of this section, the agency official shall include the documentation specified in Sec. 800.11(e). The Council shall review the finding and notify the agency official of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documented finding from the agency official. The Council shall specify the basis for its determination. The agency official shall proceed in accordance with the Council's determination. If the Council does not respond within 15 days of receipt of the finding, the agency official may assume concurrence with the agency official's findings and proceed accordingly.

(d) *Results of assessment.*

(1) *No adverse effect.* The agency official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of Sec. 800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the agency official's responsibilities under section 106 and this part. If the agency official will not conduct the undertaking as proposed in the finding, the agency official shall reopen consultation under paragraph (a) of this section.

(2) *Adverse effect.* If an adverse effect is found, the agency official shall consult further to resolve the adverse effect pursuant to Sec. 800.6.

Sec. 800.6 Resolution of adverse effects.

(a) *Continue consultation.* The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.

(1) *Notify the Council and determine Council participation.* The agency official shall notify the Council of the adverse effect finding by providing the documentation specified in Sec. 800.11(e).

(i) The notice shall invite the Council to participate in the consultation when:

- (A) The agency official wants the Council to participate;
- (B) The undertaking has an adverse effect upon a National Historic Landmark; or
- (C) A programmatic agreement under Sec. 800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the agency official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the agency official and the consulting parties that its decision to participate meets the criteria set forth in appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process. Consultation is conducted in accordance with paragraph (b)(2) of this section.

(iv) If the Council does not join the consultation, the agency official shall proceed with consultation in accordance with paragraph (b)(1) of this section.

(2) *Involve consulting parties.* In addition to the consulting parties identified under Sec. 800.3(f), the agency official, the SHPO/ THPO and the Council, if participating, may agree to invite other individuals or organizations to become consulting parties. The agency official shall invite any individual or organization that will assume a specific role or responsibility in a memorandum of agreement to participate as a consulting party.

(3) *Provide documentation.* The agency official shall provide to all consulting parties the documentation specified in Sec. 800.11(e), subject to the confidentiality provisions of Sec. 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) *Involve the public.* The agency official shall make information available to the public, including the documentation specified in Sec. 800.11(e), subject to the confidentiality provisions of Sec. 800.11(c). The agency official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The agency official should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking to ensure that the public's views are considered in the consultation. The agency official should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of Sec. 800.2(d) are met.

(5) *Restrictions on disclosure of information.* Section 304 of the act and other authorities may limit the disclosure of information under paragraphs (a)(3) and (a)(4) of this section. If an Indian tribe or Native Hawaiian organization objects to the disclosure of information or if the agency official believes that there are other reasons to withhold information, the agency official shall comply with Sec. 800.11(c) regarding the disclosure of such information.

(b) *Resolve adverse effects.*

(1) *Resolution without the Council.*

(i) The agency official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The agency official may use standard treatments established by the Council under Sec. 800.14(d) as a basis for a memorandum of agreement.

(iii) If the Council decides to join the consultation, the agency official shall follow paragraph (b)(2) of this section.

(iv) If the agency official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement. The agency official must submit a copy of the executed memorandum of agreement, along with the documentation

specified in Sec. 800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of section 106 and this subpart.

(v) If the agency official, and the SHPO/THPO fail to agree on the terms of a memorandum of agreement, the agency official shall request the Council to join the consultation and provide the Council with the documentation set forth in Sec. 800.11(g). If the Council decides to join the consultation, the agency official shall proceed in accordance with paragraph (b)(2) of this section. If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with Sec. 800.7(c).

(2) *Resolution with Council participation.* If the Council decides to participate in the consultation, the agency official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under Sec. 800.2(c)(3), to seek ways to avoid, minimize or mitigate the adverse effects. If the agency official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement.

(c) *Memorandum of agreement.* A memorandum of agreement executed and implemented pursuant to this section evidences the agency official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. The agency official shall ensure that the undertaking is carried out in accordance with the memorandum of agreement.

(1) *Signatories.* The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The agency official and the SHPO/THPO are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(1) of this section.

(ii) The agency official, the SHPO/THPO, and the Council are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(2) of this section.

(iii) The agency official and the Council are signatories to a memorandum of agreement executed pursuant to Sec. 800.7(a)(2).

(2) *Invited signatories.*

(i) The agency official may invite additional parties to be signatories to a memorandum of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories.

(ii) The agency official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties.

(iii) The agency official should invite any party that assumes a responsibility under a memorandum of agreement to be a signatory.

(iv) The refusal of any party invited to become a signatory to a memorandum of agreement pursuant to paragraph (c)(2) of this section does not invalidate the memorandum of agreement.

(3) *Concurrence by others.* The agency official may invite all consulting parties to concur in the memorandum of agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement.

(4) *Reports on implementation.* Where the signatories agree it is appropriate, a memorandum of agreement shall include a provision for monitoring and reporting on its implementation.

(5) *Duration.* A memorandum of agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(6) *Discoveries.* Where the signatories agree it is appropriate, a memorandum of agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

(7) *Amendments.* The signatories to a memorandum of agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the agency official shall file it with the Council.

(8) *Termination.* If any signatory determines that the terms of a memorandum of agreement cannot be or are not being carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The agency official shall either execute a memorandum of agreement with signatories under paragraph (c)(1) of this section or request the comments of the Council under Sec. 800.7(a).

(9) *Copies.* The agency official shall provide each consulting party with a copy of any memorandum of agreement executed pursuant to this subpart.

Sec. 800.7 Failure to resolve adverse effects.

(a) *Termination of consultation.* After consulting to resolve adverse effects pursuant to Sec. 800.6(b)(2), the agency official, the SHPO/THPO, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the agency official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request that the Council comment pursuant to paragraph (c) of this section and shall notify all consulting parties of the request.

(2) If the SHPO terminates consultation, the agency official and the Council may execute a memorandum of agreement without the SHPO's involvement.

(3) If a THPO terminates consultation regarding an undertaking occurring on or affecting historic properties on its tribal lands, the Council shall comment pursuant to paragraph (c) of this section.

(4) If the Council terminates consultation, the Council shall notify the agency official, the agency's Federal preservation officer and all consulting parties of the termination and comment under paragraph (c) of this section. The Council may consult with the agency's Federal preservation officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

(b) *Comments without termination.* The Council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a memorandum of agreement will be executed. The Council shall provide them to the agency official when it executes the memorandum of agreement.

(c) *Comments by the Council.*

(1) *Preparation.* The Council shall provide an opportunity for the agency official, all consulting parties, and the public to provide their views within the time frame for developing its comments. Upon request of the Council, the agency official shall provide additional existing information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) *Timing.* The Council shall transmit its comments within 45 days of receipt of a request under paragraph (a)(1) or (a)(3) of this section or Sec. 800.8(c)(3), or termination by the Council under Sec. 800.6(b)(1)(v) or paragraph (a)(4) of this section, unless otherwise agreed to by the agency official.

(3) *Transmittal.* The Council shall provide its comments to the head of the agency requesting comment with copies to the agency official, the agency's Federal preservation officer, all consulting parties, and others as appropriate.

(4) *Response to Council comment.* The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(l) of the act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

- (i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments and providing it to the Council prior to approval of the undertaking;
- (ii) Providing a copy of the summary to all consulting parties; and
- (iii) Notifying the public and making the record available for public inspection.

Sec. 800.8 Coordination With the National Environmental Policy Act.

(a) General principles.

(1) *Early coordination.* Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a "major Federal action significantly affecting the quality of the human environment," and therefore requires preparation of an environmental impact statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

(2) *Consulting party roles.* SHPO/THPOs, Indian tribes, and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) *Inclusion of historic preservation issues.* Agency officials should ensure that preparation of an environmental assessment (EA) and finding of no significant impact (FONSI) or an EIS and record of decision (ROD) includes appropriate scoping,

identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) *Actions categorically excluded under NEPA.* If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the agency official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to Sec. 800.3(a). If so, the agency official shall proceed with section 106 review in accordance with the procedures in this subpart.

(c) *Use of the NEPA process for section 106 purposes.* An agency official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in Secs. 800.3 through 800.6 if the agency official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) *Standards for developing environmental documents to comply with Section 106.* During preparation of the EA or draft EIS (DEIS) the agency official shall:

(i) Identify consulting parties either pursuant to Sec. 800.3(f) or through the NEPA scoping process with results consistent with Sec. 800.3(f);

(ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of Secs. 800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the agency official's consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;

(iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes, and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and

(v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

(2) *Review of environmental documents.*

(i) The agency official shall submit the EA, DEIS, or EIS to the SHPO/THPO, Indian tribes, and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, and other consulting parties prior to or when making the document available for public comment. If the document being prepared is a DEIS or EIS, the agency official shall also submit it to the Council.

(ii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the agency official that preparation of the EA, DEIS, or EIS has not met the standards set forth in paragraph (c)(1) of this section or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS, or EIS is inadequate. If the agency official receives such an objection, the agency official shall refer the matter to the Council.

(3) *Resolution of objections.* Within 30 days of the agency official's referral of an objection under paragraph (c)(2)(ii) of this section, the Council shall notify the agency

official either that it agrees with the objection, in which case the agency official shall enter into consultation in accordance with Sec. 800.6(b)(2) or seek Council comments in accordance with Sec. 800.7(a), or that it disagrees with the objection, in which case the agency official shall continue its compliance with this section. Failure of the Council to respond within the 30 day period shall be considered disagreement with the objection.

(4) *Approval of the undertaking.* If the agency official has found, during the preparation of an EA or EIS that the effects of an undertaking on historic properties are adverse, the agency official shall develop measures in the EA, DEIS, or EIS to avoid, minimize, or mitigate such effects in accordance with paragraph (c)(1)(v) of this section. The agency official's responsibilities under section 106 and the procedures in this subpart shall then be satisfied when either:

(i) A binding commitment to such proposed measures is incorporated in:

(A) The ROD, if such measures were proposed in a DEIS or EIS; or

(B) An MOA drafted in compliance with Sec. 800.6(c); or

(ii) The Council has commented under Sec. 800.7 and received the agency's response to such comments.

(5) *Modification of the undertaking.* If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the agency official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the binding commitment adopted pursuant to paragraph (c)(4) of this section) are carried out, the agency official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in Secs. 800.3 through 800.6 will be followed as necessary.

Sec. 800.9 Council review of section 106 compliance.

(a) *Assessment of agency official compliance for individual undertakings.* The Council may provide to the agency official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the agency official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiative. The agency official shall consider the views of the Council in reaching a decision on the matter in question.

(b) *Agency foreclosure of the Council's opportunity to comment.* Where an agency official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the agency official and the agency's Federal preservation officer and allow 30 days for the agency official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the agency official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) *Intentional adverse effects by applicants.*

(1) Agency responsibility. Section 110(k) of the act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the act governs its implementation.

(2) *Consultation with the Council.* When an agency official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the agency official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the agency official's notification, unless otherwise agreed to by the agency official, the Council shall provide the agency official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The agency official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) *Compliance with Section 106.* If an agency official, after consulting with the Council, determines to grant the assistance, the agency official shall comply with Secs. 800.3 through 800.6 to take into account the effects of the undertaking on any historic properties.

(d) *Evaluation of Section 106 operations.* The Council may evaluate the operation of the section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the act.

(1) *Information from participants.* Section 203 of the act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the section 106 process. The agency official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the section 106 process.

(2) *Improving the operation of section 106.* Based upon any evaluation of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an agency official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the process in this part, the Council may participate in individual case reviews conducted under such process in addition to the SHPO/THPO for such period that it determines is necessary to improve

performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation pursuant to section 202(a)(6) of the act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

Sec. 800.10 Special requirements for protecting National Historic Landmarks.

(a) *Statutory requirement.* Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in Secs. 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.

(b) *Resolution of adverse effects.* The agency official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under Sec. 800.6.

(c) *Involvement of the Secretary.* The agency official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the act to assist in the consultation.

(d) *Report of outcome.* When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any memoranda of agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

Sec. 800.11 Documentation standards.

(a) *Adequacy of documentation.* The agency official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. The agency official shall provide such documentation to the extent permitted by law and within available funds. When an agency official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the agency official and specify the information needed to meet the standard. At the request of the agency official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the agency official and the consulting parties.

(b) *Format.* The agency official may use documentation prepared to comply with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) *Confidentiality.*

(1) *Authority to withhold information.* Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the act, after

consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

(2) *Consultation with the Council.* When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the SHPO/THPO, Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) *Other authorities affecting confidentiality.* Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants.

(d) *Finding of no historic properties affected.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to Sec. 800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) *Finding of no adverse effect or adverse effect.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify historic properties;

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking's effects on historic properties;

(5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) *Memorandum of agreement.* When a memorandum of agreement is filed with the Council, the documentation shall include, any substantive revisions or additions to the documentation provided the Council pursuant to Sec. 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) *Requests for comment without a memorandum of agreement.* Documentation shall include:

(1) A description and evaluation of any alternatives or mitigation measures that the agency official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies or summaries of any views submitted to the agency official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to Sec. 800.6(a)(1).

Sec. 800.12 Emergency situations.

(a) *Agency procedures.* The agency official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of Secs. 800.3 through 800.6.

(b) *Alternatives to agency procedures.* In the event an agency official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the agency official may comply with section 106 by:

(1) Following a programmatic agreement developed pursuant to Sec. 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the agency official determines that circumstances do not permit seven days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) *Local governments responsible for section 106 compliance.* When a local government official serves as the agency official for section 106 compliance, paragraphs (a) and (b) of this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the agency official shall comply with Secs. 800.3 through 800.6.

(d) *Applicability.* This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

Sec. 800.13 Post-review discoveries.

(a) *Planning for subsequent discoveries.*

(1) Using a programmatic agreement. An agency official may develop a programmatic agreement pursuant to Sec. 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) *Using agreement documents.* When the agency official's identification efforts in accordance with Sec. 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no programmatic agreement has been developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official's responsibilities under section 106 and this part.

(b) *Discoveries without prior planning.* If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the agency official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to Sec. 800.6; or

(2) If the agency official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archeological data, the agency official may comply with the Archeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) *Eligibility of properties.* The agency official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section 106. The agency official shall specify the National Register criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) *Discoveries on tribal lands.* If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the agency official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

Subpart C—Program Alternatives

Sec. 800.14 Federal agency program alternatives.

(a) *Alternate procedures.* An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) *Development of procedures.* The agency official shall consult with the Council, the National Conference of State Historic Preservation Officers, or individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the *Federal Register* and take other appropriate steps to seek public input during the development of alternate procedures.

(2) *Council review.* The agency official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) *Notice.* The agency official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the *Federal Register*.

(4) *Legal effect.* Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) *Programmatic agreements.* The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) *Use of programmatic agreements.* A programmatic agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) *Developing programmatic agreements for agency programs.*

(i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the programmatic agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section.

(ii) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The agency official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) *Effect.* The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPOs/ THPOs when the programmatic agreement concerns a specific region or the president of NCSHPO when NCSHPO has participated in the consultation. A programmatic agreement shall take effect on tribal lands only when the THPO, Indian tribe, or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved programmatic agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the president of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional programmatic agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the act and the SHPO is signatory to programmatic agreement, the THPO assumes the role of a signatory, including the right to terminate a regional programmatic agreement on lands under the jurisdiction of the tribe.

(iv) *Notice.* The agency official shall notify the parties with which it has consulted that a programmatic agreement has been executed under paragraph (b) of this section, provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/ THPOs, and the public.

(v) If the Council determines that the terms of a programmatic agreement are not being carried out, or if such an agreement is terminated, the agency official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) *Developing programmatic agreements for complex or multiple undertakings.* Consultation to develop a programmatic agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow Sec. 800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the agency official shall comply with the provisions of subpart B of this part for each individual undertaking.

(4) *Prototype programmatic agreements.* The Council may designate an agreement document as a prototype programmatic agreement that may be used for the same type of program or undertaking in more than one case or area. When an agency official uses such a prototype programmatic agreement, the agency official may develop and execute the

agreement with the appropriate SHPO/THPO and the agreement shall become final without need for Council participation in consultation or Council signature.

(c) *Exempted categories.*

(1) *Criteria for establishing.* An agency official may propose a program or category of agency undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as “undertakings” as defined in Sec. 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the act.

(2) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The agency official shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council review of proposed exemptions.* The Council shall review a request for an exemption that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the act.

(6) *Legal consequences.* Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) *Termination.* The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) *Notice.* The agency official shall publish notice of any approved exemption in the *Federal Register*.

(d) *Standard treatments.*

(1) *Establishment.* The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the *Federal Register*.

(2) *Public participation.* The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an agency official has proposed a standard treatment, the Council may request the agency official to arrange for public involvement.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Termination.* The Council may terminate a standard treatment by publication of a notice in the *Federal Register* 30 days before the termination takes effect.

(e) *Program comments.* An agency official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under Secs. 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) *Agency request.* The agency official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council action.* Unless the Council requests additional documentation, notifies the agency official that it will decline to comment, or obtains the consent of the agency official to extend the period for providing comment, the Council shall comment to the agency official within 45 days of the request.

(i) If the Council comments, the agency official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in

the *Federal Register* of the Council's comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the agency official shall continue to comply with the requirements of Secs. 800.3 through 800.6 for the individual undertakings.

(6) *Withdrawal of comment.* If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the agency official shall comply with the requirements of Secs. 800.3 through 800.6 for the individual undertakings.

(f) *Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives.* Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) *Identifying affected Indian tribes and Native Hawaiian organizations.* If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the agency official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the agency official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them. When a proposed program alternative has nationwide applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda, and applicable provisions of law.

(2) *Results of consultation.* The agency official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The agency official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.

Sec. 800.15 Tribal, State, and local program alternatives. [Reserved]

Sec. 800.16 Definitions.

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470-470w-6.

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Approval of the expenditure of funds* means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) *Area of potential effects* means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) *Comment* means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) *Consultation* means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

(g) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) *Day* or *days* means calendar days.

(i) *Effect* means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) *Foreclosure* means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

(k) *Head of the agency* means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local, or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l)(1) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) *Indian tribe* means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(n) *Local government* means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) *Memorandum of agreement* means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) *National Historic Landmark* means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) *National Register criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s)(1) *Native Hawaiian organization* means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

(2) *Native Hawaiian* means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(t) *Programmatic agreement* means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with Sec. 800.14(b).

(u) *Secretary* means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(v) *State Historic Preservation Officer (SHPO)* means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

(w) *Tribal Historic Preservation Officer (THPO)* means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

(x) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

Appendix A to Part 800—Criteria for Council Involvement in Reviewing Individual Section 106 Cases

(a) *Introduction.* This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

(b) *General policy.* The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

(c) *Specific criteria.* The Council is likely to enter the section 106 process at the steps specified in the regulations in this part when an undertaking:

(1) *Has substantial impacts on important historic properties.* This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) *Presents important questions of policy or interpretation.* This may include questions about how the Council's regulations are being applied or interpreted, including

possible foreclosure or anticipatory demolition situations; situations where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) *Has the potential for presenting procedural problems.* This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to Sec. 800.9(d)(2).

(4) *Presents issues of concern to Indian tribes or Native Hawaiian organizations.* This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.

Dated: December 4th, 2000.

John M. Fowler,

Executive Director.

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Section 110 Guidelines: The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act

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Introduction

Section 110 of the National Historic Preservation Act (16 U.S.C. 470)

Section 110 of the National Historic Preservation Act (hereinafter referred to as NHPA or the Act) sets out the broad historic preservation responsibilities of Federal agencies and is intended to ensure that historic preservation is fully integrated into the ongoing programs of all Federal agencies. This intent was first put forth in the preamble to the National Historic Preservation Act upon its initial adoption in 1966. When the Act was amended in 1980, section 110 was added to expand and make more explicit the statute's statement of Federal agency responsibility for identifying and protecting historic properties and avoiding unnecessary damage to them. Section 110 also charges each Federal agency with the affirmative responsibility for considering projects and programs that further the purposes of the NHPA, and it declares that the costs of preservation activities are eligible project costs in all undertakings conducted or assisted by a Federal agency.

The 1992 amendments to the Act further strengthened the provisions of section 110. Under the law, the head of each Federal agency must do several things. First, he or she must assume responsibility for the preservation of historic properties owned or controlled by the agency. Each Federal agency must establish a preservation program for the identification, evaluation, nomination to the National Register, and protection of historic properties. Each Federal agency must consult with the Secretary of the Interior (acting through the Director of the National Park Service) in establishing its preservation programs. Each Federal agency must, to the maximum extent feasible, use historic properties available to it in carrying out its responsibilities. The 1992 additions to section 110 also set out some specific benchmarks for Federal agency preservation programs, including:

- (a) historic properties under the jurisdiction or control of the agency are to be managed and maintained in a way that considers the preservation of their historic, archeological, architectural, and cultural values;
- (b) historic properties not under agency jurisdiction or control but potentially affected by agency actions are to be fully considered in agency planning;
- (c) agency preservation-related activities are to be carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations, and the private sector;
- (d) agency procedures for compliance with section 106 of the Act are to be consistent with regulations issued by the Advisory Council on Historic Preservation; and

(e) an agency may not grant assistance or a license or permit to an applicant who damages or destroys historic property with the intent of avoiding the requirements of section 106, unless specific circumstances warrant such assistance.

The complete text of section 110 is included as Appendix A to these Guidelines. Also included as Appendix B are sections 1 and 2 of the NHPA that set out the purposes and policies of that Act. Anyone unfamiliar with the purposes of the Act or with the specific provisions of section 110 as amended in 1992 should refer to those texts in addition to the revised Guidelines.

Section 110 Guidelines - Background and Format

The Section 110 Guidelines were first published in the Federal Register on February 17, 1988 (53 FR 4727-46). This second edition has been revised to incorporate the 1992 amendments to the Act and to make the Guidelines easier to use.

These Guidelines neither replace nor incorporate other statutory authorities, regulations, or *The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*. These Guidelines show how Federal agencies should address these various other requirements and guidelines in carrying out their responsibilities under the Act. The head of each Federal agency, acting through its Preservation Officer, should become familiar with all the statutes, regulations, and guidelines that bear upon the agency historic preservation program required by section 110.

This second edition of the Section 110 Guidelines follows a format significantly different from that of its predecessor. The first edition followed the sequence of the statute and provided detailed guidance for each subsection of section 110. The current edition instead takes the form of standards and guidelines that will assist each Federal agency in establishing a preservation program that meets the various requirements of section 110.

Agency Use of These Standards and Guidelines for Evaluating Their Programs

The preservation and use of historic properties and their careful consideration in agency planning and decisionmaking are in the public interest, are consistent with the declaration of policy set forth in the NHPA, and must be a fundamental part of the mission of any Federal agency. These standards and guidelines are intended to assist Federal agency personnel and the agency head in carrying out their policies, programs, and projects in a manner consistent with the requirements and purposes of section 110 of the NHPA, related statutory authorities, and existing regulations and guidance.

An agency should use these standards and guidelines, and consultation with the Secretary and others, to ensure that the basic individual components of a preservation program called for in section 110 are in place. The preservation program should also be fully integrated into both the general and specific operating procedures of the agency. The agency's preservation program should interact with the agency's management systems to ensure that historic preservation issues are considered in decisionmaking. The program should try to ensure that the agency's officials, employees, contractors, and other responsible parties have sufficient

budgetary and personnel resources needed to identify, evaluate, nominate, manage, and use the historic properties under agency care or affected by agency actions.

Consultation and Technical Assistance

Section 110(a)(2) requires that agency preservation programs be established "in consultation with the Secretary." Federal agencies seeking such consultation should contact the Associate Director, Cultural Resource Stewardship and Partnerships, National Park Service, Department of the Interior, 1849 C Street, NW, Washington, D.C. 20240. Consultation with the Secretary regarding an agency's program will be based upon the degree to which that program is consistent with the Act and with the standards and guidelines that follow. Upon request, the Secretary will also provide informal technical assistance to any agency on questions concerning the establishment or improvement of the agency's historic preservation program. Requests for technical assistance should also be addressed to the Associate Director, Cultural Resources Stewardship and Partnerships, National Park Service.

Section 202(a)(6) of the Act provides that the Advisory Council may review Federal agency preservation programs and recommend improvements to such agencies. Where the Council carries out such a review, it will base any recommendations on its own regulations and policy statements, and on the standards and guidelines that follow.

The Secretary of the Interior's Standards for Federal Agency Historic Preservation Programs

STANDARD 1. Each Federal agency establishes and maintains a historic preservation program that is coordinated by a qualified Preservation Officer, and that is consistent with and seeks to advance the purposes of the National Historic Preservation Act. The head of each Federal agency is responsible for the preservation of historic properties owned or controlled by the agency. [Sec. 110(a)(1), Sec. 110(a)(2), Sec. 110(c), and Sec. 110(d)].

STANDARD 2. An agency provides for the timely identification and evaluation of historic properties under agency jurisdiction or control and/or subject to effect by agency actions. [Sec. 110(a)(2)(A), and Sec. 112]

STANDARD 3. An agency nominates historic properties under the agency's jurisdiction or control to the National Register of Historic Places. [Sec. 110(a)(2)(A)].

STANDARD 4. An agency gives historic properties full consideration when planning or considering approval of any action that might affect such properties. [Sec. 110(a)(2)((B),(C), and (E), Sec. 110(f) and Sec. 402(16 U.S.C. 470a-2)]

STANDARD 5. An agency consults with knowledgeable and concerned parties outside the agency about its historic preservation related activities. [Sec. 110(a)(2)(D)].

STANDARD 6. An agency manages and maintains historic properties under its jurisdiction or control in a manner that considers the preservation of their historic, architectural, archeological, and cultural values. [Sec. 110(a)(1), Sec. 110 (a)(2)(B), Sec. 110(b)].

STANDARD 7. An agency gives priority to the use of historic properties to carry out agency missions.

[Sec. 110(a)(1)].

For a cross-reference of each standard to the parts of 110 see Appendix A.

The Secretary's Standards and Guidelines for Federal Agency Historic Preservation Programs

These guidelines have no regulatory effect. Instead, they are the Secretary's formal guidance to each Federal agency on meeting the requirements of section 110 of the Act.

The following guidelines provide information on the steps an agency must take to establish and maintain a preservation program that meets each of the applicable Secretary's Standards.

STANDARD 1. Each Federal agency establishes and maintains a historic preservation program that is coordinated by a qualified Preservation Officer, and that is consistent with and seeks to advance the purposes of the National Historic Preservation Act. The head of each Federal agency is responsible for the preservation of historic properties owned or controlled by the agency. [Sec. 110(a)(1),

Sec. 110(a)(2), Sec. 110(c), and Sec. 110(d)].

GUIDELINES:

Agency Programs.

(a) An agency historic preservation program must include specific provisions to ensure, to the extent feasible given the agency's mission and mandates, the full consideration and appropriate preservation of historic properties under the agency's jurisdiction or control and of other historic properties affected by the agency's actions. [Sec. 110(a)(2)(B)]

(b) An agency historic preservation program is embodied in agency-wide policies, procedures, and activities. An agency historic preservation program is the vehicle for ensuring that the agency's mission-driven activities are carried out in a manner consistent with the purposes of National Historic Preservation Act. The program is not an activity carried out separate and apart from the activities mandated by the agency mission.

(c) The identification, evaluation, and preservation of historic properties must be the fundamental goal of any Federal agency preservation program. [Sec. 110(a)(2)]. However, an agency's ability to achieve this goal is affected by its own mission and by whether it owns and manages historic property:

(1) In those cases where historic property is under the jurisdiction and control of the agency, the agency has an affirmative responsibility to manage and maintain such property in a manner that takes into account the property's historic significance. In addition, the Federal agency has an affirmative responsibility to seek and use historic properties to the maximum extent feasible in carrying out its activities. [Sec. 110(a)(1) and Sec. 110(a)(2)(B)]

(2) Where an agency carries out its mission through the award of grant funds for specific activities, and where those activities will inevitably affect historic properties, the agency should, to the maximum extent feasible, design its programs to encourage grantees to retain and make appropriate use of historic properties in carrying out grant-funded activities.

(3) Where an agency's historic preservation activities are limited to considering the impact of federally licensed, or permitted activities initiated by non-federal entities on non-federally owned historic properties, the agency's preservation responsibility may be more narrowly cast as seeking to avoid or minimize any adverse effects to such properties that might otherwise occur as a result of such activities.

(d) An agency historic preservation program must be established in consultation with the Secretary of the Interior. [Sec. 110(a)(2)]. Consultation with the Secretary regarding an agency's historic preservation program will be based on these Standards and Guidelines.

(e) The agency historic preservation program must be an effective and efficient vehicle through which the agency head can meet his or her statutory responsibilities for the preservation of historic properties. [Sec. 110(a)(2)]. Compliance with responsibilities pursuant to section 106 of the Act is an integral part of an agency's overall historic preservation program. That program, however, is not simply intended to meet agency section 106 responsibilities to "take into account" the effects of its undertakings on historic properties. The program described in section 110(a)(2) is an agency-wide approach to achieving the goals set forth in the NHPA. It should be fully integrated into both the general and specific operating procedures of the agency.

(f) The preservation program should interact with the agency's budgetary and financial management systems to:

(1) ensure that historic preservation issues are considered before budgetary decisions are made that foreclose historic preservation options, and

(2) ensure that the historic preservation program itself is adequately funded to enable it to perform its functions.

(g) To avoid needless duplication of effort and increased workload in developing and implementing its program, the agency should carefully review and consider using those existing policies, procedures, approaches and standards that are government-wide, i.e., applicable to all preservation programs, and develop only those that need to be agency-specific. Preservation programs can be expected to differ based on the extent to which:

(1) agencies manage, own, or exercise control over historic properties;

(2) historic properties play a significant role in agency activities through active use (e.g., for recreation, interpretation, public access/use, transportation, office space);

(3) agencies are engaged in public education/interpretation, or multiple-use resource management; or,

(4) agencies are in a position to influence actions affecting historic properties.

(h) Agency funding decisions for historic preservation work should be based on a determination of the prudent level of investment for a specific undertaking. That determination, in turn, should acknowledge that preservation costs are eligible project costs on an equal footing with other planning, design, construction, environmental protection, and mitigation needs and requirements. Similarly, the cost of caring for, documenting, and otherwise preserving artifacts, records, and remains related to historic properties is an eligible project cost. [Sec. 110(g)]. The agency may contract with a State Historic Preservation Officer (SHPO), another Federal agency, or other public or private organization as appropriate to assist it in carrying out the agency's historic preservation work.

(i) Where preservation activity is a condition of obtaining a Federal license or permit, or Federal approval, or is subject to a delegation of authority by a Federal agency, the recipient may be expected to incur reasonable costs. [Sec. 110(g)]. Because it is difficult to establish fair standards that would be applicable in all cases, "reasonable costs" should not be determined using inflexible criteria, such as a flat fee or a standard percentage of a budget, but rather should be determined on a case-by-case basis.

(j) An efficient preservation program should allow the agency to do more than simply meet its section 110 and 106 responsibilities. In order to eliminate duplicative effort and assist in agency planning, the preservation program should be coordinated with actions the agency takes to meet the requirements of other relevant and related Federal statutes (e.g., NAGPRA, the Archaeological Resources Protection Act (ARPA), the American Indian Religious Freedom Act (AIRFA), and the National Environmental Policy Act (NEPA)) in a comprehensive, anticipatory manner.

Preservation Officer

(k) The agency position responsible for coordinating the preservation program is the Preservation Officer required of all agencies by section 110(c) of the NHPA (unless specifically exempted under section 214 of the NHPA). A Preservation Officer may have other agency duties in addition to historic preservation coordination, depending on the magnitude and degree of the agency's historic preservation activities and responsibilities. [Sec. 110(c)].

(l) Agency officials designated as Preservation Officers should have substantial experience administering Federal historic preservation activities and/or specifically assigned staff under their supervision who have such experience. Section 112 of the NHPA requires that agency personnel or contractors responsible for historic resources, meet qualification standards established by the Office of Personnel Management in consultation with the Secretary.

(m) Each Preservation Officer should have sufficient agency-wide authority, staff, and other resources to carry out section 110 responsibilities effectively. Agency administrative systems should ensure that the Preservation Officer can review and comment meaningfully on all agency programs and activities and interact with the agency's planning and project management systems in such a way as to influence decisions potentially affecting historic resources. The Preservation Officer should have sufficient authority and the agency should have sufficient control systems to ensure that decisions made pursuant to section 106 and section 110 about the treatment of such resources are in fact carried out.

(n) In agencies where significant preservation responsibilities are delegated to regional or field offices, or Federal facilities or installations, the agency head should also appoint qualified preservation officials at those levels. Such officials should ensure that their actions and conduct of historic preservation activities are coordinated with, and consistent with, those of the central office Preservation Officer for that agency.

(o) The agency should ensure that its personnel management system identifies those personnel with preservation responsibilities, includes such responsibilities in their position descriptions and performance elements and standards, and appropriately rewards high-quality performance. In addition, the agency should provide for ongoing training in historic preservation for all agency personnel with preservation responsibilities.

STANDARD 2. An agency provides for the timely identification and evaluation of historic properties under agency jurisdiction or control and/or subject to effect by agency actions. [Sec. 110(a)(2)(A) and Sec. 112].

GUIDELINES:

(a) Identification and evaluation of historic properties are critical steps in their long-term management, as well as in project-specific planning by Federal agencies. Normally, an agency must identify the full range of historic properties that may be affected by an agency program or activity, including, but not limited to, historic buildings and structures, archaeological sites, traditional cultural properties, designed and other cultural landscapes, historic linear features such as roads and trails, historic objects such as signs and street furniture, and historic districts comprising cohesive groups of such properties. [Sec. 110(a)(2)(A)]. Effective management of historic properties requires that they first be identified and evaluated. The level of identification needed can vary depending on the nature of the property or property type, the nature of the agency's management authority, and the nature of the agency's possible effects on the property.

(b) The Secretary of the Interior has issued standards and guidelines for identification and evaluation of historic properties (in *The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* [48 FR 44720-44726]), which should be used to ensure that the preservation program's identification and evaluation procedures will be adequate and appropriate. Identification and evaluation of historic properties must be conducted by professionally qualified individuals. [Sec. 101(g), Sec. 101(h), and Sec. 112]

(c) Agency efforts to identify and evaluate historic properties should include early consultation with the State Historic Preservation Officer, or the Tribal Preservation Officer as appropriate, to ensure that such efforts benefit from and build effectively upon any relevant data already included in the State's or Tribe's inventory. For information on consulting with an Indian tribe that has assumed State Historic Preservation Officer functions pursuant to section 101(d)(2) of the Act, see Standard 6, Guideline 7(b). Agencies are encouraged to share with the appropriate SHPO and Tribal Preservation Officer, information about historic properties gathered through their identification and evaluation activities.

(d) Where an agency is planning an action that is not aimed at specific land areas (for example, a nationwide program of assistance to local governments, farmers, or

low-income homeowners), and the identification of specific historic properties subject to effect is not feasible, the agency should nevertheless consider what types of historic properties may be affected directly or indirectly, and consider strategies that will minimize adverse effect and maximize beneficial effect on those properties. Such consideration must be carried out in consultation with SHPOs, Tribal Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public as appropriate (110(a)(2)(E)(ii)).

(e) Where an agency is planning an action that could affect historic properties directly or indirectly (e.g., a land-use or construction project; a project that could change the way land or buildings are used or developed, or alter the social, cultural, or economic character of a community; and any program of assistance to or the issuance of a license for such activities), identification and evaluation should take place at the earliest possible stage of planning, and be coordinated with the earliest phases of any environmental review carried out under the National Environmental Policy Act and/or related authorities. Identification and evaluation efforts must be carried out in consultation with SHPOs, Tribal Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public as appropriate (110(a)(2)(E)(ii)).

(f) Where identification and evaluation are carried out as a part of long-term planning, it may be appropriate to conduct background studies to develop a "predictive model" of historic property distributions that can be used in evaluating the likely effects of particular land management projects as the program proceeds. In some cases, depending on management needs for a particular project or activity, it may not be necessary to identify exhaustively every historic property or historic property type. It may also be appropriate and cost-effective to carry out the work in phases organized around particular property types or other such coherent units. For example, if historic architecture is of greater immediate concern than Native American traditional properties or archeological sites, a survey of architecture alone may be appropriate during a particular budget year, with archeological survey and ethnographic studies deferred until later. However, identification is not complete until all historic properties have been identified. Such work should be developed in consultation with SHPOs, Tribal Preservation Officers, local governments, Indian tribes and Native Hawaiian organizations as appropriate, and other parties that may have knowledge of, or interest in, such properties.

(g) Identification of historic properties is an ongoing process. As time passes, events occur, or scholarly and public thinking about historical significance changes. Therefore, even when an area has been completely surveyed for historic properties of all types it may require re-investigation if many years have passed since the survey was completed. Such follow-up studies should be based upon previously obtained information, may focus upon filling information gaps, and should consider re-evaluation of properties based upon new information or changed historical understanding.

STANDARD 3. An agency nominates historic properties under the agency's jurisdiction or control to the National Register of Historic Places. [Sec. 110(a)(2)(A)].

GUIDELINES

(a) The first step in designing a program for the nomination of historic properties is to determine what role nomination will play in the agency's overall preservation program. For example:

(1) An agency that controls relatively few historic properties may find it realistic to nominate them all to the National Register, and then manage them accordingly. An agency with a great many historic properties will need to establish explicit priorities for identifying, nominating, and preserving properties.

(2) Placement on the National Register may help justify budgeting funds for preservation or management of a historic property, so agencies may want to give priority to nominating properties as a first step in upgrading their maintenance and providing for their continued active service in carrying out agency programs. Further, development of National Register-level documentation provides information on the property that will assist the agency in its subsequent property management decisions.

(3) An agency with an excellent internal program for identifying and preserving historic properties may find that other determinants, such as whether a property is to be managed and interpreted as a site of public interest, are more useful in establishing nomination priorities.

(4) An agency that regularly transfers property out of Federal ownership may find it useful to give higher priority to nominating properties to be transferred, at the expense of other properties, in those cases where placement on the National Register may make preservation more likely once a property is no longer under Federal management.

(b) Beyond serving the agency's own internal management needs, the National Register is the nation's formal repository of information on historic properties. To the extent that the National Register is incomplete, its usefulness as a planning and educational tool is diminished. Consequently, an agency should generally strive to nominate the historic properties under its jurisdiction or control to the National Register.

(c) The Secretary of the Interior already has in place Standards and Guidelines for registration of historic properties (in *The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44726-44728) that details the process that should be followed in formally recognizing historic properties as significant. These Standards and Guidelines, along with the National Register Bulletin #16, *Guidelines for Completing National Register Forms*, provide guidance on completing National Register nomination forms. National Register regulations (36 CFR 60) set forth the nomination process.

STANDARD 4. An agency gives historic properties full consideration when planning or considering approval of any action that might affect such properties. [Sec. 110(a)(2)(B),(C), and (E), and Sec. 402 (16 U.S.C. 470a-2)].

GUIDELINES:

All Historic Properties

(a) Each Federal agency has an affirmative responsibility under section 110 of the National Historic Preservation Act to consider its activities' effects on our nation's historic properties. This responsibility extends to a systematic consideration of properties not under the jurisdiction or control of the agency, but potentially affected by agency actions. [Sec. 110(a)(2)(C)].

(b) Full consideration of historic properties includes assessment of the widest range of preservation alternatives early in program or project planning, coordinated to the extent feasible with other kinds of required planning and environmental review.

(c) Full consideration of historic properties includes consideration of all kinds of effects on those properties: direct effects, indirect or secondary effects, and cumulative effects. Effects may be visual, audible, or atmospheric. Beyond the effects from physical alteration of the resource, itself, effects on historic properties may result from changes in such things as local or regional traffic patterns, land use, and living patterns.

(d) Full consideration of historic properties includes an obligation to solicit and consider the views of others in planning and carrying out agency preservation activities (See Standard 5 on Consultation). [Sec. 110(a)(2)(D)].

(e) Full consideration of historic properties must include development of and adherence to agency procedures for section 106 review that are consistent with the regulations of the Advisory Council on Historic Preservation, and, as necessary, with certain provisions of the Native American Graves Protection and Repatriation Act. [Sec. 110(a)(2)(E)(i), (ii), and (iii)].

(f) The term "consistent with the regulations issued by the Council" as used in the NHPA means that an agency's procedures provide for the identification and evaluation of historic properties, the assessment of project and program effects on them, and consultation (specifically including consultation with the State Historic Preservation Officer, Tribal Preservation Officer or other Native American groups where appropriate, and other affected parties) to determine appropriate treatment or mitigation. Such procedures must either adhere to and expand upon the process set out in 36 CFR 800, or include modifications or alternatives to that process that have been reviewed and approved by the Council. Implementation of procedures consistent with the Council's regulations means that those procedures are carried out in a manner consistent with the Guidelines for Standard 1 above.

(g) Full consideration of historic properties includes development of procedures to identify, discourage, and guard against "anticipatory demolition" of a historic property by applicants for Federal assistance or license. Agency procedures should include a system for early warning to applicants and potential applicants that anticipatory demolition of a historic property may result in the loss of Federal assistance, license or permit, or approval for a proposed undertaking. When an historic property is destroyed or irreparably harmed with the express purpose of circumventing or preordaining the outcome of section 106 review (e.g., demolition or removal of all or part of the property) prior to application for Federal funding, a Federal license, permit, or loan guarantee, the agency considering that application is required by section 110(k) to withhold the assistance sought, unless the agency, after consultation with the Council, determines and documents that "circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant." [Sec. 110(k)].

(h) Agency preservation procedures for section 106 compliance must provide for the disposition of Native American, Alaskan, and Hawaiian human remains and cultural items from Federal or tribal land consistent with section 3(c) of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA).

[Sec. 110(2)(E)(iii)]. The applicable NAGPRA sections on disposition [sections 3(c)(3) and 3(a) & (b)] vest "ownership and right of control" according to a hierarchy of relationships to the cultural items. See NAGPRA (25 U.S.C. 3002(c)) and the Department of Interior's regulations implementing this Act (43 CFR Part 10) for detailed information.

(i) In those cases where consultation pursuant to section 106 does not produce a Memorandum of Agreement (MOA) governing how an agency will "take into account" the adverse effects of its undertaking on historic properties, section 110(l) requires that the final decision(s), reached after consideration of the Council's comments, be made by the agency head and not by any subordinate official, that it be explicit and informed, and that it be a part of the public record available for review. [Sec. 110(l)].

National Historic Landmarks

(j) National Historic Landmarks (NHL) are designated by the Secretary under the authority of the Historic Sites Act of 1935, which authorizes the Secretary to identify historic and archaeological sites, buildings, and objects which "possess exceptional value as commemorating or illustrating the history of the United States." Section 110(f) of the NHPA requires that Federal agencies exercise a higher standard of care when considering undertakings that may directly and adversely affect NHLs. The law requires that agencies, "to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark." In those cases when an agency's undertaking directly and adversely affects an NHL, or when Federal permits, licenses, grants, and other programs and projects under its jurisdiction or carried out by a state or local government pursuant to a Federal delegation or approval so affect an NHL, the agency should consider all prudent and feasible alternatives to avoid an adverse effect on the NHL. [Sec. 110(a)(2)(B) and Sec. 110(f)].

(k) Where such alternatives appear to require undue cost or to compromise the undertaking's goals and objectives, the agency must balance those goals and objectives with the intent of section 110(f). In doing so, the agency should consider:

- (1) the magnitude of the undertaking's harm to the historical, archaeological and cultural qualities of the NHL;
- (2) the public interest in the NHL and in the undertaking as proposed, and,
- (3) the effect a mitigation action would have on meeting the goals and objectives of the undertaking.

(l) The Advisory Council's regulations implementing section 106 include specific provisions that also implement section 110(f). These regulations require that the Council must be included in any consultation following a determination by the Federal agency that a Federal or federally assisted undertaking will have an adverse effect on an NHL. The Council must notify the Secretary and may request the Secretary to provide a report to the Council detailing the significance of the affected NHL under section 213 of the NHPA and recommending measures to avoid, minimize or mitigate adverse effects. The Council shall report the outcome of the section 106 process to the Secretary and the head of the agency responsible for the undertaking.

Foreign Historic Properties

(m) In accordance with section 402 of the National Historic Preservation Act Amendments of 1980 (P.L. 96-515) and with Executive Order 12114 (issued January 4, 1979), the agency's preservation program should ensure that, when carrying out work in other countries, the agency will consider the effects of such actions on historic properties, including World Heritage Sites and properties that are eligible for inclusion in the host country's equivalent of the National Register.

(n) The agency's preservation program should ensure that those agency officials, contractors, and other parties responsible for implementing section 402 of the NHPA (16 U.S.C. 470a-z) and Executive Order 12114 have access to personnel with appropriate levels and kinds of professional expertise in historic preservation to identify and assist in the management of such properties.

(o) Efforts to identify and consider effects on historic properties in other countries should be carried out in consultation with the host country's historic preservation authorities, with affected communities and groups, and with relevant professional organizations.

STANDARD 5. An agency consults with knowledgeable and concerned parties outside the agency about its historic preservation related activities. [Sections 110(a)(2)(D) and (E)(ii)].

GUIDELINES:

Consultation General Principles

(a) Consultation means the process of seeking, discussing, and considering the views of others, and, where feasible, seeking agreement with them on how historic properties should be identified, considered, and managed. Consultation is built upon the exchange of ideas, not simply providing information. Whether consulting on a specific project or on broader agency programs, the agency should:

- (1) make its interests and constraints clear at the beginning;
- (2) make clear any rules, processes, or schedules applicable to the consultation;
- (3) acknowledge others' interests and seek to understand them;
- (4) develop and consider a full range of options; and,
- (5) try to identify solutions that will leave all parties satisfied.

(b) Consultation should include broad efforts to maintain ongoing communication with all those public and private entities that are interested in or affected by the agency's activities and should not be limited to the consideration of specific projects.

(c) Consultation should be undertaken early in the planning stage of any Federal action that might affect historic properties. Although time limits may be necessary on specific transactions carried out in the course of consultation (e.g., the time allowed to respond to an inquiry), there should be no hard-and-fast time limit on consultation

overall. Consultation on a specific undertaking should proceed until agreement is reached or until it becomes clear to the agency that agreement cannot be reached.

(d) While specific consultation requirements and procedures will vary among agencies depending on their missions and programs, the nature of historic properties that might be affected, and other factors, consultation should always include all affected parties. Section 110(a)(2)(D) specifies that an agency's preservation-related activities be carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations, and the private sector. Section 110(a)(2)(E)(ii) requires an agency's procedures for compliance with section 106 to provide a process for the identification and evaluation of historic properties and the development and implementation of agreements, in consultation with SHPOs, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate. In addition to having a formal role under the Act, SHPOs and Tribal Preservation Officers can assist in identifying other parties with interests, as well as sources of information.

(e) The agency needs to inform other agencies, organizations, and the public in a timely manner about its projects and programs, and about the possibility of impacts on historic resources of interest to them. However, the agency cannot force a group to express its views, or participate in the consultation. These groups also bear a responsibility, once they have been made aware that a Federal agency is interested in their views, to provide them in a suitable format and in a timely fashion.

(f) Agency efforts to inform the public about its projects and programs and about the possibility of impacts on historic resources must be carried out in a manner consistent with the provisions of section 304 of the Act, which calls for withholding from disclosure to the public information on the location, character, or ownership of a historic resource where such disclosure may:

- (1) cause a significant invasion of privacy;
- (2) risk harm to the historic resource; or,
- (3) impede the use of a traditional religious site by practitioners.

Consultation with Native Americans

(g) Inclusion of Indian tribes and Native Hawaiian organizations in the consultation process is imperative and is specifically mandated by the Act [Sec. 110(a)(2)(D)]:

(1) properties with traditional religious and cultural importance to Native American and Native Hawaiian groups may be eligible for the National Register; such properties must be considered, and the appropriate Native American and/or Native Hawaiian groups must be consulted in project and program planning through the section 106 review process (see NHPA Sec. 101(d)(6)(A&B);

(2) Section 101(d)(2) of the Act provides that Indian tribes may assume State Historic Preservation Officer responsibilities on tribal lands, when approved to do so by the Secretary of the Interior. In those cases where a tribe has assumed such responsibilities on tribal lands, a Federal agency must consult with the tribe instead of the SHPO, in order to meet agency responsibilities for consultation pursuant to the Act;

(3) the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) establishes consultation requirements (43 CFR 10) that may affect or be affected by consultation pursuant to section 106 of the NHPA concerning activities on Federal and Tribal lands that could affect human remains and cultural items. The Archeological Resources Protection Act of 1979 and its uniform regulations also require consultation with tribes and provide a formal process of notification (16 U.S.C. 470cc-dd);

(4) Section 110 requires that an agency's efforts to comply with section 106 must also be consistent with the requirements of section 3(c) of NAGPRA concerning the disposition of human remains and Native American cultural items from Federal and tribal lands.

(h) Where those consulted do not routinely or customarily participate in traditional governmental means of consultation (e.g., through public meetings, exchanges of correspondence), reasonable efforts should be made to accommodate their cultural values and modes of communication.

STANDARD 6. An agency manages and maintains historic properties under its jurisdiction or control in a manner that considers the preservation of their historic, architectural, archeological, and cultural values. [Sec. 110(a)(1), Sec. 110 (a)(2)(B), Sec. 110(b)].

GUIDELINES:

(a) Historic properties include any prehistoric or historic districts, sites, buildings, structures, or objects listed in, or eligible for inclusion in, the National Register of Historic Places, including artifacts, records, and material remains related to such properties. To the extent feasible, as part of its property management program, the agency should endeavor to retain historic buildings and structures in their traditional uses and to maintain significant archeological sites and landscapes in their undisturbed condition. [See *Secretary of the Interior's Standards for the Treatment of Historic Properties* (36 CFR 68), and *Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings* and *Guidelines for the Treatment of Historic Landscapes*.]

(b) Where it is no longer feasible to continue the traditional use of a historic structure or to maintain a significant archeological site or cultural landscape in undisturbed condition, the agency should consider an adaptive use that is compatible with the historic property. Adaptive use proposals must be reviewed in accordance with section 106 of the Act. The agency should consider as wide a range of adaptive use options as is feasible given its own management needs, cost factors, and the needs of preservation. A use that severely damages or destroys a historic property is not consistent with the section 110(a)(1) requirement to preserve historic properties in accordance with the professional standards established pursuant to section 101(g) of the Act.

(c) Where modification of a historic property is required to allow it to meet contemporary needs and requirements, the agency should ensure that *The Secretary of the Interior's Standards for the Treatment of Historic Properties* and its accompanying guidelines are followed. Agencies are authorized and directed by section 110(a)(1) to carry out (or cause a lessee or concessioner to carry out) whatever preservation work is necessary (e.g., rehabilitation or documentation) in

preparation for use. Proposals to modify historic properties must be reviewed in accordance with section 106 of the Act. When such modification requires disturbance of the earth, and it is not feasible to avoid and protect significant archeological resources, the archeological resources should be excavated and the data recovered. Excavations should focus on areas that will be disturbed during the project, but overall excavation efforts should be governed by a research design intended to recover significant data contained in the site. Doing so may require excavation of adjacent deposits of the site. All archeological work should conform to the Secretary's "Standards for Archeological Documentation." Under sections 101(a)(7)(A) and 110, agencies are also responsible for ensuring that prehistoric and historic material remains and associated records recovered in conjunction with projects and programs are deposited in repositories capable of providing adequate long-term curatorial services (see 36 CFR 79). Additional requirements for the management and ongoing care of archeological resources may be found in the Antiquities Act (16 U.S.C. 431-433) and the Archeological Resource Protection Act (16 U.S.C. 470aa-mm), and their attendant regulations.

(d) Until and unless decisions are made to manage them in some other manner, historic properties, and properties not yet formally evaluated that may meet the criteria for inclusion in the National Register, should be maintained so that their preservation is ensured through adherence to *The Secretary of the Interior's Standards for the Treatment of Historic Properties*.

(e) The relative cost of various management strategies for a historic structure, ranging from full restoration, to rehabilitation and adaptive use to demolition and replacement with a modern building, should be carefully and objectively considered, with reference to the pertinent requirements of Executive Order 11912, as amended, to the pertinent criteria established in OMB Circular A-94, and to the pertinent principles and methods set forth in the National Bureau of Standards Life-Cycle Costing Manual (NBS Handbook 135).

(f) Applicable long and short-term costs should be carefully considered as part of any cost analysis. It is often the case that the short-term costs of preserving and rehabilitating a historic structure are balanced by long-term savings in maintenance or replacement; on the other hand, failure to perform needed cyclic maintenance may shorten the life of a building and decrease the value of investment in its rehabilitation.

(g) Where it is not feasible to maintain a historic property, or to rehabilitate it for contemporary use, the agency may elect to modify it in ways that are inconsistent with the Secretary's "Standards for Rehabilitation," allow it to deteriorate, or demolish it. However, the decision to act or not act to preserve and maintain historic properties should be an explicit one, reached following appropriate consultation within the section 106 review process and in relation to other management needs.

(h) Where the agency determines in accordance with section 106 that maintaining or rehabilitating a historic property for contemporary use in accordance with the Secretary's Standards is not feasible, the agency must provide for appropriate recording of the historic property in accordance with section 110(b) before it is altered, allowed to deteriorate, or demolished.

STANDARD 7. An agency gives priority to the use of historic properties in carrying out agency missions. [Sec. 110(a)(1)].

GUIDELINES:

(a) For the most part, use of historic properties involves the integration of those properties into the activities directly associated with the agency's mission. However, the agency should also be open to the possibility of other uses, such as the use of traditional sacred sites or plant gathering areas by Native Americans, or use of an archeological site as a public interpretive facility.

(b) An agency with historic properties under its jurisdiction and control should maintain an inventory of those properties that notes the current use and condition of each property. The agency should provide for regular inspection of the properties and an adequate budget for their appropriate maintenance.

(c) Section 110(a)(1) applies not only to historic properties under an agency's ownership or control, but to other historic properties available to an agency. An agency that requires the use of non-federal property is required to give priority to the use of historic properties. In such cases the agency should notify potential private-sector offerors of this priority and, if feasible, offer incentives to help ensure that historic properties will be offered.

(d) Where an agency carries out its mission through the award of grant funds for specific activities, and where those activities will inevitably affect historic properties, the agency should, to the extent feasible, design its grants programs so as to encourage grantees to retain and make appropriate use of historic properties in carrying out grant-funded activities.

(e) As provided for in section 111 of the Act, the agency should consider leases, exchanges, and management agreements with other parties as means of providing for the continuing or adaptive use of historic properties.

(f) Surplus properties that are listed in or have been formally determined eligible for the National Register can be transferred to State, tribal, and local governments for historic preservation purposes through the Historic Surplus Property Program. Additionally, properties or portions of surplus properties may be made available to States or local agencies at no cost for parks and recreation through application to the Federal Lands-to-Parks Program. Contact the NPS' Heritage Preservation Services Division or its Recreation Resources Assistance Division in Washington, D.C., for more information on these programs.

(g) The use of historic properties is not mandated where it can be demonstrated to be economically infeasible, or where historic properties will not serve the agency's requirements. The agency's responsibility is to balance the needs of the agency mission, the public interest in protecting historic properties, the costs of preservation, and other relevant public interest factors in making such decisions.

Definitions

(a) The Act or NHPA means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 et seq.

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(b) Advisory Council or Council means the agency, fully titled the Advisory Council on Historic Preservation, established pursuant to section 201 of Title II of the NHPA, that is to be afforded a reasonable opportunity under sections 106 and 110(f) of the NHPA to comment with regard to proposed undertakings, as defined in section 301(7) of the NHPA; that reviews Federal programs pursuant to section 202(a)(6) of the NHPA; and with whose regulations outlining the procedures for complying with the requirements of section 106 of the NHPA ("Protection of Historic Properties," found at 36 CFR Part 800) in accordance with section 110(a)(2)(E)(i), other Federal agencies procedures for compliance with section 106 must be consistent.

(c) Agency Head means the individual Departmental Secretary, Executive Director or Administrator of an agency, as defined in the Council's regulations (36 CFR Part 800).

(d) Cultural items is defined in the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA, 25 U.S.C 3002(c)). It includes human remains; associated and unassociated funerary objects (consisting of items intentionally placed with the body in a grave, including those not in possession of a Federal agency); sacred objects, ceremonial objects important to the practice of Native American traditional religions; and objects of cultural patrimony, those items having historical, traditional, or cultural importance to Indian tribes themselves. For a complete definition see section 2(3)(A)-(D) of NAGPRA, and the Department of Interior's regulations implementing the provisions of the Act at 43 CFR Part 10.

(e) Historic property or historic resource is defined at section 301(5) of the NHPA and means any prehistoric or historic district, site, building, structure, landscape or object included in, or eligible for inclusion in the National Register, including artifacts, records, and material remains related to such a property or resource. Section 101(d)(6)(A) of the National Historic Preservation Act provides that "properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register."

(f) Historic resource (see definition for "historic property").

(g) Indian tribe or tribe is defined at section 301(4) of the NHPA and means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The Secretary of the Interior is responsible for determining an Indian tribe's eligibility for those special programs and services.

(h) Memorandum of Agreement means the document that records the terms and conditions which have been agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(i) National Register is defined at section 301(6) of the NHPA and means the list of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering, and culture established under section 101 of the NHPA and maintained by the Secretary of the Interior and fully titled the "National Register of Historic Places."

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(j) Native Hawaiian is defined in the NHPA at section 301(17) and means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(k) Native Hawaiian organization as defined at section 301(18) of the NHPA means any organization which--

(1) serves and represents the interests of Native Hawaiians;

(2) has as a primary and stated purpose the provision of services to Native Hawaiians; and,

(3) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians.

The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and *Hui Malama I Na Kapuna O Hawai'i Nei*, an organization incorporated under the laws of the State of Hawaii.

(l) Preservation or historic preservation as defined in the NHPA at section 301(8) includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.

(m) Preservation Officer means the individual in the agency responsible for managing the agency's historic preservation program and coordinating all preservation activities. All federal agencies are required to appoint a Preservation Officer under section 110(c) of the National Historic Preservation Act (unless specifically exempted under section 214 of the NHPA). The Preservation Officer and the Agency Head are not necessarily one and the same individual.

(n) Secretary is defined at section 301(11) of the NHPA and means the Secretary of the Interior acting through the Director of the National Park Service, except where otherwise specified.

(o) Secretary's Standards means the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (available from the National Park Service), the project and program standards and guidelines for implementing the NHPA. They are technical guidance concerning archeological and historic preservation activities and methods. The complete Secretary's Standards currently address each of the following activities: Preservation Planning, Identification, Evaluation, Registration, Historical Documentation, Architectural and Engineering Documentation, Archeological Documentation, Treatment of Historic Properties (including Rehabilitation), and Professional Qualifications.

(p) State Historic Preservation Officer (SHPO) means the official appointed or designated pursuant to section 101(b)(1) of the NHPA to administer the State historic preservation program or a representative designated to act for the SHPO.

(q) Traditional Cultural Property is defined as a property that is associated with cultural practices or beliefs of a living community that (1) are rooted in that community's history, and (2) are important in maintaining the continuing cultural

identity of the community. Readers should refer to *National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties* (available from the National Park Service) for more information.

(r) Tribal Preservation Officer or Tribal Historic Preservation Officer means the official appointed or designated by the Tribe to carry out the historic preservation program responsibilities that the Tribe has assumed pursuant to section 101(d) of the NHPA.

(s) Tribal lands is defined at section 301(14) of the NHPA and means--

- (1) all lands within the exterior boundaries of any Indian reservation; and,
- (2) all dependent Indian communities.

(t) Undertaking as defined in the NHPA at section 301(7) means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including--

- (1) those carried out by or on behalf of the agency;
- (2) those carried out with Federal financial assistance;
- (3) those requiring a Federal permit, license, or approval; and,
- (4) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

Appendix A

Section 110 of the National Historic Preservation Act (16 U.S.C. 470h-2):

(a)(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g), any preservation, as may be necessary to carry out this section. [Standards 1, 6 and 7].

(2) Each Federal agency shall establish (unless exempted pursuant to section 214), in consultation with the Secretary [of the Interior], a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties.

[Standard 1]. Such program shall ensure --

(A) that historic properties under the jurisdiction or control of the agency are identified, evaluated, and nominated to the National Register [Standards 2 and 3];

(B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archeological, architectural, and

cultural values in compliance with section 106 and gives special consideration to the preservation of such values in the case of properties designated as having national significance [Standard 4];

(C) that the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning [Standards 4 and 6];

(D) that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector [Standard 5]; and,

(E) that the agency's procedures for compliance with section 106 --

(i) are consistent with regulations issued by the [Advisory] Council [on Historic Preservation] pursuant to section 211 [Standard 4];

(ii) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered [Standard 4]; and,

(iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)) [Standard 4].

(b) Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, a historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a), in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference [Standard 6].

(c) The head of each Federal agency shall, unless exempted under section 214, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this Act. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 101(h) [Standard 1].

(d) Consistent with the agency's mission and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act [Standard 1].

(e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such

plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced [Standard 7].

(f) Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking [Standard 4].

(g) Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this Act, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit [Standard 1].

(h) The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts not to exceed \$1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the president of the United States to any citizen of the United States recommended for such award by the Secretary.

(i) Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such statement would not otherwise be required under the National Environmental Policy Act of 1969, and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

(j) The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

(k) Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having the legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant [Standard 4].

(l) With respect to any undertaking subject to section 106 which adversely affects any property included in or eligible for inclusion in the National Register, and for which a Federal agency has not entered into an agreement with the Council, the head of such agency shall document any decision made pursuant to section 106. The head of such agency may not delegate his or her responsibilities pursuant to such section. Where a section 106 memorandum of agreement has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all of its parts [Standard 4].

Appendix B

Purposes of the National Historic Preservation Act:

Section 110(d) of the National Historic Preservation Act (the Act) calls on all Federal agencies, consistent with their mission and mandates, to carry out their activities in accordance with the purposes of the Act and to consider programs and projects that will further the purposes of the Act. The purposes of the Act are set forth in sections 1 and 2. These sections are directly germane to all Federal preservation programs: Section 1 (b) The Congress finds and declares that --

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of federal and federally assisted projects and will assist economic growth and development; and,

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 2: It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to--

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

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(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with the States, Indian tribes, Native Hawaiians, and local governments;

(3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;

(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and

(6) assist State and local governments, Indian tribes and Native Hawaiian organizations and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Other Historic Preservation Laws

1. The National Environmental Policy Act (NEPA)

The National Environmental Policy Act (NEPA) is a procedural law that establishes a national policy and planning process for addressing effects, as the result of federal actions, on the environment. Congress passed NEPA as the national policy for a “better human environment.” The “human environment” includes physical, natural, social and cultural elements of the environment. Important historic and cultural aspects of our natural heritage are explicitly included as elements of our natural environment that merit preservation in accordance with provisions of NEPA. The Act also directs Federal agencies having special expertise (e.g., National Park Service and the Advisory Council on Historic Preservation) to be part of the environmental impact statement process.

To accomplish this policy, NEPA requires that, before the Federal Government can fund or implement an action, agency decision-makers must study the impacts that the proposed action and alternatives will have on the environment, and make that information available to the public. As you learned in the Introductory Course on FEMA’s Environmental and Historic Preservation Compliance Process, FEMA’s regulations that tailor NEPA to FEMA’s programs are located in 44 CFR Part 10.

There are four possible outcomes under NEPA:

1. Statutory Exclusion, called a STATEX
2. Categorical Exclusion, called a CATEX
3. Environmental Assessments, called EAs, which may result in a Finding of No Significant Impact (FONSI) or
4. Environmental Impact Statements(s)

Over 94% of FEMA projects are Statexes, about 5% are Catexes, and the rest are EAs.

In coordinating historic preservation compliance with NEPA, it is important to remember that Statexed and Catexed projects are not excluded from compliance with NHPA.

Sections of 36 CFR Part 800 (800.8(a)) specifically address coordination between NEPA and Section 106. The regulation encourages early coordination and directs that consulting parties should be prepared to consult early in the NEPA process, when purpose and need are being defined and a wide range of alternatives is open. For FEMA, the planning stage of NEPA is more difficult for response and recovery projects, for which applicants are submitting projects to repair disaster damage. Mitigation programs, however, involve more planning and are therefore much more conducive to such early coordination.

In addition, the regulation encourages agencies to include “appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of

any adverse effects” in EAs, FONSI, EISs and Records of Decision (RODs). For NEPA review of a project in which historic properties are adversely affected, FEMA ensures that a separate Memorandum of Agreement is complete and becomes part of the NEPA documentation (FONSI or ROD).

Although 36 CFR Part 800 provides for the use of the NEPA process and documents to comply with Section 106 in lieu of the procedures set forth in 800.3 through 800.6, FEMA has made the decision to not follow this path at the present time. FEMA does, however, closely coordinate the public participation elements of both NEPA and Section 106.

2. Archeological and Historic Preservation Act of 1974 (AHPA)

The Archeological and Historic Preservation Act is intended to preserve historical and archeological data that may be threatened by dam construction or other alterations of the terrain.

The Act requires FEMA and other Federal agencies to notify the Secretary of Interior of any construction or license for construction of a dam or any Federal project that may destroy significant scientific/archeological data. The Secretary may survey the area to recover and preserve data, which she determines to be in the public interest, and will consult with interested parties to determine ownership and the most appropriate repository for any relics recovered.

FEMA staff should understand that notifying the Interior Secretary, as required by AHPA, does not constitute compliance with Section 106 of the National Historic Preservation Act.

3. Archaeological Resources Protection Act of 1979 (ARPA)

ARPA prohibits unauthorized excavation on Federal and Indian lands. The law is intended to secure archeological resources and to foster cooperation between governmental authorities and the archeological community with regard to archeological resources and data.

Anyone may apply for a permit to excavate or remove archeological resources located on Federal or Indian lands. A permit may be issued if the:

- applicant is qualified
- activity furthers archeological knowledge in the public interest
- resources remain property of the U.S. and
- activity is consistent with management of public lands.

If a permit may cause harm or destruction of any religious or cultural site, the Federal land manager shall, before issuing a permit, notify any Indian tribe that may consider the site to have religious or cultural significance. Indian tribes or tribal members do not require a permit for excavation or removal of any archeological resource on Indian lands, except in the absence of tribal law regulating such removal or excavation.

Unlike NHPA, ARPA provides for both civil and criminal penalties for failure to comply with the Act.

4. Native American Graves Protection and Repatriation Act of 1990 (NAGPRA)

NAGPRA requires FEMA and other Federal agencies, as well as museums receiving federal funds, to inventory their holdings of Native American cultural items, including human remains and objects associated with funerals or burials, and develop written summaries for unassociated funerary objects, sacred objects, and objects of cultural patrimony that are in the collections they own or control. Agencies must notify Indian Tribes or Native Hawaiian organizations that appear to be culturally affiliated with the items in their holdings, and offer them the opportunity to claim the remains and items.

The second principal intention of the law is the protection, on Federal and Tribal lands, of Native American graves and other cultural items still located within archaeological sites. On Federal and Tribal lands, archaeological investigations for planning or research purposes, or other land-modifying activities that inadvertently discover cultural items require FEMA or the Tribe involved to consult with affiliated or potentially affiliated Native Americans concerning the treatment and disposition of these items.

When intentional excavation and removal of Native American human remains and cultural items from Federal and Tribal lands must occur, this activity may proceed only with a permit issued pursuant to the Archaeological Resources Protection Act after consulting with the appropriate Tribe. If an inadvertent discovery is made of Native American remains or objects in connection with an activity on Federal or Tribal lands, the activity must cease in the area of discovery, a reasonable effort must be made to protect the items discovered before resuming activity, and the appropriate Federal agency or Tribal authority must be notified

NAGPRA requirements may overlay Section 106 requirements of the National Historic Preservation Act (NHPA) when undertakings occur on Federal or Tribal lands.

5. American Indian Religious Freedom Act of 1978 (AIRFA)

AIRFA preserves and protects, for American Indians, their inherent right of freedom to believe, express and exercise the traditional religions of the American Indian, Eskimo, Aleut and Native Hawaiians. The intent of AIRFA has been interpreted as ensuring that Native Americans obtain First Amendment protection, but not to grant them rights in excess of the First Amendment.

Specifically, AIRFA preserves and protects for American Indians:

- access to sites
- use and possession of sacred objects
- freedom to worship through ceremonials and traditional sites.

If a place of religious importance to American Indians may be affected by an undertaking, AIRFA promotes consultation with Indian religious practitioners, which may be coordinated with Section 106 consultation.

Amendments to NHPA in 1992 strengthened its interface with AIRFA by clarifying that:

- properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.
- in carrying out its responsibilities under Section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to the protected properties.

6. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (1994)

Executive Order 12898 focuses Federal attention on the environmental and human health conditions in minority and low-income communities with the goal of achieving environmental justice.

Environmental justice means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

The Order makes achievement of environmental justice part of the mission of Federal agencies by identifying and addressing disproportionately high and adverse human health or environmental effects of Federal programs, policies and activities on minority populations and low-income populations.

In addition, this Order requires federal agencies to provide minority and low-income communities access to public information on, and an opportunity for public participation in, matters relating to human health or the environment.

7. Executive Order 13007: Indian Sacred Sites (1996)

Executive Order 13007, signed by President Clinton on May 24, 1996, requires Federal land-managing agencies to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites. It also requires agencies to develop procedures for reasonable notification of proposed actions or land management policies that may restrict access to or ceremonial use of, or adversely effect, sacred sites.

Sacred sites are defined in the executive order as “any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.” There is no review of such determinations by Federal agencies.

In 2001, the Advisory Council on Historic Preservation (ACHP) provided additional guidance to Federal agencies regarding the relationship between E.O. 13007 and Section 106:

It is important to note that a sacred site may not meet the National Register criteria for a historic property and that, conversely, a historic property may not meet the criteria for a sacred site. However, in those instances where an undertaking may affect a historic property that is also considered by an Indian tribe to be a sacred site, the Federal agency should, in the course of the Section 106 review process, consider accommodation of access to and ceremonial use of the property and avoidance of adverse physical effects in accordance with E.O. 13007.

To the extent that the requirements of the executive order and the Council's regulations are similar, Federal agencies can use the Section 106 review process to ensure that the requirements of E.O. 13007 are fulfilled. For example, E.O. 13007 requires that agencies contact Indian tribes regarding effects and the Section 106 regulations require consultation with Indian tribes to identify and resolve adverse effects to historic properties.

Consultation regarding the identification and evaluation of historic properties of religious and cultural significance to an Indian tribe could include identification of those properties that are also sacred sites. Similarly, consultation to address adverse effects to such historic properties/sacred sites could include discussions regarding access and ceremonial use.

While a Federal agency is not required to integrate the requirements of the executive order in the Section 106 review process, it may be beneficial for both the agency and the tribe to do so. Not only would it be more efficient to integrate the requirements, but it might also ensure that all issues and values are given appropriate and timely consideration.

**Federal
Emergency
Management
Agency**

Public Assistance Program

**Standard Operating
Procedure**

Historic Review



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Federal Emergency Management Agency

Historic Review

**Standard Operating Procedure
September 2001**

To report suspected fraud, waste, or abuse, please call
FEMA's hotline at 1-800-323-8603

Disaster recovery assistance is available without regard to race, color, national origin, sex, age, religion, disability, or economic status. Anyone who believes he/she has been discriminated against should contact the FEMA Helpline at 1-800-525-0321.

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Historic Review

Standard Operating Procedure

INTRODUCTION

Purpose

The Historic Review Standard Operating Procedure (SOP) provides procedural guidance to Federal and state personnel and applicants for the integration of historic preservation compliance into FEMA's Public Assistance (PA) Program. It also provides direction to FEMA and State personnel and applicants for the completion of historic review in a consistent and timely manner.

Scope

This SOP describes the historic review process outlined by the National Historic Preservation Act (NHPA), which requires Federal agencies to take into account the effects of their undertakings on historic properties. Federal agencies must consult with parties who have an interest in the effects of the undertaking in order to identify affected historic properties, assess the undertaking's effects on historic properties, and seek ways to avoid, minimize, or treat any adverse effects on historic properties. FEMA complies with NHPA and its implementing regulations (36 CFR Part 800) either by executing statewide programmatic agreements or by following standard regulatory procedures, commonly referred to as the *Section 106 Process*. This SOP outlines the steps required for compliance with NHPA under FEMA's programmatic agreement as well as under the standard Section 106 process.

FEMA is committed to continually reviewing and evaluating its historic preservation program. The agency seeks to incorporate changes in the Section 106 review process and to update when necessary the procedures outlined in this SOP.

Tools Necessary to Complete Historic Review Under Standard Section 106

(36 CFR Part 800: Protection of Historic Properties)

- Programmatic agreement, if executed
- Special Considerations Questions (Appendix A)
- Job Aid Checklist for the Historic Scoping Meeting (Appendix B)
- Project maps and photos (obtain from applicant)

- Assessment Form for Determination of Effect (Appendix A)
- FEMA's Historic Preservation Program Desk Reference

Overview

This document is organized into the following sections:

- **Introduction:** This section briefly discusses the purpose of the SOP and FEMA's responsibilities regarding historic preservation.
- **The Public Assistance Process and Historic Review:** This section describes the process through which FEMA undertakes historic review as part of the PA Program.
- **Roles and Responsibilities:** This section outlines the historic review responsibilities of the applicant, State Emergency Management Agency, FEMA's Environmental Liaison Officer, FEMA Public Assistance personnel, and the Historic Preservation Specialist.
- **Appendices:** This section includes forms and general reference materials.

Note: FEMA uses the term *Special Considerations* to describe issues other than program eligibility that affect the scope of work and funding for a project. Special Considerations include hazard mitigation and insurance in the PA Program, as well as compliance with Federal laws and regulations pertaining to floodplain management, environment, and historic preservation.

This SOP specifically addresses the historic preservation context of Special Considerations. Please refer to FEMA's SOP on Environmental Review for guidelines on the environmental compliance process.

HISTORIC REVIEW AND THE PUBLIC ASSISTANCE PROCESS

This section describes the Public Assistance process of achieving compliance with NHPA using either standard Section 106 review or the terms of an executed programmatic agreement.

Background

In a Disaster Field Office (DFO), the Environmental Liaison Officer (ELO) coordinates both the environmental and historic reviews necessary as a result of FEMA program activities. Within the PA Program, these activities may be delegated to the Special Considerations Liaison, who will work closely with the Public Assistance Officer (PAO), Public Assistance Coordinator (PAC), and Specialists to ensure that historic preservation review is addressed throughout the Public Assistance process.

In order to begin the process to comply with the NHPA, FEMA initiates coordination with the State Emergency Management Agency (SEMA), the State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO), and the Advisory Council on Historic Preservation (Council), if appropriate. The primary purpose of this coordination is to establish points of contact within a series of agencies so that required historic preservation review can proceed in an orderly and expeditious fashion.

FEMA works with participating agencies, either prior to or immediately following disaster declaration, to execute a historic preservation programmatic agreement in each state. This programmatic agreement establishes a streamlined historic review process through which FEMA complies with NHPA and other Federal historic preservation legislation. The Council and the National Conference of State Historic Preservation Officers have reviewed FEMA's approach to compliance and endorsed the major concepts in the programmatic agreement. If a programmatic agreement has not been executed in a given state, then FEMA must follow the standard requirements of Section 106 of the NHPA and all steps outlined in its implementing regulations (36 CFR Part 800). Because the programmatic agreement is the result of negotiation between FEMA, SEMA, the Council, and the SHPO/THPO, it is important to review carefully the stipulations for the agreement that has been executed.

Consideration of historic properties is critical to the effective delivery of Federal assistance through FEMA's Public Assistance (PA) Program, Hazard Mitigation Grant Program (HMGP), Pre-disaster Hazard Mitigation, Federal Assistance to Individuals and Households, and Flood Mitigation Assistance (FMA) Program. If FEMA fails to address these issues expeditiously, consequences may include project delays, denial of required permits, legal action, or even the de-obligation of Federal funding. Consideration of historic proper-

ties as early as possible in the implementation of FEMA's programs can prevent many of these consequences.

Pre-Disaster Planning

The periods of time between disasters offer crucial opportunities to prepare for possible future disasters. FEMA regional staff and the SEMA should stay current with any changes to FEMA regulations and policies that may affect NHPA compliance, as well as monitoring any changes to the NHPA and its implementing regulations. The SEMA should maintain a working relationship with the SHPO/THPO. This is particularly important since often there is little regular interaction between the SEMA and SHPO/THPO. At the same time, FEMA should discuss unique historic and archeological issues in the state with the SHPO/THPO.

FEMA's Regional Environmental Officers (REOs) play the most important and central role in pre-disaster planning. To achieve the greatest benefits from early coordination, the following steps outline the sequence of activities that should be carried out:

1. The FEMA REO initiates contact with the SEMA and SHPO/THPO to establish points of contact for addressing future historic preservation issues in the event of a Federally declared disaster. The REO and SEMA should cultivate and maintain a good working relationship with the SHPO/THPO.
2. The REO should take the lead to establish inter-agency contacts, initiate consultation, develop lists of state, regional, and local preservation organizations, and identify major historic preservation concerns in the region.
3. Whenever possible, the REO should make available preparedness measures on protecting historic properties and cultural resources to preservation organizations and cultural institutions.
4. The REO should negotiate and execute a programmatic agreement for the disaster and distribute copies to SEMA and SHPO/THPO. Whenever possible, programmatic agreements should be executed prior to a disaster declaration.

Preliminary Damage Assessments

A Preliminary Damage Assessment (PDA) is conducted by FEMA and SEMA to document the impact and magnitude of a disaster. Its purpose is to verify that the response and recovery efforts needed to respond to the disaster are beyond state and local capabilities. The PDA team generally consists of Federal and state inspectors, a field coordinator, and may include the FEMA REO. The field coordinator should designate a Special Considerations Point of Contact (POC) to expedite the process of collecting information on historic

resources that may be affected by FEMA programs and to generally minimize confusion. PDA team members should obtain any available historic information that the potential applicant can readily provide. Such observations should be noted on the PDA. Due to time constraints, however, there can be no verification of the information provided at the time of the PDA.

The applicant representatives should have a general familiarity with the historic resources associated with their facilities and should be asked to share that information with the PDA inspection teams. The collection of project coordinate location as data (latitude/longitude) using Global Positioning System (GPS) units is encouraged for mapping PDA information.

All information collected during the PDA should be provided immediately to the FEMA Public Assistance Officer (PAO).

Scoping Process

As assigned by the PAO, the Special Considerations Liaison or the ELO is responsible for coordinating with the State, PAO, and the SHPO/THPO on the identification of any potential historic properties that may be affected by Public Assistance activities.

As part of the coordination process, a streamlined strategy will be developed to address potential historic preservation issues. Prior to that coordination, the REO/ELO will work closely with the PAO to interpret the PDA data for potential historic resources and will coordinate with FEMA's Regional Office to obtain FEMA requirements for historic preservation review and other historic preservation issues relating to previous disasters. The ELO will then schedule scoping meetings with the appropriate state and Federal agencies to initiate consultation on historic issues.

After the scoping meetings, the Special Considerations Liaison or the ELO will make Historic Preservation (HP) Specialist staffing recommendations to the PAO. Upon receiving comments from the PAO, the Special Considerations Liaison or the ELO will develop *Disaster-Specific Guidance for Environmental Considerations* (herein called Disaster Specific Guidance), including a section on historic considerations. The PAO will review this guidance at the Field Briefing with all staff members, including the Special Consideration staff.

Applicant Briefings

The State is responsible for conducting Applicant Briefings. FEMA staff, including the ELO, may attend at the invitation of the State. FEMA should encourage the SEMA to invite relevant environmental and historic resource agencies, including the SHPO/THPO.

These briefings are intended to introduce the potential applicants to the various disaster recovery programs. Applicants also have the opportunity to apply for disaster assistance.

Applicant Briefings have a diverse audience and a great deal of information must be given in a short period of time. Because there is little time to address historic review in detail, the SEMA should inform the audience that FEMA has procedures available to assist applicants in the historic review process. The SEMA should also advise applicants that compliance with NHPA requires that damaged historic structures be secured and repair work not begun until historic review has been completed. In the event that structures are in imminent danger of failure, applicants should alert FEMA/SEMA immediately so that important historical information can be recorded before the resource is lost. The Applicant Briefing should end with a question and answer period when applicants can alert the State official of any immediate historic preservation issues or needs. The SEMA should alert FEMA of any such issues following the briefing.

Field Briefing

The PAO will conduct Field Briefings before the PACs begin their Kickoff Meetings. The purpose of the briefing is to inform FEMA staff of potential issues, program priorities, data about the disaster, reporting requirements, and any unique procedures that will be undertaken at the DFO. The PAO, ELO, or the Special Considerations Liaison will present the Disaster Specific Guidance.

After the briefing, all PA Program staff should have a general understanding of known historic requirements, including whether a programmatic agreement has been executed in the affected state(s), and how historic and cultural resources will be identified, evaluated, resolved, and documented.

The Kickoff Meeting

The Kickoff Meeting provides an opportunity for PA Program staff to introduce applicants to program requirements. The PAC, with the assistance of the State-Applicant Liaison (SAL), will schedule and conduct the meeting. The PAC will discuss Special Considerations issues and concerns. The PAC will provide copies of the *Special Considerations Questions* and will stress the need for Section 106 compliance. The PAC will encourage the applicant to bring a listing of damages and estimated costs to begin this discussion. If the PAC knows that an applicant has a significant number of historic resources or issues, a Historic Preservation (HP) Specialist should attend the Kickoff Meeting to address historic review needs. The PAC should review applicant-specific information with the HP Specialist prior to the meeting.

Project Formulation and Historic Review

Project formulation is the process through which eligible projects are identified and reviewed. Information on a project, including a description of the damaged facility and the necessary repairs, must be compiled on a Project Worksheet (PW). Historic issues are also identified at this time with the completion of the Special Considerations Questions form by the applicant and its review by the PAC. Relevant historic information about the damaged facility should be recorded on the PW, including the date of original construction, the identification of any known historic significance associated with the facility, and an assessment of whether the proposed work can be confined to the original footprint of the structure. If possible, photographs of the historic or cultural resource should be included.

Historic review requirements should be addressed at every stage of the project formulation process. At this time, the PAC identifies historic or potentially historic properties and coordinates with the ELO and an HP Specialist to resolve any historic issues. The program's goal is to have the HP Specialist begin the historic review while the applicant or the Project Officer develops each scope of work. The HP Specialist may have to coordinate review with other specialists to address hazard mitigation, insurance, or environmental issues. The HP Specialist is also responsible for keeping the PAC informed on the status of the review efforts.

In the cases where applicants develop their own PWs for small projects, FEMA and the State will validate only a sample, usually 20% of the small projects submitted. However, all projects with potential historic preservation issues are separately reviewed by the HP Specialist and are not part of the 20% that are validated. One of the responsibilities of the Validation Specialist is to confirm that there are no historic review requirements for a project where none were previously noted.

Upon completion of the historic review, the HP Specialist will confer with the PAC on his/her findings and recommendations. The PAC may meet with the applicant on the findings or may request that the HP Specialist do so. The PW is then finalized with all terms and conditions for historic review compliance.

Projects cannot be approved for funding until all compliance requirements have been agreed to, formally documented as required by 36 CFR Part 800, and documented in the Case Management File (CMF). The PAC will advise the HP Specialist as to the proper procedures for entering information directly into the CMF.

USING THE STANDARD SECTION 106 PROCESS

If a programmatic agreement has not been executed before or immediately after the disaster, the following review process should be followed:

Step 1: Initiating the Section 106 Review Process

FEMA is responsible for integrating Section 106 review early in the project planning process. To initiate the standard Section 106 review process, FEMA must establish whether or not an undertaking exists, as defined in 36 CFR §800.3(a). An undertaking can be a FEMA-funded action, project, program, or activity. Since all PA funded activities are considered to be undertakings, FEMA must determine whether the proposed scope of work has the potential to affect historic properties. If FEMA determines that no undertaking exists (36 CFR §800.16(y)), or there is an undertaking but it does not have the potential to affect historic properties, then FEMA has no further responsibilities under the Section 106 process. FEMA should document the steps taken to establish whether an undertaking exists in the project file.

FEMA should initiate the Section 106 review process whenever it is clear that the type of Public Assistance project or activity has the potential to affect a historic property. The potential exists if the project includes work that will not substantially match the pre-disaster condition of the facility, if the project expands beyond the footprint of the facility, and/or if the project involves ground-disturbing activities on previously undisturbed soil. These projects include, but are not limited to, improved or alternate projects, mitigation activities, emergency demolitions, and ground-disturbing activities associated with debris disposal. This potential may become evident during the Scoping Process, Applicant Briefing, or Kickoff Meeting. FEMA, SEMA or the applicant may also record historic issues on the PW or the Special Considerations Questions form.

If FEMA determines that an undertaking has the potential to affect historic properties, it must begin the consultation process with certain agencies, individuals, and the public as defined in the Section 106 regulations. To begin this process, the PAC must forward the PW to the HP Specialist or notify the HP Specialist as soon as the project becomes known. Consulting parties must include the respective SHPO/THPO and SEMA representatives, as well as representatives of the local government with jurisdiction over the area in which the effects of an undertaking may occur, and applicants for Federal assistance (36 CFR §800.2(c)(1)(2)(4)(5)). Furthermore, FEMA must consult with any Indian tribe or Native Alaskan or Hawaiian organization that attaches religious and/or cultural significance to affected historic properties (36 CFR §800.2(c)(3)).

FEMA also consults with the SHPO/THPO to identify any other parties entitled to be consulting parties and invites them to participate in the Section 106 review process (36 CFR §800.3(f)). Other individuals and organizations with a demonstrated legal, economic, or preservation interest may ask to participate, whereupon FEMA must consult with the

SHPO/THPO (36 CFR §800.2(c)(6), 36 CFR §800.3(f)(3)) to determine the validity of their participation. Finally, FEMA must consult with the SHPO/THPO to prepare a plan for involving the public in the Section 106 review process (36 CFR §800.3(e)).

Step 2: Identification and Evaluation of Historic Properties

If a FEMA project or activity has the potential to affect historic properties, FEMA is responsible for determining whether or not the properties are listed or eligible for listing in the National Register of Historic Places. This responsibility includes determining the scope of identification efforts, identifying historic properties, and evaluating their historic significance. Throughout this entire process, FEMA must consult with the SHPO/THPO, Indian tribes, and Native Alaskan or Hawaiian organizations about properties to which they attach religious and cultural significance. The SHPO/THPO should assist FEMA in gathering information about historic properties, review and comment on FEMA's determinations of eligibility and determinations of effect, and provide consultation to resolve any adverse effects.

The identification and evaluation of historic properties must be conducted by someone who meets the Secretary of the Interior's Professional Qualifications Standards, as determined by FEMA's Federal Preservation Officer (FPO).

To determine the scope of identification efforts, FEMA consults with the SHPO/THPO (36 CFR §800.4(a)) to define the Area of Potential Effects (APE), which is the geographic area or areas within which an undertaking may directly or indirectly cause alterations to the character or use of historic properties. FEMA also reviews existing information about historic and cultural resources, seeks information from parties likely to have knowledge of or concerns about the area, and gathers information from Indian tribes and Native Alaskan and Hawaiian organizations.

Based on information gathered, FEMA takes the steps necessary to identify historic properties within the APE. This identification process typically begins with background documentary research followed by an identification survey.

For the purpose of FEMA activities, the term *historic property* generally refers to any building, site, structure, object, or district fifty years of age or older. To be eligible for the National Register of Historic Places, such resources must be significant when evaluated in relationship to major historical trends in a community, state, or the nation. Eligible properties must also possess integrity, or qualities that authenticate a property's historic identity. Some properties less than fifty years old may also be eligible for the National Register if they are exceptionally significant. The ELO or the Special Considerations Liaison should coordinate with the SHPO/THPO to obtain a listing of properties in the declared counties that have previously been determined eligible for the National Register, if available. If a property is not on the list, it still may be eligible for the National Register.

The following are some examples of historic properties that may arise in FEMA activities:

- **Buildings:** residences, courthouses, city halls, factories, schools, libraries
- **Sites:** archaeological sites, battlefields, traditional cultural properties, cemeteries
- **Structures:** bridges, lighthouses, roads, culverts, dams, power plants
- **Objects:** sculptures, monuments, fountains, statuary
- **Districts:** college campuses, central business districts, irrigation systems, industrial complexes, transportation networks

To identify historic properties, FEMA, the State, or the applicant consults with the SHPO/THPO, Indian tribes, and Native Alaskan or Hawaiian organizations to gather information for identifying properties of historic, religious or cultural significance.

If FEMA identifies potentially historic properties, then the HP Specialist, PAC, or Project Officer should consult with the applicant, the SHPO/THPO, Indian tribes, and Native Alaskan or Hawaiian organizations to try to redesign the project so as to avoid all potentially eligible historic properties. If any resources cannot be avoided, then additional evaluation may be required to determine whether or not such resources are eligible for the National Register.

During evaluation, FEMA uses the information gathered in the identification phase to determine the National Register eligibility of properties not previously evaluated for their historic significance. In some instances, FEMA may need to assess the significance of previously evaluated historic properties to determine whether the property's historic integrity may have been affected by the disaster, other intervening acts, or the passage of time.

In consultation with SHPO/THPO, Indian tribes, or Native Alaskan and Hawaiian organizations, FEMA applies the National Register Criteria (36 CFR Part 63) to properties identified within the APE that have not been previously evaluated for National Register eligibility. If FEMA determines that the historic properties meet any of the National Register Criteria, and the SHPO/THPO agrees, FEMA considers the property eligible for the National Register for Section 106 purposes. If FEMA and the SHPO/THPO agree that the Criteria are not met, the property is ineligible for National Register listing.

If FEMA and the SHPO/THPO are not in agreement as to whether a property meets the Criteria, FEMA must obtain a formal determination of eligibility from the Keeper of the National Register of Historic Places (Keeper) pursuant to 36 CFR Part 63. Also, when a Native Alaskan or Hawaiian organization or an Indian tribe does not agree with the finding, it may ask the Council to request that FEMA obtain a determination of eligibility from the Keeper.

Should FEMA determine that there are either no historic properties present or there are historic properties present but the undertaking will have no effect on them, FEMA shall

provide documentation to the SHPO/THPO, notify all consulting parties, and make information available to the public prior to approving the project. If the SHPO/THPO does not object within 30 days, the review process is complete.

Step 3: Assessing Adverse Effects

FEMA must proceed to the assessment of adverse effects when it finds that historic properties are affected or the SHPO/THPO or Council objects to a *no historic properties affected* finding. Adverse effects occur when an undertaking directly or indirectly alters the characteristics of a historic property that qualify it for inclusion in the National Register.

To assess adverse effects, FEMA must 1) notify all consulting parties and invite their response and 2) apply the criteria of adverse effect in consultation with the SHPO/THPO and any Indian tribes and Native Alaskan or Hawaiian organizations attaching religious and cultural significance to identified properties. FEMA must consider the views provided by consulting parties and the public.

No Adverse Effect Determinations

- If FEMA proposes a determination of *no adverse effect* (NAE), pursuant to 36 CFR §800.5(b) and (c), FEMA should submit the finding and all relevant documentation to the SHPO/THPO for a 30-day review period. FEMA should concurrently notify all consulting parties of the finding and submit all relevant documentation as listed in §800.11(e). If the SHPO/THPO concurs with the finding and the Council is not reviewing the finding pursuant to §800.5(c)(3), FEMA may proceed with the action. If the SHPO/THPO does not respond within 30 days, FEMA may assume concurrence and proceed with the action or consult with the Council in lieu of the SHPO/THPO, pursuant to §800.3(c)(4).
- The Council will only become involved in the review of a project if:
 - 1) The SHPO/THPO or any consulting party does not concur with FEMA's finding of *no adverse effect* and efforts to resolve the disagreement are unsuccessful. In this case, FEMA must submit the proposed project and determination, the scope of work, and all accompanying documentation, as outlined in §800.11(e), to the Council.
 - 2) The Council may, on its own initiative, request to review the NAE finding within the 30-day SHPO/THPO review period. This review will generally be in response to a request by an Indian tribe, Native Alaskan or Hawaiian organization, or other consulting party. The Council's decision to review the finding will be guided by the criteria in Appendix A of the regulations.

- If the Council chooses to review the finding, it must comment within 15 days of receiving the documented finding from FEMA as to whether FEMA correctly applied the adverse effect criteria in consultation with the SHPO/THPO. If the Council has not responded to FEMA within the 15-day period, FEMA may assume concurrence and proceed with the project. In the event that FEMA will not conduct the project as proposed in the NAE finding, FEMA must reopen consultation under §800.5(a).

Adverse Effect Determinations

- If FEMA determines that an action will adversely affect a historic property, FEMA must consult further with the SHPO/THPO and other consulting parties identified earlier under §800.3, including Indian tribes and Native Alaskan and Hawaiian organizations, to develop and evaluate effects.
- FEMA must notify the Council of all adverse effect determinations during the earliest phases of consultation, generally as soon as enough background documentation is available to meet the requirements of §800.11(e). The notice should invite the Council to participate when FEMA wants the Council to participate, when the project will adversely affect a National Historic Landmark, or when a programmatic agreement under §800.14(b) will be developed. The Council may also be invited to participate in the case of dispute resolution. If FEMA believes the *Criteria for Council Involvement* (Appendix A to 36 CFR Part 800) applies to the project, FEMA may also provide a written explanation to the Council.
- The Council must advise FEMA within 15 days if it will participate in the consultation process. FEMA may proceed with the consultation if the Council has not responded within the 15-day period. If there is a change in the project or the review process, FEMA should notify the Council. As a result of this notice or on its own initiative, the Council may reassess its decision and determine to participate in the consultation.

Step 4: Resolving Adverse Effects

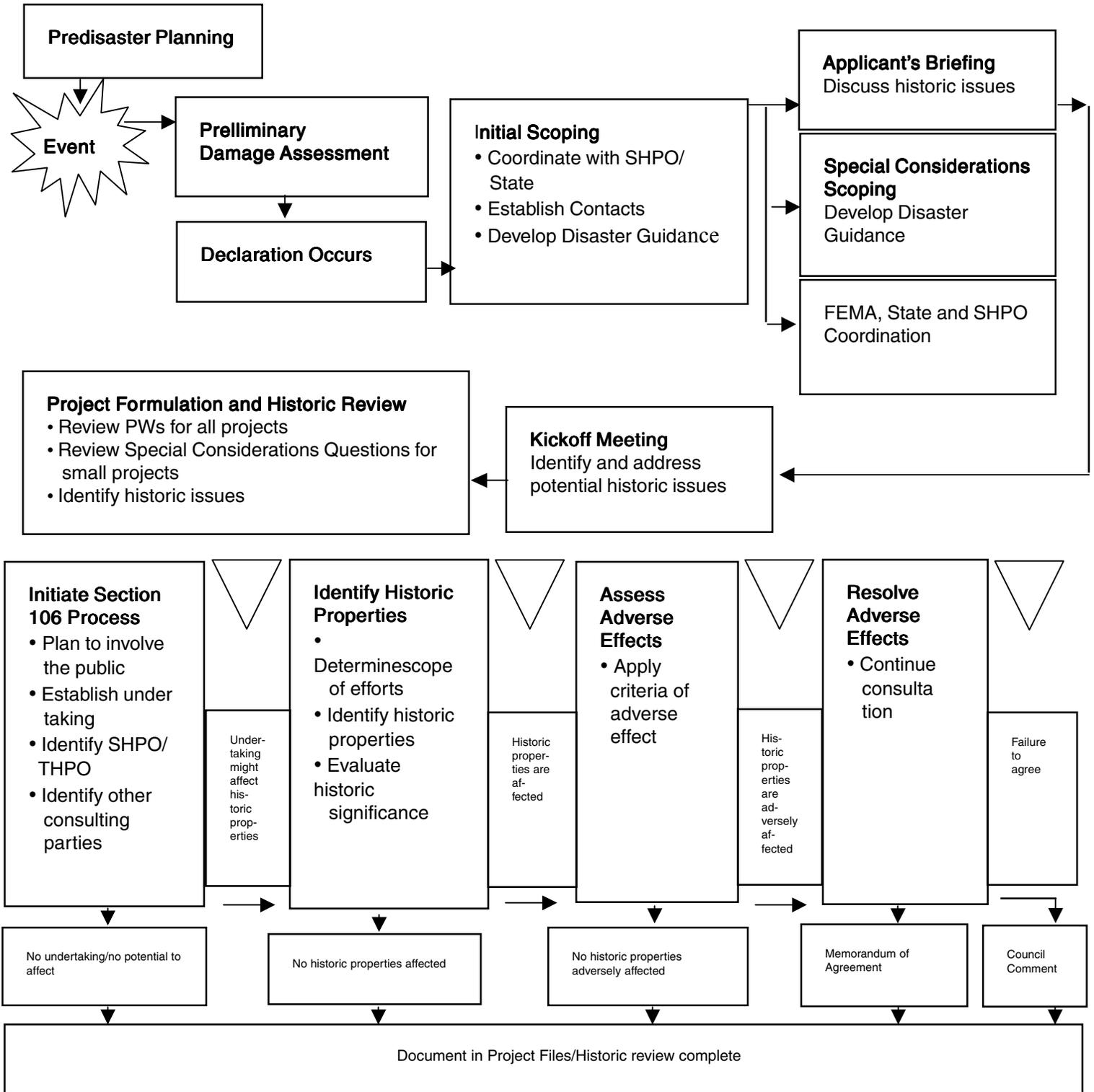
Consultation to resolve adverse effects usually results in a Memorandum of Agreement (MOA), which outlines agreed-upon measures that FEMA will take to avoid, minimize, or treat the adverse effect.

FEMA may not approve project funding until the MOA has been executed. Once executed, all signatories are responsible for ensuring that the terms of the MOA are followed. If consultation is unsuccessful, the Council renders advisory comments to the head of the Federal agency. FEMA takes the comments into account when making a final decision on the undertaking (36 CFR §800.7).

Emergency Review

Undertakings that result from immediate threats to life and safety within the first 30 days of a disaster declaration are considered emergencies for the purposes of Section 106 review. In the event of an emergency, FEMA must follow the emergency review procedures outlined in 36 CFR §800.12. The Federal Coordinating Officer (FCO) or ELO shall certify in writing to the SHPO, the Council, and any Indian tribe or Native Alaskan or Hawaiian organizations that may attach religious or cultural significance to historic properties, the need for FEMA to conduct expedited project review for the emergency. The parties will have seven days to comment on the action. When it is not possible to give seven days for comment, verbal notification to the SHPO/THPO and Council, followed in writing, is acceptable. FEMA must take the comments into consideration before proceeding with the emergency action. Should FEMA determine that it is necessary to extend the emergency review period beyond 30 days, FEMA's Federal Preservation Officer shall consult with the Council.

HISTORIC REVIEW FLOWCHART (STANDARD SECTION 106)



PROGRAMMATIC AGREEMENTS

Programmatic agreements are executed either prior to or immediately following disaster declarations. The programmatic agreement establishes a streamlined historic review process through which FEMA complies with NHPA and other Federal historic preservation legislation. A programmatic agreement is a product of negotiation between FEMA and other Federal and state agencies.

Programmatic agreements are usually disaster-specific, but may also be executed for specific periods of time, such as two or four years. All disaster personnel dealing with historic issues should read and understand the terms of the programmatic agreement for their disaster.

Selected Elements of a Programmatic Agreement

Whereas Clauses

The Whereas clauses at the beginning of a programmatic agreement identify the FEMA programs covered by the agreement and stipulate that the affected State will receive financial and technical assistance from FEMA to administer the disaster assistance programs. The clauses note that an executed programmatic agreement allows FEMA to expedite the historic review process by excluding the Council and SHPO/THPO from review of certain routine activities with little potential to affect historic properties. The body of the agreement itself stipulates the steps necessary to consider the effects of undertakings on historic properties.

Applicability

Programmatic agreements remain in effect for the duration of each identified disaster in a specific state or for the period of time specified in the agreement. The agreement outlines the FEMA programs for which the programmatic agreement is applicable, and states that FEMA has no obligation to consider the effects of Federal assistance to individuals and households with the exception of construction and ground disturbing activities associated with temporary housing. The agreement also specifies that undertakings that do not qualify for review under the terms of the agreement will be reviewed in accordance with 36 CFR Part 800.

Initial Coordination

The agreement sets out the steps necessary to follow at the beginning of a disaster declaration. Specifically, FEMA initiates a scoping process with the SHPO/THPO and SEMA to

establish points of contact and exchange vital information. The SHPO provides a list of historic properties within the declared disaster area and assists FEMA in identifying Federally recognized Indian tribes, Native Alaskan or Hawaiian organizations, historic groups, and individuals to inform them of the implementation of the programmatic agreement. The initial coordination period is also the time when FEMA and SEMA identify potential landfill sites for debris disposal and areas for chipping vegetation debris.

Emergency Project Review

Emergency review procedures may be followed in response to an immediate threat to human health and safety. The emergency review period begins at the time that FEMA determines that an emergency undertaking is required and remains in effect for a period not to exceed 30 days. Procedures are set out for informing the SHPO/THPO of the emergency undertaking and providing available information about the condition of the property, the proposed action, and the measures that would take the adverse effect into account.

Standard Project Review

This section describes the procedures for standard historic preservation review. Certain projects do not require review due to programmatic allowances, as defined in Appendix 1 of the agreement. Information is provided for the review of small and large projects. Procedures are discussed for determining the Area of Potential Effects (APE) of an undertaking and whether the proposed project has the potential to affect historic properties. The Secretary of the Interior's Standards for the Treatment of Historic Properties are taken into consideration and provisions are recommended for the review of undertakings that may have an adverse effect on historic properties.

Resolution of Adverse Effects

This section discusses the need for FEMA to document when an undertaking will adversely affect a historic property. Treatment measures are presented to consider the effects of an undertaking. Information is provided on the development and implementation of a Memorandum of Agreement or Secondary Programmatic Agreements to identify treatment measures and programmatic conditions that will be required to satisfy historic review requirements.

Ground Disturbing and Archeological Activities

Projects that have the potential to affect archeological resources within the APE are reviewed in this section. If archeological properties exist within the APE, FEMA and the project applicant shall consult to develop ways to avoid such properties. All project work shall cease if human remains or burial artifacts are uncovered in the project area.

Tribal Participation

FEMA is obligated to determine if there are Indian tribes, Native Alaskan, or Native Hawaiian groups that might attach religious and cultural significance to historic properties that may be affected by the disaster. Identified tribes are invited to become a party to the programmatic agreement.

Public Participation

Public participation is essential to informed decisionmaking. FEMA consults with the SHPO/THPO to determine if there are individuals or organizations with a demonstrated interest in the preservation of historic resources affected by the disaster.

Anticipatory Actions

FEMA will not grant assistance to an applicant who has intentionally demolished or otherwise significantly affected a historic property with the intent of avoiding historic review requirements.

Signatories

FEMA signatories to the programmatic agreement include the Readiness, Response and Recovery and Flood Insurance-Mitigation Directorates, and the Regional Director for the affected State. Other signatories include the State Emergency Management Agency, the State Historic Preservation Officer, and may include the Advisory Council on Historic Preservation and the Tribal Historic Preservation Officer when tribal resources are involved.

Appendix 1

Appendix 1 lists the project activities, known as programmatic allowances, that do not require review by the Council or SHPO/THPO.

APPLICANT ROLES AND RESPONSIBILITIES

An applicant is a State agency or department, local government, Indian tribal government, Alaskan native village, Native Hawaiian organization, or eligible non-profit organization that submits a request for Public Assistance. During the historic review process, the applicant plays an important role in identifying project-related historic information, which FEMA uses to comply with Federal historic preservation laws and regulations.

What do I need to know first about FEMA's historic review process?

- One goal of the PA Program is to complete the historic review process in a timely manner and with minimal impact on your disaster recovery efforts.
- During the process, FEMA can provide technical assistance in explaining and completing historic review.
- Intentional actions to avoid compliance with Federal historic preservation laws are termed “anticipatory actions” and may result in the denial of funding.

What can I do to expedite the historic review process?

- Tell the Public Assistance Coordinator (PAC) about historic properties associated with any of your projects as soon as possible. Include construction dates and any other relevant historical information in the project scope of work for all buildings and structures. The earlier FEMA knows about these issues, the more efficiently they can be addressed.
- Provide information that will help determine if your project involves historic properties by completing the Special Considerations Questions form as accurately as possible. Include any relevant information in the “comment” section of the form.
- A well-written scope of work can help ensure that the information you are providing to FEMA and SEMA includes all the information they need to successfully complete the historic review process for your project in a timely manner. In addition to clear photographs, detailed maps and accurate construction dates of known or potential historic properties within or near the project area, a detailed scope of work explaining your proposed project, and the methods that will be used to complete it is invaluable. Submittal of this scope of work will allow FEMA to determine what effects, if any, the proposed project may have on historic properties.
- If your project involves historic properties, work with FEMA and SEMA staff while they are completing the historic review process.

What do I need to do first when I discover that a project involves a historic property?

- Secure structures from physical alteration, illegal entry, and future damage.
- Save all easily recognizable damaged architectural details unless doing so is a threat to personal life and safety.
- Make no repairs to a historic property that may alter important features.
- Contact your PAC immediately and indicate the presence of a historic property on the Project Worksheet and Special Considerations Questions forms.

What will happen at the Applicant Briefing?

- In addition to describing FEMA programs, SEMA or FEMA staff will explain the importance of identifying any special considerations, such as historic review, that may be relevant to the recovery effort. The applicant packet includes a copy of the Special Considerations Questions form. (Appendix A).

What will happen at the Kickoff Meeting?

- The PAC or Project Officer (PO) will ask the applicant to identify the projects that may require historic review. Indicate to the PAC or PO those projects that will include work to properties at least 50 years old or that may affect undisturbed land.
- For those projects involving historic properties or undisturbed land, the PAC will explain to you how the necessary historic review will proceed.
- A Historic Preservation (HP) Specialist or Special Considerations Liaison may be present to meet with applicants and collect relevant information to expedite the historic review process. If not, the HP Specialist will contact you if additional information is needed for the historic review.
- The PAC will establish the time limitations for submitting small projects, generally 30 or 60 days. Failure to submit small projects within the established time frame will result in the project being elevated to a more detailed level of historic review.

How can I prepare for the Kickoff Meeting?

- The kickoff meeting is the applicant's opportunity to provide relevant information about damaged properties. Review your list of known historic properties and note the damages and other related considerations for each project. Generally, these considerations include whether there is a known historic property or the presence of pristine or undis-

turbed areas on or near the project site. Note the date of construction and whether the proposed project will change the footprint of the facility. Review the list with your jurisdiction's (city or county) planner responsible for historic preservation.

Do all projects undergo historic review?

- No, but all projects must be screened to determine if historic review is necessary. The first step of this screening is the accurate completion of the Special Considerations Questions form and a complete project scope of work. If historic review is required, the type of proposed work to repair the damaged facility will determine the level of historic review that is necessary.

What if I change the scope of work?

- If the scope of work is altered, immediately notify your PAC. All changes to the scope of work must be reviewed and approved by FEMA before construction begins. If the Disaster Field Office (DFO) has closed, notify SEMA, who will contact FEMA.
- Prepare a short summary of what aspects of the work have or will change and what unexpected conditions were encountered. Be ready to provide this information to the PAC.
- FEMA will review the work and advise you on how to proceed.

What if I encounter archeological properties?

- Cease all construction and ground disturbing activities immediately and contact the THPO/SHPO, SEMA, and FEMA.

What happens if an emergency situation exists?

Emergency situations may exist that pose threats to human safety and therefore require immediate action. If the action may potentially affect a historic property, an expedited review process is available for these situations. If an emergency situation exists:

- Notify the PAC or the HP Specialist as soon as possible with information regarding the emergency situation and any necessary emergency protective measures.
- FEMA will coordinate with you, the SHPO/THPO, SEMA, and the Council to conduct the appropriate historic review.
- If the situation is a threat to life and safety and you are unable to reach FEMA, SEMA or the THPO/SHPO in time to discuss the emergency, try to take photographs before the structure is lost. This may be the only documentation of the structure. Once it is gone, it is lost forever to the community.

Applicant Historic Review Checklist

Pre-Disaster Planning

- Familiarize yourself with the historic designation and significance of your facilities, which might include those listed or eligible for listing in the National Register of Historic Places or the State Register.
- Maintain contact with your jurisdiction's (city or county) planner who is responsible for local historic preservation and alert him/her to the potential need for technical support during the disaster recovery process.
- Ensure that you have the appropriate insurance information, inventories, and related documents available for your historic properties or those containing cultural objects.

Preliminary Damage Assessment

- Review your list of damaged sites for potential historic properties. Ensure that FEMA, SEMA, and Preliminary Damage Assessment (PDA) inspectors note this information in their reports.
- Let FEMA, SEMA, and the THPO/SHPO know if there are any potential historic properties that may pose a threat to human safety. Take photographs at a minimum before the resource is lost.

Applicant Briefing

- If there was significant damage to historic areas in your jurisdiction, relay this information to the SEMA official conducting the briefing.
- Review the information packet received at the briefing for information regarding historic review.

Kickoff Meeting

- Review your list of known damaged sites for potential historic properties.
- Review your list of known damaged sites with your jurisdiction's representative responsible for local historic preservation and note his/her concerns. Bring this information to the meeting, if applicable.

- Review the Special Considerations Chapter and the Special Considerations Questions form in the Applicant Handbook.

Project Formulation

- Provide complete and accurate descriptions of the damaged site and the proposed scope of work to return the facility to its pre-disaster condition, use, or function. Include construction dates and other relevant historical information.
- Complete the Special Considerations Questions form as accurately and completely as possible for each project
- Alert the PAC or PO when the facility will not be returned to its pre-disaster condition, use, or function.
- Assist the HP Specialist in the historic review process as needed.

Project Approval

- Understand the terms and conditions that must be met as a condition of receiving Public Assistance funds.
- Understand that any work undertaken to intentionally avoid historic review or affect a historic property in an unanticipated manner may jeopardize FEMA funding.

STATE EMERGENCY MANAGEMENT AGENCY ROLES AND RESPONSIBILITIES

Depending on the size and nature of the disaster, the State Emergency Management Agency (SEMA) is encouraged to participate in various levels of the Public Assistance process, including assigning an HP Specialist to work in the Resource Pool. These expenses are eligible as grant management cost provisions in accordance with the cost-share provisions outlined in the FEMA-State Agreement.

Following a disaster, do applicants' projects still have to comply with the National Historic Preservation Act?

Yes. Congress has not exempted FEMA and its disaster recovery assistance grants from the requirement to comply with the National Historic Preservation Act (NHPA). This includes actions such as temporary housing, debris removal, and the demolition of privately owned buildings with Public Assistance funds.

Is there any time-critical information that should be provided to applicants or to potential applicants?

Yes. During the Applicant Briefing, SEMA should advise applicants of the following points regarding historic facilities:

- Applicants should secure damaged historic structures and sites from physical alteration, illegal entry, and future damage until compliance issues associated with the NHPA are addressed.
- Applicants should identify historic components of a project as soon as possible. The earlier these conditions are known, the more quickly FEMA can address them. They must be addressed before funding approval.
- Applicants may not initiate demolition or construction on projects for which they are seeking Federal funding prior to NHPA compliance and subsequent approval from FEMA. This includes debris removal and the demolition of private property using Public Assistance funds. Any such *anticipatory actions* may jeopardize Federal funding.
- If it appears that an emergency action will affect a historic property, whether positively or adversely, the applicant must notify SEMA immediately. SEMA will then apprise FEMA of the situation right away. If the affected property is a standing structure, applicants should be directed to take clear, 35mm black & white photos (and color, if possible) of as much of the structure as is safe, prior to any emergency action. The photographs may end up being the only historical documentation the structure ever receives. If the

affected property is an archeological site, it may be possible to mobilize one or more archeologists on an emergency basis to perform some level of data recovery prior to the site's disturbance or destruction.

Should the State invite the State or Tribal Historic Preservation Officer (S/THPO) to the Applicant Briefing?

If it is immediately apparent that there may be a large number of damaged historic properties eligible for Public Assistance, you should request the State Historic Preservation Officer or Tribal Historic Preservation Officer (THPO) and/or FEMA's Environmental Liaison Officer (ELO) to attend the Applicant Briefing.

Where in the Public Assistance Program staffing structure is the State involved in historic review?

At the state level, all historic review should be coordinated through the State Public Assistance Officer (PAO). The State PAO should work together with the FEMA PAO to determine how the coordination of historic issues will take place between the two offices. The State may also have someone in a position equivalent to FEMA's HP Specialist to assist in completing historic review.

What responsibilities does the State have regarding changes to the applicant's scope of work or unexpected discoveries?

The State should notify FEMA immediately if:

- There are any changes to the approved scope of work.
- The project affects a previously unidentified historic property, such as an archeological site, or human remains are discovered.
- The project affects a known historic property in an unanticipated manner.

State Emergency Management Agency Historic Review Checklist

Pre-Disaster Planning

- Maintain contact with the FEMA Regional Environmental Officer to stay current on historic compliance issues.
- Notify the SHPO/THPO of any changes in FEMA's policies, regulations, and laws affecting historic properties.
- Include the SHPO/THPO in disaster recovery exercises.
- Maintain current staff contact lists for the SHPO/THPO and local historic preservation groups.
- Work with FEMA, the SHPO/THPO, and the Council to execute a programmatic agreement before a disaster occurs.

Preliminary Damage Assessment

- Direct State PDA inspectors to note in their reports any known historic characteristics of damaged sites and any potentially emergency situations where a historic resource poses a threat to human life and safety. Photographs should be taken, if possible, of threatened historic or cultural resources, and the SHPO/THPO should be notified.
- Encourage the use of location coordinates by GPS Units for mapping purposes.

Applicant Briefing

- If appropriate, invite the ELO and SHPO/THPO to attend the Applicant Briefing.
 - Tell potential applicants that, although a disaster has been declared, there will be a need for all projects affecting historic properties to comply with the NHPA. Emphasize to the applicants that the compliance process is streamlined to minimize delays to disaster assistance.
- Advise potential applicants that intentionally avoiding historic compliance or affecting historic properties in an unintentional manner may jeopardize funding.

- Instruct the Applicants to:
 - Secure historic properties from physical alteration, illegal entry, and future damage.
 - Identify any historic preservation issues associated with damaged sites as soon as possible.
 - Not begin work on historic properties until NHPA compliance is complete.
 - Alert the State or FEMA if emergency situations exist.

Special Considerations Scoping Process

- Provide a State counterpart to FEMA's ELO or Special Considerations Liaison.
- Attend the special considerations scoping meeting with FEMA and the SHPO/THPO.

Field Briefing

- Include a discussion of historic compliance issues and review of the Disaster-Specific in the briefing's agenda.

Kickoff Meeting

- Support the PAC in addressing project-specific historic preservation issues.

Project Formulation

- Provide Project Officers and HP Specialists with relevant information on historic properties and the review process, as available, to support the project formulation process.

PUBLIC ASSISTANCE OFFICER ROLES AND RESPONSIBILITIES

The Public Assistance Officer (PAO) is responsible for the effective and efficient operation of the Public Assistance (PA) Program. Timely, accurate, and consistent resolution of historic requirements is an important component of that responsibility. The implementation of a Public Assistance Program Operations plan and a staffing plan that includes plans to meet Federal historic preservation laws will help ensure that the desired program goals and objectives are met.

A summary of PAO responsibilities is included in the following checklist. Information below summarizes some of the more critical historic preservation responsibilities of the PAO.

What are the first historic preservation issues I should address?

- First, determine whether or not a programmatic agreement has been executed in the state in which the disaster has been declared. If a programmatic agreement has been executed, obtain a current copy of that agreement from the ELO. If not, immediately contact the Federal Preservation Officer (FPO) and your ELO, if appropriate, to ensure that negotiations are begun to execute the programmatic agreement.
- Contact the ELO as soon as he/she arrives at the DFO to coordinate staffing resources, discuss how historic issues will be addressed at the Field Briefing and Kickoff Meetings, discuss the authority given to PACs for the screening of projects for historic review, and any other relevant issues related to historic review.

How can the Federal Preservation Officer (FPO) assist me on my assignment?

- The FPO can provide assistance in obtaining resources such as Technical Assistance Contractors who have expertise in historic preservation requirements, mission assign tasks to another Federal agency with preservation expertise, and find other means of conducting the identification and evaluation of historic resources.
- The PAO should coordinate with ELO to contact the FPO at FEMA Headquarters.

What should be considered when I am staffing the Special Considerations Liaison position?

- The magnitude and complexity of a declared disaster will determine how you staff the Special Considerations Liaison position. For smaller and more compact disasters, a single person who has a broad understanding of the four Special Considerations Components may be designated as the Special Considerations Liaison. This person may

also serve as the Deputy ELO for small disasters. In this case, the ELO may assume the role of coordinating historic and environmental responsibilities, or may assign this responsibility to a deputy or a specialist. For catastrophic events, there may be several Special Considerations Liaisons, each with responsibility for a particular Special Considerations component.

- On smaller disasters, once the Special Considerations Liaison completes his or her scoping responsibilities and prepares the Disaster-Specific Guidance packets, he/she may be absorbed into the Resource Pool as a specialist. On catastrophic disasters, the Special Considerations Liaison may even be designated as a Deputy PAO.

When should I deploy the Special Considerations Liaison?

- In addition to selection of the Deputy PAOs and PACs, it is critical that the Special Considerations Liaison be part of the initial deployment. The PA Program process has established as a priority the identification and development of resolution strategies for special considerations prior to the initiation of the Kickoff Meetings.

Does the process differ for emergency situations?

- At times, emergency situations exist that require quick action regarding historic properties such as when a building has been damaged to the point of being a threat to safety and must be demolished. The following expedited process exists to handle situations that are a threat to life and safety:
 - The PAC should notify you immediately of the situation.
 - You may advise the PAC to notify the Federal Coordinating Officer (FCO) of the need for FEMA to conduct emergency project review for individual undertakings. You may also request the ELO to notify the SHPO/THPO and the Council. This written notification should include information on the property such as physical description, maps, and photographs as well as work proposed to mitigate adverse effects (See Appendix E: Sample Emergency Notification).
 - Alternately, you may contact the FPO directly or you may request the Special Considerations Liaison to complete this task.
 - There may be situations where the emergency is so immediate that verbal communication with the SHPO/THPO, Council, and FCO is necessary. The FPO can be helpful in facilitating this discussion.

Public Assistance Officer Historic Review Checklist

Pre-Disaster Planning

- Stay informed about FEMA's policies, regulations, and laws pertaining to historic preservation. The REO can provide this information.
- Ensure that such information is forwarded to SEMA.
- Review Program SOPs.
- Remain current on the REO's management reporting requirements for environmental/historic compliance.

Preliminary Damage Assessment

- Direct the PDA inspectors to collect any readily available information on the historic designation of damaged facilities.
- Consider the benefits and use of Global Positioning System (GPS) units to collect location coordinate information (e.g. latitude/longitude) for mapping purposes.

Initial Deployment to DFO

- Deploy a Special Considerations Liaison to begin the scoping process.
- Debrief the ELO on potential Public Assistance environmental and historic issues.
- Consult with the ELO on how Federal responsibilities are to be carried out.
- Coordinate information with the ELO/REO.

Applicant Briefing

- Check with SEMA to determine the nature of FEMA support.
- Encourage SEMA to request attendance of an HP Specialist and a representative from the SHPO/THPO if there are any damaged historic properties.

Special Considerations Scoping Process

- Ensure that the ELO is part of the scoping process and that compliance reporting requirements are identified.
 - Review the ELO or Special Considerations Liaison's recommendations for HP Specialist staffing.
 - Initiate specialist deployment through the ADD System (DAEs) or through Task Orders for Technical Assistance Contractors (TAC).
 - Ensure that the Disaster-Specific Guidance is complete prior to the Field Briefing.
 - Review the Disaster-Specific Guidance as prepared by the ELO or Special Considerations Liaison for completeness and accuracy.
 - Encourage the implementation of a programmatic agreement.

Field Briefing

- Review the Disaster-Specific Guidance completely with the staff and allow adequate time for questions and answers.
- Be specific on whether the PAC will direct all historic issues to the Specialists or if they will be delegated some authority to take historic compliance actions themselves.
- Define the management reports expected from all personnel regarding historic requirements and establish a timeline for submittals.
- Define the types of issues the PAC should elevate for resolution (i.e. policy guidance, controversial issues, etc.).

Project Approval

- Follow established guidelines on an internal quality control process to measure accuracy, timeliness, and consistency in the program.
- When an activity has been mission assigned to another Federal agency, ensure that historic compliance is satisfied. Allow the other Federal agency to handle all SHPO/THPO consultation directly. Request that FEMA be kept apprised of all consultations.

- Prior to DFO closure, finalize all management and status reports. Develop a strategy with deadlines to address any unresolved historic requirements.

PUBLIC ASSISTANCE COORDINATOR ROLES AND RESPONSIBILITIES

The Public Assistance Coordinator (PAC) is a customer service representative assigned to work with an applicant from the time of the disaster declaration through funding approval. The State-Applicant Liaison (SAL) is the title of the State's counterpart to the PAC. Whenever there is a reference to the PAC, it is assumed that coordination with the SAL has taken place.

What is my role in the historic review process?

The PAC has one of the most important roles in conveying the historic review requirements to the applicant and identifying the potential for historic issues in Public Assistance projects. On the front lines of the process, the PAC is in the position to communicate with applicants at the Kickoff Meetings at the beginning of the disaster to collect information about the historic nature of potential projects and to relay information to the applicants about FEMA's historic review process. The PAC is responsible for both the initial and final review of projects and is responsible for forwarding projects requiring historic review to the HP Specialist. The PAC then ensures that the historic review process is complete and documented prior to project approval.

The PAC is responsible for:

- Becoming familiar with the Disaster-Specific Guidance.
- If delegated the authority by the PAO, screening every large project for historic or potential historic requirements.
- Initiating the resolution of all historic issues and ensuring their completion in a timely manner. Appropriate environmental and historic preservation staff should be included in the resolution of all historic issues.
- Keeping the applicant informed of historic review status for their project(s).
- Ensuring that the Case Management File (CMF) has all proper documentation regarding the historic review process.
- Ensuring that all coordination documents are a part of the permanent project file.
- Ensuring that the proper compliance conditions are included on the Project Worksheet, and are completed, as requested.

When does historic review begin?

- Historic review begins with the screening that you, as the PAC, complete on every project to identify any historic considerations that may be associated with that project. If the PAO has not delegated you the authority to screen each project for potential historic issues, you should forward all project worksheets to the HP Specialist for an initial screening. The screening process can begin as early as the Kickoff Meeting or whenever the applicant establishes a list of their damaged facilities.
- As the PAC, you may assist SEMA in discussing historic review requirements at the Applicant Briefing. FEMA does not always attend these briefings, as they are SEMA's responsibility to organize, but FEMA may attend if invited. This task may also be delegated to the Environmental Liaison Officer (ELO) or Special Considerations Liaison.

What resources at the Disaster Field Office (DFO) are available to assist me with historic review?

- This SOP.
- FEMA's CD-ROM entitled "FEMA: Responding to More Than Disasters—National Historic Preservation Act."
- FEMA's Historic Preservation web site (www.fema.gov/r-n-r/hpindex.htm).
- FEMA's Historic Preservation Desk Reference.
- Disaster Specific Guidance for Environmental Considerations.
- Environmental Liaison Officer (ELO).
- Special Considerations Liaison.
- Historic Preservation (HP) Specialist.
- Public Assistance Officer (PAO).

What do I need to do to prepare for the Kickoff Meeting?

- Familiarize yourself with the PDAs for your assigned applicants in order to understand the types of damages or unique situations that your applicants may face. Plan to address these items if the applicants do not.
- Review the Disaster- Specific Guidance. This document should have been distributed and discussed at the Field Briefing. If you do not have the Disaster-Specific Guidance or missed the Field Briefing, contact the ELO or Special Considerations Liaison to obtain a packet.
- Review any available mapped data for your assigned areas. Maps may have been plotted from PDA information or from past disasters. Ask for such information at the

Field Briefing or from the ELO or Special Considerations Liaison.

- Review past disaster historic review issues associated with your assigned area. This should be outlined in the Disaster-Specific Guidance. If not, ask the ELO or Special Considerations Liaison to obtain this information for you.
- Have a general understanding of the steps outlined in the historic review process to be followed for the disaster recovery (you may have to describe them to an applicant). These should be summarized in the Disaster Specific Guidance. If these decisions have not been made, you must meet with the ELO, Special Considerations Liaison, or the PAO to determine how historic review is going to proceed during disaster recovery. Essential questions include:
 - Are there any known historic resources in the disaster area that I should address at my Kickoff Meetings (e.g. covered bridges, archaeological sites, old buildings, cemeteries, farmsteads, forts, mills, industrial complexes, etc.)?
 - Are Indian tribes, Native Alaskan, or Native Hawaiian organizations affected by this disaster?
 - Are there any historic landscapes within the disaster area (such as battlefields, rural farming areas, or heritage tourism byways)?
 - Are there any historically significant ships or airplanes within the disaster area?
 - Are there any sites or structures within the disaster area that have importance to a particular cultural group?
- Request an HP Specialist or representative to attend the Kickoff Meeting, if needed.
- Review the list of Project Worksheet (PW) conditions and Special Considerations Questions for historic review. These should have been distributed at the Field Briefing. If there are any questions, ask at the Field Briefing or ask the ELO or Special Considerations Liaison.
- Note that FEMA will not grant assistance to an applicant who intentionally avoids requirements of historic review by significantly affecting a historic property to which the assistance would apply (for example, when an applicant demolishes a potentially historic resource). This type of action is known as *anticipatory action*.

How do I help the applicant identify historic properties or issues in preparation for the Kickoff Meeting?

- When contacting the applicant to organize the Kickoff Meeting, ask them if they are aware of any historic issues related to potential projects. Remind them to review their list of damages, paying particular attention to any potentially historic properties that may have been damaged. Suggest that they have the list reviewed by their jurisdiction's planner responsible for historic preservation (usually a city or county planner), who may be able to identify historic properties that were overlooked or assist in identifying potential consulting parties. If the applicant will not have a list of damages prepared in time for the Kickoff Meeting, ask them to identify the historic properties they own or operate and historic properties that may be located in areas in which buildings may be demolished for health and safety purposes. Use this information to determine whether you should request an HP Specialist to attend the Kickoff Meeting with you.
- Explain why historic review is necessary, even after a disaster.
- Assure the applicant that FEMA and the State have a commitment to resolve issues in an expeditious manner.
- Refer the applicant to the historic preservation questions on the Special Considerations Questions form.
- Discuss the types of historic properties that you identified in your preparation for the Kickoff Meeting. Use this information to guide the applicant in identifying the historic properties associated with their projects.
- Discuss the possibility of emergency demolition of public or private property, and how the historic review of those actions will proceed.
- Inform the applicant that an HP Specialist can be made available to assist with any questionable issue regarding historic properties.
- Make sure the applicant understands that if several sites are grouped into a project and one of the sites requires historic review, then the entire grouping will be held for approval until the historic issues are resolved. Allow the applicant to make an informed choice regarding their grouping of sites.
- Document your meeting notes in the CMF.
- Notify the HP Specialist of all historic preservation issues discussed at the Kickoff Meeting, and whether any follow-ups are needed.

How is historic review addressed in project formulation?

- As the PWs for small projects are submitted, the PAC reviews the scopes of work with the applicant for completeness, eligibility, and the identification of historic or potentially historic properties. Review the Special Considerations Questions form for completeness and accuracy for each project.
- Identify potential historic properties using the following resources: PDA information, the information provided in the Disaster-Specific Guidance, the PWs, including the applicants' responses to the Special Considerations Questions, and the project descriptions and scopes of work.
- Ensure that the applicant has noted on the PW whether historic properties exist in any project areas. (It is the applicant's responsibility to note the existence of historic properties under the special considerations section of the PW for each project. However, the PAC still has responsibility for ensuring that historic properties are identified and that the PW is completed correctly.) Be sure the date of construction is included in the scopes of work for all structures.
- When a small project has been selected for validation, direct the Validation Specialist to coordinate with the HP Specialist prior to initiating the validation process. The Validation and HP Specialists are to review the PW together. The Validation Specialist can obtain additional information for the HP Specialist, or the HP Specialist may accompany the Validation Specialist on a site visit to obtain the required information.
- The Validation Specialist notes any previously unidentified Special Considerations issues on the Project Validation Form (PVF).
- For large projects, inform the Project Officer of potential historic properties and request that the Resource Coordinator (RC) assign an HP Specialist to work with the Project Officer.
- As directed at the Field Briefing, the PAC prepares periodic status or progress reports for the PAO. These reports should include the status of projects in historic review.
- Completely document the historic review process in the CMF.

Why do I need a Historic Preservation (HP) Specialist or Technical Assistance Contractor (TAC)?

HP Specialists and TACs should be used to provide expert technical assistance to expedite projects that:

- Are large or complex.
- Have substantial public interest or are political in nature.
- Involve unique properties or historic, cultural, or archeological requirements.
- Require the identification and evaluation of historic properties, including determinations of eligibility, determinations of effect and adverse effects, and the development of treatment measures to avoid or resolve adverse effects.

How do I assist in initiating the historic review process?

If the applicant has indicated that a project may affect historic properties or areas of undisturbed ground, you must initiate the historic review process by forwarding the PW to an HP Specialist. Even though an applicant may not know if a historic property exists, you must initiate the review process if there is the potential for unidentified historic or archaeological properties to exist.

If you need additional assistance you may request a HP Specialist through the RC or a TAC through the PAO. These resources should keep you informed of the status of historic review.

What happens if the applicant changes the scope of work (SOW)?

If the applicant has indicated that the approved SOW must be changed, ask the applicant the following questions:

- What do you wish to do that is different from the approved SOW?
- Have any actions related to the revised SOW been undertaken yet? Alert the applicant to the fact that since Federal funding is involved, a review of these changes is required under the National Environmental Policy Act (NEPA) and the NHPA. Caution the applicant that funding is at risk if the work proceeds without completing these reviews.
- Why is the change taking place? Is it being driven by an urgent public health and safety

need? Is it required by codes and standards? Or by unexpected conditions? Will the change classify the project as an improved or alternate project? Is it a hazard mitigation opportunity?

Based on the answers to these questions, you should do the following:

- Request a specialist(s) to assist with environmental and historic review requirements. Establish the necessary priority.
- If the project or the changes have become potentially controversial, alert the PAO immediately.

Does the process differ for emergency situations?

At times, emergency situations exist that require quick action regarding historic properties, such as when a building has been damaged to the point of being a threat to safety and must be demolished. An expedited process exists to handle situations that are a threat to life and safety:

- Notify the PAO and ELO of the situation.
- The PAO may ask you to notify the FCO of the need for FEMA to conduct expedited project review for individual undertakings. You may also be requested to notify the SHPO/THPO and Council. This written notification should include information on the property such as physical description, maps, and photographs, and a description of work proposed to mitigate adverse effects (See Appendix C: Sample Emergency Notification).
- Alternately, the PAO may request the Special Considerations Liaison to complete this task or may contact the ELO or FPO.
- There may be situations where the emergency is so immediate that verbal communication with the SHPO/THPO, Council and the FCO is necessary. The FPO can be helpful in facilitating this discussion.

What steps should be taken in the event of an unexpected discovery or an unanticipated action on a known property?

An unexpected discovery occurs most often when ground-disturbing activity uncovers archeological resources. In the event of an unexpected discovery:

- It is FEMA's policy to avoid archeological sites, and if avoidance is not possible, then to minimize the effects.
- Tell the applicant that FEMA requires them to cease all construction activities in the vicinity of the discovery and to take all reasonable measures to avoid or minimize harm to the property. Such measures may include removing large bulldozers or other heavy equipment that would damage or degrade archeological resources.
- Alert the PAO to the situation.
- Upon receiving direction from the PAO, request an HP Specialist to consult with the SHPO/THPO to develop actions that take into account the effect of the undertaking and provide SHPO/THPO with written recommendations. The PAO may have the Special Considerations Liaison or the ELO facilitate this consultation with the SHPO/THPO.
- The PAC will hold a meeting with the applicant to discuss the modifications to the SOW to implement FEMA's recommendations. Depending on the nature of the project, the PAO and/or ELO may also attend this meeting.
- The PAC will ensure that all documentation has been entered in the CMF.

Public Assistance Coordinator Historic Review Checklist

Pre-Disaster Planning

- Review SOPs between deployments.
- Review executed programmatic agreements.

Preliminary Damage Assessment

- Note any known historic properties or characteristics for every project.
- Ask if location coordinates by Global Positioning System (GPS) units will be taken for the PDA. If not, acquire an area map of sufficient scale to clearly identify areas of concern. USGS charts provide adequate coverage for rural areas whereas property tax maps may be useful within cities and towns.

Initial Deployment to DFO

- Review PDA information.
- Review SOPs.

Field Briefing

- Receive Disaster-Specific Guidance for Environmental Considerations.
- Understand how historic review will take place and the expected general time frames for such reviews.

Kickoff Meeting

- Prepare for the Kickoff Meeting to determine if an HP Specialist should attend.
- When scheduling meetings with applicants, request that they bring any information about potentially affected historic properties with them to the meeting.
- Review the Special Considerations Questions.
- Explain why historic review is required.

- Discuss anticipatory actions.
- Explain what to do if a damaged facility is known to be historic.
- Explain that technical assistance is available for historic review issues.
- Document the meeting in the CMF.

Project Formulation

- Review every project for the existence of historic or potentially historic properties. Use the following to make a determination:
 - Special Considerations Questions.
 - Project Description, including date of construction.
 - Information provided in the Disaster-Specific Guidance.
 - Information provided by the applicant or members of the public.
- Request an HP Specialist as soon as issues are identified.
- Have the historic review proceed concurrently with the development of the scope of work.
- Brief the HP Specialist on the other specialists with whom coordination will be required.
- Alert the PAO if issues appear to be controversial.
- Brief the PO on any historic properties involved with large projects.
- Have the Validation Specialist coordinate with the HP Specialist prior to the validation inspection.
- Assure that all conditions are noted on the PW and that the applicant understands them.
- Assure that the CMF remains updated and complete.

ENVIRONMENTAL LIAISON OFFICER ROLES AND RESPONSIBILITIES

The Environmental Liaison Officer (ELO) serves as an arm of the Federal Coordinating Officer (FCO) and is responsible for ensuring compliance with environmental and historic preservation review activities among all of FEMA's Public Assistance, Individual Assistance, and Mitigation Programs. The ELO position is staffed by the Regional Environmental Officer (REO) or his/her support staff. In disasters where there is no Special Considerations Liaison, the ELO often assumes many of the Special Considerations Liaison's responsibilities for addressing historic and environmental issues in the Public Assistance (PA) Program.

The ELO is responsible for the following historic review activities:

- Conducting environmental and historic preservation compliance training in the Disaster Field Office.
- Interpreting and summarizing the Preliminary Damage Assessment (PDA) information to identify historic requirements affecting the PA Program.
- Compiling current FEMA policies and guidelines on historic review requirements.
- Coordinating with the Regional Environmental Officer, Federal Preservation Officer (FPO), and/or the Office of General Counsel on cultural resource issues and the resolution of complex or controversial issues, as necessary.
- Assisting the FPO, as requested, in the execution of a programmatic agreement.
- Using previous information to initiate the scoping process with the State and the SHPO/THPO and other agencies to identify any unique historic preservation situations in the state or for that disaster.
- Assisting with the preparation of the Disaster-Specific Guidance.
- Working with the Resource Coordinator and PAO to identify HP Specialist staffing and other technical assistance needs.
- Posting relevant historic guidance and documents for the disaster on FEMA's environmental and historic review bulletin board.

The Deputy Environmental Liaison Officer (DELO) assists the ELO at the DFO. The DELO attends FCO and PAO staff meetings, prepares relevant environmental information for Situation Reports, reviews all projects for environmental and historic preservation considerations, updates the Disaster-Specific Guidance, and performs other duties as necessary.

How is historic review addressed in the initial scoping meeting?

Prior to initiating the scoping process, the ELO will begin identifying potential historic requirements that the PA Program will have to resolve. The ELO should initiate a scoping process with the State and the SHPO/THPO, during which the ELO should perform the following:

- Share points of contact among program staff in the Disaster Field Office (DFO).
- Provide a single Point of Contact to the SHPO/THPO, if possible.
- Notify the SHPO/THPO of the declared counties. Ask the SHPO/THPO to provide a list of National Register and State Register properties, geographic areas with high potential for archeological resources, areas where it is known that there are no archeological resources, previously identified traditional cultural properties and known properties of religious and cultural value, if available. If not, coordinate to find ways to easily obtain this information. Note specific regions in the county impacted by the disaster where FEMA-funded undertakings are likely to occur.
- Provide the SHPO/THPO with a summary of types of damages identified in the PDA.
- Collect information for the Disaster-Specific Guidance document from the SHPO/THPO and SEMA.
- Advise the State that the agency must notify applicants in writing that their Federal funding will be jeopardized if they intentionally and adversely affect a historic property (anticipatory actions).
- Arrange a scoping meeting as soon as possible after the initial scoping contact.

What happens at the scoping meeting?

- The SHPO/THPO may provide you with a list of properties eligible for or listed on the National Register and State Register for each county affected by the disaster.
- The SHPO/THPO staff must identify a SHPO/THPO representative to assist FEMA in implementing its historic review process.
- Together with the SHPO/THPO, you should identify and contact organizations having an interest in historic properties to assist in locating damaged historic properties.

- Be prepared to explain the FEMA PA Program process to participants in the scoping meeting.

What is the Disaster-Specific Guidance for Environmental Considerations?

The Disaster-Specific Guidance document is a booklet of important information about historic and environmental issues in a given disaster. It will provide essential details which will help the PACs, POs and the Environmental and Historic Preservation (HP) Specialists perform their review in a timely manner.

The document should be well organized, concise, and relatively short. Consider presenting some of the information in a bulleted format so that it can be easily referenced by users. Do not duplicate information that is already in the SOPs or policies. This guidance is intended to supplement that information.

Developing several Disaster-Specific Guidance packets, each addressing a different historic topic, may be an option. For instance, one packet can deal with the application of the programmatic allowances, if a programmatic agreement is executed, and another could address unique historic situations (such as covered bridges or stone walls) that may need to be addressed within the area of a particular disaster.

The goal is to have the guidance packets prepared, reviewed by both the ELO and the PAO, and finalized for distribution and discussion at the Field Briefing for FEMA/SEMA staff.

What information should be included in the Disaster-Specific Guidance for Environmental Considerations?

Basic information might include:

- Identification of unique historic preservation situations for the disaster. For example, identifying areas where historic events may have occurred, such as, the possible presence of Colonial period cemeteries, Civil War battlefields, or American Indian shell mounds.
- Listing of previously identified historic properties. The list should be sorted for those facilities within the declared disaster areas.
- Summary of any known controversial historic issues associated with past disasters, if available.
- Examples of some of the types of historic facilities that should be given particular attention.
- Methods of public notification and involvement in historic preservation issues.

Environmental Liaison Officer Historic Review Checklist

Pre-Disaster Planning

- Review SOPs.
- Help organize and coordinate needed historic preservation training.
- Talk to FEMA Headquarters staff for updates on historic preservation issues and policies.

Initial Deployment to DFO

- Obtain PDA information and begin review for potential historic preservation issues.
- Inquire whether the PDA information has GIS coordinate locations for mapping.
- Debrief FCO and PAO on progress and status of historic preservation issues.
- Begin to make contacts with the State.
- Review any executed programmatic agreements and renew if appropriate.

Historic Review Scoping Process

- Coordinate with the PAO about his/her desired involvement in the scoping process.
- Make contact with State counterpart to obtain state and disaster-specific information.
- Obtain contact lists for the SHPO/THPO and other historic preservation agencies in the disaster area.
- Obtain from the SHPO/THPO the list of previously identified historic properties, if available, for the counties within the disaster area.
- Identify historic requirements affecting the PA Program.
- Discuss how archeologically sensitive areas will be identified and addressed.

- Make an initial recommendation to the PAO regarding the number and type of HP Specialists required (consider needed expertise such as archeology, architecture, etc.).
- Work with the PAO to determine if the PACs will be delegated any historic compliance authority.
- Develop Disaster-Specific Guidance based upon PAO and State input.
- Obtain emergency recordation procedures from the SHPO.
- Work with the PAO to coordinate environmental/historic representation at the Applicant Briefing and Kickoff Meeting, as needed.

Field Briefing with FEMA/SEMA Staff

- If requested by PAO, present the Disaster-Specific Guidance and allow adequate time for questions and answers.
- Address whether the PACs will direct all historic requirements to the Specialists or will be delegated some authority to take historic compliance actions themselves.
- Define what sorts of issues the PAC should elevate for resolution (i.e. policy guidance, controversial issues, etc).
- Review the use of the PW special considerations codes and standard conditions for historic review.

Project Formulation

- Coordinate the initial screening of projects for historic issues, if the PACs are not delegated this authority.
- Assist the PAO, PACs, Special Considerations Liaison, and HP Specialists in the development of a plan to involve the public for projects requiring historic review.
- Assist the HP Specialists in the resolution of adverse effects and the execution and implementation of agreements.

SPECIAL CONSIDERATIONS LIAISON ROLES AND RESPONSIBILITIES

The Special Considerations Liaison is the person who coordinates special considerations issues in the Public Assistance (PA) Program, including compliance with environmental and historic laws and regulations. The Special Considerations Liaison works closely with the ELO to facilitate the scoping process, identify historic review issues, and perform other duties depending on the nature of the disaster.

In summary, the Special Considerations Liaison is responsible for:

- Interpreting the Preliminary Damage Assessment (PDA) information to identify historic properties associated with Public Assistance projects.
- Summarizing the information obtained from the PDAs and conveying it to the PACs.
- Compiling current FEMA PA policies and guidelines on conducting historic review.
- Coordinating with the ELO and the Federal Preservation Officer (FPO).
- Assisting in the execution of a programmatic agreement, as requested by the FPO.
- Working with the ELO to initiate the scoping process with SEMA, the SHPO/THPO, and other relevant historic preservation organizations that will identify any unique historic preservation situations in the state or for that disaster.
- Assisting in the preparation of the Disaster-Specific Guidance.
- Working with the ELO to develop a plan for public involvement and to identify the appropriate SHPO/THPO and other consulting parties.

How is a Special Considerations Liaison chosen?

- The Public Assistance Officer (PAO) will designate the Special Considerations Liaison(s).
- For smaller disasters, the Special Considerations Liaison responsibilities may be fulfilled by a single staff person. In this case, the Special Considerations Liaison would fulfill the requirements of the historic review scoping process. On larger, more complex disasters, the PAO may decide to have a staff person for each of the Special Considerations components.
- The State is encouraged to appoint a state counterpart to the Special Considerations Liaison.

- The Special Considerations Liaison should review relevant information contained in the previous section on the Environmental Liaison Officer's roles and responsibilities.

Special Considerations Liaison Historic Review Checklist

Pre-Disaster Planning

- Review SOPs.
- Request that your Region/Office send you to any available training on historic preservation.
- Visit the FEMA web site to become familiar with policies and issues on historic preservation.

Initial Deployment to the DFO

- Obtain PDA information and begin review to identify patterns that may lead to the identification of historic preservation issues.
- Inquire whether the PDA information has GIS coordinate locations for mapping.
- Debrief PAO on progress and status.
- Begin to make contacts with the State.
- Review any executed programmatic agreements.

Special Considerations Scoping Process

- Coordinate with ELO/REO first to avoid the duplication of efforts.
- Coordinate with the Hazard Mitigation Officer about his/her desired involvement in the scoping process.
- Make contact with State counterpart to obtain state and disaster-specific information.
- Obtain contact lists for the SHPO/THPO and other historic preservation agencies in the disaster area.
- Obtain list of properties listed on or eligible for listing in the National Register and those listed in the State Register, if available. Review the listings and summarize only those facilities within the disaster area.

- Identify historic properties (types, location, number) affecting the PA Program.
- Discuss how archeologically sensitive areas will be identified and addressed.
- Make an initial recommendation to the PAO regarding the number and type of HP Specialists required (consider needed expertise such as archeology, architecture, etc.).
- Develop Disaster-Specific Guidance based upon ELO, PAO, and SEMA input.
- Work with the PAO to determine if the PACs will be delegated any historic compliance authority.

Field Briefing

- If requested by PAO, present the Disaster-Specific Guidance and allow adequate time for questions and answers.
- Define what sorts of issues the PAC should elevate for resolution (i.e. policy guidance, controversial issues, etc).
- Review the use of the PW special considerations codes and standard conditions for historic review.

Project Formulation

- Coordinate the initial screening of projects for historic issues, if the PACs are not delegated this authority.
- Assist the PAO, PACs, ELO, and HP Specialists in the development of a plan to involve the public for projects requiring historic review.
- Assist in the resolution of adverse effects and the execution and implementation of agreements.

HISTORIC PRESERVATION SPECIALIST ROLES AND RESPONSIBILITIES

Historic Preservation (HP) Specialists are technical experts who identify and evaluate historic properties, apply the Secretary of the Interior's Standards and Guidelines to proposed projects, and negotiate and draft agreement documents. HP Specialists may work with the Public Assistance Coordinators (PACs), Project Officers (POs), other specialists, the applicant, and the SHPO/THPO to bring a scope of work into conformance with the Standards and Guidelines. The HP Specialists work under the guidance of the ELO within the PA program.

In order to comply with the National Historic Preservation Act (NHPA), HP Specialists who carry out the following responsibilities must meet the Secretary of the Interior's Professional Qualifications Standards, as determined by FEMA's Federal Preservation Officer (FPO).

- The identification and evaluation of historic properties, including determinations of eligibility.
- Determinations of effect and adverse effects.
- The development of treatment measures to avoid or resolve adverse effects.

The FPO certifies when the HP Specialist meets these standards and may assist in identifying Technical Assistance Contractors (TAC) or individuals from FEMA, other Federal agencies, or State agencies who may meet the Professional Qualifications Standards.

Following a disaster, do applicants' projects still have to comply with the National Historic Preservation Act?

- Yes. Congress has not exempted FEMA and its disaster recovery assistance grants from the requirement to comply with the NHPA. This includes actions such as temporary housing, debris removal, and the demolition of privately owned buildings with Public Assistance funds.

How is a HP Specialist chosen?

- The PAC will request that the Resource Coordinator (RC) assign an HP Specialist to identify historic requirements. A PO and other Specialists may also request that an HP Specialist be assigned. These actions should be coordinated with the ELO.
- The RC will select the Specialist from the resource pool of FEMA, SEMA and TAC

personnel, and assign that person to the PAC to handle historic requirements. Coordination with the ELO is necessary.

What types of assignments may be given to the HP Specialist?

- The HP Specialist may be assigned to attend a Kickoff Meeting with a PAC. This assignment will be made if the PAC determines that there could be a significant number of historic properties affected by potential Public Assistance projects. For example, if the applicant's project is in Charleston, South Carolina, it may be assumed that numerous historic requirements will arise even before specific projects are identified.
- The HP Specialist may be assigned to work with an applicant to address historic issues at the same time the applicant develops the scopes of work for small projects.
- The HP Specialist may be assigned to work with a PO as they develop the scope of work for a large project.
- If a historic issue is discovered after a Project Worksheet (PW) has been completed for a small or large project, then an HP Specialist will be assigned to resolve that issue and coordinate the resolution of the issue with the PAC or PO and applicant.
- The HP Specialist may be assigned to a small project that has been selected for validation. The historic issue would be resolved concurrently with the validation process and the HP and Validation Specialists would coordinate accordingly. The PAC or PO, in coordination with SEMA, must clearly indicate if they want the specialist to work directly with the applicant or through the PO/PAC.

When is historic review conducted?

- The applicant and PAC will identify projects for which historic review must be initiated based on answers to the Special Considerations Questions, the Disaster-Specific Guidance, and through the evaluation of scopes of work.
- The PAC will initiate the historic review process once FEMA has determined that the project has the potential to affect a historic property.
- All historic documentation will be reviewed with the PAC in accordance with the direction given in the Disaster-Specific Guidance. If the project requires a comprehensive NEPA review, involving an Environmental Assessment (EA) or Environmental Impact Statement (EIS), further coordination is required with the ELO.

- Projects that are undergoing validation may have historic issues identified during the validation process and will be forwarded to the HP Specialist for historic review.

I've received my assignment. What do I do first?

- Once you have received your assignment from the RC, report first to the ELO or Special Considerations Liaison and then to the PAC to pick up copies of the PWs you will be reviewing in addition to any other relevant information concerning your assignment.
- The PAC will review each assignment with you and explain the scope of the issues as they are currently understood.
- Once you have received the assignment and met with the PAC, formulate a strategy for dealing with the requirements. You should reference the Disaster-Specific Guidance prepared by the ELO or Special Considerations Liaison as concise program compliance guidance for PACs, POs, and Specialists, as they complete the Section 106 review process. If it is necessary to obtain additional information from the applicant, brief the PAC on the need to contact the applicant and then make the necessary contact.
- Discuss with the PAC any concerns or issues that might become apparent during the historic review process.
- When applicable, prepare a list of historic properties no longer eligible for listing on the National Register because they have lost their integrity as a result of the disaster, and consult with the SHPO/THPO for guidance.

The following points apply when historic review is being conducted simultaneously with the validation process:

- Be aware that the Validation Specialist may contact you to determine if there are any historic requirements that should be noted.
- Communicate with the Validation Specialist to meet jointly with the applicant whenever possible to expedite the historic review and save the applicant time and effort.

How is historic review conducted?

- Follow the appropriate review process (under Standard Section 106 or under the programmatic agreement) outlined in the front of this document.

What historic review activities might occur after work commences?

FEMA may require the applicant to stop construction and/or any ground-disturbing activities in the vicinity of an unexpected discovery and require the applicant to take all reasonable measures to avoid or minimize harm to the property. If this happens, tell the PAC and PO that work should cease until the issue is resolved. The ELO, PAO, and FCO may also be advised depending on the nature of the discovery. It is important to document the project file of all such activities.

- If an unexpected discovery occurs, consult with the SHPO/THPO to develop actions that take into account the effect of the undertaking. Provide the SHPO/THPO with written recommendations.
- If the State advises FEMA of changes to the scope of work, review additional work items and determine if they will have an effect on the historic property.

What happens when historic review is complete?

- Document all decisions and any conversations with the applicant in the CMF as directed by the PAC. Also document in NEMIS general comments for specific PWs.
- Scan all related documents, including correspondence, forms, photographs, and agreements into the CMF.
- Notify the SHPO/THPO that historic review is complete.
- Upon completion of the historic review, the PAO will release Specialists back to the RC or the Resource Pool.

Historic Preservation Specialist Historic Review Checklist

Pre-Disaster Planning

- Visit the FEMA web site for current information on FEMA and historic preservation at www.fema.gov/r-n-r/hpindex.htm.
- Review the SOPs.

Field Briefing

- Review the Disaster-Specific Guidance for Environmental Considerations.
- Know whether the historic review will proceed under the programmatic agreement or the Section 106 review process.
- Obtain Geographic Information System (GIS) and United States Geological Survey (USGS) maps of the disaster area(s) from the DFO or the SHPO/THPO.
- Consult with the ELO or Special Considerations Liaison for an update on FEMA policies and guidance on historic review.
- Know the name of the SHPO single point of contact.

Kickoff Meeting

- If assigned to attend a Kickoff Meeting:
 - Review the anticipated applicant issues with the PAC.
 - Review Disaster-Specific Guidance.
 - Review any available mapped information.
 - Determine what your role will be at the meeting.

Project Formulation

- Consult with the ELO regarding how Federal responsibilities are to be carried out.
- If assigned to assist the PAC with project screening for historic requirements, review projects for historic or potential historic requirements. Use the following to make a determination:

- Special Considerations Questions Form.
 - Project Descriptions.
 - Information provided in the Disaster-Specific Guidance.
-
- Alert the PAC, ELO, or PO if issues appear to be controversial or if there is a need for specialists to address previously unknown issues such as environmental or historic compliance.
 - Keep the PAC or PO informed of the status of your resolution efforts.
 - Coordinate with the Validation Specialist if assigned a small project that was selected to be validated.
 - Document all meeting notes, memos, correspondence, phone calls, decisions, etc. in the CMF.

PROJECT OFFICER ROLES AND RESPONSIBILITIES

Project Officers (PO) serve as resources for the applicant in the development of projects and cost estimates for large projects. Because POs assist applicants in the development of the scope of work and provide other technical assistance, they are in the position to identify historic issues as they arise and to ensure that a Historic Preservation (HP) Specialist becomes involved with the project.

Following a disaster, do applicants' projects still have to comply with the National Historic Preservation Act?

- Yes. Congress has not exempted FEMA and its disaster recovery assistance grants from the requirement to comply with the National Historic Preservation Act (NHPA). This includes actions such as temporary housing, debris removal, and the demolition of privately owned buildings with Public Assistance funds.
- The PO is responsible for:
 - Notifying the PAC when a project may potentially affect a historic property or undisturbed ground.
 - Requesting an HP Specialist to conduct the historic review for a project involving historic properties.
 - Familiarizing him/herself with the Disaster-Specific Guidance for Environmental Considerations.
 - Keeping the applicant and the PAC informed of historic review status for the project(s).
 - Ensuring that the proper compliance conditions are included on the Project Worksheet (PW), and verifying that the conditions have been met.

When does historic review begin?

- Historic review begins with the screening that the PAC completes on every project to identify any historic considerations that may be associated with that project. It is therefore important to keep the PAC informed of all potential historic issues associated with a project. The screening process can begin as early as the Kickoff Meeting or whenever the applicant establishes a list of their damaged facilities.

What resources at the Disaster Field Office (DFO) are available to assist me with historic review?

- This SOP.
- USGS and GIS maps.
- Historic properties lists.
- FEMA's CD-ROM entitled "FEMA: Responding to More Than Disasters—National Historic Preservation Act."
- FEMA's Historic Preservation web site (www.fema.gov/r-n-r/hpindex.htm)
- Disaster-Specific Guidance for Environmental Considerations.
- Environmental Liaison Officer.
- Special Considerations Liaison.
- HP Specialist.
- Public Assistance Officer.

Why do I need an HP Specialist or Technical Assistance Contractor (TAC)?

HP Specialists and TACs should be used to provide expert technical assistance to expedite projects that:

- Are large or complex.
- Have substantial public interest or are political in nature.
- Involve unique properties or historic, cultural, or archeological requirements.
- Require the identification and evaluation of historic properties, including determinations of eligibility, determinations of effect and adverse effects, and the development of treatment measures to avoid or resolve adverse effects.

How do I assist in initiating the historic review process?

- If the applicant has indicated that their project(s) may affect historic properties or areas of undisturbed ground, you must initiate the historic review process by notifying the PAC and forwarding the PW to an HP Specialist. Even though an applicant may not know that a historic property exists, you must initiate the review process if there is the potential for unidentified historic or archeological properties to exist.
- If you need an HP Specialist, you may request one through the PAC. You may request a TAC through the PAO.

What happens if the applicant changes the scope of work (SOW)?

If the applicant has indicated that the approved SOW must change, find out from the applicant what will be done differently and why the change is taking place. Ask the applicant the following specific questions, remembering that the answers may change the historic review process:

- Is demolition part of the change to the SOW? If so, additional review may be necessary if the facility being demolished is potentially historic.
- Will the change re-classify the work as an improved or alternate project? If so, will there be a change in what will happen to the original facility?
- Have any actions related to the revised SOW been undertaken yet? Alert the applicant to the fact that since Federal funding is involved, a review of these changes is required under the National Environmental Policy Act (NEPA) and the NHPA. Caution that funding is at risk if the work is proceeding without completing these reviews.
- Why is the change taking place?
- Is it being driven by an urgent public health and safety need? If so, the action may be an emergency and may justify an expedited review. Contact the PAC, PAO, and ELO immediately.
- Is it required by codes and standards? If so, this may affect the ability of the project to meet the Secretary of the Interior's Standards and thus may require additional review.
- Has the applicant encountered unexpected conditions related to historic or archeological resources? If so, advise the applicant to stop work immediately and consult with FEMA.
- Is it a hazard mitigation opportunity? If so, additional review may be necessary to determine whether the mitigation will cause an adverse effect to historic properties.

Based on the answers to these questions, you should do the following:

- Request a specialist(s) to assist with environmental and historic review requirements. Establish the necessary priority.
- If the project or the changes have become potentially controversial, alert the PAC immediately.

Does the process differ for emergency situations?

- At times, emergency situations exist that require quick action regarding historic properties, such as when a building has been damaged to the point of being a threat to safety and must be demolished. An expedited process exists to handle situations that are a threat to life and safety. If there is an emergency situation, notify the PAC immediately, who will take the appropriate steps to that historic review is completed expeditiously.

What steps should be taken in the event of an unexpected discovery or an unanticipated action on a known property?

An unexpected discovery occurs most often when ground-disturbing activity uncovers archeological resources. In the event of an unexpected discovery:

- It is FEMA's policy to avoid archeological sites or to minimize the effects of the action if avoidance is not possible.
- FEMA will require the applicant to stop all construction and ground-disturbing activities in the vicinity of the discovery and to take all reasonable measures to avoid or minimize harm to the property. Such measures may include removing large bulldozers or other heavy equipment that would damage or degrade archeological resources.
- Alert the PAC to the situation.

Project Officer Historic Review Checklist

Pre-Disaster Planning

- Review SOPs between deployments.

Field Briefing

- Receive Disaster-Specific Guidance for Environmental Considerations.
- Understand how historic review will take place and the expected general time frames for such reviews.

Project Formulation

- Review the project(s) for the existence of historic or potentially historic properties. Use the following to make a determination:
 - Special Considerations Questions.
 - Project Description.
 - Information provided in the Disaster-Specific Guidance.
 - Information provided by the applicant
- Request an HP Specialist as soon as issues are identified.
- Have the historic review proceed concurrently with the development of the scope of work.
- Brief the HP Specialist on the other specialists with whom coordination will be required.
- Alert the PAC of potential historic issues and keep the PAC informed of the status of the historic review.
- Assure that all conditions are noted on the PW and that the applicant understands them.

GLOSSARY

Adverse Effect

Harm to historic properties directly or indirectly caused by a Federal agency's action. The adverse effect may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association.

The Advisory Council on Historic Preservation (Council)

Congress established the Advisory Council on Historic Preservation as an independent Federal agency composed of a twenty-member council that advises the President and Congress on historic preservation issues and administers the provisions of the National Historic Preservation Act (NHPA), including Section 106 and Section 110. The Council is responsible for reviewing the policies and programs of Federal agencies and recommending to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs.

Area of Potential Effects (APE)

The Area of Potential Effects is the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist (36 CFR Part 800.2 [c]). This area always includes the actual site of the undertaking, and may also include other areas where the undertaking will cause changes in land use, traffic patterns, or other aspects that could affect historic properties.

Disaster-Specific Guidance

This document summarizes the findings of the Special Considerations Scoping Process. The Disaster-Specific Guidance does not document the scoping process, but is intended to give concise, specific guidance to the PACs, POs, and Specialists for the identification and resolution of disaster-specific special considerations. Typically, the Disaster-Specific Guidance would be prepared by the Environmental Liaison Officer or the Special Considerations Liaison(s). Several guidance documents can be developed for a particular disaster.

Evaluation

The process by which the significance and integrity of a historic property are judged and eligibility for the National Register of Historic Places is determined.

Federal Undertaking

Serving as the trigger for Section 106 review under NHPA, an undertaking is any Federal project, activity, or program that involves the expenditure of Federal money and can result in changes in the character or use of historic properties. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted

by a Federal agency. These activities may include construction, rehabilitation and repair projects, demolition, licenses, permits, loans, loan guarantees, grants, Federal property transfers, and many other types of Federal involvement.

Historic Property

A historic property is any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places. This term includes properties of traditional religious and cultural importance to an Indian tribe, Native Alaskan or Native Hawaiian organization.

Identification

Persons meeting the Secretary of the Interior's Professional Qualification Standards gather information about historic properties in order to evaluate the eligibility of properties for the National Register. Eligible properties must meet one or more of the National Register Criteria for Evaluation. The four criteria are:

- A) Association with events that have made significant contributions to history
- B) Association with historically significant persons
- C) Design or construction distinction
- D) Ability to provide information about history or prehistory

Memorandum of Agreement (MOA)

A Memorandum of Agreement is a legally binding document resulting from consultation that establishes the treatment measures FEMA and other consulting parties will take to avoid or reduce the adverse effects a specific project, program, or activity may have on historic properties. Signatories include FEMA and the SHPO/THPO, and may include SEMA, the Council, or other consulting parties assigned responsibilities in the MOA. The ELO will provide a standard format for the agreement, although the terms should be negotiated among the consulting parties. Whether or not the Council decides to participate in the development of the MOA, FEMA must submit the final MOA and any substantive revisions or additions to the Council. If the Council is participating in the development of the MOA, the Section 106 process is not completed until the MOA is signed by all consulting and concurring parties. If the Council is not a signatory, the Section 106 process is not completed until the day the signed MOA and any additional supporting documentation is received by the Council.

National Historic Preservation Act (NHPA)

In response to the rapid loss of historic properties from Federally funded urban renewal activities and construction of the interstate highway network across the United States in the 1950s and 60s, Congress passed the National Historic Preservation Act in 1966. The intent of this legislation was to ensure that all Federal agencies, including FEMA, consider

historic properties in their project planning and execution, and to encourage States to begin their own historic preservation programs. The primary components of the Act are the expansion and maintenance of the National Register for Historic Places as the nation's official list of historic properties worthy of preservation, the creation of the Advisory Council on Historic Preservation and State Historic Preservation Offices, and the requirement that each Federal agency establish a historic preservation program, designate a Federal Preservation Officer, and consider the effects of Federal undertakings on historic properties.

National Register of Historic Places

The national list of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering, and culture. The National Register is maintained by the Secretary of the Interior.

Section 106

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to consider what effects their actions may have on historic properties. To that end, each project involving historic properties must follow a pre-established review process to explore how to reduce or avoid potential adverse impacts. In order to streamline this review, FEMA has developed and carries out its historic preservation responsibilities under a programmatic agreement, which takes the place of the standard Section 106 process. If a programmatic agreement has not been executed, then FEMA must follow Section 106 and its implementing regulations (36 CFR Part 800) to comply with NHPA.

State Historic Preservation Officer (SHPO)

The official appointed or designated to administer the State historic preservation program, pursuant to section 101(b)(1) of the National Historic Preservation Act.

Tribal Historic Preservation Officer (THPO)

The tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of Section 106 compliance on tribal lands, in accordance with section 101(d)(2) of the National Historic Preservation Act.

Secretary of the Interior's Professional Qualifications Standards

Standards published in 36 CFR Part 61 are used by the National Park Service to define the minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. FEMA's FPO determines whether someone meets the Standards for FEMA identification and evaluation efforts.

Traditional Cultural Property (TCP)

A traditional cultural property is any property eligible for inclusion in the National Register because of its association with the cultural practices or beliefs of a living community that are rooted in that community's traditions and are important in maintaining the continuing cultural identity of the community. An example of a TCP is a location associated with the traditional beliefs of a Native American group regarding its origins, its cultural history, or the nature of the world. Federal agencies must treat TCPs as historic properties under Section 106. For further guidance, see National Register Bulletin 38 entitled *Guidelines for Evaluating and Documenting Traditional Cultural Properties*.

APPENDIX A

PUBLIC ASSISTANCE FORMS FOR HISTORIC REVIEW

The following Public Assistance forms will assist in the proper completion of the historic review process, and the most updated versions are available on FEMA's Public Assistance Website (<http://www.fema.gov/r-n-r/pa/appfrm1.htm>):

- **Project Worksheet (PW)** (Form 90-91)
The PW is the form used to document projects. This form contains the information necessary to approve the eligible scope of work and itemized cost estimate prior to funding. The PW includes instructions for completion.
- **Special Considerations Questions** (Form 90-120)
This form documents potential issues, other than program eligibility, that must be addressed before Federal grant money can be obligated to repair or restore damaged facilities. These issues include flood insurance, historic preservation and environmental laws and hazard mitigation.
- **Assessment Form for Determination of Adverse Effect** (Form 90-122)
Once historic properties have been identified for a specific Public Assistance project, this form documents the historic status, application of adverse effect criteria, and conclusions made about steps necessary to complete historic review.

APPENDIX B CHECKLIST FOR HISTORIC REVIEW SCOPING MEETING

The following checklist is intended to assist the Environmental Liaison Officer (ELO) (and his/her designees) and the Special Considerations Liaison with the scoping meeting in accordance with the National Historic Preservation Act (NHPA). The following should be accomplished during the meeting(s).

1. Answer questions that the SHPO/THPO may have about the Public Assistance Program.
2. Arrange for coordination between FEMA and SHPO/THPO staff to review projects in accordance with Section 106 and its implementing regulations. To facilitate coordination FEMA and the SHPO\THPO should:
 - Establish points of contact and exchange staff names, titles, addresses, and phone numbers.
 - Determine acceptable procedures for FEMA to access SHPO files, if necessary during FEMA's review process.
3. Coordinate with the SHPO/THPO to receive lists of sites in National Register and State Register.
4. Obtain an inventory, maps, or a sensitivity assessment of archeological sites establishing where there is a high probability, likely probability, and no probability of archeological resources in the declared disaster.
5. Identify potential historic compliance issues within the disaster area associated with disaster response and recovery such as:
 - Damage to any historic sites.
 - Location of any severely damaged areas where there are high concentrations of historic properties or archeological sites.
 - Damage to any cultural properties such as important archival material or artifacts that might not be listed in the National Register but are eligible and require immediate attention.
 - Potential demolition of any historic properties or excavation of sensitive archeological areas.
 - Disposition of damaged architectural details.
 - Historic resource-free location of landfill sites for debris disposal.
6. Obtain names and phone numbers of organizations and individuals that may have information about the effect of an undertaking on particular historic properties.

APPENDIX C
SAMPLE EMERGENCY NOTIFICATION

Mr/Mrs/Ms [name]
Historic Preservation Officer
Advisory Council on Historic Preservation
[Address 1]
[Address 2]

Re: Presidential Disaster Declaration FEMA-xxxx-DR-xx, [location]

Dear [name]:

Numerous structures were damaged or destroyed in [location] as a result of [type of disaster] on [date]. As a result of the [disaster], the [name of property] was severely damaged. The City determined that the [name of property] was in imminent danger of collapse onto a city street, creating a serious public safety hazard. On [date], the City, working closely with the property owner, directed partial demolition to render the structure safe.

This is to confirm that you were notified and afforded opportunity to comment on [date], in accordance with 36 CFR §800.12(b)(2) regarding this structure. Due to the serious nature and urgency of this situation we were unable to provide you with a seven-day notice per the regulation.

We were able to take photographs of the structure before partial demolition occurred and are working with the [SHPO] on the disposition of the negatives and photographs. I am enclosing photographs for your information and files. If you have any questions about this emergency action, please do not hesitate to call me at [phone number].

Sincerely,

[Federal Coordinating Officer or Environmental Liaison Officer]

Enclosures

cc: [SHPO]
[PAO]
[FPO]
[SPAO]

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY
THE (STATE) HISTORIC PRESERVATION OFFICER
THE (STATE) EMERGENCY MANAGEMENT AGENCY
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

WHEREAS, in response to damages from flash flooding, FEMA-____-DR-__ (Disaster), the Federal Emergency Management Agency (FEMA) proposes to administer the Federal disaster Public Assistance, Hazard Mitigation Grant, Individual and Family Grant, and Flood Mitigation Assistance Programs (Programs) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5121, (Stafford Act), and its implementing regulations contained in Title 44 of the Code of Federal Regulations (44 CFR) Part 206, and the National Flood Insurance Reform Act of 1994 and its implementing regulations contained in 44 CFR Part 78; and

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

WHEREAS, as a result of the Disaster, _____ (State) will receive financial and technical assistance from FEMA and will in turn provide monies and other assistance to eligible applicants to alleviate the effects of the Disaster, and as such the (State) Emergency Management Agency (SEMA) will be responsible for administering these Programs, has participated in this consultation, and has been invited to enter into this Programmatic Agreement (Agreement); and

WHEREAS, FEMA, the SHPO, SEMA, and the Council acknowledge that implementation of these Programs will be more effective if, pursuant to 36 CFR §800.14(b), an Agreement is in place to define roles and responsibilities in the Section 106 review process, eliminate the need for further SHPO and Council review of certain routine activities with little potential to adversely affect historic properties, and promote efficiency so that the effects of undertakings on historic properties may be considered while delays to FEMA's delivery of disaster assistance are minimized; and

WHEREAS, FEMA has determined that implementation of these Programs will result in undertakings that may have an effect on historic properties that have religious and cultural significance to Federally recognized tribes (Tribes), and FEMA may request that these Tribes participate in the terms of this Agreement to fulfill the requirements of Section 106;

NOW, THEREFORE, FEMA, the SHPO, SEMA, and the Council agree that these Programs will be administered in accordance with the following Stipulations to satisfy FEMA's Section 106 responsibilities for all undertakings. FEMA will not approve funding of any undertaking until it is reviewed pursuant to this Agreement.

STIPULATIONS

To the extent of its legal authority, and in coordination with the SHPO, SEMA, and the Council, FEMA shall require that the following measures are implemented:

I. LEAD AGENCY COORDINATION

- A. When FEMA is determined to be the Lead Agency, FEMA will coordinate the Section 106 review activities of all Federal agencies and Tribes that participate in undertakings funded by the Programs.
- B. FEMA may request that a Tribe become a signatory to this Agreement by entering into an Addendum with a signature page, thus accepting the provisions of this Agreement. The addition of a Tribe without further change to this Agreement will not require an amendment to the Agreement. A sample Tribal Addendum is attached as Appendix B.

II. APPLICABILITY

- A. This Agreement applies to the Programs implemented for the referenced Disaster.
- B. FEMA has determined that the following types of activities are not undertakings under 36 CFR §800.16(y), and FEMA has no further obligations under Section 106 responsibilities, pursuant to 36 CFR §800.3(a)(1):
 - 1. Implementation of the Programs as related to assistance to individuals and households (Sections 408 and 411 of the Stafford Act, Individual and Family Grant Programs), with the exception of ground disturbing activities and construction related to temporary housing;
 - 2. Funding the administrative action of acquiring properties in buyout projects. SEMA will ensure that applicants secure the properties from physical alteration, illegal entry, and damage until the requirements of the Agreement are fulfilled. Applicant communities will agree to the above provisions as part of the grant before FEMA will release any project funding.
 - 3. Implementation of Federal assistance pursuant to Section 422 of the Stafford Act, Simplified Procedures, when it has the effect of restoring a facility to its pre-disaster condition, and using in-kind materials.
- C. FEMA will determine when an undertaking meets applicable criteria of the Programmatic Allowances (Allowances) listed in Appendix A. FEMA will document this determination in the project file and authorize the release of funding for the undertaking.
- D. For all other activities, FEMA will conduct Section 106 review in accordance with Stipulation V. or VI. of the Agreement.

III. GENERAL

A. Professional Qualifications:

1. FEMA will use Federal, State of _____ agency, or contractor staff who meet the Secretary of the Interior's (SOI) Professional Qualifications Standards (Qualifications), as determined by FEMA's Federal Preservation Officer (FPO), in the required disciplines, in ensuring compliance with this Agreement.
2. FEMA acknowledges that Tribes possess special expertise related to properties that possess Tribal religious and cultural significance, and FEMA may utilize this expertise in determining if any such properties are eligible for the National Register.

B. All time designations will be in calendar days. If any party does not comment on a determination related to a proposed action within an agreed upon timeframe, FEMA may assume the party's concurrence with FEMA's determination.

C. FEMA responsibilities:

1. FEMA may request that Federal, State of _____ agency, or applicant staff who meet the Qualifications, as determined by FEMA's FPO, conduct the identification and evaluation of historic properties on behalf of FEMA, as described in 36 CFR §800.4(b,c).¹
2. FEMA will review any National Register eligibility determinations resulting from the performance of these delegated activities.
3. FEMA will provide the SHPO and Council with an annual report for the previous calendar year by March 31st of each year that this Agreement is in effect. This report will summarize the actions taken to implement the terms of this Agreement, and recommend any actions or revisions that should be considered during the next year. These parties will review this information to determine if amendments to the Agreement are necessary.

D. SHPO responsibilities:

1. The SHPO will concur or non-concur with FEMA's National Register eligibility determinations within the timeframes required by this Agreement.
2. The SHPO may delegate some or all of its responsibilities under this Agreement to persons who are not currently members of the SHPO staff and who will serve as SHPO representatives with respect to the actions and decisions required by this Agreement. The SHPO will consult with FEMA about the selection of a

¹ FEMA will provide 100 percent funding under the Stafford Act through standard procurement procedures for the performance of these delegated activities

representative, the scope of responsibilities delegated, and implementing procedures related to the actions and decisions delegated.

IV. INITIAL COORDINATION FOLLOWING DECLARATION OF THE DISASTER

Upon entering into this Agreement, FEMA will meet with the SHPO and SEMA to establish points of contact and protocols for the implementation of the Agreement. SHPO and SEMA representatives will then attend a historic scoping meeting, where FEMA and SEMA will provide guidance on program issues and processes. SEMA and FEMA, as appropriate, will also present information related to the Section 106 review process to all applicants, at the applicants' briefings and kickoff meetings.

A. FEMA will:

1. Determine with the SHPO those historic properties (standing structures) that have not retained integrity. This Agreement will only apply to historic properties that retain integrity in the aftermath of the Disaster, pursuant to 36 CFR Part 60. If FEMA and the SHPO do not agree on whether a listed property has retained integrity, FEMA will review all undertakings that may affect the property in accordance with Stipulations V. through VII.
2. Consult with other Federal agencies and any Tribes having jurisdiction for undertakings related to the Programs to ensure compliance with applicable historic laws and regulations.
3. Develop with the SHPO a feasible plan for involving the public in the Section 106 review process.

B. The SHPO will:

1. Provide FEMA with available information about historic properties within the declared Disaster area, including:
 - a. properties listed in or previously determined eligible for the National Register through a Section 106 review or by the SOI;
 - b. properties listed in the State of _____ Historic Register;
 - c. geographic areas with high potential for archaeological resources, and areas where it is known that there are not any archaeological resources; and
 - d. previously identified Traditional Cultural Properties, and known properties of religious and cultural significance to Tribes.

2. Work with FEMA to jointly compile a list of previously identified or unevaluated historic properties, and geographic areas with a high potential for unidentified historic properties.
3. Identify SHPO staff or consultants to assist FEMA staff with its Section 106 responsibilities, and to identify in coordination with FEMA specific activities that the SHPO may perform at FEMA's request for specific projects.
4. Assist FEMA in identifying any Tribes, organizations, or individuals that may have an interest in historic properties affected by the Disaster. FEMA and the SHPO will jointly contact these interested parties to inform them of this Agreement and to request information on the location of damaged historic properties.
5. Assist local jurisdictions in identifying staging and landfill sites for debris disposal, and sites for chipping of vegetation debris, if applicable, that will have minimal or no effect on historic properties.

V. EXPEDITED PROJECT REVIEW FOR EMERGENCIES

- A. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 (36 CFR §800.12(d)).
- B. As a result or in anticipation of the Disaster, FEMA may be requested to authorize funding for emergency protective measures in response to an immediate threat to human health and safety or improved property, which may adversely affect historic properties. For all undertakings that the Federal Coordinating Officer (FCO) determines are of an emergency nature as defined in Section 102(1) of the Stafford Act, and are not exempt from Section 106 review in accordance with Stipulation V.A. above, FEMA will conduct the following expedited review:
 1. The expedited review period will begin at the time that FEMA determines that an emergency action is required, and will remain in effect for the time necessary to implement this expedited review, but for not more than 30 days after the time of discovery of the emergency.
 2. The FCO will certify in writing to the SHPO the need for FEMA to conduct expedited project review for individual undertakings. Should FEMA determine that it is necessary to extend the expedited review period beyond 30 days, FEMA will, in 30-day increments, as needed, request an extension in writing from the Council. FEMA will immediately assume the Council's concurrence unless otherwise notified by the Council.
 3. If it appears that an emergency action will adversely affect a historic property during this expedited review period, FEMA will provide the SHPO with available information about the condition of the property, the proposed action, and prudent

and feasible measures that would take the adverse effect into account, requesting the SHPO's comments. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. The SHPO will respond to any FEMA request for comments within 3 days after receipt, unless FEMA determines the nature of the emergency action warrants a shorter time period.

4. If FEMA does not accept the recommendations provided by the SHPO pursuant to this Stipulation, or the SHPO objects to FEMA's proposal to use the emergency review procedure and/or proposed treatment measures, FEMA will consult with the SHPO to resolve the dispute. If FEMA is unable to resolve the dispute, FEMA will seek the Council's comments. The Council will provide final comments to FEMA within 3 days after receipt of FEMA's request, unless FEMA determines the nature of the emergency action warrants a shorter time period.

VI. STANDARD PROJECT REVIEW

The signatories of this agreement will follow the following review for all non-emergency undertakings:

- A. Area of Potential Effects (APE): For all project review of standing structures the APE will be the individual facility (as defined in 44 CFR §206.201(c)) when an undertaking is limited to the in-kind repair or rehabilitation of the facility's interior or exterior. FEMA will establish the APE in consultation with the SHPO for all other undertakings including those that may affect archaeological properties. FEMA will also identify and invite other appropriate parties (such as local governments and the public) to provide information related to the APE.
- B. In accordance with 36 CFR §800.4(b,c), FEMA will determine, in consultation with the SHPO, if the APE contains properties (including archaeological properties) that are listed in or eligible for the National Register (historic property).
- C. If no historic properties are present or if an undertaking is designed to avoid affecting the character defining features of such historic property or properties, FEMA will make a determination of "no historic properties affected" in accordance with 36 CFR §800.4(d)(1). FEMA will notify the SHPO and all consulting parties of this determination and provide supporting documentation. Unless the SHPO or any consulting party objects to this determination within 14 days after receipt, FEMA will complete the Section 106 review and may approve funding.
- D. If an undertaking may affect identified historic properties, or if the SHPO objects to the determination of "no historic properties affected" within 14 days after receipt, FEMA will consult with the SHPO to apply the criteria of adverse effect, pursuant to 36 CFR §800.5(a)(1), or determine if the undertaking meets the SOI Standards for the Treatment of Historic Properties (Standards), or any other applicable SOI Standards. FEMA will

also consider any views provided by consulting parties and the public related to such effects.

1. For standing structures only:
 - a. If FEMA and the SHPO agree that an undertaking does not meet the adverse effect criteria or that it meets the Standards, FEMA will make a determination of “no adverse effect” pursuant to 36 CFR §800.5(b). FEMA will notify the SHPO and all consulting parties of this determination and provide supporting documentation pursuant to 36 CFR §800.5(c). Unless the SHPO or any consulting party objects within 14 days after receipt of the notification, FEMA will complete the Section 106 review and may approve funding.
 - b. If the SHPO objects to the “no adverse effect” determination, FEMA will request through SEMA that the applicant revise the scope of work to substantially conform to the Standards, in consultation with the SHPO and consulting parties. FEMA also will ensure that the revised scope of work is reviewed for funding eligibility. If the applicant modifies the scope of work to address the objections, FEMA will notify the SHPO and all consulting parties, and provide supporting documentation. Unless the SHPO or any consulting party objects within 14 days after receipt, FEMA will complete the Section 106 review and may approve funding.
 - c. If the applicant is unable to, or will not modify the undertaking to meet the Standards or address the objections, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.
2. For archaeological properties only:
 - a. If there is a reasonable potential for archaeological properties to be present within the APE, FEMA will consult with the SHPO to determine the level of effort necessary to identify the anticipated type and location of these properties.
 - b. If the SHPO or any other consulting party objects that identified archaeological properties can be avoided through redesign of an undertaking, or through procedures/requirements agreed among all the consulting parties, or concurs that there will be an adverse effect, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

VII. RESOLUTION OF ADVERSE EFFECTS FOR HISTORIC PROPERTIES

- A. If FEMA determines that an undertaking will adversely affect a historic property, FEMA will determine if the undertaking will be reviewed in accordance with 36 CFR §800.6(b), resulting in a Memorandum of Agreement (MOA), or addressed through a Secondary

Programmatic Agreement (Secondary Agreement). Following this decision, FEMA will notify the SHPO, all other consulting parties, and provide the Council with an adverse effect notice, including documentation in accordance with 36 CFR §800.11(e).

1. Memorandum of Agreement: FEMA may develop an MOA in accordance with 36 CFR §800.6(c) to outline measures to treat adverse effects to historic properties. FEMA may consider reasonable alternate treatment measures that serve an equivalent or greater public benefit than standard measures or archaeological data recovery, while promoting the preservation of historic properties. FEMA will attempt to identify all such feasible measures in consultation with the SHPO and other consulting parties. Alternate measures may include, but are not limited to, preservation planning, interpretive programs, or development of a historic properties database with Geographic Information Systems.
 2. Secondary Programmatic Agreement: FEMA, the SHPO, SEMA, the Council, if participating, and other consulting parties may consult to develop a Secondary Agreement to require programmatic conditions and/or treatment measures for multiple, but similar undertakings by an applicant.
- B. When an undertaking will adversely affect an archaeological property, FEMA may treat the adverse effect by providing for the recovery of significant information through archaeological data recovery or other scientific means. To accomplish this objective, FEMA will follow the SOI's *Guidelines for Archaeological Documentation* and consult with the other consulting parties to prepare a data recovery plan. For sites where FEMA determines extraordinary circumstances exist or when other treatment measures are appropriate, FEMA will consult further with the other consulting parties to develop an appropriate approach to resolving the adverse effects.
- C. FEMA will also involve the public in the resolution of adverse effects in accordance with 36 CFR §800.6(a)(4).
- D. When an undertaking will adversely affect a National Historic Landmark (NHL), FEMA will also notify and invite the Secretary of the Interior (Secretary) to participate in consultation. When the Council participates in consultation related to an NHL, the Council will report the outcome of the consultation to the Secretary and the FEMA Director.

VIII. CHANGES TO AN APPROVED SCOPE OF WORK

SEMA will 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 will then consult with the SHPO 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, or any other applicable SOI Standards. If FEMA determines that the change does not meet an Allowance, or if FEMA and the SHPO

determine that the change cannot be modified to conform to the Standards, or any other applicable SOI Standards, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

IX. UNEXPECTED DISCOVERIES

- A. SEMA will notify FEMA as soon as practicable if it appears that an undertaking will affect a previously unidentified property that may be historic, or affect a known historic property in an unanticipated manner. SEMA will require the applicant to stop construction activities in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the property until FEMA concludes consultation with the SHPO.
- B. FEMA will notify the SHPO of the discovery at the earliest possible time and consult to develop actions to take into account the effects of the undertaking. FEMA will notify the SHPO of any time constraints, and all parties will mutually agree upon timeframes for this consultation. SEMA and the applicant may participate in this consultation. FEMA will provide the SHPO with written recommendations to take into account the effects of the undertaking.
- C. If the SHPO does not object to FEMA's recommendations within the agreed upon timeframe, FEMA will require the applicant to modify the scope of work to implement the recommendations. If the SHPO objects to the recommendations, FEMA and the SHPO will consult further to resolve this objection through actions including, but not limited to, identifying project alternatives that may result in the undertaking having no adverse effect on historic properties, or proceeding in accordance with Stipulation VII.

X. DISPUTE RESOLUTION

- A. Should the SHPO, SEMA, the Council, or a consulting party object within the timeframe provided by this Agreement to any plans, specifications, or actions provided for review pursuant to this Agreement, FEMA will consult further with the objecting party to seek resolution. If FEMA objects within any such timeframe to any such plans, specifications, or actions, FEMA will consult further with the other parties to seek resolution. If FEMA determines within 14 days of receipt of an objection that the objection cannot be resolved, FEMA will forward to the Council all documentation relevant to the dispute, including FEMA's proposed resolution to the objection.
- B. Any recommendation or comment provided by the Council will pertain only to the subject of the dispute. The responsibility of the signatories to implement all actions pursuant to this Agreement that are not subject to the dispute will remain unchanged.

XI. ANTICIPATORY ACTIONS

- A. FEMA will not grant assistance to an applicant who, with intent to avoid the requirements of this Agreement or Section 106, has intentionally significantly 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. After consulting with the SHPO and Council, FEMA may determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant, and will complete consultation for the undertaking pursuant to Stipulation VII.

- B. FEMA will specifically advise SEMA of this Stipulation and will require that SEMA advise its applicants in writing at their kickoff meetings that they may not initiate construction on projects for which they are seeking Federal funding prior to compliance with this Agreement. SEMA will also advise its applicants that they may jeopardize Federal funding if construction is initiated prior to compliance with this Agreement.

XII. DURATION, AMENDMENTS, AND TERMINATION

- A. Unless terminated pursuant to Stipulation XII.C. below, this Agreement shall remain in effect from the date of implementation until FEMA, in consultation with all other signatories, determines that the terms of this Agreement have been satisfactorily fulfilled. Upon such determination, this Agreement will terminate, and FEMA will provide all other signatories with written notice of the determination and termination.
- B. FEMA, the SHPO, SEMA, or the Council may terminate this Agreement by providing 30 days' written notice to the other parties, provided that the parties will consult during this period to seek amendments or other actions that would prevent termination. Termination of this Agreement will require compliance with 36 CFR Part 800.
- C. This Agreement may be terminated by the implementation of a subsequent Agreement that explicitly terminates or supersedes this Agreement, or by FEMA's implementation of Alternate Procedures, pursuant to 36 CFR §800.14(a).

XIII. IMPLEMENTATION OF THIS PROGRAMMATIC AGREEMENT

- A. This Agreement may be implemented in counterparts, with a separate page for each signatory, and FEMA will ensure that each party is provided with a complete copy. This Agreement will become effective on the date of the last signature.
- B. Execution of this agreement by the Council and implementation by FEMA evidences that FEMA has afforded the Council a reasonable opportunity to comment on all of the Programs pursuant to the Stafford Act and the National Flood Insurance Reform Act, and that FEMA has satisfied its Section 106 responsibilities for all undertakings.

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: _____
Lacy E. Suiter, Assistant Director,
Readiness, Response and Recovery Directorate

Date: _____

By: _____
Robert F. Shea, Acting Assistant Director,
Federal Insurance Administration and Mitigation

Date: _____

By: _____
[name], Regional Director,
Region __

Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____
John M. Fowler, Executive Director

Date: _____

(STATE) HISTORIC PRESERVATION OFFICE

By: _____
[name], State Historic Preservation Officer

Date: _____

(STATE) EMERGENCY MANAGEMENT DIRECTOR

By: _____
[name], Director

Date: _____

APPENDIX A: PROGRAMMATIC ALLOWANCES

The following project activities do not require review by the SHPO or Council pursuant to Stipulations III.-VI. This list may be revised without amending this Agreement, with a letter concurred by FEMA and the SHPO.

When referenced in an Allowance, “in kind” shall mean that the result will match all physical and visual aspects of existing historic materials, including form, color, and workmanship. “In kind” mortar will also match the strength and joint tooling of existing historic mortar.

- I. GROUND DISTURBING ACTIVITIES AND SITE WORK**, when all work is consistent with the Standards, or any other applicable SOI Standards
 - A. Ground disturbing activities related to the repair, replacement, or hardening of any footings, foundations, retaining walls, other slope stabilization systems (i.e., gabion baskets, etc.), and utilities (including sewer, water, storm drains, electrical, gas, communication, leach lines, and septic tanks), provided the excavation will not disturb more soil than previously disturbed. This Allowance refers to archaeological review. The Allowance also applies to historic review of such features that are listed in or eligible for the Register, only if the work is in kind.
 - B. Substantially in kind repair, replacement, or upgrade of culvert systems within rivers, streams, or drainage ways, including any modest increase in capacity, provided the excavation will not disturb more soil than previously disturbed. This Allowance also applies to related features (such as headwalls and wing walls) that are in or eligible for the Register, only if the work is in kind.
 - C. Repair, replacement, or hardening of utilities under existing improved roads/roadways, or within other previously disturbed rights of way.
 - D. In kind repair or replacement of driveways, parking lots, and walkways.
 - E. In kind repair or replacement of fencing and other freestanding exterior walls.
 - F. Substantially in kind repair or replacement of metal utilitarian structures (i.e. pump houses, etc.), including major exposed pipelines. Modern materials may be used, provided their finish is compatible with the context of the site. Structures such as bridges, water towers, and antenna towers are not considered metal utilitarian structures for the purposes of this Allowance.
 - G. Installation of temporary structures for uses such as classrooms or offices. This Allowance does not apply to such structures in historic districts.
 - H. Installation of scaffolding, temporary barriers (i.e., chain link fences, etc.), polyethylene sheeting, or tarps, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations.

- I. In kind repair or replacement of hardscaping and utilities, such as paving, planters, trellises, irrigation, and lighting.
- J. In kind repair, replacement, or upgrade to codes and standards of existing piers, docks, boardwalks, boat ramps, and dune crossovers, provided the footprint will substantially match the existing footprint.
- K. Debris collection from public rights of way, transport, and disposal in existing licensed solid waste facilities. This Allowance does not include establishment or expansion of debris staging areas.
- L. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, to restore the facility to its pre-disaster condition, provided the sediment is used to repair eroded banks or is disposed at an existing licensed or permitted spoil site.
- M. Dewatering flooded developed areas.

II. BUILDINGS, when all work is consistent with the Standards

A. Interior Floors, Walls, Stairs and Ceilings

- 1. In kind repairing, replacing, retaining, preserving, protecting, or maintaining of materials or features.
- 2. In kind repair of interior floors, walls and ceilings. This Allowance also applies to the repair of interior finishes, including plaster and wallboard, provided the repair is restricted to the damaged area and does not affect adjacent materials. The Allowance does not apply to historic architectural finishes such as decorative plaster trim, or plaster substrates for decorative materials such as murals, gold leaf, etc.
- 3. Repair or replacement of suspended or glued ceiling tiles.
- 4. Installation of grab bars and other such minor interior modifications for handicapped accessibility.
- 5. Non-destructive or concealed testing for hazardous materials (lead paint, asbestos, etc.) or damage assessment.

B. Utilities and Mechanicals

- 1. Minor interior mechanical (HVAC), electrical, or plumbing work, limited to upgrading, elevation, or in kind replacement, with the exception of historic

fixtures, which must be repaired in kind for this Allowance to apply. This Allowance does not apply to exposed new ductwork.

2. Replacement or installation of interior fire detection, fire suppression, or security alarm systems. This Allowance does not apply to exposed wiring such as surface mounted wiring, conduits, piping, etc.

C. Windows and Doors

1. In kind repair or replacement of damaged or deteriorated windows and doors.
2. Replacement of window panes in kind or with clear double or triple glazing, provided the result does not alter the existing window material and form. Also, historic windows or glazing may be treated with clear window films. This Allowance does not apply to the replacement of existing archaic or decorative glass.
3. In kind repair of historic door and window hardware.

D. Exterior Walls, Cornices, Porches and Foundations

1. Repainting of surfaces, provided that destructive surface preparation treatments are not used, such as water blasting, sandblasting, power sanding, and chemical cleaning.
2. In kind repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or trim.
3. Substantially in kind repair or replacement of signs or awnings.
4. Temporary stabilization bracing or shoring, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations.
5. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view, such as in the Hilti systems, and disturbed historic fabric is restored in kind.
6. In kind repair or reconstruction of concrete/masonry walls, parapets, chimneys, or cornices, including mortar that matches the color, strength, and joint tooling of historic mortar, where occurring.
7. Bracing and reinforcing of chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or removable in the future.

8. Strengthening of foundations and the addition of foundation bolts, provided that visible new work is in kind, including mortar that matches the color, strength, and joint tooling of historic mortar, where occurring.
- E. Roofing
1. In kind repair, replacement, or strengthening of roofing, gutters, or downspouts. Also, cement asbestos shingles may be replaced with asphalt based shingles, and untreated wood shingles may be replaced with fire resistant wood shingles.
- F. Weatherproofing and Insulation
1. Caulking and weather-stripping to complement the color of adjacent surfaces.
 2. In kind replacement or installation of insulation systems, provided that decorative interior plaster, woodwork, or exterior siding is not altered. This Allowance does not apply to urea formaldehyde foam insulation or any other thermal insulation containing water, when installed within wall cavities. Also, the Allowance does not apply to insulation systems that do not include an adequate vapor retarder, or to work in enclosed spaces that are not vented.
- G. Seismic Upgrades
1. The installation of the following seismic upgrades, provided that such upgrades are not visible on the exterior or within character defining historic interiors: 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.

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 with in kind surface materials to maintain pre-disaster size, traffic capacity, and load classifications of motor vehicles, including the reshaping and compacting of road bed soil and the repair of asphaltic or Portland cement concrete pavements. This Allowance does not apply to the repair of brick or stone paving, or the regrading of native materials to reconstruct the roadbed.
- C. Repair of traffic control devices such as traffic signs and signals, delineators, pavement markings, and traffic surveillance systems.

- D. In kind repair of road lighting systems, such as period lighting.
- 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.

IV. FEES AND SERVICES

- A. Miscellaneous labor costs.
- B. Rental or purchase of vehicles or other motorized equipment.
- C. Builders fees.
- D. Fees for architectural, engineering or other design services, provided the services will 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.

V. HUMAN SERVICES

The following activities relating to implementation of Sections 408, 409, 412, 415, and 416 of the Stafford Act:

- A. The minimal repair program.
- B. Temporary housing for disaster victims whose homes are uninhabitable, with the exception of potential archeological issues related to temporary housing sites.
- C. Disaster unemployment assistance.
- D. Legal services.
- E. Crisis counseling.
- F. Loans to individuals, businesses, and farmers for the repair, rehabilitation, or replacement of damaged real and personal property.
- G. 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.

VI. VECTOR CONTROL

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

APPENDIX B

ADDENDUM TO THE PROGRAMMATIC AGREEMENT AMONG THE FEDERAL EMERGENCY MANAGEMENT AGENCY, THE (STATE) HISTORIC PRESERVATION OFFICER, THE (STATE) EMERGENCY MANAGEMENT AGENCY, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

WHEREAS, in response to the _____ flooding, FEMA-____-DR-__, the Federal Emergency Management Agency (FEMA) proposes to administer the Federal disaster Public Assistance, Hazard Mitigation Grant, Individual and Family Grant, and Flood Mitigation Assistance Programs (Programs) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5121-5204c, (Stafford Act), and its implementing regulations contained in Title 44 of the Code of Federal Regulations (44 CFR) Part 206, and the National Flood Insurance Reform Act of 1994 and its implementing regulations contained in 44 CFR Part 78; and

WHEREAS, FEMA, the (State) Historic Preservation Officer (SHPO), the (State) Emergency Management Agency (SEMA), and the Advisory Council on Historic Preservation (Council) recognize that implementation of these Programs will result in Undertakings that may occur on lands under the jurisdiction of the _____ Indian Tribe (Tribe); and

WHEREAS, FEMA has determined that implementation of these Programs will result in Undertakings that may have an effect on properties of religious and cultural significance to the Tribe, located on or off Tribal lands, that are listed in or eligible for the National Register of Historic Places (historic properties), and has consulted with the Tribe and its Tribal Historic Preservation Officer (THPO) pursuant to 36 CFR §800.14(b)(3) of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA);

NOW, THEREFORE, FEMA has consulted with the Tribe and requested that it enter into this Addendum to the Programmatic Agreement (Agreement) to facilitate the Section 106 review of Undertakings that may directly or indirectly affect historic properties of religious and cultural significance on or off Tribal lands.

STIPULATIONS

FEMA shall require that the following measures are implemented:

[OPTION 1: The THPO has not assumed SHPO responsibilities pursuant to Section 101(d)(2) of the NHPA:]

1. FEMA will consult with the _____ THPO in addition to the SHPO, pursuant to this Agreement, for all Undertakings that may affect historic properties of religious and cultural significance to the Tribe, on or off Tribal lands. The THPO agrees to participate in the review of all of these Undertakings in accordance with the terms of the Agreement. For the purposes of this Addendum, all references to “the SHPO” in the Agreement will also refer to the THPO for the review of these Undertakings.
2. FEMA will require all Federal agencies participating in an Undertaking to consult with the THPO in addition to the SHPO pursuant to the Agreement and this Addendum.
3. This Addendum shall become effective on the last date of signature by FEMA, the SHPO, the THPO, SEMA (if the Grantee), the Council, and any other participating Federal agency.

[OPTION 2: The THPO has assumed SHPO responsibilities pursuant to Section 101(d)(2) of the NHPA:]

1. FEMA recognizes that the _____ Tribe has assumed the responsibilities of the SHPO for Section 106 on Tribal lands, pursuant to Section 101(d)(2) of the NHPA, and shall consult with the THPO in lieu of the SHPO, pursuant to this Agreement for all Undertakings that may affect historic properties of religious and cultural significance to the Tribe, on or off Tribal lands. The THPO agrees to participate in the review of all of these Undertakings in accordance with the terms of the Agreement. For the purposes of this Addendum, all references to “the SHPO” in the Agreement will refer only to the THPO for the review of such Undertakings occurring on or affecting historic properties on Tribal lands. All references to the SHPO will refer to both the SHPO and the THPO for the review of such Undertakings that may affect historic properties off Tribal lands, unless the SHPO elects to not participate in this review.
2. FEMA will require all Federal agencies participating in an Undertaking to consult with the THPO pursuant to the Agreement and this Addendum.
3. The parties recognize that the SHPO shall participate as a consulting party pursuant to the Agreement if an Undertaking will occur on Tribal land but affect historic properties off Tribal land. The SHPO may also participate in consultation if requested in accordance with 36 CFR §800.3(c)(1).
4. This Addendum shall become effective on the last date of signature by FEMA, the SHPO, the THPO, SEMA (if the Grantee), the Council, and any other participating Federal agency.

SIGNATORY PARTIES:

FEMA, the SHPO, the THPO, SEMA (if the Grantee), the Council, and any other participating Federal agency

_____ **TRIBAL HISTORIC PRESERVATION OFFICE**

By: _____
[name], Tribal Historic Preservation Officer

Date: _____

Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines [As Amended and Annotated]

Agency: [National Park Service](#), Department of the Interior. Action: Notice.

Summary: This notice sets forth the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. These standards and guidelines are not regulatory and do not set or interpret agency policy. They are intended to provide technical advice about archeological and historic preservation activities and methods.

Dates: These Standards and Guidelines are effective on September 29, 1983.*

***[The National Park Service has not republished "The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" since 1983 (48 FR 44716). NPS has updated portions of the Standards and Guidelines. Where NPS has officially revised portions and published the revisions in the Federal Register, such as the Historic Preservation Project standards and the treatment definitions, we strike through the 1983 language and provide a link to the new material. Where the 1983 language is not current but NPS has not officially replaced it, such as the technical information, we strike through the out-of-date materials. We then provide current technical information and links to NPS and partner websites where this information is available.]**

Language within brackets has *not* been published for effect in the Federal Register as a part of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.]

For Further Information Contact: ~~Lawrence E. Aten, Chief, Interagency Resources Division, National Park Service, United States Department of the Interior, Washington, DC 20240 (202-343-9500). A Directory of Technical Information listing other sources of supporting information is available from the National Park Service.~~

[NPS Cultural Resources Email Contacts](#)

Supplementary Information: The Standards and Guidelines are prepared under the authority of sections 101(f) (g), and (h), and section 110 of the National Historic Preservation Act of 1966, as amended. State Historic Preservation Officers: Federal Preservation Officers including those of the Department of Agriculture, Department of Defense, Smithsonian Institution and General Services Administration; the Advisory Council on Historic Preservation; the National Trust for Historic Preservation; and other interested parties were consulted during the development of the Standards and Guidelines; additional consultation with these agencies will occur as the Standards and Guidelines are tested during their first year of use.

Purpose

The proposed Standards and the philosophy on which they are based result from nearly twenty years of intensive preservation activities at the Federal, State, and local levels.

The purposes of the Standards are:

- To organize the information gathered about preservation activities.
- To describe results to be achieved by Federal agencies, States, and others when planning for the identification, evaluation, registration and treatment of historic properties.
- To integrate the diverse efforts of many entities performing historic preservation into a systematic effort to preserve our nation's culture heritage.

Uses of the Standards

The following groups or individuals are encouraged to use these Standards:

- Federal agency personnel responsible for cultural resource management pursuant to section 110 of the National Historic Preservation Act, as amended, in areas under Federal jurisdiction. A separate series of guidelines advising Federal agencies on their specific historic preservation activities under section 110 is in preparation.
- State Historic Preservation Offices responsible under the National Historic Preservation Act, as amended, by making decisions about the preservation of historic properties in their States in accordance with appropriate regulations and the Historic Preservation Fund Grants Management Manual. The State Historic Preservation Offices serve as the focal point for preservation planning and act as a central state-wide repository of collected information.
- Local governments wishing to establish a comprehensive approach to the identification, evaluation, registration and treatment of historic properties within their jurisdictions.
- Other individuals and organizations needing basic technical standards and guidelines for historic preservation activities.

Organization

This material is organized in three sections: Standards; Guidelines; and recommended technical sources, cited at the end of each set of guidelines. Users of this document are expected to consult the recommended technical sources to obtain guidance in specific cases.

Review of the Standards and Guidelines

The Secretary of the Interior's Standards for Rehabilitation have recently undergone extensive review and their guidelines made current after 5 years of field use. Users and other interested parties are encouraged to submit written comments on the utility of these Standards and Guidelines except for the Rehabilitation Standards mentioned above. This edition will be thoroughly reviewed by the National Park Service (including consultation with Federal and State agencies), after the end of its first full year of use and any necessary modifications will be made. Subsequent reviews are anticipated as needed. ~~[Comments should be sent to Chief, Interagency Resources Division, National Park Service, United States Department of the Interior, Washington, DC 20240.]~~

Secretary of the Interior's Standards for Preservation Planning

Preservation planning is a process that organizes preservation activities (identification, evaluation, registration and treatment of historic properties) in a logical sequence. The Standards for Planning discuss the relationship among these activities while the remaining activity standards consider how each activity should be carried out. The Professional Qualifications Standards discuss the education and experience required to carry out various activities.

The Standards for Planning outline a process that determines when an area should be examined for historic properties, whether an identified property is significant, and how a significant property should be treated.

Preservation planning is based on the following principles:

- Important historic properties cannot be replaced if they are destroyed. Preservation planning provides for conservative use of these properties, preserving them in place and avoiding harm when possible and altering or destroying properties only when necessary.

- If planning for the preservation of historic properties is to have positive effects, it must begin before the identification of all significant properties has been completed. To make responsible decisions about historic properties, existing information must be used to the maximum extent and new information must be acquired as needed.
- Preservation planning includes public participation. The planning process should provide a forum for open discussion of preservation issues. Public involvement is most meaningful when it is used to assist in defining values of properties and preservation planning issues, rather than when it is limited to review of decisions already made. Early and continuing public participation is essential to the broad acceptance of preservation planning decisions.

Preservation planning can occur at several levels or scales: in a project area; in a community; in a State as a whole; or in the scattered or contiguous landholdings of a Federal agency. Depending on the scale, the planning process will involve different segments of the public and professional communities and the resulting plans will vary in detail. For example, a State preservation plan will likely have more general recommendations than a plan for a project area or a community. The planning process described in these Standards is flexible enough to be used at all levels while providing a common structure which promotes coordination and minimizes duplication of effort. The Guidelines for Preservation Planning contain additional information about how to integrate various levels of planning.

Standard I. Preservation Planning Establishes Historic Contexts

Decisions about the identification, evaluation, registration and treatment of historic properties are most reliably made when the relationship of individual properties to other similar properties is understood. Information about historic properties representing aspects of history, architecture, archeology, engineering and culture must be collected and organized to define these relationships. This organizational framework is called a "historic context." The historic context organizes information based on a cultural theme and its geographical and chronological limits. Contexts describe the significant broad patterns of development in an area that may be represented by historic properties. The development of historic contexts is the foundation for decisions about identification, evaluation, registration and treatment of historic properties.

Standard II. Preservation Planning Uses Historic Contexts To Develop Goals and Priorities for the Identification, Evaluation, Registration and Treatment of Historic Properties

A series of preservation goals is systematically developed for each historic context to ensure that the range of properties representing the important aspects of each historic context is identified, evaluated and treated. Then priorities are set for all goals identified for each historic context. The goals with assigned priorities established for each historic context are integrated to produce a comprehensive and consistent set of goals and priorities for all historic contexts in the geographical area of a planning effort. The goals for each historic context may change as new information becomes available. The overall set of goals and priorities are then altered in response to the changes in the goals and priorities for the individual historic contexts.

Activities undertaken to meet the goals must be designed to deliver a usable product within a reasonable period of time. The scope of the activity must be defined so the work can be completed with available budgeted program resources.

Standard III. The Results of Preservation Planning Are Made Available for Integration Into Broader Planning Processes

Preservation of historic properties is one element of larger planning processes. Planning results, including goals and priorities, information about historic properties, and any planning documents, must be

transmitted in a usable form to those responsible for other planning activities. Federally mandated historic preservation planning is most successfully integrated into project management planning at an early stage. Elsewhere, this integration is achieved by making the results of preservation planning available to other governmental planning bodies and to private interests whose activities affect historic properties.

Secretary of the Interior's Guidelines for Preservation Planning

Introduction

These Guidelines link the Standards for Preservation Planning with more specific guidance and technical information. They describe one approach to meeting the Standards for Preservation Planning. Agencies, organizations or individuals proposing to approach planning differently may wish to review their approaches with the National Park Service.

The Guidelines are organized as follows:

[Managing the Planning Process](#)

[Developing Historic Contexts](#)

[Developing Goals for a Historic Context](#)

[Integrating Individual Historic Contexts—Creating the Preservation Plan](#)

[Coordinating with Management Frameworks](#)

[Recommended Sources of Technical Information](#)

Managing the Planning Process

The preservation planning process must include an explicit approach to implementation, a provision for review and revision of all elements, and a mechanism for resolving conflicts within the overall set of preservation goals and between this set of goals and other land use planning goals. It is recommended that the process and its products be described in public documents.

Implementing the Process

The planning process is a continuous cycle. To establish and maintain such a process, however, the process must be divided into manageable segments that can be performed, within a defined period, such as a fiscal year or budget cycle. One means of achieving this is to define a period of time during which all the preliminary steps in the planning process will be completed. These preliminary steps would include setting a schedule for subsequent activities.

Review and Revision

Planning is a dynamic process. It is expected that the content of the historic contexts described in Standard I and the goals and priorities described in Standard II will be altered based on new information obtained as planning proceeds. The incorporation of this information is essential to improve the content of the plan and to keep it up-to-date and useful. New information must be reviewed regularly and systematically, and the plan revised accordingly.

Public Participation

The success of the preservation planning process depends on how well it solicits and integrates the views of various groups. The planning process is directed first toward resolving conflicts in goals for historic preservation, and second toward resolving conflicts between historic preservation goals and other land use planning goals. Public participation is integral to this approach and includes at least the following actions:

1. Involving historians, architectural historians, archeologists, folklorists and persons from related disciplines to define, review and revise the historic contexts, goals and priorities;

2. Involving interested individuals, organizations and communities in the planning area in identifying the kinds of historic properties that may exist and suitable protective measures;
3. Involving prospective users of the preservation plan in defining issues, goals and priorities;
4. Providing for coordination with other planning efforts at local, State, regional and national levels, as appropriate; and
5. Creating mechanisms for identifying and resolving conflicts about historic preservation issues. The development of historic contexts, for example, should be based on the professional input of all disciplines involved in preservation and not be limited to a single discipline. For prehistoric archeology, for example, data from fields such as geology, geomorphology and geography may also be needed. The individuals and organizations to be involved will depend, in part, on those present or interested in the planning area.

Documents Resulting from the Planning Process

In most cases, the planning process produces documents that explain how the process works and that discuss the historic contexts and related goals and priorities. While the process can operate in the absence of these documents, planning documents are important because they are the most effective means of communicating the process and its recommendations to others. Planning documents also record decisions about historic properties.

As various parts of the planning process are reviewed and revised to reflect current information, related documents must also be updated. Planning documents should be created in a form that can be easily revised. It is also recommended that the format language and organization of any documents or other materials (visual aids, etc.) containing preservation planning information meet the needs of prospective users.

Developing Historic Contexts

General Approach

Available information about historic properties must be divided into manageable units before it can be useful for planning purposes. Major decisions about identifying, evaluating, registering and treating historic properties are most reliably made in the context of other related properties. A historic context is an organizational format that groups information about related historic properties, based on a theme, geographic limits and chronological period. A single historic context describes one or more aspects of the historic development of an area, considering history, architecture, archeology, engineering and culture and identifies the significant patterns that individual historic properties represent, for example, Coal Mining in Northeastern Pennsylvania between 1860 and 1930. A set of historic contexts is a comprehensive summary of all aspects of the history of the area.

The historic context is the cornerstone of the planning process. The goal of preservation planning is to identify, evaluate, register and treat the full range of properties representing each historic context, rather than only one or two types of properties. Identification activities are organized to ensure that research and survey activities include properties representing all aspects of the historic context. Evaluation uses the historic context as the framework within which to apply the criteria for evaluation to specific properties or property types. Decisions about treatment of properties are made with the goal of treating the range of properties in the context. The use of historic contexts in organizing major preservation activities ensures that those activities result in the preservation of the wide variety of properties that represent our history, rather than only a small, biased sample of properties.

Historic contexts, as theoretical constructs, are linked to actual historic properties through the concept of property type. Property types permit the development of plans for identification, evaluation and treatment even in the absence of complete knowledge of individual properties. Like the historic context, property types are artificial constructs which may be revised as necessary. Historic contexts can be developed at a variety of scales appropriate for local, State and regional planning. Give the probability of historic contexts

overlapping in an area, it is important to coordinate the development and use of contexts at all levels. Generally, the State Historic Preservation Office possesses the most complete body of information about historic properties and, in practice, is in the best position perform this function.

The development of historic contexts generally results in documents that describe the prehistoric processes or patterns that define the context. Each of the contexts selected should be developed to the point of identifying important property types to be useful in later preservation decision-making. The amount of detail included in these summaries will vary depending on the level (local, State, regional, or national) at which the contexts are developed and on their intended uses. For most planning purposes, a synopsis of the written description of the historic context is sufficient.

Creating a Historic Context

Generally, historic contexts should not be constructed so broadly as to include all property types under a single historic context or so narrowly as to contain only one property type per historic context. The following procedures should be followed in creating a historic context.

1. Identify the concept, time period and geographical limits for the historic context

Existing information, concepts, theories, models and descriptions should be used as the basis for defining historic contexts. Biases in primary and secondary sources should be identified and accounted for when existing information is used in defining historic contexts.

The identification and description of historic contexts should incorporate contributions from all disciplines involved in historic preservation. The chronological period and geographical area of each historic context should be defined after the conceptual basis is established. However, there may be exceptions, especially in defining prehistoric contexts where drainage systems or physiographic regions often are outlined first. The geographical boundaries for historic contexts should not be based upon contemporary political, project or other contemporary boundaries if those boundaries do not coincide with historical boundaries. For example, boundaries for prehistoric contexts will have little relationship to contemporary city, county or State boundaries.

2. Assemble the existing information about the historic context

- a. Collecting information: Several kinds of information are needed to construct a preservation plan. Information about the history of the area encompassed by the historic context must be collected, including any information about historic properties that have already been identified. Existing survey or inventory entries are an important source of information about historic properties. Other sources may include literature on prehistory, history, architecture and the environment; social and environmental impact assessments; county and State land use plans; architectural and folklife studies and oral histories; ethnographic research; State historic inventories and registers; technical reports prepared for Section 106 or other assessments of historic properties; and direct consultation with individuals and organized groups.

In addition, organizations and groups that may have important roles in defining historic contexts and values should be identified. In most cases a range of knowledgeable professionals drawn from the preservation, planning and academic communities will be available to assist in defining contexts and in identifying sources of information. In other cases, however, development of historic contexts may occur in areas whose history or prehistory has not been extensively studied. In these situations, broad general historic contexts should be initially identified using available literature and expertise, with the expectation that the contexts will be revised and subdivided in the future as primary source research and field survey are conducted. It is also important to identify such sources of information as existing planning data, which is needed to establish goals for identification, evaluation and treatment, and to identify factors that will affect attainment of those goals.

The same approach for obtaining information is not necessarily desirable for all historic contexts. Information should not be gathered without first considering its relative importance to the historic context, the cost and time involved, and the expertise required to obtain it. In many cases, for

example, published sources may be used in writing initial definitions of historic contexts; archival research or field work may be needed for subsequent activities.

- b. Assessing information: All information should be reviewed to identify bias in historic perspective, methodological approach, or area of coverage. For example, field surveys for archeological sites may have ignored historic archeological sites, or county land use plans may have emphasized only development goals.

3. Synthesize information

The information collection and analysis results in a written narrative of the historic context. This narrative provides a detailed synthesis of the data that have been collected and analyzed. The narrative covers the history of the area from the chosen perspective and identifies important patterns, events, persons or cultural values. In the process of identifying the important patterns, one should consider:

- Trends in area settlement and development, if relevant;
- Aesthetic and artistic values embodied in architecture, construction technology or craftsmanship;
- Research values or problems relevant to the historic context; social and physical sciences and humanities; and cultural interests of local communities; and
- Intangible cultural values of ethnic groups and native American peoples.

4. Define property types

A property type is a grouping of individual properties based on shared physical or associative characteristics. Property types link the ideas incorporated in the theoretical historic context with actual historic properties that illustrate those ideas. Property types defined for each historic context should be directly related to the conceptual basis of the historic context. Property types defined for the historic context "Coal Mining in Northeastern Pennsylvania, 1860-1930" might include coal extraction and processing complexes; railroad and canal transportation systems; commercial districts; mine workers' housing; churches, social clubs and other community facilities reflecting the ethnic origins of workers; and residences and other properties associated with mine owners and other industrialists.

- a. Identify property types: The narrative should discuss the kinds of properties expected within the geographical limits of the context and group them into those property types most useful in representing important historic trends.

Generally, property types should be defined after the historic context has been defined. Property types in common usage ("Queen Anne House," "mill buildings" or "stratified sites") should not be adopted without first verifying their relevance to the historic contexts being used.

- b. Characterize the locational patterns of property types: Generalizations about where particular types of properties are likely to be found can serve as a guide for identification and treatment. Generalizations about the distribution of archeological properties are frequently used. The distribution of other historic properties often can be estimated based on recognizable historical, environmental or cultural factors that determined their location. Locational patterns of property types should be based upon models that have an explicit theoretical or historical basis and can be tested in the field. The model may be the product of historical research and analysis ("Prior to widespread use of steam power, mills were located on rivers and streams able to produce water power" or "plantation houses in the Mississippi Black Belt were located on sandy clay knolls"), or it may result from sampling techniques. Often the results of statistically valid sample surveys can be used to describe the locational patterns of a representative portion of properties belonging to a particular property type. Other surveys can also provide a basis for suggesting locational patterns if a diversity of historic properties was recorded and a variety of environmental zones was inspected. It is likely that the identification of locational patterns will come from a combination of these sources. Expected or predicted locational patterns of property types should be developed with a provision made for their verification.

- c. Characterize the current condition of property types: The expected condition of property types should be evaluated to assist in the development of identification, evaluation and treatment strategies, and to help define physical integrity thresholds for various property types. The following should be assessed for each property type:
 1. Inherent characteristics of a property type that either contribute to or detract from its physical preservation. For example, a property type commonly constructed of fragile materials is more likely to be deteriorated than a property type constructed of durable materials; structures whose historic function or design limits the potential for alternative uses (water towers) are less likely to be reused than structures whose design allows a wider variety of other uses (commercial buildings or warehouses).
 2. Aspects of the social and natural environment that may affect the preservation or visibility of the property type. For example, community values placed on certain types of properties (churches, historic cemeteries) may result in their maintenance while the need to reuse valuable materials may stimulate the disappearance of properties like abandoned houses and barns.
 3. It may be most efficient to estimate the condition of property types based on professional knowledge of existing properties and field test these estimates using a small sample of properties representative of each type.

5. Identify information needs

Filling gaps in information is an important element of the preservation plan designed for each historic context. Statements of the information needed should be as specific as possible, focusing on the information needed, the historic context and property types it applies to, and why the information is needed to perform identification, evaluation, or treatment activities.

Developing Goals for a Historic Context

Developing Goals

A goal is a statement of preferred preservation activities, which is generally stated in terms of property types.

The purpose of establishing preservation goals is to set forth a "best case" version of how properties in the historic context should be identified, evaluated, registered and treated.

Preservation goals should be oriented toward the greatest possible protection of properties in the historic context and should be based on the principle that properties should be preserved in place if possible, through affirmative treatments like rehabilitation, stabilization or restoration. Generally, goals will be specific to the historic context and will often be phrased in terms of property types. Some of these goals will be related to information needs previously identified for the historic context. Collectively, the goals for a historic context should be a coherent statement of program direction covering all aspects of the context.

For each goal, a statement should be prepared identifying:

1. The goal, including the context and property types to which the goal applies and the geographical area in which they are located;
2. The activities required to achieve the goal;
3. The most appropriate methods or strategies for carrying out the activities;
4. A schedule within which the activities should be completed; and

5. The amount of effort required to accomplish the goal, as well as a way to evaluate progress toward its accomplishment.

Setting priorities for goals

Once goals have been developed they need to be ranked in importance. Ranking involves examining each goal in light of a number of factors.

1. General social, economic, political and environmental conditions and trends affecting (positively and negatively) the identification, evaluation, registration and treatment of property types in the historic context.

Some property types in the historic context may be more directly threatened by deterioration, land development patterns, contemporary use patterns, or public perceptions of their value, and such property types should be given priority consideration.

2. Major cost or technical considerations affecting the identification, evaluation and treatment of property types in the historic context.

The identification or treatment of some property types may be technically possible but the cost prohibitive; or techniques may not currently be perfected (for example, the identification of submerged sites or objects, or the evaluation of sites containing material for which dating techniques are still being developed).

3. Identification, evaluation, registration and treatment activities previously carried out for property types in the historic context.

If a number of properties representing one aspect of a historic context have been recorded or preserved, treatment of additional members of that property type may receive lower priority than treatment of a property type for which no examples have yet been recorded or preserved. This approach ensures that the focus of recording or preserving all elements of the historic context is retained, rather than limiting activities to preserving properties representing only some aspects of the context.

The result of considering the goals in light of these concerns will be a list of refined goals ranked in order of priority.

Integrating Individual Contexts—Creating the Preservation Plan

When historic contexts overlap geographically, competing goals and priorities must be integrated for effective preservation planning. The ranking of goals for each historic context must be reconciled to ensure that recommendations for one context do not contradict those for another. This important step results in an overall set of priorities for several historic contexts and a list of the activities to be performed to achieve the ranked goals. When applied to a specific geographical area, this is the preservation plan for that area.

It is expected that in many instances historic contexts will overlap geographically. Overlapping contexts are likely to occur in two combinations—those that were defined at the same scale (i.e., textile development in Smithtown 1850-1910 and Civil War in Smithtown 1855-1870) and those defined at different scales (i.e., Civil War in Smithtown and Civil War in the Shenandoah Valley). The contexts may share the same property types, although the shared property types will probably have different levels of importance, or they may group the same properties into different property types, reflecting either a different scale of analysis or a different historical perspective. As previously noted, many of the goals that are formulated for a historic context will focus on the property types defined for that context. Thus it is critical that the integration of goals include the explicit consideration of the potential for shared property type membership by individual properties. For example, when the same property types are used by two contexts, reconciling the goals will require weighing the level of importance assigned to each property type. The degree to which integration of historic contexts must involve reconciling property types may be limited by the coordinated development of historic contexts used at various levels.

Integration with Management Frameworks

Preservation goals and priorities are adapted to land units through integration with other planning concerns. This integration must involve the resolution of conflicts that arise when competing resources occupy the same land base. Successful resolution of these conflicts can often be achieved through judicious combination of inventory, evaluation and treatment activities. Since historic properties are irreplaceable, these activities should be heavily weighted to discourage the destruction of significant properties and to be compatible with the primary land use.

Recommended Sources of Technical Information

Current Recommendations

A Planning Companion: A Guide for State Historic Preservation Planning. Susan L. Henry Renaud, 1983 (draft). Describes an approach to preservation planning that uses fully developed historic contexts as special technical studies necessary to effective planning and decision-making.

[*Guidelines for Local Surveys: A Basis for Preservation Planning.*](#) (formerly National Register Bulletin 24). Anne Derry, H. Ward Jandl, Carol D. Shull, and Jan Thorman; revised by Patricia L. Parker, 1985.

Local Historic Preservation Plans: A Selected Annotated Bibliography. Neil Gagliardi and Stephen Morris, 1993. Provides an overview of the range of local historic preservation plans from across the country, including information on how a number of communities have addressed various issues in their preservation plans.

[*The National Historic Landmarks Program Theme Study and Preservation Planning.*](#) Robert S. Grumet. Technical Brief 10, Archeology & Ethnography Program, National Park Service, 1990, revised 1992.

[*National Park Service, 1994, Thematic Framework.*](#)

Use of the National Park Service Thematic Framework need not be limited to the federal level, as the conceptualization it provides can equally inform preservation and interpretation at local, state, and regional levels.

Preparing a Historic Preservation Plan. Bradford J. White and Richard J. Roddewig. Planning Advisory Service Report No. 450, 1994. Describes components that are important in a good preservation plan and explains how several communities have carried out preservation planning activities. Available from the [American Planning Association](#), 122 South Michigan Avenue, Suite 1600, Chicago, Illinois 60603-6107; (312) 786-6344.

Protecting Archeological Sites on Private Lands. Susan L. Henry, with Geoffrey M. Gyrisco, Thomas H. Veech, Stephen A. Morris, Patricia L. Parker, and Jonathan P. Rak. Provides useful information on strategies for protecting archaeological sites in local communities.

Reaching Out, Reaching In: A Guide to Creating Effective Public Participation in State Historic Preservation Planning. Barry R. Lawson, Ellen P. Ryan, and Rebecca Bartlett Hutchison, 1993. Describes an approach for designing public participation programs for State Historic Preservation Office preservation planning, with a mini-case study from the Maryland Historical Trust. May also be applicable in local community preservation planning settings.

Taking Command of Change: A Practical Guide for Applying the Strategic Development Process in State Historic Preservation Offices. Douglas C. Eadie, 1995.

Describes a strategic planning approach designed to provide practical guidance to SHPOs in managing growth and change.

~~*Resource Protection Planning Process*. State and Plans Grants Division, 1980. Washington, DC. Available from Survey and Planning Branch, Interagency Resources Division, National Park Service, Department of the Interior, Washington, DC 20240.~~

~~Outlines a step-by-step approach to implementing the resource protection planning process.~~

~~*Resources Protection Planning Process Case Studies*. Available from Survey and Planning Branch, Interagency Resources Division, National Park Service, Department of the Interior, Washington, DC 20240. Reports prepared by State Historic Preservation Offices and others using the planning process.~~

~~*Planning Theory*. Andreas Faludi, 1980. Oxford: Pergamon Press. Constructs a model of planning using concepts borrowed from general systems theory.~~

~~[Historic Preservation Planning Program](#)~~

~~[National Register Multiple Property Submission List](#)~~

~~[State Historic Preservation Offices \(SHPO\)](#)~~

Each SHPO Office has prepared a list of historic context titles, many, if not all, of which may have been developed and might be available. In addition, some SHPO Offices have developed guidelines for preparing historic contexts for their states.

Secretary of the Interior's Standards for Identification

Identification activities are undertaken to gather information about historic properties in an area. The scope of these activities will depend on: existing knowledge about properties; goals for survey activities developed in the planning process; and current management needs.

Standard I. Identification of Historic Properties Is Undertaken to the Degree Required To Make Decisions

Archival research and survey activities should be designed to gather the information necessary to achieve defined preservation goals. The objectives, chosen methods and techniques, and expected results of the identification activities are specified in a research design. These activities may include archival research and other techniques to develop historic contexts, sampling an area to gain a broad understanding of the kinds of properties it contains, or examining every property in an area as a basis for property specific decisions. Where possible, use of quantitative methods is important because it can produce an estimate, whose reliability may be assessed, of the kinds of historic properties that may be present in the studied area. Identification activities should use a search procedure consistent with the management needs for information and the character of the area to be investigated. Careful selection of methods, techniques and level of detail is necessary so that the gathered information will provide a sound basis for making decisions.

Standard II. Results of Identification Activities Are Integrated Into the Preservation Planning Process

Results of identification activities are reviewed for their effects on previous planning data. Archival research or field survey may refine the understanding of one or more historic contexts and may alter the need for additional survey or study of particular property types. Incorporation of the results of these activities into the planning process is necessary to ensure that the planning process is always based on the best available information.

Standard III. Identification Activities Include Explicit Procedures for Record-Keeping and Information Distribution

Information gathered in identification activities is useful in other preservation planning activities only when it is systematically gathered and recorded, and made available to those responsible for preservation planning. The results of identification activities should be reported in a format that summarizes the design and methods of the survey, provides a basis for others to review the results, and states where information on identified properties is maintained. However, sensitive information, like the location of fragile resources, must be safeguarded from general public distribution.

Secretary of the Interior's Guidelines for Identification

Introduction

These Guidelines link the Standards for Identification with more specific guidance and technical information. The Guidelines outline one approach to meet the Standards for Identification. Agencies, organizations and individuals proposing to approach identification differently may wish to review their approaches with the National Park Service.

The Guidelines are organized as follows:

[Role of Identification in the Planning Process](#)

[Performing Identification](#)

[Integrating Identification Results](#)

[Reporting Identification Results](#)

[Recommended Sources of Technical Information](#)

Role of Identification in the Planning Process

Identification is undertaken for the purpose of locating historic properties and is composed of a number of activities which include, but are not limited to archival research, informant interviews, field survey and analysis. Combinations of these activities may be selected and appropriate levels of effort assigned to produce a flexible series of options. Generally identification activities will have multiple objectives, reflecting complex management needs. Within a comprehensive planning process, identification is normally undertaken to acquire property-specific information needed to refine a particular historic context or to develop any new historic contexts. (See the Guidelines for Preservation Planning for discussion of information gathering to establish plans and develop historic contexts.) The results of identification activities are then integrated into the planning process so that subsequent activities are based on the most up-to-date information. Identification activities are also undertaken in the absence of a comprehensive planning process, most frequently as part of a specific land use or development project. Even lacking a formally developed preservation planning process, the benefits of efficient, goal-directed research may be obtained by the development of localized historic contexts, suitable in scale for the project area, as part of the background research which customarily occurs before field survey efforts.

Performing Identification

Research Design

Identification activities are essentially research activities for which a statement of objectives or research design should be prepared before work is performed. Within the framework of a comprehensive planning process, the research design provides a vehicle for integrating the various activities performed during the identification process and for linking those activities directly to the goals and the historic context(s) for which those goals were defined. The research design stipulates the logical integration of historic

context(s) and field and laboratory methodology. Although these tasks may be performed individually, they will not contribute to the greatest extent possible in increasing information on the historic context unless they relate to the defined goals and to each other. Additionally, the research design provides a focus for the integration of interdisciplinary information. It ensures that the linkages between specialized activities are real, logical and address the defined research questions. Identification activities should be guided by the research design and the results discussed in those terms. (See Reporting Identification Results.)

The research design should include the following:

1. **Objectives** of the identification activities. For example: to characterize the range of historic properties in a region; to identify the number of properties associated with a context; to gather information to determine which properties in an area are significant. The statement of objectives should refer to current knowledge about the historic contexts or property types, based on background research or assessments of previous research. It should clearly define the physical extent of the area to be investigated and the amount and kinds of information to be gathered about properties in the area.
2. **Methods** to be used to obtain the information. For example: archival research or field survey. Research methods should be clearly and specifically related to research problems.

Archival research or survey methods should be carefully explained so that others using the gathered information can understand how the information was obtained and what its possible limitations or biases are. The methods should be compatible with the past and present environmental character of the geographical area under study and the kinds of properties most likely to be present in the area.

3. **The expected results** and the reason for those expectations. Expectations about the kind, number, location, character and condition of historic properties are generally based on a combination of background research, proposed hypotheses, and analogy to the kinds of properties known to exist in areas of similar environment or history.

Archival Research

Archival or background research is generally undertaken prior to any field survey. Where identification is undertaken as part of a comprehensive planning process, background research may have taken place as part of the development of the historic contexts (see the Guidelines for Preservation Planning). In the absence of previously developed historic contexts, archival research should address specific issues and topics. It should not duplicate previous work. Sources should include, but not be limited to, historical maps, atlases, tax records, photographs, ethnographies, folklife documentation, oral histories and other studies, as well as standard historical reference works, as appropriate for the research problem. (See the Guidelines for Historical Documentation for additional discussion.)

Field Survey

The variety of field survey techniques available, in combination with the varying levels of effort that may be assigned, give great flexibility to implementing field surveys. It is important that the selection of field survey techniques and level of effort be responsive to the management needs and preservation goals that direct the survey effort.

Survey techniques may be loosely grouped into two categories, according to their results. First are the techniques that result in the characterization of a region's historic properties. Such techniques might include "windshield" or walk-over surveys, with perhaps a limited use of sub-surface survey. For purposes of these Guidelines, this kind of survey is termed a "reconnaissance." The second category of survey techniques is those that permit the identification and description of specific historic properties in an area; this kind of survey effort is termed "intensive." The terms "reconnaissance" and "intensive" are sometimes defined to mean particular survey techniques, generally with regard to prehistoric sites. The use of the terms here is general and is not intended to redefine the terms as they are used elsewhere.

Reconnaissance survey might be most profitably employed when gathering data to refine a developed historic context—such as checking on the presence or absence of expected property types, to define specific property types or to estimate the distribution of historic properties in an area. The results of regional characterization activities provide a general understanding of the historic properties in a particular area and permit management decisions that consider the sensitivity of the area in terms of historic preservation concerns and the resulting implications for future land use planning. The data should allow the formulation of estimates of the necessity, type and cost of further identification work and the setting of priorities for the individual tasks involved. In most cases, areas surveyed in this way will require resurvey if more complete information is needed about specific properties.

A reconnaissance survey should document:

1. The kinds of properties looked for;
2. The boundaries of the area surveyed;
3. The method of survey, including the extent of survey coverage;
4. The kinds of historic properties present in the surveyed area;
5. Specific properties that were identified, and the categories of information collected; and
6. Places examined that did not contain historic properties.

Intensive survey is most useful when it is necessary to know precisely what historic properties exist in a given area or when information sufficient for later evaluation and treatment decisions is needed on individual historic properties. Intensive survey describes the distribution of properties in an area; determines the number, location and condition of properties; determines the types of properties actually present within the area; permits classification of individual properties; and records the physical extent of specific properties. An intensive survey should document:

1. The kinds of properties looked for;
2. The boundaries of the area surveyed;
3. The method of survey, including an estimate of the extent of survey coverage;
4. A record of the precise location of all properties identified; and
5. Information on the appearance, significance, integrity and boundaries of each property sufficient to permit an evaluation of its significance.

Sampling

Reconnaissance or intensive survey methods may be employed according to a sampling procedure to examine less-than-the-total project or planning area.

Sampling can be effective when several locations are being considered for an undertaking or when it is desirable to estimate the cultural resources of an area. In many cases, especially where large land areas are involved, sampling can be done in stages. In this approach, the results of the initial large area survey are used to structure successively smaller, more detailed surveys. This "nesting" approach is an efficient technique since it enables characterization of both large and small areas with reduced effort. As with all investigative techniques, such procedures should be designed to permit an independent assessment of results.

Various types of sample surveys can be conducted, including, but not limited to: random, stratified and systematic. Selection of sample type should be guided by the problem the survey is expected to solve, the nature of the expected properties and the nature of the area to be surveyed.

Sample surveys may provide data to estimate frequencies of properties and types of properties within a specified area at various confidence levels. Selection of confidence levels should be based upon the nature of the problem the sample survey is designed to address.

Predictive modeling is an application of basic sampling techniques that projects or extrapolates the number, classes and frequencies of properties in unsurveyed areas based on those found in surveyed areas. Predictive modeling can be an effective tool during the early stages of planning an undertaking, for targeting field survey and for other management purposes. However, the accuracy of the model must be verified; predictions should be confirmed through field testing and the model redesigned and retested if necessary.

Special survey techniques

Special survey techniques may be needed in certain situations.

Remote sensing techniques may be the most effective way to gather background environmental data, plan more detailed field investigations, discover certain classes of properties, map sites, locate and confirm the presence of predicted sites, and define features within properties. Remote sensing techniques include aerial, subsurface and underwater techniques. Ordinarily the results of remote sensing should be verified through independent field inspection before making any evaluation or statement regarding frequencies or types of properties.

Integrating Identification Results

The results of identification efforts must be integrated into the planning process so that planning decisions are based on the best available information. The new information is first assessed against the objectives of the identification efforts to determine whether the gathered information meets the defined identification goals for the historic context(s); then the goals are adjusted accordingly. In addition, the historic context narrative, the definition of property types and the planning goals for evaluation and treatment are all adjusted as necessary to accommodate the new data.

Reporting Identification Results

Reporting of the results of identification activities should begin with the statement of objectives prepared before undertaking the survey. The report should respond to each of the major points documenting:

1. Objectives;
2. Area researched or surveyed;
3. Research design or statement of objectives;
4. Methods used, including the intensity of coverage. If the methods differ from those outlined in the statement of objectives, the reasons should be explained.
5. Results: how the results met the objectives; result analysis, implications and recommendations; where the compiled information is located.

A summary of the survey results should be available for examination and distribution. Identified properties should then be evaluated for possible inclusion in appropriate inventories.

Protection of information about archeological sites or other properties that may be threatened by dissemination of that information is necessary. These may include fragile archeological properties or properties such as religious sites, structures, or objects, whose cultural value would be compromised by public knowledge of the property's location.

Recommended Sources of Technical Information

Current Recommendations

Archaeological Method and Theory: An Encyclopedia. Linda Ellis, editor. Garland Publishing, Inc., New York, 2000.

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Guidelines for Local Surveys: A Basis for Preservation Planning ([WordPerfect file](#) or [.zip file](#)) Anne Derry, H. Ward Jandl, Carol Shull and Jan Thorman. National Register Division, U.S. Department of the Interior, 1978, revised 1985.

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Interpreting Space: GIS and Archaeology. Kathleen M. S. Allen, Stanton W. Green, and Ezra B. W. Zubrow, editors. Taylor and Francis, New York, 1990.

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Principles of Archaeological Stratigraphy. E.C. Harris. 2nd ed. Academic Press Inc, San Diego, 1989.

"Red Flag Models: The Use of Modelling in Management Contexts." Jeffery H. Altschul. In *Interpreting Space: GIS and Archaeology*. Kathleen M. S. Allen, Stanton W. Green, and Ezra B. W. Zubrow, editors. Pp. 226-238. Taylor and Francis, New York, 1990.

"Regional Surveys in the Eastern United States: The Strengths and Weaknesses of Implementing Subsurface Testing Programs." K. G. Lightfoot. *American Antiquity* 51(3):484-504, 1986.

"Sampling in Archaeological Surveys: A Critique." S. Plog. *American Antiquity* 38(1):280-285, 1978.

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Property Types:

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[Guidelines for Evaluating and Documenting Historic Aviation Properties](#). Department of the Interior, National Park Service, National Register, History and Education, 1998.

[Guidelines for Identifying, Evaluating and Registering America's Historic Battlefields](#). Department of the Interior, National Park Service, National Register, History and Education, 1992.

[Guidelines for Evaluating and Registering Cemeteries and Burial Place](#). Department of the Interior, National Park Service, National Register, History and Education, 1992.

[How to Evaluate and Nominate Designed Historic Landscapes](#). Department of the Interior, National Park Service, National Register, History and Education, 1990.

Guidelines for Evaluating and Registering Historical Archeological Sites ([WordPerfect file](#) or [.zip file](#)). Department of the Interior, National Park Service, National Register, History and Education, 1992, revised 1999.

[Guidelines for Identifying, Evaluating and Registering Historic Mining Properties](#). Department of the Interior, National Park Service, National Register, History and Education, 1992, revised 1997, 1999.

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How to Apply the National Register Criteria for Post Offices ([WordPerfect file](#)). Department of the Interior, National Park Service, National Register, History and Education, 1984, revised 1994.

[Guidelines for Evaluating and Nominating Properties that Have Achieved Significance in the Past Fifty Years](#). Department of the Interior, National Park Service, National Register, History and Education, 1979, revised, 1990, 1996, 1998.

[Guidelines for Evaluating and Documenting Rural Historic Landscapes](#). Department of the Interior, National Park Service, National Register, History and Education, 1991, revised 1999.

[Guidelines for Evaluating and Documenting Properties Associated with Significant Persons](#). Department of the Interior, National Park Service, National Register, History and Education, 1989.

[Guidelines for Evaluating and Documenting Traditional Cultural Properties](#). Department of the Interior, National Park Service, National Register, History and Education, 1990, revised 1992, 1998.

[Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places](#). Department of the Interior, National Park Service, National Register, History and Education, 1992.

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Remote Sensing and Non-Destructive Archeology. Thomas R. Lyons and James L. Ebert, editors. Remote Sensing Division, Southwest Cultural Resources Center, National Park Service, U.S. Department of the Interior and University of New Mexico, 1978.

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Sedimentary Studies of Prehistoric Archeological Sites. Sherwood Gagliano, Charles Pearson, Richard Weinstein, Diana Wiseman, and Christopher McClendon. Division of State Plans and Grants, National Park Service, U.S. Department of the Interior, 1982. Washington, D.C. Available from Coastal Environments Inc., 1260 Main Street, Baton Rouge, Louisiana 70802. Establishes and evaluates a method for employing sedimentological analysis in distinguishing site areas from non-site areas when identifying submerged archeological sites on the continental shelf.

State Survey Forms. Available from Interagency Resource Management Division, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Characterizes cultural resource survey documentation methods in State Historic Preservation Offices.

Truss Bridge Types: A Guide to Dating and Identifying. Donald C. Jackson and T. Allan Comp. American Association for State and Local History, 1977. Nashville, Tennessee. Technical leaflet #95. Available from AASLH, 172 Second Avenue North, Nashville, Tennessee 37201. Information about performing surveys of historic bridges and identifying the types of properties encountered.

[Archeology & Ethnography Program](#)
[National Register of Historic Places](#)
[Society for Historical Archaeology](#)
[Society of American Archaeology](#)
[State Historic Preservation Offices \(SHPO\)](#)

Many SHPO Offices have prepared survey manuals and guides for survey projects, many of which might be available.

Secretary of the Interior's Standards for Evaluation

Evaluation is the process of determining whether identified properties meet defined criteria of significance and therefore should be included in an inventory of historic properties determined to meet the criteria. The criteria employed vary depending on the inventory's use in resource management.

Standard I. Evaluation of the Significance of Historic Properties Uses Established Criteria

The evaluation of historic properties employs criteria to determine which properties are significant. Criteria should therefore focus on historical, architectural, archeological, engineering and cultural values, rather than on treatments. A statement of the minimum information necessary to evaluate properties against the criteria should be provided to direct information gathering activities.

Because the National Register of Historic Places is a major focus of preservation activities on the Federal, State and local levels, the National Register criteria have been widely adopted not only as required for Federal purposes, but for State and local inventories as well. The National Historic Landmark criteria and other criteria used for inclusion of properties in State historic site files are other examples of criteria with different management purposes.

Standard II. Evaluation of Significance Applies the Criteria Within Historic Contexts

Properties are evaluated using a historic context that identifies the significant patterns that properties represent and defines expected property types against which individual properties may be compared. Within this comparative framework, the criteria for evaluation take on particular meaning with regard to individual properties.

Standard III. Evaluation Results in A List or Inventory of Significant Properties That Is Consulted In Assigning Registration and Treatment Priorities

The evaluation process and the subsequent development of an inventory of significant properties is an on-going activity. Evaluation of the significance of a property should be completed before registration is considered and before preservation treatments are selected. The inventory entries should contain sufficient information for subsequent activities such as registration or treatment of properties, including an evaluation statement that makes clear the significance of the property within one or more historic contexts.

Standard IV. Evaluation Results Are Made Available to the Public

Evaluation is the basis of registration and treatment decisions. Information about evaluation decisions should be organized and available for use by the general public and by those who take part in decisions about registration and treatment. Use of appropriate computer-assisted data bases should be a part of

the information dissemination effort. Sensitive information, however, must be safeguarded from general public distribution.

Secretary of the Interior's Guidelines for Evaluation

Introduction

These Guidelines link the Standards for Evaluation with more specific guidance and technical information. These Guidelines describe one approach to meeting the Standards for Evaluation. Agencies, organizations, or individuals proposing to approach evaluation differently may wish to review their approach with the National Park Service.

The Guidelines are organized as follows:

[The Evaluation Process](#)

[Criteria](#)

[Application of Criteria within a Historic Context](#)

[Inventory](#)

[Recommended Sources of Technical Information](#)

The Evaluation Process

These Guidelines describe principles for evaluating the significance of one or more historic properties with regard to a given set of criteria.

Groups of related properties should be evaluated at the same time whenever possible; for example, following completion of a theme study or community survey.

Evaluation should not be undertaken using documentation that may be out of date. Prior to proceeding with evaluation the current condition of the property should be determined and previous analyses evaluated in light of any new information.

Evaluation must be performed by persons qualified by education, training and experience in the application of the criteria. Where feasible, evaluation should be performed in consultation with other individuals experienced in applying the relevant criteria in the geographical area under consideration; for example, the State Historic Preservation Officer or local landmarks commission.

Evaluation is completed with a written determination that a property is or is not significant based on provided information. This statement should be part of the record.

Criteria

The purposes of evaluation criteria should be made clear. For example, the criteria may be used "to evaluate properties for inclusion in the county landmarks list," or "to implement the National Register of Historic Places program."

For Federal cultural resource management purposes, criteria used to develop an inventory should be coordinated with the National Register criteria for evaluation as implemented in the approved State comprehensive historic preservation plan.

Content of Criteria: Criteria should be appropriate in scale to the purpose of the evaluation. For example, criteria designed to describe national significance should not be used as the basis for creating a county or State inventory. Criteria should be categorical and not attempt to describe in detail every

property likely to qualify. Criteria should outline the disciplines or broad areas of concern (history, archeology, architectural history, engineering and culture, for example) included within the scope of the inventory; explain what kinds of properties, if any, are excluded and the reasons for exclusion; and define how levels of significance are measured, if such levels are incorporated into the criteria. If the criteria are to be used in situations where the National Register criteria are also widely used, it is valuable to include a statement explaining the relationship of the criteria used to the National Register criteria, including how the scope of the inventory differs from that defined by the National Register criteria and how the inventory could be used to identify properties that meet the National Register criteria.

Information Needed to Evaluate Properties: The criteria should be accompanied by a statement defining the minimum information necessary to evaluate properties to insure that this information is collected during identification activities intended to locate specific historic properties. Generally, at least the following will be needed:

1. Adequately developed historic contexts, including identified property types. (See the Guidelines for Preservation Planning for discussion of development of historic contexts.)
2. Sufficient information about the appearance, condition and associative values of the property to be evaluated to:
 - a. Classify it as to property type;
 - b. Compare its features or characteristics with those expected for its property type; and
 - c. Define the physical extent of the property and accurately locate the property.

To facilitate distinguishing between facts and analysis, the information should be divided into categories including identification and description of pertinent historical contexts; description of the property and its significance in the historical context; and analysis of the integrity of the property relative to that needed to represent the context.

Usually documentation need not include such items as a complete title history or biography of every owner of a property, except where that information is important in evaluating its significance. Information on proposed or potential treatments or threats, such as destruction of a property through uncontrollable natural processes, is also not needed for evaluation, unless those effects are likely to occur prior to or during the evaluation, thereby altering the significant characteristic of the property. If archeological testing or structural analysis is needed for evaluation, it should not proceed beyond the point of providing the information necessary for evaluation and should not unnecessarily affect significant features or values of the property.

When more information is needed: Evaluation cannot be conducted unless all necessary information is available. (See Information Needed to Evaluate Properties.) Any missing information or analysis should be identified (e.g. development of context or information on the property) as well as the specific activities required to obtain the information (archival research, field survey and testing, or laboratory testing). When adequate information is not available, it is important to record that fact so that evaluation will not be undertaken until the information can be obtained. In some cases needed information is not obtainable, for example, where historical records have been destroyed or analytical techniques have not been developed to date materials in archeological sites. If an evaluation must be completed in these cases, it is important to acknowledge what information was not obtainable and how that missing information may affect the reliability of the evaluation.

Application of the Criteria within a Historic Context

The first step in evaluation is considering how the criteria apply to the particular historic context. This is done by reviewing the previously developed narrative for the historic context and determining how the criteria would apply to properties in that context, based on the important patterns, events, persons and cultural values identified. (See the discussion of the historic context narrative in the Guidelines for Preservation Planning.) This step includes identification of which criteria each property type might meet and how integrity is to be evaluated for each property type under each criterion. Specific guidelines for

evaluating the eligibility of individual properties should be established. These guidelines should outline and justify the specific physical characteristics or data requirements that an individual property must possess to retain integrity for the particular property type; and define the process by which revisions or additions can be made to the evaluation framework.

Consideration of property type and integrity: After considering how the criteria apply to the particular historic context, the evaluation process for a property generally includes the following steps:

1. A property is classified as to the appropriate historic context(s) and property type(s). If no existing property type is appropriate, a new property type is defined, its values identified, and the specific characteristics or data requirements are outlined and justified as an addition to the historic context. If necessary, a new historic context is defined for which values and property types and their integrity requirements are identified and justified.
2. A comparison is made between the existing information about the property and the integrity characteristics or data required for the property type.
 - a. If the comparison shows that the property possesses these characteristics, then it is evaluated as significant for that historic context. The evaluation includes a determination that the property retains integrity for its type.
 - b. If the comparison shows that the property does not meet the minimum requirements, one of several conclusions is reached:
 1. The property is determined not significant because it does not retain the integrity defined for the property type.
 2. The property has characteristics that may make it significant but these differ from those expected for that property type in that context. In this case, the historic context or property types should be reexamined and revised if necessary, based on subsequent research and survey.

The evaluation should state how the particular property meets the integrity requirements for its type. When a property is disqualified for loss of integrity, the evaluation statement should focus on the kinds of integrity expected for the property type, those that are absent for the disqualified property, and the impact of that absence on the property's ability to exemplify architectural, historical or research values within a particular historic context.

The integrity of the property in its current condition, rather than its likely condition after a proposed treatment, should be evaluated. Factors such as structural problems, deterioration, or abandonment should be considered in the evaluation only if they have affected the integrity of the significant features or characteristics of the property.

Inventory

An inventory is a repository of information on specific properties evaluated as significant.

Content: The inventory should include:

1. Summaries of the important historic contexts. These may be in the form of an approved plan or analysis of historic contexts important in the history of the geographical area covered by the inventory.
2. Descriptions of significant property types of these contexts, whether or not any specific properties have been identified.
3. Results of reconnaissance surveys or other identification activities, even if the level of information on specific properties identified as part of those activities is not sufficient to evaluate individual properties.
4. Information on individual properties that was used in evaluation.

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- Historic contexts are identified by name, with reference to documents describing those contexts, or with a narrative statement about the context(s) where such documents do not exist.
- A description of the property. Part of this description may be a photographic record.
- A statement that justifies the significance of the property in relation to its context(s). This statement should include an analysis of the integrity of the property.
- Boundaries of the property.
- A record of when a property was evaluated and included in the inventory, and by whom.
- Records on demolished or altered properties and properties evaluated as not significant should be retained, along with full description of areas surveyed, for the planning information these records provide about impacts to properties and about the location and character of non-significant properties to prevent redundant identification work at a later time.

Maintenance: Inventory entries should be maintained so that they accurately represent what is known about historic properties in the area covered by the inventory. This will include new information gained from research and survey about the historic contexts, property types, and previously evaluated properties, as well as information about newly evaluated properties. For individual properties, addition of kinds of significance, change in the boundaries, or loss of significance through demolition or alteration should be recorded.

Uses and Availability: An inventory should be managed so that the information is accessible. Its usefulness depends on the organization of information and on its ability to incorporate new information. An inventory should be structured so that entries can be retrieved by locality or by historic context. The availability of the inventory information should be announced or a summary should be distributed. This may be in the form of a list of properties evaluated as significant or a summary of the historic contexts and the kinds of properties in the inventory. Inventories should be available to managers, planners, and the general public at local, State, regional, and Federal agency levels.

It is necessary to protect information about archeological sites or other properties whose integrity may be damaged by widespread knowledge of their location. It may also be necessary to protect information on the location of properties such as religious sites, structures, or objects whose cultural value would be compromised by public knowledge of the property's location.

Recommended Sources of Technical Information

Current Recommendations

Archaeological Method and Theory: An Encyclopedia. Linda Ellis, editor. Garland Publishing, Inc., New York, 2000.

Cultural Resource Significance Evaluation: Proceedings of a U.S. Army Corps of Engineers Workshop 3-4 October 1994, Vicksburg, Mississippi. Frederick L. Briuer and Clay Mathers, editors. US. Army Corps of Engineers, IWR Report 96-EL-3, 1996.

Defining Boundaries for National Register Properties ([WordPerfect file](#)). Department of the Interior, National Park Service, National Register, History and Education, 1995.

Geophysical Exploration for Archaeology: An Introduction to Geophysical Exploration. Bruce W. Bevan. Midwest Archeological Center Special Report No. 1. Department of the Interior, National Park Service, Midwest Archeological Center, Lincoln, Nebraska, 1998.

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"Other Questions that Count: Introductory Comments on Assessing Significance in Historical Archaeology." William B. Lees and Vergil E. Noble. *Historical Archaeology* 24(2):10-13, 1990.

[Researching a Historic Property](#). Department of the Interior, National Park Service, National Register, History and Education, 1991, revised 1998.

Settler Communities in the West: Historic Contexts for Cultural Resource Managers of Department of Defense Lands. Robert Lyon, editor. National Park Service, Rocky Mountain Region, 1994.

[National Park Service, 1994, Thematic Framework](#). Department of the Interior, National Park Service.

Trends and Patterns in Cultural Resource Significance: An Historical Perspective and Annotated Bibliography ([.pdf file](#)). Frederick L. Briuer and Clay Mathers. U.S. Army Corps of Engineers Water Resources Support Center IWR Report 96-EL-1, 1996.

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Guidelines for Identifying, Evaluating and Registering Aids to Navigation ([WordPerfect file](#)). Department of the Interior, National Park Service, National Register, History and Education, 1990.

[Guidelines for Evaluating and Documenting Historic Aviation Properties](#). Department of the Interior, National Park Service, National Register, History and Education, 1998.

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[How to Evaluate and Nominate Designed Historic Landscapes](#). Department of the Interior, National Park Service, National Register, History and Education, 1990.

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[Guidelines for Identifying, Evaluating and Registering Historic Mining Properties](#). Department of the Interior, National Park Service, National Register, History and Education, 1992, revised 1997, 1999.
How to Apply the National Register Criteria for Post Offices ([WordPerfect file](#)). Department of the Interior, National Park Service, National Register, History and Education, 1984, revised 1994.

[Guidelines for Evaluating and Nominating Properties that Have Achieved Significance in the Past Fifty Years](#). Department of the Interior, National Park Service, National Register, History and Education, 1979, revised 1990, 1996, 1998.

[Guidelines for Evaluating and Documenting Rural Historic Landscapes](#). Department of the Interior, National Park Service, National Register, History and Education, 1991, revised 1999.

[Guidelines for Evaluating and Documenting Properties Associated with Significant Persons](#). Department of the Interior, National Park Service, National Register, History and Education, 1989.

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[Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places](#). Department of the Interior, National Park Service, National Register, History and Education, 1992.

~~*How to Apply the National Register Criteria*. Available through the National Register Branch, Interagency Resources Division, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Provides detailed technical information about interpretation of the significance and integrity criteria used by the National Register of Historic Places program.~~

~~*How To Series*. Available through the National Register Branch, Interagency Resources Division, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Discusses application of the National Register criteria for evaluation.~~

~~Titles include:~~

~~*How To Establish Boundaries for National Register Properties*.~~

~~*How To Evaluate and Nominate Potential National Register Properties That Have Achieved Significance Within the Last 50 Years*.~~

~~*How To Improve Quality of Photos for National Register Nominations*.~~

~~*How to Apply for Certification of Significance Under Section 2124 of the Tax Reform Act of 1976*.~~

~~*How To Apply for Certification of State and Local Statutes and Historic Districts*.~~

~~*How To Qualify Historic Properties Under the New Federal Law Affecting Easements*.~~

~~*Importance of Small, Surface, and Disturbed Sites as Sources of Significant Archeological Data*. Valerie Talmage and Olga Chesler. Interagency Archeological Service, 1977. Washington, D.C. Available from the National Technical Information Service. NTIS Publication Number PB 270939/AS. Discusses the role of small, surface, and disturbed sites as sources of significant information about a variety of prehistoric activities. These types of sites are frequently ignored in the development of regional archeological research designs.~~

[Archeology & Ethnography Program National Register of Historic Places](#)

Secretary of the Interior's Standards For Registration

Registration is the formal recognition of properties evaluated as significant. Preservation benefits provided by various registration programs range from honorific recognition to prohibition of demolition or alteration of included properties. Some registration programs provide recognition and other broad benefits while other programs authorize more specific forms of protection.

Standard I. Registration Is Conducted According To Stated Procedures

Registration of historic properties in the National Register of Historic Places must be done in accordance with the National Register regulations published in the Code of Federal Regulations, 36 CFR 60. Registration for other lists or purposes follow an established process that is understood by the public, particularly by those interests that may be affected by registration.

Standard II. Registration Information Locates, Describes and Justifies the

Significance and Physical Integrity of a Historic Property

Registers are used for planning, research and treatment. They must contain adequate information for users to locate a property and understand its significance. Additional information may be appropriate depending on the intended use of the register.

Standard III. Registration Information Is Accessible to the Public

Information should be readily available to the public and to government agencies responsible for the preservation of historic properties and for other planning needs.

Secretary of the Interior's Guidelines for Registration

Introduction

These Guidelines link the Standards for Registration with more specific guidance and technical information. They describe one approach to meeting the Standards for Registration. Agencies, organizations, or individuals proposing to approach registration differently may wish to review their approach with the National Park Service.

The Guidelines are organized as follows:

[Purpose of Registration Programs](#)

[Registration Procedures](#)

[Documentation on Registered Properties](#)

[Public Availability](#)

[Recommended Sources of Technical Information](#)

Purpose of Registration Programs

Registration of historic properties is the formal recognition of properties that have been evaluated as significant according to written criteria. Registration results in an official inventory or list that serves an administrative function. A variety of benefits or forms of protection accrue to a registered property, ranging from honorific recognition to prohibition of demolition or alteration.

Some registration programs provide recognition and other broad benefits or entitlement, while other registrations of properties may, in addition, authorize more specific forms of protection. The application of the registration process should be a logical outgrowth of the same planning goals and priorities that guided the identification and evaluation activities. All registration programs should establish priorities for recognition of their authorized range of properties; provide for confidentiality of sensitive information; and establish a means of appealing the registration or non-registration of a property.

Registration Procedures

Explicit procedures are essential because they are the means by which the public can understand and participate in the registration process. Procedures for registration programs should be developed by professionals in the field of historic preservation, in consultation with those who will use or be affected by the program. Prior to taking effect, procedures should be published or circulated for comment at the governmental level at which they will be used. (Procedures for registration of properties in the National Register of Historic Places and the National Historic Landmarks list, for example, are published in the *Federal Register*.)

Any registration program should include:

1. A professional staff to prepare or assess the documentation,
2. A professional review, independent of the nominating source, to provide an impartial evaluation of the documented significance;
3. Adequate notice to property owners, elected officials and the public about proposed registrations and the effects of listing, if any, and

4. A means of public participation.

Professional Review: The registration process should include an independent evaluation of the significance of the property and of the quality and thoroughness of the documentation supporting that significance. Such evaluation ensures that significance is adequately justified and that registration documentation meets the technical requirements of the registration process.

State and local preservation programs, concerned with both public and private properties, generally use a review board, panel or commission. This level of professional review has proven to be effective in assessing the significance of properties considered for registration.

Review boards and other forms of independent review should include professionals in the fields or disciplines included in the criteria; representatives of other fields or disciplines may be desirable to reflect other values or aspects of the register. Key personnel must be qualified by education, training or experience to accomplish their designated duties (See the Professional Qualifications Standards.) The scope of the independent review should be clearly stated in the registration procedures and should not include issues outside the scope of the applicable criteria for evaluation and other areas specified in the procedures. Generally, independent reviewers should not be involved in any primary research or analysis related to properties under consideration; this information should be gathered and organized prior to review meetings. Documentation presented to the reviewers should be made available to the public prior to review meetings or public hearings. Registration of properties should not take place until review of documentation has been completed.

Public Notice: Adequate notice allows property owners, officials and other interested parties to comment on proposed registrations prior to action by the independent reviewers. The degree of protection and control provided by a registration program may be a factor in determining what constitutes adequate notice. For example, adequate notice of proposed inclusion in honorific registers may be less complex than that for registration that results in local controls on alteration or demolition of registered properties. Notice to elected officials and the public is necessary to distribute information about potential registrations of concern to planning and development interests.

Adequate notice to property owners may be accomplished through means ranging from individual notification by mail to publication of a public notice, depending on the nature of the registration program and the number and character of the properties involved.

Public notices and owner notification about proposed registrations should include the dates and times of public meetings and review meetings, the kinds of comments that are appropriate, and how comments will be considered in the evaluation process. The notice should also state where information can be obtained about the registration program, the criteria used to evaluate properties for inclusion, and the significance of specific properties under consideration.

The procedures should include a means of public participation in the form of submission of written comments or a review meeting open to the public or a public hearing.

The procedures should state time periods within which reviews, notices, comments, public hearings, review meetings and appeals will occur. The time periods should be short enough to allow for efficient recognition of historic properties but also allow adequate time for public comment and participation by those affected. Time periods may vary depending on whether activities are carried out at the local, State, or national level. These time schedules should be widely circulated so that the process is widely understood.

Appeal Process: A means of appeal should be included in the registration process to allow for reconsideration of a property's inclusion. Reasons for appeal may range from existence of additional information about the property supporting or refuting its significance to administrative or procedural error. An appeal process should specify to whom an appeal may be made and how the information that is

provided will be evaluated. The appeal procedures should also state the time limit, if any, on appealing a decision and on consideration of information and issuance of a decision by the appeal authority.

Documentation on Registered Properties

Documentation requirements should be carefully weighed to provide the information actually needed to reach a registration decision and should be made public. It should be made certain that identification and evaluation activities obtain and record the information necessary for registration. Documentation should be prepared in a standardized format and on materials that are archivally stable and easy to store and retrieve.

Location: The precise location of a historic property must be clearly identified.

Street address, town or vicinity, and county should be provided. Properties should also be located on maps; these may be USGS maps, county planning maps or city base maps or real estate maps. A uniform system of noting location, such as UTM grid points or longitude and latitude, should supplement mapping. It is recommended that each registration process standardize the preferred choice of maps appropriate to the scope of the process.

Description: An accurate description of a property includes a description of both the current and historical physical appearance and condition of the property and notes the relevant property type(s) for the applicable historic context(s). Discussion should include alterations, deterioration, relocation and other changes to the property since its period of significance.

Significance: A statement of significance should explain why a property meets the criteria for inclusion in the register to which it has been nominated.

This statement should contain at least 3 elements:

1. Reference to the relevant historic context(s);
2. Identification of relevant property types within the context and their characteristics; and
3. Justification that the property under consideration has the characteristics required to qualify it.

Relevant historic contexts can be identified through reference to the preservation plan or other documents where the contexts have been previously described or can be provided by a narrative discussion of the context. (The development of contexts and their use in evaluating properties are discussed in the Guidelines for Preservation Planning and the Guidelines for Evaluation.) A significant property type and its characteristics are identified either through reference to the historic context(s) or by a narrative in the documentation that describes historic contexts. Justification of a specific property is made by systematic comparison of its characteristics to those required for the property type.

Boundaries: The delineation and justification of boundaries for a registered property are important for future treatment activities. It is especially critical when legal restraints or restrictions may result from the registration of properties. Thus, boundaries should correspond as closely as possible to the actual extent and configuration of the property and should be carefully selected to encompass, but not exceed, the extent of the significant resource(s). The selection of boundaries should reflect the significant aspects of the property.

Arbitrary boundaries should not be chosen for ease of description since this can result in the inclusion of unrelated land or in exclusion of a portion of the historic property. Present property lines should not be chosen as property boundaries without careful analysis of whether they are appropriate to the historic property. A single uniform boundary description and acreage should not be applied to a group or class of properties (antebellum plantations, for example) without examination of the actual extent of each property. The selected boundaries should be justified as appropriate to the historic property.

Boundaries should be clearly and precisely described, using a verbal boundary description, legal description, accurate sketch map, or lines drawn on base maps, or a combination of these where needed to specify the limits of the property being registered. When used, maps should show the location of buildings, structures, sites or objects within the boundary.

Updating Information on Registered Properties: A change in the condition of the significant features of a property may require a change in the official registration record. Alteration of a significant architectural feature, for example, could mean that a property is no longer significant for its architectural design. Additional significance of registered properties may be identified through development of new historic contexts. Research may reveal that a property is significant in other historic contexts or is significant at a higher level. For example, a property previously recognized as of local significance could be found to be of national significance.

A change in location or condition of a registered property may mean that the property is no longer significant for the reasons for which it was registered and the property should be deleted from the registered list.

Public Availability

Lists of registered properties should be readily available for public use, and information on registered properties should be distributed on a regular basis. Lists of properties registered nationally are distributed through publication in the Federal Register and to Congressional Offices and State Historic Preservation Offices. Comprehensive information should be stored and maintained for public use at designated national, State and local authorities open to the public on a regular basis.

Information should be retrievable by the property name, and location, historic context or property type. The specific location of properties that may be threatened by dissemination of that information must be withheld. These may include fragile archeological properties or properties such as religious sites, structures, or objects whose cultural value would be compromised by public knowledge of the property location.

Recommended Sources of Technical Information

Current Recommendations

[How to Complete the National Register Registration Form](#). Department of the Interior, National Park Service, National Register, History and Education, 1977, revised 1986, 1991, 1997, 1999.

[How to Complete the National Register Multiple Property Documentation Form](#). Department of the Interior, National Park Service, National Register, History and Education, 1991, revised 1998.

[How to Prepare National Historic Landmark Nominations \(online order form\)](#). Department of the Interior, National Park Service, National Register, History and Education, 1999.

[Researching a Historic Property](#). Department of the Interior, National Park Service, National Register, History and Education, 1991, revised 1998.

[Defining Boundaries for National Register Properties \(WordPerfect file\)](#). Department of the Interior, National Park Service, National Register, History and Education, 1995.

[How to Improve the Quality of Photographs for National Register Nominations \(online order form\)](#). Department of the Interior, National Park Service, National Register, History and Education, 1997.

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[Using the UTM Grid System to Record Historic Sites](#). Department of the Interior, National Park Service, National Register, History and Education, 1977.

Property Types:

[Guidelines for Identifying, Evaluating and Registering Aids to Navigation \(WordPerfect file\)](#). Department of the Interior, National Park Service, National Register, History and Education, 1990.

[Guidelines for Evaluating and Documenting Historic Aviation Properties](#). Department of the Interior, National Park Service, National Register, History and Education, 1998.

[Guidelines for Identifying, Evaluating and Registering America's Historic Battlefields](#). Department of the Interior, National Park Service, National Register, History and Education, 1992.

[Guidelines for Evaluating and Registering Cemeteries and Burial Place](#). Department of the Interior, National Park Service, National Register, History and Education, 1992.

[How to Evaluate and Nominate Designed Historic Landscapes](#). Department of the Interior, National Park Service, National Register, History and Education, 1990.

[Guidelines for Evaluating and Registering Historical Archeological Sites \(WordPerfect file or .zip file\)](#). Department of the Interior, National Park Service, National Register, History and Education, 1992, revised 1999.

[Guidelines for Identifying, Evaluating and Registering Historic Mining Properties](#). Department of the Interior, National Park Service, National Register, History and Education, 1992, revised 1997, 1999.

[How to Apply the National Register Criteria for Post Offices \(WordPerfect file\)](#). Department of the Interior, National Park Service, National Register, History and Education, 1984, revised 1994.

[Guidelines for Evaluating and Nominating Properties that Have Achieved Significance in the Past Fifty Years](#). Department of the Interior, National Park Service, National Register, History and Education, 1979, revised 1990, 1996, 1998.

[Guidelines for Evaluating and Documenting Rural Historic Landscapes](#). Department of the Interior, National Park Service, National Register, History and Education, 1991, revised 1999.

[Guidelines for Evaluating and Documenting Properties Associated with Significant Persons](#). Department of the Interior, National Park Service, National Register, History and Education, 1989.

[Guidelines for Evaluating and Documenting Traditional Cultural Properties](#). Department of the Interior, National Park Service, National Register, History and Education, 1990, revised 1992, 1998.

[Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places](#). Department of the Interior, National Park Service, National Register, History and Education, 1992.

[How to Complete the National Register Form](#). National Register Division, National Park Service, US. Department of the Interior, 1977. Washington, D.C. Available through the Superintendent of Documents, US Government Printing Office, Washington, D.C. 20402. GPO Stock Number 024005- 00666-4. This publication is the standard reference on the documentation requirements of the National Register of Historic Places program.

~~How To Series~~. Available through the National Register Branch, Interagency Resources Division, National Park Service, U.S. Department of the Interior, Washington, DC 20240. These information sheets contain

supplementary information about interpreting the National Register criteria for evaluation and documentation requirements of the National Register registration program. Titles include:
~~*How To Establish Boundaries for National Register Properties.*~~
~~*How To Evaluate and Nominate Potential National Register Properties that Have Achieved Significance Within the Last 50 Years.*~~
~~*How To Improve the Quality of Photographs for National Register Nominations.*~~
~~*How To Apply for Certification of Significance Under Section 2124 of the Tax Reform Act of 1976.*~~
~~*How To Apply for Certification of State and Local Statutes and Historic Districts.*~~
~~*How To Qualify Historic Properties Under the New Federal Law Affecting Easements.*~~

[National Register of Historic Places](#)
[National Register Information System \(NRIS\)](#)

Note on Documentation and Treatment of Historic Properties

Documentation and treatment of historic properties includes a variety of techniques to preserve or protect properties, or to document their historic values and information. While documentation activities may be applied to any potentially historic property, generally only those properties that first have been evaluated as significant against specified criteria (such as those of the National Register) are treated. Some commonly applied treatments are preservation in place, rehabilitation, restoration and stabilization; there are other types of treatments also. Documentation and treatment may be applied to the same property; for example, archeological historical, and architectural documentation may be prepared before a structure is stabilized or before foundations or chimneys or other lost features are reconstructed.

Alternatives for treatment will usually be available, and care should be applied in choosing among them. Preservation in place is generally preferable to moving a property. Over time, the preferred treatment for a property may change; for example, an archeological site intended for preservation in place may begin to erode so that a combination of archeological documentation and stabilization may be required. If a decision is made that a particular property will not be preserved in place, the need for documentation must then be considered.

The three sets of documentation standards (i.e., the Standards for Historical Documentation, Standards for Architectural and Engineering Documentation, and Standards for Archeological Documentation) as well as the ~~Standards for Historic Preservation Projects (Acquisition, Preservation, Stabilization, Protection, Rehabilitation, Restoration, and Reconstruction)~~ [the Secretary of the Interior's Standards for the Treatment of Historic Properties (Preservation, Rehabilitation, Restoration, Reconstruction)] describe the techniques of several disciplines to treat historic properties, and to document or preserve information about their historical values. The integration of planning for documentation and treatment with their execution is accomplished in a statement of objectives, or research design. Because both the goals and appropriate methodologies are likely to be interdisciplinary in nature, the relationship among these various activities should be specified in the research design to ensure that the resulting documentation produces a comprehensive record of historic properties in an efficient manner.

Secretary of the Interior's Standards for Historical Documentation

Historic documentation provides important information related to the significance of a property for use by historians, researchers, preservationists, architects, and historical archeologists. Research is used early in planning to gather information needed to identify and evaluate properties. (These activities are discussed in the Standards and Guidelines for Preservation Planning and the Standards and Guidelines for Identification.) Historical documentation is also a treatment that can be applied in several ways to properties previously evaluated as significant; it may be used in conjunction with other treatment activities (as the basis for rehabilitation plans or interpretive programs, for example) or as a final treatment to

preserve information in cases of threatened property destruction. These Standards concern the use of research and documentation as a treatment.

Standard I. Historical Documentation Follows a Research Design that Responds to Needs Identified in the Planning Process

Historical documentation is undertaken to make a detailed record of the significance of a property for research and interpretive purposes and for conservation of information in cases of threatened property destruction. Documentation must have defined objectives so that proposed work may be assessed to determine whether the resulting documentation will meet needs identified in the planning process. The research design or statement of objectives is a formal statement of how the needs identified in the plan are to be addressed in a specific documentation project. This is the framework that guides the selection of methods and evaluation of results, and specifies the relationship of the historical documentation efforts to other proposed treatment activities.

Standard II. Historical Documentation Employs an Appropriate Methodology to Obtain the Information Required by The Research Design

Methods and techniques of historical research should be chosen to obtain needed information in the most efficient way. Techniques should be carefully selected and the sources should be recorded so that other researchers can verify or locate information discovered during the research.

Standard III. The Results of Historical Documentation Are Assessed Against the Research Design and Integrated into the Planning Process

Documentation is one product of research; information gathered about the usefulness of the research design itself is another. The research results are assessed against the research design to determine how well they meet the objectives of the research. The results are integrated into the body of current knowledge and reviewed for their implications for the planning process. The research design is reviewed to determine how future research designs might be modified based on the activity conducted.

Standard IV. The Results of Historical Documentation Are Reported and Made Available to the Public

Research results must be accessible to prospective users. Results should be communicated to the professional community and the public in reports summarizing the documentation activity and identifying the repository of additional detailed information. The goal of disseminating information must be balanced, however, with the need to protect sensitive information whose disclosure might result in damage to properties.

Secretary of the Interior's Guidelines for Historical Documentation

Introduction

These Guidelines link; the Standards for Historical Documentation with more specific guidance and technical information. They describe one approach to meeting the Standards for Historical Documentation. Agencies, organizations or individuals proposing to approach historical documentation differently may wish to review their approaches with the National Park service.

The Guidelines are organized as follows:

[Historical Documentation Objectives](#)
[Research Design](#)
[Methods](#)
[Integrating Results](#)
[Reporting Results](#)
[Recommended Sources of Technical Information](#)

Documentation Objectives

Documentation is a detailed record, in the form of a report or other written document, of the historical context(s) and significance of a property. Historical research to create documentation uses archival materials, oral history techniques, ethnohistories, prior research contained in secondary sources and other sources to make a detailed record of previously identified values or to investigate particular questions about the established significance of a property or properties. It is an investigative technique that may be employed to document associative, architectural, cultural or informational values of properties. It may be used as a component of structural recording or archeological investigation, to enable interpretation or to mitigate the anticipated loss of a property through conservation of information about its historical, architectural or archeological significance. Documentation generally results in both greater factual knowledge about the specific property and its values, and in better understanding of the property in its historical context. In addition to increasing factual knowledge about a property and its significance in one historical context, documentation may also serve to link the property to or define its importance in other known or yet-to-be defined historic contexts.

Documentation should incorporate, rather than duplicate, the findings of previous research. Research may be undertaken to identify how a particular property fits into the work of an architect or builder; to analyze the historical relationship among several properties; or to document in greater detail the historical contexts of properties. The kinds of questions investigated will generally depend on what is already known or understood and what information is needed. For example, documentation of a bridge whose technological significance is well understood, but whose role in local transportation history is not, would summarize the information on the former topic and focus research on the associative values of the property. The questions that research seeks to answer through deed, map or archival search, oral history and other techniques may also relate to issues addressed in structural documentation or archeological investigation; for example, the reasons for and history of modification of a building to be the subject of architectural or engineering documentation.

Research Design

Historical documentation is guided by a statement of objectives, research design or task directive prepared before research is performed. The research design is a useful statement of how proposed work will enhance existing archival data and permits comparison of the proposed work with the results. The purpose of the research design is to define the proposed scope of the documentation work and to define a set of expectations based on the information available prior to the research. Generally, the research design also ensures that research methods are commensurate with the type, quality and source of expected information. The research design for a property should identify

1. Evaluated significance of the property(is) to be investigated;
2. Historical, architectural, archeological or cultural issues relevant to the evaluated significance of the property;
3. Previous research on those issues and how the proposed work is related to existing knowledge;
4. The amount and kinds of information required to produce reliable historical analyses;
5. Methods to be used to obtain the information;

6. Types of sources to be investigated; types of personnel required;
7. Expected results or findings based on available knowledge about the property and its context; and
8. Relationship of the proposed historical documentation to other proposed treatment activities; for example, recommendations on the use of documentation in interpretive programs or other aspects of treatment such as anticipated architectural, engineering or archeological documentation.

Research Methods

Research methods should be chosen based on the information needs, be capable of replication and be recorded so that another researcher could follow the same research procedure. Sources should be recorded so that other researchers can locate or verify the information discovered during the search.

Use of Sources: The variety of available written and graphic materials and the number of individuals that can serve as sources, including but not limited to personal records, deed and title books, newspapers, plats, maps, atlases, photographs, vital records, censuses, historical narratives, interviews of individuals and secondary source materials, should be considered in developing the research design. Part of the development of the research design is deciding what kinds of source materials are most likely to contain needed information and at what point in the research process that information will be most valuable. For example, often secondary sources are most valuable for gathering background information, while primary sources are more useful to gather or confirm specific facts. The documentation goals may not require exhaustive investigation of sources, such as deed records or building permits. Research may be kept cost-effective by making careful decisions about when to use particular sources, thereby limiting the use of time-consuming techniques to when absolutely necessary. Decisions about when to gather information may also affect the quality of information that can be gathered. When dealing with large project areas where loss of many properties is anticipated, it is important to gather information from local archival sources and oral histories before project activities destroy or disperse family or community records and residents.

Analysis of the accuracy and biases of source materials is critical in analyzing the information gathered from these sources. Maps, historical atlases and insurance maps should be assessed like written records for errors, biases and omissions; for example, some map sources may omit structures of a temporary nature or may not fully depict ethnic or minority areas. Likewise, building plans and architectural renderings may not reflect a structure as it was actually built.

Analysis: Analysis should not only focus on the issues defined in the research design, but should also explore major new issues identified during the course of research or analysis. The documentation gathered may raise important issues not previously considered, and further investigation may be important, particularly when contradictory information has been gathered. It is important to examine the implications of these new issues to ensure that they are investigated in a balanced way. Questions that should be considered in analyzing the information include:

1. Has enough information been gathered to answer the questions that were posed?
2. Do the answers contradict one another? If so, it may be necessary to search for more evidence. If no additional evidence is available, judgments must be based on the available sources, weighing their biases. Conflicts of source materials should be noted.

In general, the more the researcher knows about the general historical period and setting and limitations of the source materials under investigation, the better the individual is prepared to evaluate the information found in the documentary sources investigated. Peer review or consultation with other knowledgeable individuals about the information and the tentative conclusions can be an important part of the analysis.

Integrating Results

The results of documentation must be integrated into the planning process so that planning decisions are based on the best available information. The new information is first assessed against the research design to determine whether the gathered information meets the defined objectives of the research. Then the relevant historic contexts, property types, and treatment goals for those contexts are all adjusted, as necessary, based on the historical documentation results.

Reporting Results

Reports should contain:

1. Summaries of the purpose of the documentation, the research design and methods and techniques of investigation.
2. Sources of facts or analyses so that other researchers can locate the information in its original context. Notation of any conflicts in source materials and how the individual performing the documentation interpreted these conflicts.
3. Sources consulted, including those expected to contain useful information and those that contained no information about the property(ies).
4. Assessment of the accuracy, biases and historical perspective of all sources. This information and that identified in No. 3 may be provided in an annotated bibliography.
5. Discussion of major analyses and results, including conclusions regarding all major research issues identified in the research design, as well as important issues raised in the course of research. The analysis should be summarized in terms of its impact on interpreting the property's significance and expanding or altering the knowledge about the property and its context.
6. Researchers' interpreting of historical events or trends. These interpretations should be clearly identified.

Primary results should be preserved and made accessible in some manner, although they need not necessarily be contained in the report. At minimum, the report should reference the location of notes and analyses.

Results of historic documentation should be made available for use in preservation planning and by the general public. Report formats may vary, depending on the audience and the anticipated uses of the documentation, but professionally accepted rules of report writing should be followed. If reports are of a technical nature, the format of the major scientific journal of the pertinent discipline may be the most appropriate format. Peer review of draft reports is one means of ensuring that state-of-the-art technical reports are produced.

Recommended Sources of Technical Information

Current Recommendations

Ethics and Public History: An Anthology. Theodore J. Karamanski, editor. Robert E. Krieger Publishing Company, Malabar, Florida, 1990.

The Modern Researcher. 5th Edition. Jacques Barzun and Henry F. Graff. Houghton Mifflin Company, Boston, 1992.

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The New American History. Eric Foner, editor. Temple University Press, Philadelphia, 1990.

A Shared Authority: Essays on the Craft and Meaning of Oral and Public History. Michael Frisch. State University of New York Press, Albany, 1990.

Telling the Truth About History. Joyce Appleby, Lynn Hunt, and Margaret Jacob. W.W. Norton & Company, New York, 1994.

The Past Before Us: Contemporary Historical Writing in the United States. Michael Kammen, editor. Cornell University Press, Ithaca, New York, 1982.

Nearby History: Exploring the Past Around You. David E. Kyvig and Myron A. Marty. The American Association for State and Local History, Nashville, Tennessee, 1982.

Folklife and Fieldwork A Layman's Introduction to Field Techniques. Peter Bartis. American Forklift Center, Washington, DC, 1979.

~~*Ordinary People and Everyday Life: Perspectives on the New Social History*. James B. Gardner and George Rollie Adams, editors. American Association for State and Local History, Nashville, Tennessee, 1983.~~

The Process of Field Research. Carl Fleischhauer and Charles K. Wolfe. American Folklife Center, Washington, D.C., 1981.

~~*Researching Heritage Buildings*. Margaret Carter. Ministry of the Environment, Ottawa, Canada, 1983.~~

[National Register of Historic Places](#)
[Historic American Buildings Survey/Historic American Engineering Record \(HABS/HAER\)](#)

Secretary of the Interior's Standards for Architectural and Engineering Documentation

These standards concern the development of documentation for historic buildings, sites, structures and objects. This documentation, which usually consists of measured drawings, photographs and written data, provides important information on a property's significance for use by scholars, researchers, preservationists, architects, engineers and others interested in preserving and understanding historic properties. Documentation permits accurate repair or reconstruction of parts of a property, records existing conditions for easements, or may present information about a property that is to be demolished. These Standards are intended for use in developing documentation to be included in the Historic American Building Survey (HABS) and the Historic American Engineering Record (HAER) Collections in the Library of Congress. HABS/HAER, in the National Park Service, have defined specific requirements for meeting these Standards for their collections. The HABS/HAER requirements include information important to development of documentation for other purposes such as State or local archives.

Standard I. Documentation Shall Adequately Explicate and Illustrate What is Significant or Valuable About the Historic Building, Site, Structure or Object Being Documented.

The historic significance of the building, site, structure or object identified in the evaluation process should be conveyed by the drawings, photographs and other materials that comprise documentation. The historical, architectural, engineering or cultural values of the property together with the purpose of the

documentation activity determine the level and methods of documentation. Documentation prepared for submission to the Library of Congress must meet the HABS/HAER Guidelines.

Standard II. Documentation Shall be Prepared Accurately From Reliable Sources With Limitations Clearly Stated to Permit Independent Verification of the Information.

The purpose of documentation is to preserve an accurate record of historic properties that can be used in research and other preservation activities. To serve these purposes, the documentation must include information that permits assessment of its reliability.

Standard III. Documentation Shall be Prepared on Materials That are Readily Reproducible, Durable and in Standard Sizes.

The size and quality of documentation materials are important factors in the preservation of information for future use. Selection of materials should be based on the length of time expected for storage, the anticipated frequency of use and a size convenient for storage.

Standard IV. Documentation Shall be Clearly and Concisely Produced.

In order for documentation to be useful for future research, written materials must be legible and understandable, and graphic materials must contain scale information and location references.

Secretary of the Interior's Guidelines for Architectural and Engineering Documentation

Introduction

These Guidelines link the Standards for Architectural and Engineering Documentation with more specific guidance and technical information. They describe one approach to meeting the Standards for Architectural Engineering Documentation. Agencies, organizations or individuals proposing to approach documentation differently may wish to review their approaches with the National Park Service.

The Guidelines are organized as follows:

[Definitions](#)

[Goal of Documentation](#)

[The HABS/HAER Collections](#)

[Standard I: Content](#)

[Standard II: Quality](#)

[Standard III: Materials](#)

[Standard IV: Presentation](#)

[Architectural and Engineering Documentation Prepared for Other Purposes](#)

[Recommended Sources of Technical Information](#)

Definitions

These definitions are used in conjunction with these Guidelines:

Architectural Data Form—a one page HABS form intended to provide identifying information for accompanying HABS documentation.

Documentation—measured drawings, photographs, histories, inventory cards or other media that depict historic buildings, sites, structures or objects.

Field Photography—photography, other than large-format photography, intended for the purpose of producing documentation, usually 35mm.

Field Records—notes of measurements taken, field photographs and other recorded information intended for the purpose of producing documentation.

Inventory Card—a one page form which includes written data, a sketched site plan and a 35mm contact print dry-mounted on the form. The negative, with a separate contact sheet and index should be included with the inventory card.

Large Format Photographs—photographs taken of historic buildings, sites, structures or objects where the negative is a 4 x 5, 5 x 7" or 8 x 10" size and where the photograph is taken with appropriate means to correct perspective distortion.

Measured Drawings—drawings produced on HABS or HAER formats depicting existing conditions or other relevant features of historic buildings, sites, structures or objects. Measured drawings are usually produced in ink on archivally stable material, such as mylar.

Photocopy—A photograph, with large format negative, of a photograph or drawing.

Select Existing Drawings—drawings of historic buildings, sites, structures or objects, whether original construction or later alteration drawings that portray or depict the historic value or significance.

Sketch Plan—a floor plan, generally not to exact scale although often drawn from measurements, where the features are shown improper relation and proportion to one another.

Goal of Documentation

The Historic American Buildings Survey (HABS) and Historic American Engineering Record (HAER) are the national historical architectural and engineering documentation programs of the National Park Service that promote documentation incorporated into the HABS/HAER collections in the Library of Congress. The goal of the collections is to provide architects, engineers, scholars, and interested members of the public with comprehensive documentation of buildings, sites, structures and objects significant in American history and the growth and development of the built environment.

The HABS/HAER Collections

HABS/HAER documentation usually consists of measured drawings, photographs and written data that provide a detailed record which reflects a property's significance. Measured drawings and properly executed photographs act as a form of insurance against fires and natural disasters by permitting the repair and, if necessary, reconstruction of historic structures damaged by such disasters. Documentation is used to provide the basis for enforcing preservation easement. In addition, documentation is often the last means of preservation of a property, when a property is to be demolished, its documentation provides future researchers access to valuable information that otherwise would be lost.

HABS/HAER documentation is developed in a number of ways. First and most usually, the National Park Service employs summer teams of student architects, engineers, historians and architectural historians to develop HABS/HAER documentation under the supervision of National Park Service professionals. Second, the National Park Service produces HABS/HAER documentation, in conjunction with restoration or other preservation treatment, of historic buildings managed by the National Park Service. Third, Federal agencies, pursuant to Section 110(b) of the National Historic Preservation Act, as amended, record those historic properties to be demolished or substantially altered as a result of agency action or assisted action (referred to as mitigation projects). Fourth, individuals and organizations prepare

documentation to HABS/HAER standards and donate that documentation to the HABS/HAER collections. For each of these programs, different Documentation Levels will be set.

The Standards describe the fundamental principles of HABS/HAER documentation. They are supplemented by other material describing more specific guidelines, such as line weights for drawings, preferred techniques for architectural photography, and formats for written data. This technical information is found in the HABS/HAER Procedures Manual.

These Guidelines include important information about developing documentation for State or local archives. The State Historic Preservation Officer or the State library should be consulted regarding archival requirements if the documentation will become part of their collections. In establishing archives, the important questions of durability and reproducibility should be considered in relation to the purposes of the collection.

Documentation prepared for the purpose of inclusion in the HABS/HAER collections must meet the requirements below. The HABS/HAER office of the National Park Service retains the right to refuse to accept documentation for inclusion in the HABS/HAER collections when that documentation does not meet HABS/HAER requirements, as specified below.

Standard I: Content

1. Requirement: Documentation shall adequately explicate and illustrate what is significant or valuable about the historic building, site, structure or object being documented.

2. Criteria: Documentation shall meet one of the following documentation levels to be considered adequate for inclusion in the HABS/HAER collections.

a. Documentation Level I;

1. Drawings: a full set of measured drawings depicting existing or historic conditions.
2. Photographs: photographs with large-format negatives of exterior and interior views; photocopies with large format negatives of select existing drawings or historic views where available.
3. Written data: history and description.

b. Documentation Level II;

1. Drawings: select existing drawings, where available, should be photographed with large-format negatives or photographically reproduced on Mylar.
2. Photographs: photographs with large-format negatives of exterior and interior views, or historic views, where available.
3. Written data: history and description.

c. Documentation Level III;

1. Drawings: sketch plan.
2. Photographs: photographs with large-format negatives of exterior and interior views.
3. Written data: architectural data form.

d. Documentation Level IV: HABS/HAER inventory card.

3. Test: Inspection of the documentation by HABS/HAER staff.

4. Commentary: The HABS/HAER office retains the right to refuse to accept any documentation on buildings, sites, structures or objects lacking historical significance. Generally, buildings, sites, structures or objects must be listed in, or eligible for listing in the National Register of Historic Places to be considered for inclusion in the HABS/HAER collections.

The kind and amount of documentation should be appropriate to the nature and significance of the buildings, site, structure or object being documented. For example, Documentation Level I would be inappropriate for a building that is a minor element of a historic district, notable only for streetscape context and scale. A full set of measured drawings for such a minor building would be expensive and would add little, if any, information to the HABS/HAER collections. Large format photography (Documentation Level III) would usually be adequate to record the significance of this type of building. Similarly, the aspect of the property that is being documented should reflect the nature and significance of the building, site, structure or object being documented. For example, measured drawings of Dankmar Adler and Louis Sullivan's Auditorium Building in Chicago should indicate not only facades, floor plans and sections, but also the innovative structural and mechanical systems that were incorporated in that building. Large-format photography of Gunston Hall in Fairfax County, Virginia, to take another example, should clearly show William Buckland's hand-carved moldings in the Palladian Room, as well as other views.

HABS/HAER documentation is usually in the form of measured drawings, photographs, and written data. While the criteria in this section have addressed only these media, documentation need not be limited to them. Other media, such as films of industrial processes, can and have been used to document historic buildings, sites, structures or objects. If other media are to be used, the HABS/HAER office should be contacted before recording.

The actual selection of the appropriate documentation level will vary, as discussed above. For mitigation documentation projects, this level will be selected by the National Park Service Regional Office and communicated to the agency responsible for completing the documentation. Generally, Level I documentation is required for nationally significant buildings and structures, defined as National Historic Landmarks and the primary historic units of the National Park Service.

On occasion, factors other than significance will dictate the selection of another level of documentation. For example, if a rehabilitation of a property is planned, the owner may wish to have a full set of as-built drawings, even though the significance may indicate Level II documentation.

HABS Level I measured drawings usually depict existing conditions through the use of a site plan, floor plans, elevations, sections and construction details. HAER Level I measured drawings will frequently depict original conditions where adequate historical material exists, so as to illustrate manufacturing or engineering processes.

Level II documentation differs from Level I by substituting copies of existing drawings, either original or alteration drawings, for recently executed measured drawings. If this is done, the drawings must meet HABS/HAER requirements outlined below. While existing drawings are rarely as suitable as as-built drawings, they are adequate in many cases for documentation purposes. Only when the desirability of having as-built drawings is clear are Level I measured drawings required in addition to existing drawings. If existing drawings are housed in an accessible collection and cared for archivally, their reproduction for HABS/HAER may not be necessary. In other cases, Level I measured drawings are required in the absence of existing drawings.

Level III documentation requires a sketch plan if it helps to explain the structure. The architectural data form should supplement the photographs by explaining what is not readily visible.

Level IV documentation consists of completed HABS/HAER inventory cards. This level of documentation, unlike the other three levels, is rarely considered adequate documentation for the HABS/HAER collections but is undertaken to identify historic resources in a given area **prior** to additional, more comprehensive documentation.

Standard II: Quality

1. Requirement: HABS and HAER documentation shall be prepared accurately from reliable sources with limitations clearly stated to permit independent verification of information.

2. Criteria: For all levels of documentation, the following quality standards shall be met:

- a. **Measured drawings:** Measured drawings shall be produced from recorded, accurate measurements. Portions of the building that were not accessible for measurement should not be drawn on the measured drawings, but clearly labeled as not accessible or drawn from available construction drawings and other sources and so identified. No part of the measured drawings shall be produced from hypothesis or non-measurement related activities. Documentation Level I measured drawings shall be accompanied by a set of field notebooks in which the measurements were first recorded. Other drawings, prepared for Documentation Levels II and III, shall include a statement describing where the original drawings are located.
- b. **Large format photographs:** Large format photographs shall clearly depict the appearance of the property and areas of significance of the recorded building, site, structure or object. Each view shall be perspective-corrected and fully captioned.
- c. **Written history:** Written history and description for Documentation Levels I and II shall be based on primary sources to the greatest extent possible. For Levels III and IV, secondary sources may provide adequate information; if not primary research will be necessary. A frank assessment of the reliability and limitations of sources shall be included. Within the written history, statements shall be footnoted as to their sources, where appropriate. The written data shall include a methodology section specifying name of researcher, date of research, sources searched, and limitations of the project.

3. Test: Inspection of the documentation by HABS/HAER staff.

4. Commentary: The reliability of the HABS/HAER collections depends on documentation of high quality. Quality is not something that can be easily prescribed or quantified, but it derives from a process in which thoroughness and accuracy play a large part. The principle of independent verification of HABS/HAER documentation is critical to the HABS/HAER collections.

Standard III: Materials

1. Requirement: HABS and HAER documentation shall be prepared on materials that are readily reproducible for ease of access; durable for long storage; and in standard sizes for ease of handling.

2. Criteria: For all levels of documentation, the following material standards shall be met:

- a. **Measured Drawings:**
Readily Reproducible: Ink on translucent material
Durable: Ink on archivally stable materials.
Standard Sizes: Two sizes: 19 x 24" or 24 x 36"
- b. **Large Format Photographs:**
Readily Reproducible: Prints shall accompany all negatives.
Durable: Photography must be archivally processed and stored
Negatives are required on safety film only. Resin-coated paper is not accepted. Color photography is not acceptable.
Standard Sizes: Three sizes: 4 x 5", 5 x 7", 8 x 10".
- c. **Written History and Description:**
Readily Reproducible: Clean copy for xeroxing.

Durable: Archival bond required.
Standard Sizes: 8 1/2 x 11"

d. Field Records:

Readily Reproducible: Field notebooks may be xeroxed. Photo identification sheet will accompany 35mm negatives and contact sheets.

Durable: No requirement.

Standard Sizes: Only requirement is that they can be made to fit into a 9 1/2 x 12" archival folding file.

3. Test: Inspection of the documentation by HABS/HAER staff.

4. Commentary: All HABS/HAER records are intended for reproduction; some 20,000 HABS/HAER records are reproduced each year by the Library on Congress. Although field records are not intended for quality reproduction, it is intended that they be used to supplement the formal documentation. The basic durability performance standard for HABS/ HAER records is 500 years. Ink on Mylar is believed to meet this standard, while color photography, for example, does not. Field records do not meet this archival standard, but are maintained in the HABS/HAER collections as a courtesy to the collection user.

Standard IV: Presentation

1. Requirement: HABS and HAER documentation shall be clearly and concisely produced.

2. Criteria: For levels of documentation as indicated below, the following standards for presentation will be used:

- a. Measured Drawings: Level I measured drawings will be lettered mechanically (i.e., Leroy or similar) or in a handprinted equivalent style. Adequate dimensions shall be included on all sheets. Level III sketch plans should be neat and orderly.
- b. Large format photographs: Level I photographs shall include duplicate photographs that include a scale. Level II and III photographs shall include, at a minimum, at least one photograph with a scale, usually of the principal facade.
- c. Written history and description: Data shall be typewritten on bond, following accepted rules of grammar.

3. Test: Inspection of the documentation by HABS/HAER staff.

Architectural and Engineering Documentation Prepared for Other Purposes

Where a preservation planning process is in use, architectural and engineering documentation, like other treatment activities, are undertaken to achieve the goals identified by the preservation planning process. Documentation is deliberately selected as a treatment for properties evaluated as significant, and the development of the documentation program for a property follows from the planning objectives.

Documentation efforts focus on the significant characteristics of the property, as defined in the previously completed evaluation. The selection of a level of documentation and the documentation techniques (measured drawings, photography, etc.) is based on the significance of the property and the management needs for which the documentation is being performed. For example, the kind and level of documentation required to record a historic property for easement purposes may be less detailed than that required as mitigation prior to destruction of the property. In the former case, essential documentation might be limited to the portions of the property controlled by the easement, for example, exterior facades; while in the latter case, significant interior architectural features and nonvisible structural details would also be documented.

The principles and content of the HABS/HAER criteria may be used for guidance in creating documentation requirements for other archives. Levels of documentation and the durability and sizes of documentation may vary depending on the intended use and the repository. Accuracy of documentation should be controlled by assessing the reliability of all sources and making that assessment available in the archival record; by describing the limitations of the information available from research and physical examination of the property, and by retaining the primary data (field measurements and notebooks) from which the archival record was produced. Usefulness of the documentation products depends on preparing the documentation on durable materials that are able to withstand handling and reproduction, and in sizes that can be stored and reproduced without damage.

Recommended Sources of Technical Information

Current Recommendations

Guidelines for Recording Historic Ships. By Richard K. Anderson, Jr., HABS/HAER, National Park Service, Washington, D.C. Marks the revival of the Historic American Merchant Marine Survey of the 1930s as part of the HAER program, and provides the definitive guide to maritime recording.

HABS/HAER Photography: Specifications and Guidelines. HABS/HAER, National Park Service, Washington, D.C., Draft 1997. Provides criteria for the production of large format photographs for acceptance to the HABS/HAER Collections.

HABS Historical Reports. HABS/HAER, National Park Service, Washington, D.C., 1993. Provides guidelines for producing written data on historic buildings to HABS standards.

HABS/HAER Production Notes

- [Field Records](#)
- [Large-format photographs](#)
- [Measured drawings](#)

[Recording Historic Sites and Structures Using Computer-aided Drafting \(CAD\)](#) (.PDF File). HABS/HAER, National Park Service, Washington, D.C., 2000. Addresses the application of the Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation to the use of computer-aided drafting (CAD) software in the production of two-dimensional HABS/HAER measured drawings.

Recording Historic Structures. John A. Burns, editor, AIA. The AIA Press, Washington, D.C., 1989. The definitive guide to recording America's built environment. Since issued in 1989, this publication is in its third printing.

[Recording Historic Structures and Sites for the Historic American Engineering Record](#) (.PDF Files). HABS/HAER, National Park Service, Washington, D.C., 1996. Provides guidelines for documenting historic engineering and industrial sites and structures to HAER standards using measured drawings and written data.

[Recording Structures and Sites with HABS Measured Drawings.](#) HABS/HAER, National Park Service, Washington, D.C., 1993. Provides procedures for producing measured drawings of historic buildings to HABS standards.

Transmitting HABS/HAER Documentation. HABS/HAER, National Park Service, Washington, D.C., 1999. Provides transmittal procedures and archival requirements of documentation for acceptance to the HABS/HAER Collections.

Recording Historic Buildings. Harley J. McKee. Government Printing Office, 1970. Washington, D.C. Available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. GPO number 024-005-0235-9.

HABS/HAER Procedures Manual. Historic American Buildings Survey/Historic American Engineering Record, National Park Service, 1980. Washington, D.C.

Photogrammetric Recording of Cultural Resources. Terry E. Borchers. Technical Preservation Services, U.S. Department of the Interior, 1977. Washington, D.C.

Rectified Photography and Photo Drawings for Historic Preservation. J. Henry Chambers. Technical Preservation Services, U.S. Department of the Interior, 1975. Washington, D.C.

[Historic American Buildings Survey/Historic American Engineering Record \(HABS/HAER\)](#)

[HABS/HAER Collections](#)

[HABS/HAER Summer Teams](#)

[HABS/HAER Mitigation Documentation](#)

[HABS/HAER Publications](#)

[National Historic Landmarks](#)

Secretary of the Interior's Standards for Archeological Documentation

Archeological documentation is a series of actions applied to properties of archeological interest. Documentation of such properties may occur at any or all levels of planning, identification, evaluation or treatment. The nature and level of documentation is dictated by each specific set of circumstances. Archeological documentation consists of activities such as archival research, observation and recording of above-ground remains, and observation (directly, through excavation, or indirectly, through remote sensing) of below-ground remains. Archeological documentation is employed for the purpose of gathering information on individual historic properties or groups of properties. It is guided by a framework of objectives and methods derived from the planning process, and makes use of previous planning decisions, such as those on evaluation of significance. Archeological documentation may be undertaken as an aid to various treatment activities, including research, interpretation, reconstruction, stabilization and data recovery when mitigating archeological losses resulting from construction. Care should be taken to assure that documentation efforts do not duplicate previous efforts.

Standard I. Archeological Documentation Activities Follow an Explicit Statement of Objectives and Methods That Responds to Needs Identified in the Planning Process

Archeological research and documentation may be undertaken to fulfill a number of needs, such as overviews and background studies for planning interpretation or data recovery to mitigate adverse effects. The planning needs are articulated in a statement of objectives to be accomplished by the archeological documentation activities. The statement of objectives guides the selection of methods and techniques of study and provides a comparative framework for evaluating and deciding the relative efficiency of alternatives. Satisfactory documentation involves the use of archeological and historical sources, as well as those of other disciplines. The statement of objectives usually takes the form of a formal and explicit research design which has evolved from the interrelation of planning needs, current knowledge, resource value and logistics.

Standard II. The Methods and Techniques of Archeological Documentation are Selected To Obtain the Information Required by the Statement of Objectives

The methods and techniques chosen for archeological documentation should be the most effective, least destructive, most efficient and economical means of obtaining the needed information. Methods and techniques should be selected so that the results may be verified if necessary. Non-destructive

techniques should be used whenever appropriate. The focus on stated objectives should be maintained throughout the process of study and documentation.

Standard III. The Results of Archeological Documentation are Assessed Against the Statement of Objectives and Integrated into the Planning Process

One product of archeological documentation is the recovered data; another is the information gathered about the usefulness of the statement of objectives itself. The recovered data are assessed against the objectives to determine how they meet the specified planning needs. Information related to archeological site types, distribution and density should be integrated in planning at the level of identification and evaluation. Information and data concerning intra-site structure may be needed for developing mitigation strategies and are appropriately integrated at this level of planning. The results of the data analyses are integrated into the body of current knowledge. The utility of the method of approach and the particular techniques which were used in the investigation (i.e., the research design) should be assessed so that the objectives of future documentation efforts may be modified accordingly.

Standard IV. The Results of Archeological Documentation are Reported and Made Available to the Public

Results must be accessible to a broad range of users including appropriate agencies, the professional community and the general public. Results should be communicated in reports that summarize the objectives, methods, techniques and results of the documentation activity, and identify the repository of the materials and information so that additional detailed information can be obtained, if necessary. The public may also benefit from the knowledge obtained from archeological documentation through pamphlets, brochures, leaflets, displays and exhibits, or by slide, film or multimedia productions. The goal of disseminating information must be balanced, however, with the need to protect sensitive information whose disclosure might result in damage to properties. Curation arrangements sufficient to preserve artifacts, specimens and records generated by the investigation must be provided for to assure the availability of these materials for future use.

Secretary of the Interior's Guidelines for Archeological Documentation

Introduction

These Guidelines link the Standards for Archeological Documentation with more specific guidance and technical information. They describe one approach to meeting the Standards for Documentation. Agencies, organizations or individuals proposing to approach archeological documentation differently may wish to review their approach with the National Park Service.

The Guidelines are organized as follows:

[Archeological Documentation Objectives](#)
[Documentation Plan](#)
[Methods](#)
[Reporting Results](#)
[Curation](#)
[Recommended Sources of Technical Information](#)

1. Collection of base-line data;
2. Problem-oriented research directed toward particular data gaps recognized in the historic context(s);
3. Preservation or illustration of significance which has been identified for treatment by the planning process; or

4. Testing of new investigative or conservation techniques, such as the effect of different actions such as forms of site burial (aqueous or nonaqueous).

Many properties having archeological components have associative values as well as research values. Examples include Native American sacred areas and historic sites such as battlefields. Archeological documentation may preserve information or data that are linked to the identified values that a particular property possesses. Depending on the property type and the range of values represented by the property, it may be necessary to recover information that relates to an aspect of the property's significance other than the specified research questions. It is possible that conflicts may arise between the optimal realizations of research goals and other issues such as the recognition/protection of other types of associative values. The research design for the archeological documentation should provide for methods and procedures to resolve such conflicts, and for the close coordination of the archeological research with the appropriate ethnographic, social or technological research.

Archeological Documentation Objectives

The term "archeological documentation" is used here to refer specifically to any operation that is performed using archeological techniques as a means to obtain and record evidence about past human activity that is of importance to documenting history and prehistory in the United States. Historic and prehistoric properties may be important for the data they contain, or because of their association with important persons, events, or processes, or because they represent architectural or artistic values, or for other reasons. Archeological documentation may be an appropriate option for application not only to archeological properties, but to aboveground structures as well, and may be used in collaboration with a wide range of other treatment activities.

If a property contains artifacts, features, and other materials that can be studied using archeological techniques, then archeological documentation may be selected to achieve particular goals of the planning process, such as to address a specified information need, or to illustrate significant associative values. Within the overall goals and priorities established by the planning process, particular methods of investigation are chosen that best suit the types of study to be performed.

Relationship of archeological documentation to other types of documentation or other treatments:
Archeological documentation is appropriate for achieving any of various goals, including:

Documentation Plan

Research Design: Archeological documentation can be carried out only after defining explicit goals and a methodology for reaching them. The goals of the documentation effort directly reflect the goals of the preservation plan and the specific needs identified for the relevant historic contexts. In the case of problem oriented archeological research, the plan usually takes the form of a formal research design, and includes, in addition to the items below, explicit statements of the problem to be addressed and the methods or tests to be applied. The purpose of the statement of objectives is to explain the rationale behind the documentation effort; to define the scope of the investigation; to identify the methods, techniques, and procedures to be used; to provide a schedule for the activities; and to permit comparison of the proposed research with the results. The research design for an archeological documentation effort follows the same guidelines as those for identification (see the Guidelines for Identification) but has a more property-specific orientation.

The research design should draw upon the preservation plan to identify:

1. Evaluated significance of the property(ies) to be studied;
2. Research problems or other issues relevant to the significance of the property,
3. Prior research on the topic and property type; and how the proposed documentation objectives are related to previous research and existing knowledge;

4. The amount and kinds of information (data) required to address the documentation objectives and to make reliable statements including at what point information is redundant and documentation efforts have reached a point of diminishing returns;
5. Methods to be used to find the information; and
6. Relationship of the proposed archeological investigation to anticipated historical or structural documentation, or other treatments.

The primary focus of archeological documentation is on the data classes that are required to address the specified documentation objectives. This may mean that other data classes are deliberately neglected. If so, the reasons for such a decision should be carefully justified in terms of the preservation plan.

Archeological investigations seldom are able to collect and record all possible data. It is essential to determine the point at which further data recovery and documentation fail to improve the usefulness of the archeological information being recovered. One purpose of the research design is to estimate those limits in advance and to suggest at what point information becomes duplicative. Investigation strategies should be selected based on these general principles, considering the following factors:

1. Specific data needs;
2. Time and funds available to secure the data; and
3. Relative cost efficiency of various strategies.

Responsiveness to the concerns of local groups (e.g., Native American groups with ties to specific properties) that was built into survey and evaluation phases of the preservation plan, should be maintained in archeological investigation, since such activity usually involve, site disturbance. The research design, in addition to providing for appropriate ethnographic research and consultation, should consider concerns voiced in previous phases. In the absence of previous efforts to coordinate with local or other interested groups, the research design should anticipate the need to initiate appropriate contracts and provide a mechanism for responding to sensitive issues, such as the possible uncovering of human remains or discovery of sacred areas.

The research design facilitates an orderly, goal directed and economical project. However, the research design must be flexible enough to allow for examination of unanticipated but important research opportunities that arise during the investigation.

Documentation Methods

Background Review: Archeological documentation usually is preceded by, or integrated with historical research (i.e. that intensive background information gathering including identification of previous archeological work and inspection of museum collections; gathering relevant data on geology, botany, urban geography and other related disciplines; archival research; informant interviews, or recording of oral tradition, etc.).

Depending on the goals of the archeological documentation, the background historical and archeological research may exceed the level of research accomplished for development of the relevant historic contexts or for identification and evaluation, and focuses on the unique aspects of the property to be treated. This assists in directing the investigation and locates a broader base of information than that contained in the property itself for response to the documentation goals. This activity is particularly important for historic archeological properties where information sources other than the property itself may be critical to preserving the significant aspects of the property. (See the *Secretary of the Interior's Standards and Guidelines for Historical Documentation* for discussion of associated research activities.)

Field Studies: The implementation of the research design in the field must be flexible enough to accommodate the discovery of new or unexpected data classes or properties, or changing field conditions. A phased approach may be appropriated when dealing with large complex properties or groups of properties, allowing for changes in emphasis or field strategy, or termination of the program,

based on analysis of recovered data at the end of each phase. Such an approach permits the confirmation of assumptions concerning property extent, content or organization which had been made based on data gathered from identification and evaluation efforts, or the adjustment of those expectations and resulting changes in procedure. In some cases a phased approach may be necessary to gather sufficient data to calculate the necessary sample size for a statistically valid sample. A phased documentation program may often be most cost-effective, in allowing for early termination of work if the desired objectives cannot be achieved.

Explicit descriptive statements of and justification for field study techniques are important to provide a means of evaluating results. In some cases, especially those employing a sampling strategy in earlier phases (such as identification or evaluation), it is possible to estimate parameters of certain classes of data in a fairly rigorous statistical manner. It is thus desirable to maintain some consistency in choice of sampling designs throughout multiple phases of work at the same property. Consistency with previously employed area sampling frameworks also improves potential replication in terms of later locating sampled and unsampled areas. It often is desirable to estimate the nature and frequency of data parameters based on existing information or analogy to other similar cases. These estimates may then be tested in field studies.

An important consideration in choosing methods to be used in the field studies should be assuring full, clear, and accurate descriptions of all field operations and observations, including excavation and recording techniques and stratigraphic or inter-site relationships.

To the extent feasible, chosen methodologies and techniques should take into account the possibility that future researchers will need to use the recovered data to address problems not recognized at the time the data were recovered. The field operation may recover data that may not be fully analyzed; this data, as well as the data analyzed, should be recorded and preserved in a way to facilitate future research. A variety of methodologies may be used. Choices must be explained, including a measure of cost-effectiveness relative to other potential choices. Actual results can then be measured against expectations, and the information applied later in similar cases.

Destructive methods should not be applied to portions or elements of the property if nondestructive methods are practical. If portions or elements of the property being documented are to be preserved in place, the archeological investigation should employ methods that will leave the property as undisturbed as possible. However, in cases where the property will be destroyed by, for example, construction following the investigation, it may be most practical to gather the needed data in the most direct manner, even though that may involve use of destructive techniques.

Logistics in the field, including the deployment of personnel and materials and the execution of sampling strategies, should consider site significant, anticipated location of most important data, cost effectiveness, potential time limitations and possible adverse environmental conditions.

The choice of methods for recording data gathered in the field should be based on the research design. Based on that statement, it is known in advance of field work what kinds of information are needed for analysis; record-keeping techniques should focus on these data. Field records should be maintained in a manner that permits independent interpretation in so far as possible. Record-keeping should be standardized in format and level of detail.

Archeological documentation should be conducted under the supervision of qualified professionals in the disciplines appropriate to the data that are to be recovered. When the general public is directly involved in archeological documentation activities, provision should be made for training and supervision by qualified professionals. (See the Professional Qualifications Standards.)

Analysis: Archeological documentation is not completed with field work; analysis of the collected information is an integral part of the documentation activity, and should be planned for in the research design. Analytical techniques should be selected that are relevant to the objectives of the investigation. Forms of analysis that may be appropriate, depending on the type of data recovered and the objectives of

the investigation, include but are not limited to: studying artifact types and distribution; radiometric and other means of age determination; studies of soil stratigraphy, studies of organic matter such as human remains, pollen, animal bones, shells and seeds; study of the composition of soils and study of the natural environment in which the property appears.

Reporting Results

Report Contents: Archeological documentation concludes with written report(s) including minimally the following topics:

1. Description of the study area;
2. Relevant historical documentation/background research;
3. The research design;
4. The field studies as actually implemented, including any deviation from the research design and the reason for the changes;
5. All field observations;
6. Analyses and results, illustrated as appropriate with tables, charts, and graphs;
7. Evaluation of the investigation in terms of the goals and objectives of the investigation, including discussion of how well the needs dictated by the planning process were served;
8. Recommendations for updating the relevant historic contexts and planning goals and priorities, and generation of new or revised information needs;
9. Reference to related on-going or proposed treatment activities, such as structural documentation, stabilization, etc.; and
10. Information on the location of original data in the form of field notes, photographs, and other materials.

Some individual property information, such as specific locational data, may be highly sensitive to disclosure, because of the threat of vandalism. If the objectives of the documentation effort are such that a report containing confidential information such as specific site locations or information on religious practices is necessary, it may be appropriate to prepare a separate report for public distribution. The additional report should summarize that information that is not under restricted access in a format most useful to the expected groups of potential users. Peer review of draft reports is recommended to ensure that state-of-the-art technical reports are produced.

Availability: Results must be made available to the full range of potential users. This can be accomplished through a variety of means including publication of results in monographs and professional journals and distribution of the report to libraries or technical clearinghouses such as the National Technical Information Service in Springfield, Virginia.

Curation

Archeological specimens and records are part of the documentary record of an archeological site. They must be curated for future use in research, interpretation, preservation, and resource management activities. Curation of important archeological specimens and records should be provided for in the development of any archeological program or project.

Archeological specimens and records that should be curated are those that embody the information important to history and prehistory. They include artifacts and their associated documents, photographs,

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maps, and field notes; materials of an environmental nature such as bones, shells, soil and sediment samples, wood, seeds, pollen, and their associated records; and the products and associated records of laboratory procedures such as thin sections, and sediment fractions that result from the analysis of archeological data.

Satisfactory curation occurs when:

1. Curation facilities have adequate space, facilities, professional personnel,
2. Archeological specimens are maintained so that their information values are not lost through deterioration, and records are maintained to a professional archival standard;
3. Curated collections are accessible to qualified researchers within a reasonable time of having been requested; and
4. Collections are available for interpretive purposes, subject to reasonable security precautions.

Recommended Sources of Technical Information
Current Recommendations

Archaeology, 3rd edition. David Hurst Thomas. Harcourt Brace College Publishers, Forth Worth, 1998.
Archaeology: Theories, Methods, and Practice, 2nd edition. Colin Renfrew and Paul Bahn. Thames and Hudson, London, 1996.

[Archeology in the National Historic Landmarks Program](#). Robert S. Grumet. Technical Brief 3, Archeology & Ethnography Program, National Park Service, 1988.

Archaeological Prospecting and Remote Sensing. I. Scollar, A. Tabbagh, A. Hesse, and I. Herzog. Cambridge University Press, Cambridge, 1990.

[Curation of Federally-Owned and Administered Archeological Collections](#) (36 CFR Part 79)

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[Archeology & Ethnography Program](#)

[National Register of Historic Places](#)

[Society for Historical Archaeology](#)

[Society of American Archaeology](#)

Secretary of the Interior's Standards for Historic Preservation Projects*

*[This document has been replaced by [The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995](#)]

General Standards for Historic Preservation Projects

The following general standards apply to all treatments undertaken on historic properties listed in the National Register.

1. Every reasonable effort shall be made to provide a compatible use for a property that requires minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purpose.
2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations which have no historical basis and which seek to create an earlier appearance shall be discouraged.
4. Changes which have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

5. Distinctive architectural features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.
6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any acquisition, stabilization, preservation, rehabilitation, restoration, or reconstruction project.

Specific Standards for Historic Preservation Projects

The following specific standards for each treatment are to be used in conjunction with the eight general standards and, in each case, begin with number 9. For example, in evaluating acquisition projects, include the eight general standards plus the four specific standards listed under Standards for Acquisition. The specific standards differ from those published for use in Historic Preservation Fund grant-in-aid projects (36 CFR Part 68) in that they discuss more fully the treatment of archeological properties.

Standards for Acquisition

9. Careful consideration shall be given to the type and extent of property rights which are required to assure the preservation of the historic resource. The preservation objectives shall determine the exact property rights to be acquired.
10. Properties shall be acquired in fee simple when absolute ownership is required to insure their preservation.
11. The purchase of less than fee simple interests, such as open space or facade easements, shall be undertaken when a limited interest achieves the preservation objective.
12. Every reasonable effort shall be made to acquire sufficient property with the historic resource to protect its historical, archeological, architectural or cultural significance.

Standards for Protection

9. Before applying protective measures which are generally of a temporary nature and imply future historic preservation work, an analysis of the actual or anticipated threats to the property shall be made.
10. Protection shall safeguard the physical condition or environment of a property or archeological site from further deterioration or damage caused by weather or other natural, animal or human intrusions.
11. If any historic material or architectural features are removed, they shall be properly recorded and, if possible, stored for future study or reuse.

Standards for Stabilization

9. Stabilization shall reestablish the structural stability of a property through the reinforcement of loadbearing members or by arresting deterioration leading to structural failure. Stabilization shall also reestablish weather resistant conditions for a property.
10. Stabilization shall be accomplished in such a manner that it detracts as little as possible from the property's appearance and significance. When reinforcement is required to reestablish structural stability, such work shall be concealed wherever possible so as not to intrude upon or detract from the aesthetic and historical or archeological quality of the property, except where concealment would result in the alteration or destruction of historically or archaeologically significant material or spaces. Accurate documentation of stabilization procedures shall be kept and made available for future needs.
11. Stabilization work that will result in ground disturbance shall be preceded by sufficient archeological investigation to determine whether significant subsurface features or artifacts will be affected. Recovery, curation and documentation of archeological features and specimens shall be undertaken in accordance with appropriate professional methods and techniques.

Standards for Preservation

9. Preservation shall maintain the existing form, integrity, and materials of a building, structure, or site. Archeological sites shall be preserved undisturbed whenever feasible and practical. Substantial reconstruction or restoration of lost features generally are not included in a preservation undertaking.
10. Preservation shall include techniques of arresting or retarding the deterioration of a property through a program of ongoing maintenance.

11. Use of destructive techniques, such as archeological excavation, shall be limited to providing sufficient information for research, interpretation and management needs.

Standards for Rehabilitation

9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historic, architectural or cultural material and such design is compatible with the size, scale, color, material and character of the property, neighborhood, or environment.

10. Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

Standards for Restoration

9. Every reasonable effort shall be made to use a property for its originally intended purpose or to provide a compatible use that will require minimum alteration to the property and its environment.

10. Reinforcement required for structural stability or the installation of protective or code required mechanical systems shall be concealed wherever possible so as not to intrude or detract from the property's aesthetic and historical qualities, except where concealment would result in the alteration or destruction of historically significant materials or spaces.

11. Restoration work such as the demolition of non-contributing additions that will result in ground or structural disturbance shall be preceded by sufficient archeological investigation to determine whether significant subsurface or structural features or artifacts will be affected. Recovery, curation and documentation of archeological features and specimens shall be undertaken in accordance with appropriate professional methods and techniques.

Standards for Reconstruction

9. Reconstruction of a part or all of a property shall be undertaken only when such work is essential to reproduce a significant missing feature in a historic district or scene, and when a contemporary design solution is not acceptable. Reconstruction of archeological sites generally is not appropriate.

10. Reconstruction of all or a part of a historic property shall be appropriate when the reconstruction is essential for understanding and interpreting the value of a historic district, or when no other building, structure, object, or landscape feature with the same associative value has survived and sufficient historical or archeological documentation exists to insure an accurate reproduction of the original.

11. The reproduction of missing elements accomplished with new materials shall duplicate the composition, design, color, texture, and other visual qualities of the missing element. Reconstruction of missing architectural or archeological features shall be based upon accurate duplication of original features substantiated by physical or documentary evidence rather than upon conjectural designs or the availability of different architectural features from other buildings.

12. Reconstruction of a building or structure on an original site shall be preceded by a thorough archeological investigation to locate and identify all subsurface features and artifacts. Recovery, curation and documentation of archeological features and specimens shall be undertaken in accordance with professional methods and techniques.

13. Reconstruction shall include measures to preserve any remaining original fabric, including foundations, subsurface, and ancillary elements. The reconstruction of missing elements and features shall be done in such a manner that the essential form and integrity of the original surviving features are unimpaired.

Secretary of the Interior Guidelines for Historic Preservation Projects

The guidelines for the Secretary of the Interior's Standards for Historic Preservation Projects, not included here because of their length, may be obtained separately from the National Park Service.

The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995

Standards for Preservation

1. A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.
2. The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color, and texture.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

Standards for Rehabilitation

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture,

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and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

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

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

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

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

Standards for Restoration

1. A property will be used as it was historically or be given a new use which reflects the property's restoration period.

2. Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period will not be undertaken.

3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

4. Materials, features, spaces, and finishes that characterize other historical periods will be documented prior to their alteration or removal.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.

6. Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials.

7. Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.

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

9. Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

10. Designs that were never executed historically will not be constructed.

Standards for Reconstruction

1. Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.
 2. Reconstruction of a landscape, building, structure, or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.
 3. Reconstruction will include measures to preserve any remaining historic materials, features, and spatial relationships.
 4. Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color, and texture.
 5. A reconstruction will be clearly identified as a contemporary re-creation.
 6. Designs that were never executed historically will not be constructed.
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Recommended Sources of Technical Information

Current Recommendations

Understanding Your Work on a Historic Building

[Four Approaches to Treatment--What They Are](#)

Designed to assist historic property owners, managers, and maintenance personnel, the essay explains the philosophy behind the various work approaches on historic buildings in The Secretary of the Interior's Standards for the Treatment of Historic Properties. Easy-to-read charts tell the differences between the four treatments.

[Telling Historic Preservation Time](#)

This web guidance demonstrates that TIME constitutes the philosophical framework for the four approaches to working on historic buildings--Preservation, Rehabilitation, Restoration and Reconstruction. Uses the idea of four clocks to make key points.

Using the Standards and Guidelines

[The Secretary of the Interior's Standards for Rehabilitation with Illustrated Guidelines for Rehabilitating Historic Buildings](#)

The Standards (36 CFR 67) and accompanying illustrated guidelines help property owners, developers, and federal managers apply the Secretary of the Interior's Standards for Rehabilitation during the project planning stage by providing general design and technical recommendations. These are the standards that must be used by federal historic preservation tax credit applicants.

[The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings](#) <http://www2.cr.nps.gov/tps/standards/index.htm>

The Standards (37 CFR 68) and guidelines provide a consistent framework for undertaking any one of four approaches to work, Preservation, Rehabilitation, Restoration, and Reconstruction. They pertain to both exterior and interior work on historic buildings of all sizes, materials, and types. (PDF format)

Planning Your Work on a Historic Building

[*A Checklist for Rehabilitating Historic Buildings*](#)

The rehab checklist suggests a typical process of documenting, evaluating, and assessing a historic building prior to undertaking rehabilitation work.

[*All Wet & How to Prevent It - Managing Moisture in Your Historic House*](#)

This mini-web class can help anyone who cares for, or about, a historic house to better understand how moisture can invade historic materials and what goes wrong when moisture is not adequately managed. It provides a series of simple, common sense tips to combat the problems and a quiz that's fun to take.

[*The BOILERPLATE "YESs!"*](#)

This web guidance focuses on approaches to rehabilitation work that serve to protect historic materials, exterior features, and interior spaces, features, and finishes in the process of making changes for new or continued use.

[*The BOILERPLATE "NOs!"*](#)

This web guidance illustrates what happens when inappropriate approaches to rehabilitation work cause the loss of a historic building's unique character. Includes examples of incompatible new additions--large and small.

[*Electronic REHAB*](#)

This popular web class is useful for historic building owners, historic preservation commissions; architects, contractors, and developers; maintenance personnel; and others involved in the care of historic buildings. Two quizzes are included.

[*The Walk Through--How to Read a Historic Building*](#)

This web class helps anyone identify those tangible elements or features that give historic buildings their unique visual character. Includes a challenging quiz.

Beginning Your Work on a Historic Building

[*Preservation Briefs 1 - 41*](#)

The Briefs are developed to assist owners and developers of historic buildings in recognizing and resolving common preservation and repair problems prior to work.

Preservation Tech Notes

Preservation Tech Notes (PTN) provide innovative solutions to specific problems in preserving cultural resources for architects, contractors, and maintenance personnel, as well as for anyone seeking the tax credit for rehabilitation.

- [*EXTERIOR WOODWORK NUMBER 4*](#) - Protecting Woodwork Against Decay Using Borate Preservatives
- [*MASONRY NUMBER 4*](#) - Non-destructive Evaluation Techniques for Masonry Construction
- [*METALS NUMBER 2*](#) - Restoring Metal Roof Cornices

[*Technical Preservation Services for Historic Buildings*](#)

Professional Qualifications Standards

The following requirements are those used by the National Park Service, and have been previously published in the Code of Federal Regulations, 36 CFR Part 61. The qualifications define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. In the following definitions, a year

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of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

History

The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historic organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

Archeology

The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

1. At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;
2. At least four months of supervised field and analytic experience in general North American archeology, and
3. Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

Architectural History

The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

Architecture

The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time experience in architecture; or a State license to practice architecture.

Historic Architecture

The minimum professional qualifications in historic architecture are a professional degree in architecture or a State license to practice architecture, plus one of the following:

1. At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or
2. At least one year of full-time professional experience on historic preservation projects.

Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

Preservation Terminology

Acquisition—the act or process of acquiring fee title or interest other than fee title of real property (including acquisition of development rights or remainder interest).

Comprehensive Historic Preservation Planning—the organization into a logical sequence of preservation information pertaining to identification, evaluation, registration and treatment of historic properties, and setting priorities for accomplishing preservation activities.

Historic Context—a unit created for planning purposes that groups information about historic properties based on a shared theme, specific time period and geographical area.

Historic Property—a district, site, building, structure or object significant in American history, architecture, engineering, archeology or culture at the national, State, or local level.

Integrity—the authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's historic or prehistoric period.

Intensive Survey—a systematic, detailed examination of an area designed to gather information about historic properties sufficient to evaluate them against predetermined criteria of significance within specific historic contexts.

Inventory—a list of historic properties determined to meet specified criteria of significance.

National Register Criteria—the established criteria for evaluating the eligibility of properties for inclusion in the National Register of Historic Places.

Preservation (treatment)—~~the act or process of applying measures to sustain the existing form, integrity and material of a building or structure, and the existing form and vegetative cover of a site. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.~~ [Current definition of this treatment standard, as revised in The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995:

Preservation is defined as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.]

Property Type—a grouping of individual properties based on a set of shared physical or associative characteristics.

Protection (treatment)—~~the act or process of applying measures designed to affect the physical condition of a property by defending or guarding it from deterioration, loss or attack, or to cover or shield the property from danger or injury. In the case of buildings and structures, such treatment is generally of a temporary nature and anticipates future historic preservation treatment; in the case of archeological sites, the protective measure may be temporary or permanent.~~ [This treatment standard and definition was deleted in The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995.]

Reconnaissance Survey—an examination of all or part of an area accomplished in sufficient detail to make generalizations about the types and distributions of historic properties that may be present.

Reconstruction (treatment)~~—the act or process of reproducing by new construction the exact form and detail of a vanished building, structure, or object, or any part thereof, as it appeared at a specific period of time.~~ [Current definition of this treatment standard, as revised in The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995:

Reconstruction is defined as the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.]

Rehabilitation (treatment)~~—the act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural and cultural values.~~ [Current definition of this treatment standard, as revised in The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995:

Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.]

Research design—a statement of proposed identification, documentation, investigation, or other treatment of a historic property that identifies the project's goals, methods and techniques, expected results, and the relationship of the expected results to other proposed activities or treatments.

Restoration [treatment]~~—the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.~~ [Current definition of this treatment standard, as revised in The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995:

Restoration is defined as the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.]

Sample Survey—survey of a representative sample of lands within a given area in order to generate or test predictions about the types and distributions of historic properties in the entire area.

Stabilization (treatment)~~—the act or process of applying measures designed to reestablish a weather resistant enclosure and the structural stability of an unsafe or deteriorated property while maintaining the essential form as it exists at present.~~ [This treatment standard and its definition was deleted in The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995.]

Statement of objectives—see [Research design](#).

Dated: September 26, 1983
Russell E. Dickenson
Director, National Park Service

Advisory Council on Historic Preservation Guidance on Public Participation

Please note:

On January 11, 2001, revised Section 106 regulations took effect.

The Section 106 guidance material below is based on previous regulations, but is still generally relevant when assessing a Federal undertaking's impact on historic properties. All citations to 36 CFR Part 800 refer to the regulations prior to June 1999 and are no longer valid.

Public Participation in Section 106 Review

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I. Introduction

II. Planning for public participation

III. Public participation principles

A. Public participation in Section 106 review should support historic preservation objectives and help the Federal agency meet its program responsibilities.

B. Both Federal agencies and members of the public have responsibilities in a public participation program.

C. Public participation objectives should be approached with flexibility.

D. The level and type of public participation should be appropriate to the scale and type of undertaking and to the likelihood that historic properties may be present and subject to effect.

IV. Evaluating an existing public participation program

V. Methods of public participation through programmatic coordination

VI. Methods of public participation on an individual undertaking

A. Determine the extent of public participation needed.

B. Identify potential participants.

C. Seek information from parties with knowledge or concerns.

D. Determine whether "interested persons" exist.

E. Coordinate identification and evaluation with interested persons.

F. Coordinate effect determination with interested persons.

G. Consult with interested persons about adverse effects.

H. Report the conclusion of Section 106 review to interested persons.

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I. Introduction

The National Historic Preservation Act (NHPA) and other Federal authorities, and a growing number of State and local laws, ordinances, and policies, require or encourage the consideration of historic properties in the planning and implementation of land use and development projects.

What Section 106 requires of Federal agencies

Section 106 of NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties, and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. The Council's regulations, "Protection of Historic Properties" [36 CFR Part 800, 1986], guide implementation of Section 106. The resulting system is referred to as the Section 106 review process. Figure 1 gives a brief overview of Section 106 review.

The Section 106 review process provides for active participation by the public. The general public must be notified of agency actions under the regulations, and organizations and individuals concerned with the effects of an undertaking on historic properties (defined in the regulations as "interested persons") are to be involved in the review process in various ways, depending on their particular interests.

The purpose of this publication is to help agencies involve the public effectively, with minimum burden to agency missions. A separate publication will provide advice to the public about participation in the review process.

For general information on the Section 106 review process or on the regulations themselves, the Council's publication, *Section 106, Step-by-Step*, and other literature concerning the process and related historic preservation requirements are available from the Council.

II. Planning for public participation

Systematic planning for public participation in Section 106 review will help agencies ensure that such participation takes place in an orderly and productive manner. Identifying and addressing the public's concerns about historic preservation issues should be a regular part of each agency's overall planning system, whether the activities planned are specific projects or the ongoing management of land or structures.

The regulations provide that Section 106 review, including public participation in such review, may be fully coordinated with and satisfied by the procedures carried out by agencies under the authority of the National Environmental Policy Act (NEPA) and other pertinent statutes. The Council encourages agencies to provide for public participation in Section 106 review through existing agency public participation procedures, and also encourages the public to use such procedures fully to raise and resolve historic preservation issues.

Integrating public participation into an agency's administrative processes

To the maximum extent possible, public participation in Section 106 review should be integrated into an agency's normal administrative processes in such a way as to ensure that both Section 106 in general, and public participation in particular, occur in a timely manner well before potentially damaging undertakings are approved. Agencies that are organized into headquarters, regional, and field offices should ensure that their procedures at all levels provide adequately for timely review and public participation. It is essential that agencies ensure that field offices have sufficient time to meet all applicable requirements of Section 106 review, and receive necessary guidance and assistance from regional and headquarters levels.

"Interested persons" and the general public

The Council's regulations distinguish between "interested persons" and other elements of the public. "Interested persons" are defined as "organizations and individuals that are concerned with the effects of an undertaking on historic properties" [36 CFR § 800.2(h)]. Interested persons may be, and in some cases must be, invited to participate in consultation about how to reduce the adverse effects of an undertaking on historic properties. (See Figure 2.) Members of the general public who are not interested persons must be notified of planned actions and decisions, and their comments must be considered, but they need not be invited to be active participants in consultation. It is important that in planning public participation agencies establish mechanisms for identifying and involving interested persons, without diminishing the role of the general public.

Part III, which follows, discusses general principles that should be considered in all kinds of public participation in Section 106 review. Sub-subsequent portions of this paper discuss points to consider in evaluating an existing public participation process, offer recommendations about how to work with the public on a programmatic basis, and outline step-by-step procedures for involving the public in each activity required by the regulations.

III. Public participation principles

Agencies should consider the following principles in designing systems for public participation in Section 106 review. See Figure 3 for a summary of public participation principles.

A. Public participation in Section 106 review should support historic preservation objectives and help the Federal agency meet its program responsibilities.

Practical objectives of an agency's public participation effort

An agency's public participation effort should be designed to meet such practical objectives as the following:

- obtaining assistance from members of the public likely to have information about historic properties and the areas that may be affected by undertakings, and informing them of agency undertakings and purposes;
- utilizing the applicable knowledge and expertise of professional and avocational practitioners of such disciplines as history, architectural history, landscape architecture, and archeology;
- involving property owners, local governments, Indian tribes, neighborhood associations, and others whose immediate interests may be affected, whose viewpoints need to be considered in decisionmaking, and who may need to participate in Section 106 review as interested persons;
- considering viewpoints presented by interested persons and other members of the public, both as an aid in information gathering and as a basis for decisionmaking;
- identifying and working toward the resolution of conflicts, if any, between program objectives and preservation objectives, based on full consideration of feasible alternatives.

B. Both Federal agencies and members of the public have responsibilities in a public participation program.

Agencies have the affirmative duty to make the public aware of the opportunity to participate in Section 106 review, and to encourage the participation of interested persons. Agencies should be able to expect members of the public who are concerned about historic properties to pursue their opportunity to participate actively and cooperatively in Section 106 review. The process is designed to emphasize good-faith information sharing, consultation and exploration of alternatives, to promote agreement on measures acceptable to all involved. Such a process

requires understanding of each party's rights and obligations and respect for diverse points of view.

C. Public participation objectives should be approached with flexibility.

The regulations may be implemented "in a flexible manner reflecting differing program requirements, as long as the purposes of Section 106...and these regulations are met" [36 CFR § 800.3(b)]. With reference to public participation, this means that the agency should involve the public in a flexible manner that reflects the type of undertaking under consideration, the agency's administrative processes, and the nature of known or expected public interests.

D. The level and type of public participation should be appropriate to the scale and type of undertaking and to the likelihood that historic properties may be present and subject to effect.

The level of agency effort to ensure public participation in Section 106 review should be appropriate to the scale and type of undertaking involved, to its potential effects, to the kinds of historic properties likely to be affected, and to the kinds of possible public interest present. For example, an undertaking of small scale or in an area not likely to contain historic properties rarely requires the level of public participation that a large scale undertaking or one in an area of known or likely historical significance will warrant. Similarly, an undertaking of a kind that has little potential for adverse effect to historic properties is unlikely to require the same level of public participation as will one that is likely to have major adverse effects.

Based on their mandates and on the volume and variety of their actions, Federal agencies are encouraged to define levels and methods of public participation appropriate to the various classes of undertakings in which they participate. The levels and methods should be consistent with Council guidelines, and should take into account the potential each class of undertaking has for affecting historic properties; they should also provide alternative approaches where particular circumstances warrant them.

For an individual case, at the time an agency initiates Section 106 review, it may not know what kinds of historic properties are subject to effect, what kinds of effects will occur, and what kinds of interests may be affected. A major part of the Section 106 review process involves making informed determinations about precisely these matters. Initial formulation of a means for public participation thus may require some initial identification effort. (See the Council/National Park Service publication, *Identification of Historic Properties: A Decisionmaking Guide for managers.*)

A plan for public participation will also benefit from the advice of the SHPO. Approaches may have to be adjusted as increased understanding is gained about what effects, if any, the undertaking will have.

IV. Evaluating an existing public participation program

The Council and its regulations encourage agencies to "examine their administrative processes to see that they provide for participation by the State Historic Preservation Officer and others

interested in historic preservation," and to consult with the Council to develop special procedures if impediments to such participation are found to exist [36 CFR § 800.1(b)].

Questions to consider in evaluating an agency's public participation process

In reviewing their current processes regarding public participation to ensure that they provide adequately for participation by those interested in historic preservation, in a manner consistent with these Council guidelines, agencies should consider such questions as the following:

- Does the agency make decisions about the scope and timing of public participation in a manner commensurate with the scale of the undertaking and the likelihood that historic properties and public interests in such properties will be affected?
- Does the agency inform the public of potential undertakings in a timely manner, when the widest feasible range of alternatives is open for consideration?
- In such timely public notice, does the agency explicitly request views on historic preservation issues or concerns?
- Does the agency specifically invite the views of groups likely to have interests in potentially affected historic properties?
- Does the agency identify interested persons early in Section 106 review, invite them to participate, and facilitate their participation?
- Does the agency provide mechanisms for addressing and, if possible, resolving the concerns of interested persons?
- Do agency procedures provide for information to be readily available to the public at all stages of the review process, including information on Section 106 review and the means by which the public can participate in review?
- Does the procedure systematically integrate and document the results of public participation, including public views and agency responses, into the Section 106 review process? If the answers to the above questions are affirmative, the agency's program should fully meet the purposes of public participation in Section 106 review. If not, the program may need to be modified to meet the purposes of Section 106 and Council regulations. The regulations encourage agencies to consult with the Council in making such modifications [36 CFR § 800.1(b)].

V. Methods of public participation through programmatic coordination

Definition of programmatic coordination

Programmatic coordination means establishing and maintaining relationships with elements of the public on an ongoing basis with respect to an agency program, as distinguished from contacting or being contacted by the public only when particular actions are contemplated. Where an agency anticipates numerous undertakings in a general area, programmatic coordination with the public is strongly recommended as a prelude, and sometimes as an alternative, to public participation in the review of individual undertakings. Early outreach to the

public to identify potentially interested persons and to establish specific means by which they will be afforded the opportunity to participate in review can greatly facilitate planning of specific undertakings.

When programmatic coordination with the public is appropriate

Programmatic coordination may be especially appropriate for Federal land management agencies, whose undertakings involve the ongoing administration and use of large areas of land. Since interested members of the public, like the land management agencies themselves, generally have long-term interests in the land and resources involved, groups representing various relevant interests are often known to the agencies, and arrangements can be made to ensure that public participation, where needed in specific cases, occurs in an efficient and effective manner. The Council also recommends programmatic coordination where an agency anticipates participating in numerous undertakings in a general area.

Systems for programmatic coordination can be embodied in agency procedures, in memoranda of understanding with interested persons, in Programmatic Agreements executed in accordance with 36 CFR § 800.13, and in informal arrangements designed to meet specific needs. Upon request, the Council will review such systems and advise agencies of their consistency with the purposes of NHPA [Section 202(a)(6)].

Agencies should periodically review and revise their programs for coordination with the public to ensure that these programs remain effective and that they provide for participation by those who are interested in current undertakings.

VI. Methods of public participation on an individual undertaking

The Council recommends that agencies use the following methods when arranging for public participation in the review of individual undertakings. As noted elsewhere, arrangements for public participation should be made early in the agency's consideration of the undertaking, when the widest feasible range of alternatives is open for consideration [36 CFR § 800.3(c)]. Figure 4 gives a summary of these methods.

A. Determine the extent of public participation needed.

Normally, Section 106 review begins with an assessment of information needs for identification of historic properties, as outlined in 36 CFR § 800.4(a). At this point, the responsible agency should begin to provide for public participation.

When no arrangements for public participation are needed

In some cases, no specific public participation arrangements may be needed. This may be the case if prior programmatic coordination has shown that there are no "local governments, Indian tribes, public and private organizations, [or] other parties likely to have knowledge of or concerns with historic properties in the area [36 CFR § 800.4(a)(1)(iii)]. An example of such a circumstance might be one in which a local government has carried out programmatic

coordination with respect to a neighborhood and found no interest in the neighborhood's historic, architectural, archeological, or cultural characteristics. Specific arrangements may be unneeded, too, if the undertaking has very little potential for effect on historic properties, or if it has some potential for effect, but is identical with or very similar to other undertakings that have in the past generated no public interest, and there is no reason for believing that public interest now exists that did not exist previously.

When particular pre-arranged forms of public participation are needed

In other cases, the scale or nature of the undertaking may be such that only a particular pre-arranged form of public participation is needed. For example, an agency undertaking rehabilitation of houses in a historic district might, through programmatic coordination, find that consultation with a neighborhood organization was the best way to ensure public participation in each of its projects, without the need for wider notification of the public. Similarly, a land managing agency whose undertakings might affect properties of cultural importance to an Indian tribe might establish specific agreements with the tribe and its traditional cultural leaders to ensure that their concerns were identified and addressed, without the need for public participation on a broader scale.

When general public participation is needed

In other cases general public participation in Section 106 review may be needed. The further steps outlined below are recommended for such cases; they should be carried out in the context of the agency's overall public participation process.

B. Identify potential participants.

The regulations direct agencies to seek information from "local governments, Indian tribes, public and private organizations, and other parties likely to have knowledge of or concerns with historic properties in the area" [36 CFR § 800.4(a)(1)(iii)] The SHPO should be able to assist the agency in developing an initial list of such parties, each of whom, when contacted, may be able to identify others. In addition to contacting specific groups and individuals, the agency can also notify the public that it has initiated Section 106 review, through articles in local newspapers, media releases, or other appropriate mechanisms, soliciting any information or concerns members of the public may have about potentially affected historic properties.

C. Seek information from parties with knowledge or concerns.

People identified as having particular knowledge or concerns should be asked for any information they may have about affected historic properties and for any concerns about the undertaking's effects [36 CFR <185> 800.4(a)(1)(iii)].

Ways of seeking information

Local governments, Indian tribes, and historic preservation organizations may have official points of contact through which an agency can ask for such information. Tribes and other Native

American groups may also have traditional cultural leaders who are highly knowledgeable about historic properties; seeking information from such leaders may require the assistance of a trained ethnographer. Contacting small public and private organizations and knowledgeable individuals may also require special efforts. Local historical societies and neighborhood organizations, for example, may not be familiar with government operating procedures, and may need help translating their information and concerns into terms that are meaningful to agency planning. Those contacted should be made aware of Section 106 review and the way the agency's undertaking will be reviewed. They should be asked if they wish to be notified of agency determinations. They should also be advised that the Council oversees Section 106 review and that if they question the way the process is being conducted, they can request Council review of agency findings under 36 CFR § 800.6(e). Their views should be recorded and used in carrying out further steps in the process.

D. Determine whether "interested persons" exist.

As discussed earlier, the regulations give special roles in Section 106 review to "interested persons"; that is, organizations and individuals that are concerned with the effects of an undertaking on historic properties. The agency should apply the definition of "interested persons" to each party identified as having interests in or concerns about historic properties.

E. Coordinate identification and evaluation with interested persons.

The regulations require no specific form of coordination with interested persons during the identification and evaluation phase of Section 106 review [36 CFR § § 800.4(b) and (c)], but the Council recommends that the agency seek their views, particularly where an interested person has jurisdiction over an area (e.g., a local government or a property owner), or has special knowledge of or interest in a property (e.g., an Indian tribe with an ancestral site, or a historical society with a historic building).

Notification if no historic properties exist

If it is determined that no historic properties exist in the area affected by the undertaking, the regulations encourage, although they do not require, the agency to "notify interested persons and parties known to be interested in the undertaking and its possible effects on historic properties and [to] make the documentation [that no historic properties exist] available to the public" [36 CFR § 800.4(d)]. Broad dissemination of "no property" findings is encouraged, because public review may reveal historic properties inadvertently missed in the identification effort and help avoid delays later in the undertaking.

F. Coordinate effect determination with interested persons.

If historic properties are identified, the agency must apply the criteria of effect [36 CFR § 800.9(a)] to the properties, "giving consideration to the views, if any, of interested persons" [36 CFR § 800.5(a)]. If the agency determines that the undertaking will have no effect on historic properties, it must notify the SHPO and "interested persons who have made their concerns known," and make the finding "available for public inspection" [36 CFR § 800.5(b)]. If the

agency determines that its undertaking will have an effect on historic properties, but that the effect will not be adverse, the agency can obtain the SHPO's concurrence and notify the Council with summary documentation, which must be made available for public inspection [36 CFR § 800.5(d)(1)(i); also see *Section 106, Step-by-Step*]. Alternatively, the agency can provide the determination to the Council together with the views of "affected local governments, Indian tribes, Federal agencies, and the public, if any were provided, as well as a description of the means employed to solicit such views" and notify the SHPO [36 CFR § 800.5(d)(1)(ii)]. Figure 5 describes methods by which this documentation can be made available to the public [36 CFR <185> 800.8(a)(5)].

In order to consider the views of interested persons, the agency should advise them of the agency's initial conclusions, either orally or in writing, and request their reactions. The agency should explain the rationale for its determination, with appropriate background data.

G. Consult with interested persons about adverse effects.

Mandatory and optional consulting parties

If it is determined that the undertaking will result in adverse effects on historic properties, the regulations provide for interested persons to participate in consultation about ways to avoid or reduce such effects. Some interested persons who so request must be invited to participate, and in some cases to concur in agreements. These include a local government representative within whose jurisdiction the undertaking will occur, an affected applicant for or holder of a grant, permit, or license, and the owner of affected land (see Figure 2). An Indian tribe whose lands are affected by an undertaking must be invited both to participate in consultation and to concur in any agreement. Other interested persons should be allowed to participate in consultation to the extent feasible, but their participation is conditional to the agreement of the responsible Federal agency, the SHPO, and the Council (where the Council participates in consultation).

Inviting interested persons to participate in consultation

The agency should contact any interested persons it has identified, or who have identified themselves, and ask them if they wish to participate in the consultation. Participation can occur at a number of different levels. A participant can be a full consulting party, taking part in meetings that may take place as part of the consultation process, receiving copies of pertinent correspondence, and negotiating actively with the agency, SHPO, and other parties. Consulting parties should usually be invited to concur in any agreements reached, particularly if an agreement specifies actions that these persons will take. At a less intensive level of involvement, participants may take part in consultation only with respect to particular aspects of the undertaking, or to effects of particular kinds or effects on particular properties. The agency may choose not to ask such participants to concur in agreements, or the participants themselves, once they have expressed their own views, may choose not to concur in any agreements.

Those who participate as consulting parties should be provided with the documentation set forth in 36 CFR § 800.8(b) when consultation is initiated. The consultation thereafter can vary based on the nature of the undertaking and its effects, the agency's planning system, the project schedule, and other factors. The fact that a person is a consulting party does not automatically

mean that he or she must be included in every telephone conversation or informal meeting. Consulting parties are free to discuss issues among themselves without involving other consulting parties, but must involve other consulting parties in such formal actions as the conduct of public meetings, on-site inspections of areas pertinent to their interests, and the exchange of documents. All parties should approach consultation as a good-faith effort to resolve conflict between historic preservation interests and the needs of the undertaking, by exploring alternatives to avoid or reduce the adverse effects of the undertaking. Consultation should be carried out with the intent of reaching an agreement acceptable to all consulting parties, and of ensuring that the concerns of all other participants have been identified, thoughtfully considered, and if possible, resolved.

If a consulting party other than the Federal agency, the SHPO, or the Council will not execute or concur in a Memorandum of Agreement (MOA), the agency, SHPO, and Council are not prohibited from executing it. Objections by interested persons to MOAs in preparation, however, should be given full and careful consideration, whether or not such person are consulting parties.

Participation in review by the public in general

The public in general must be given "an adequate opportunity...to receive information and express their views" [36 CFR § 800.5(e)(3)] during the consultation. This can be done in a variety of ways, again depending on the scope of the project and its effects, the agency's planning process, and other factors. Pertinent documentation should be made available for public inspection, and the status of Section 106 consultation should be reported at public hearings or meetings or in pertinent documents that are part of its projects planning or environmental review activities. Meetings with particular groups or individuals, or general public meetings, may be held by the agency, the SHPO, or the Council [36 CFR § 800.5(e)(3)].

H. Report the conclusion of Section 106 review to interested persons.

The Council recommends that interested persons be notified of the conclusion of Section 106 review once the agency has completed the process and, where applicable, obtained the Council's comments.

VII. Documenting public participation

The reason for documenting the agency's public participation efforts is to permit reviewers, including Federal courts in the event of litigation, to review the record and determine whether the agency's efforts have been adequate and reasonable. Generally, the Council has found it easiest to review documentation organized around a chronological summary that outlines the steps taken to provide for public participation and the results of these actions, along with reports, copies of written comments, summaries of meetings, and similar supporting documents attached where pertinent.

Documentation when no historic properties are found or no effect is determined

The regulations do not require that specific documentation of public participation be prepared when no historic properties are found, or when the undertaking is found to have no effect on historic properties. It has been the Council's experience that it is prudent, however, to describe as appropriate public participation efforts and their results, in identification reports, environmental documents, agency files, and elsewhere, as well as in the documentation provided to the SHPO and others pursuant to 36 CFR § § 800.4(d) or 800.5(b).

Documentation when no adverse effect is determined

Where a "no adverse effect" determination is reported to the Council, specific documentation of public participation efforts is required by 36 CFR § 800.8(a)(5). Where "adverse effect" is determined and further consultation results in an MOA, the agreement when submitted to the Council must be accompanied by "a summary of the views of. . .any interested persons" [36 CFR § 800.8(c)]. If an agreement is not reached and the Council's comments on the undertaking are sought as a result, the agency must document its "efforts to obtain and consider the views of affected local governments, Indian tribes, and other interested persons," together with "copies or summaries of any written view submitted" by such persons or others [36 CFR § § 800.8(d)(8) and 800.8(d)(10)].

Information to include in an agency's record of public participation

Generally speaking, a reviewer of an agency's record of public participation should be able to answer the following questions from the available documents:

- What general efforts did the agency make to ensure that the public was aware that the undertaking was being planned, and that Section 106 review was being carried out?
- What particular elements of the public were contacted for information or to identify concerns? Why were these particular elements of the public chosen over others?
- What groups and individuals, if any, were identified as interested persons? How were interested persons involved in the Section 106 review process?
- What concerns were identified, and what was done about these concerns?

VIII. Approaches to situations involving numerous interested persons

Where a large undertaking is reviewed under Section 106, with wide-spread potential effects or many alternatives, it is possible that large numbers of people and groups request the opportunity to participate as interested persons. The regulations do not require that all interested persons be invited to be consulting parties, but they do require that persons falling into certain categories be invited. As a result, it is possible for the number of consulting parties to become quite large. For example, a large project with many alternatives could affect hundreds or even thousands of landowners, who must be invited to be consulting parties if they so request [36 CFR § 800.5(e)(1)(iii)].

Developing strategies to provide for large numbers of interested persons

Agency public participation processes should be designed to provide for large numbers of consulting parties, as needed in a balanced and reasonable manner. Agencies should consult with SHPOs and the Council about ways to keep consultation from becoming unwieldy. Some possible strategies include:

- distinguishing carefully between formal consulting parties and other interested persons, including in the former category only those required to be accorded consulting party status by the regulations and those whose participation clearly will advance the objectives of Section 106 [36 CFR § 800.1(c)(2)];
- requesting that consulting parties name one or a few representatives to take an active role in consultation on the parties' behalf;
- using public information meetings, workshops, or similar devices to identify major interest groups and their representatives in consultation or other forms of participation;
- breaking up the process of review so that it addresses different alternatives or different kinds of effects at different times, allowing participants to seek resolution of particular concerns without having to participate in consultation regarding the entire undertaking; and
- limiting the number of consulting parties asked to concur in agreements to those with key interests in or concerns about the undertaking.

IX. Public participation in Programmatic Agreement development

The regulations permit agencies to develop "Programmatic Agreements" (PAs) with the Council, covering entire agency programs, in lieu of review of individual undertakings [36 CFR § 800.13]. PAs are appropriate where a program results in undertakings that have repetitive effects on historic properties, where effects cannot be fully determined in advance of Federal decisionmaking where non-Federal parties have major decisionmaking responsibilities, and where general land-management planning or routine Federal installation management is involved. Under 36 CFR § 800.13(c), the Council is responsible for arranging for public involvement "appropriate to the subject matter and the scope of the program."

Participation when a Programmatic Agreement is national in scope

Where a PA is national in scope, the Council may publish notice in the *Federal Register* or undertake other general notification that consultation has been initiated. This notification must occur early in the consultation process, but not before an initial draft agreement or at least an outline of issues to be considered is developed, so that respondents to the notice will be able to receive a document on which to comment. The Council also notifies organizations and other parties known or thought to be interested in the agreement's subject matter. Where a PA affects a smaller region or a single State, the Council uses press releases and similar devices, and direct mail contacts with potentially interested persons identified by the agency, the SHPO, and others, in lieu of or to supplement *Federal Register* publication. Public meetings may be held, and interested persons may be invited to consult and to concur in PAs.

Participation when PAs are used with programs of local governments

PAs are sometimes used with respect to programs for the rehabilitation of residential, commercial and industrial areas carried out by local governments using Community Development Block Grants and other funds provided through the Department of Housing and Urban Development (HUD). In such cases, the Council will normally regard the local government's fulfillment of the public participation requirements set forth at 24 CFR § 58.55 through 66 as sufficient to ensure public participation in PA development.

Including public participation provisions in PAs

Often, because of the programmatic nature of the activities covered by a PA, it may be difficult to identify some segments of the public who may have concerns about them, or to identify effects with much certainty at the time the PA is developed. In such cases the PA itself must be designed to include provision for effective public participation in its implementation. The measures of adequacy for such a public participation program are generally the same as those applied to an agency public participation program under Part IV of these guidelines.

X. Conclusion

The Council values the views of the public on historic preservation questions and encourages maximum public participation in the Section 106 process [36 CFR § 800.1(c)(2)(iv)]. The Council encourages full integration of public participation under Section 106 review and the regulations with other agency programs of planning and public participation. Agencies should ensure that such programs make the public fully aware of historic preservation issues; fully elicit expressions of public interest, knowledge, and concern; and wherever possible resolve conflicts between agency mission requirements and the historic preservation interests held by members of the public. Members of the public are encouraged to view the opportunities afforded them by the regulations as opportunities to work with, rather than against, Federal agencies to ensure that the pursuit of agency programs does not cause undue damage to historic properties, but rather, where possible, results in the enhancement of such properties.

Figure 1: A brief look at Section 106 review

How does Section 106 review work? The standard review process is spelled out in Federal regulations issued by the Advisory Council on Historic Preservation. Entitled "Protection of Historic Properties," the regulations appear in the U.S. Code of Federal Regulations at 36 CFR Part 800. The process involves five basic steps, as follows:

Step 1: Identify and evaluate historic properties

The Federal agency responsible for an undertaking begins by identifying the historic properties the undertaking may affect. To do this, the agency first reviews background information and consults with the State Historic Preservation Officer (SHPO) and others who may know about historic properties in the area. Based on this review the agency determines what

additional surveys or other field studies may be needed, and conducts such studies.

If properties, that is, districts, sites, buildings, structures or objects, are found that may be eligible for inclusion in the National Register of Historic Places, but have not yet been included in the Register, the agency evaluates them against criteria published by the National Park Service, which maintains the Register. This evaluation is carried out in consultation with the SHPO, and if questions arise about the eligibility of a given property, the agency may seek a formal determination of eligibility from the Secretary of the Interior. If a property has already been included in the National Register, of course, further evaluation is not necessary. Section 106 review gives equal treatment to properties that have already been included in the Register and those that are eligible for inclusion.

Step 2: Assess effects

If historic properties, that is, properties included in or eligible for inclusion in the National Register, are found, the agency then assesses what effect its undertaking will have on them. Again the agency works with the SHPO, and considers the views of others. The agency makes its assessment based on criteria found in the Council's regulations, and can make one of three determinations:

- No effect: the undertaking will not affect historic properties;
- No adverse effect: the undertaking will affect one or more historic properties, but the effect will not be harmful;
- Adverse effect: the undertaking will harm one or more historic properties.

Step 3: Consultation

If an adverse effect will occur, the agency consults with the SHPO and others in an effort to find ways to make the undertaking less harmful. Others who are consulted, under various circumstances, may include local governments, Indian tribes, property owners, other members of the public, and the Council. Consultation is designed to result in a Memorandum of Agreement (MOA), which outlines measures agreed upon that the agency will take to reduce, avoid, or mitigate the adverse effect. In some cases the consulting parties may agree that no such measures are available, but that the adverse effects must be accepted in the public interest.

If consultation proves unproductive, the agency or the SHPO, or the Council itself, may terminate consultation. The agency must submit appropriate documentation to the Council and request the Council's written comments.

Step 4: Council comment

The Council may comment during step 3 of the process, by participating in consultation and signing the resulting MOA. Otherwise, the agency

obtains Council comment by submitting the MOA to the Council for review and acceptance. The Council can accept the MOA, request changes, or opt to issue written comments. If consultation was terminated, the Council issues its written comments directly to the agency head, as the agency had requested.

Step 5: Proceed

If an MOA is executed, the agency proceeds with its undertaking under the terms of the MOA. In the absence of an MOA, the agency head must take into account the Council's written comments in deciding whether and how to proceed.

Alternative approaches

The Section 106 regulations also spell out three alternative means of complying with Section 106. These are:

- Programmatic Agreements among an agency, the Council, one or more SHPOs, and others;
- Counterpart regulations developed by an agency and approved by the Council;
- An agreement between the Council and a State, which substitutes a State review system for the standard Section 106 review process.

Figure 2: Who are "interested persons"?

Definition

The regulations define "interested persons" as "those organizations and individuals that are concerned with the effect of an undertaking on historic properties" [36 CFR § 800.2(h)].

Mandatory participation by interested persons

The following are considered to be interested persons who must be invited to participate in consultation when these persons so request [36 CFR § 800.5(e)(1)]:

- The head of a local government (for example, the mayor of a city, the chief executive of a county government, or his/her designee) when the undertaking may affect historic properties within the local government's jurisdiction;
- The representative of an Indian tribe (federally recognized tribe or Alaska Native Corporation) when an undertaking will affect Indian lands or properties of historic value to the tribe on non-Indian lands. (In the former case the tribe must be invited to concur in any agreement reached by the consulting parties) [36 CFR § 800.1(c),(2)(iii)];

- Applicants for or holders of grants, permits, or licenses that are the subjects of Section 106 review;
- Owners of affected lands, that is, persons who meet the regulations' definition of "interested person" and who hold title to real property within an undertaking's area of potential effect.

Optional participation by interested persons

The following are considered to be interested persons who may be invited to participate in consultation if the agency official, SHPO, and Council (if participating) jointly determine that participation is appropriate [36 CFR § 800.5(e)(2)]:

- Traditional cultural leaders, that is, individuals in a Native American group or other social or ethnic group who are recognized by members of the group as experts on the group's traditional history and cultural practices [36 CFR § 800.1(c)(2)(iii)];
- Other Native Americans, that is, American Indians, Native Hawaiians, and others who are identified by themselves and recognized by others as members of a named, native cultural group that historically has shared linguistic, cultural, social, and other characteristics, but that is not necessarily a federally recognized Indian tribe or Alaska Native Corporation [36 CFR § 800.1(c)(2) (iii)].
- Others who meet the definition of "interested person" [36 CFR § 800.5(e)(1)(iv)].

Figure 3: Public participation principles

- A. Public participation in Section 106 review should support historic preservation objectives and help the Federal agency meet its program responsibilities.
- B. Both Federal agencies and members of the public have responsibilities in a public participation program.
- C. Public participation objectives should be approached with flexibility.
- D. The level and type of public participation should be appropriate to the scale and type of undertaking and to the likelihood that historic properties may be present and subject to effect

Figure 4: Methods of public participation on an individual undertaking

- A. Determine the extent of public participation needed.
- B. Identify potential participants.
- C. Seek information from parties with knowledge or concerns.
- D. Determine whether "interested persons" exist.
- E. Coordinate identification and evaluation with interested persons.
- F. Coordinate effect determination with interested persons.
- G. Consult with interested persons about adverse effects.
- H. Report the conclusion of Section 106 review to interested persons.

Figure 5: Making documentation available to the public

When an agency determines that no historic properties are present, that no effect will occur on historic properties, or that an effect will occur but that it will not be adverse, the regulations require that documentation of the determination be made available to the public [36 CFR §

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Summer 2001*

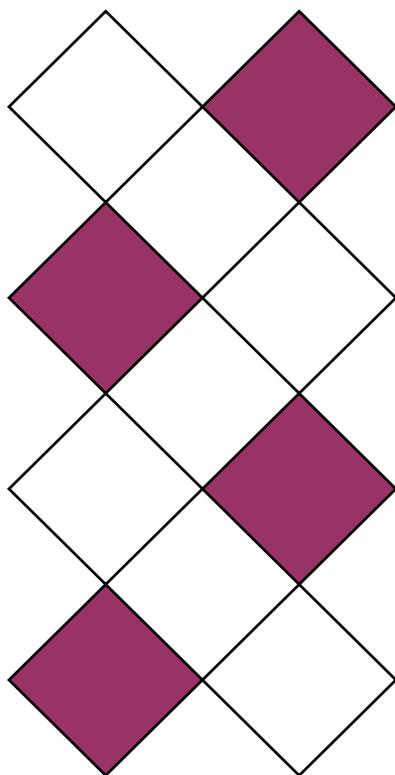
800.4(d); 800.5(b); 800.5(d)(1)]. This documentation should identify the undertaking and include a description of the agency's efforts to identify historic properties. It should describe any such properties involved, and discuss how (if at all) the undertaking will affect them, with reference to the criteria of effect and adverse effect as applicable.

How the documentation is made available to the public can vary with the scale and nature of the undertaking and the extent of agency reporting responsibilities under authorities other than Section 106. Where environmental documents are made available for public review under NEPA, for example, notification of the agency's determination can be included in such documents. For routine or small scale undertakings, it may be sufficient simply to retain documentation in agency files available for inspection by the public, as long as such documentation is also provided to the SHPO and interested persons as required. Documentation made available to the public should include notification to reviewers of their opportunity to request Council review of the agency's finding [36 CFR § 800.6(e)(1)].

In some cases, the historic property involved may be vulnerable to vandalism or other damage if their locations or exact descriptions are revealed. Section 304 of the National Historic Preservation Act (16 U.S.C. 470w-3) directs Federal agencies, "after consultation with the Secretary [of the Interior] [to] withhold from disclosure to the public, information relating to the location or character of historic resources" under such circumstances. Procedures to follow in such cases are outlined in the Department of the Interior's Guidelines for Federal Agency Responsibilities under Section 110 of the National Historic Preservation Act (53 FR 4727-46; February 17, 1988). Deciding on whether and how to withhold such information requires careful balance between the need to protect the property from damage, and the need to provide the public with sufficient information to participate effectively in the Section 106 process. A commonly used compromise approach involves placing location and detailed descriptive information in confidential appendices to the documentation made available to the public, limiting the availability of such appendices to those with a definite need to know, and providing only general information on the location and nature of historic properties in the material openly available to the public.

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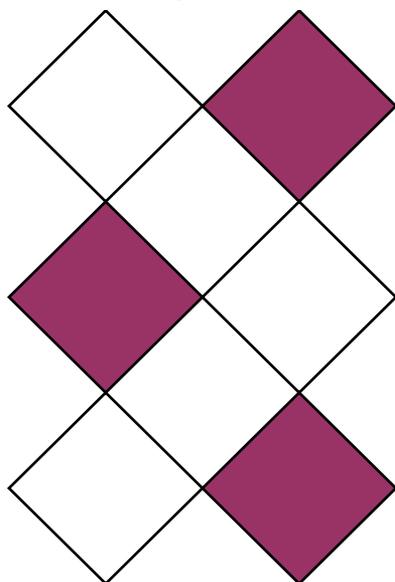
Historic
Preservation
Program



Guidance for
Photographing
Historic
Properties



Federal Emergency
Management Agency
9580.6 Job Aid



Advisory Council on Historic Preservation Guidance on Preparing Agreement Documents

Please note:

On January 11, 2001, [revised Section 106 regulations](#) took effect.

The Section 106 guidance material below is based on previous regulations, but is still generally relevant when assessing a Federal undertaking's impact on historic properties. All citations to 36 CFR Part 800 refer to the regulations prior to June 1999 and are no longer valid.

Preparing Agreement Documents

Section 106 of the National Historic Preservation Act (NHPA) directs Federal agencies to take into account the effects of their undertakings, including those they assist or license, on historic properties. It also directs agencies to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. Sections 110(f) and 111 of NHPA establish related requirements.

The Council has issued regulations to guide agencies in implementing Section 106 and related authorities. [36 CFR Part 800] For further information on how to comply with the regulations see the Council's publication, *Section 106, Step-by-Step*. The regulations provide for consultation among responsible agencies, the State Historic Preservation Officer (SHPO), other interested persons, and sometimes the Council. This consultation is aimed at reaching agreement on ways to avoid or reduce adverse effects on historic properties.

Where it is possible to avoid adverse effects, a determination of no adverse effect (NAE) may be made. Often such a determination is made on the basis of agreement among the responsible agency, the SHPO, and others on measures that will be employed to ensure that adverse effects do not occur. These measures must be implemented in order for the determination to be valid with reference to the agency's Section 106 responsibilities.

If avoidance of adverse effects is not feasible, agreement is usually reached on measures that wholly or in part mitigate the adverse effects. Once agreed upon, such measures are embodied in a Memorandum of Agreement (MOA) and implemented.

In some cases, consultation may occur with respect to a whole agency program, rather than with respect to a particular project, and result in agreement on **procedures** that the agency will use, with respect to the program, to ensure that adverse effects are avoided or mitigated. Such procedures are set forth in Programmatic Agreements (PA).

In this publication, NAE determinations, MOAs, and PAs will be referred to collectively as "agreement documents." Where only a particular type of agreement document is the subject of a discussion, the type will be identified.

During the Council's 20 years of experience under Section 106, certain avoidance and mitigation measures have been refined almost to the point of standardization. Formats for MOAs and certain recurrent kinds of PAs have also been standardized. In order to simplify the preparation of NAE determinations, MOAs, and PAs, the standard formats and descriptions of avoidance and mitigation measures have been compiled into this publication, together with background information and suggestions about when and how various formats and approaches can be used.

Preparing Agreement Documents is divided into eight parts. After this introduction (Part I), Part II addresses basic, often-asked questions about agreement documents. Part III offers pointers about how to write effective agreement documents. Parts IV, V, and VI offer standard formats for NAE determinations, MOAs, and PAs respectively. Part VII presents standard language for various kinds of conditions and stipulations that are commonly used in agreement documents. Part VIII provides several complete hypothetical agreement documents.

Use of the basic formats presented here will help ensure that NAE determinations, MOAs, and PAs are legally sufficient, while use of the standard language for commonly used conditions and stipulations should free agency officials, SHPOs, and other parties to focus their attention on innovative solutions to substantive preservation problems.

This publication is not intended to discourage creativity in devising unique solutions to preservation problems, nor to encourage consulting parties to adopt stock solutions without first considering all feasible and prudent alternatives. The purpose of this publication is to make standard language and formats readily available to those preparing agreement documents, so that they can be used where applicable. It is also designed to encourage the clear representation of agreements arrived at, thus reducing the likelihood of repetitive redrafts or debates over meaning.

Each undertaking reviewed under Section 106 presents its own substantive issues, however. Participants in review are encouraged to explore possible new solutions to preservation problems, and to give full consideration to alternatives before settling on any particular approach, whether described in this publication or not.

II. Questions and answers about agreement document preparation

What are agreement documents?

The term "agreement document" is used in this publication to cover three kinds of documents that conclude the process of review under Section 106 and represent some form of agreement between an agency and an SHPO, or among an agency, the SHPO, the Council, and sometimes other parties.

"No Adverse Effect" (NAE) determinations are made by agencies in consultation with SHPOs under 36 CFR (185) 800.5(d). Often in making such a determination, an agency, an SHPO, and sometimes other parties agree on project changes or conditions to prevent adverse effects to historic properties. Agencies provide NAE determinations, with supporting documentation, to the Council for review.

Memoranda of Agreement (MOA) are executed under 36 CFR (185) 800.5(e)(4). In an MOA an agency, an SHPO, the Council, and sometimes other parties agree on measures to avoid, reduce, or mitigate adverse effects on historic properties, or to accept each effect in the public interest.

Programmatic Agreements (PA) are executed under 36 CFR (185) 800.13. In a PA an agency, the Council, and other parties agree on a process for considering historic properties with respect to an entire agency program.

How is the decision to prepare an agreement document reached?

The process leading to an agreement document depends on the nature of the undertaking and its effects.

NAE determinations. Under the regulations, the responsible Federal agency official applies the Council's Criteria of Effect and Adverse Effect [36 CFR § 800.9] to historic properties within an undertaking's area of potential effects, in consultation with the SHPO. If the agency determines that the undertaking will have no adverse effect, the agency so advises the Council, usually in a letter to the Council with supporting documentation. The extent of the documentation required depends on whether the SHPO has formally concurred in the determination and on the nature of the undertaking's effects.

If the fact that the undertaking will have no adverse effect is obvious, reaching the determination should be easy and involve only simple, routine consultation between the agency and SHPO. If there are questions to be resolved about the nature of the undertaking's effects, however, substantial consultation may go into reaching the determination, involving onsite reviews, study of documents, weighing of alternatives, perhaps making alterations in project plans, and the development of conditions which, once agreed upon, will ensure, within reason, that adverse effects will be avoided.

MOAs. If the agency's application of the Criteria of Adverse Effect indicates that the undertaking will have adverse effects, achieving agreement normally requires more formal consultation, often involving a wider range of parties than is typical of an NAE determination. Still, however, the nature of the consultation process is determined by the extent of the undertaking and its effects. It may be obvious that there is no reasonable alternative to the action causing adverse effects, and the measures that can be adopted to reduce or mitigate such adverse effects may be equally obvious. In such a case an MOA can usually be developed promptly.

Where an undertaking presents more complex issues, consultation involves careful discussion of the undertaking's various effects, examination of alternatives to avoid or mitigate those effects, and a careful weighing of the public interest, often in the context of public meetings, onsite inspections, the conduct of appropriate studies, and the participation of diverse groups of people. The result is usually an MOA representing the best compromise solution agreeable to all the consulting parties.

PAs. A PA is usually developed because an agency finds that its actions under a given program, within a large and complex project, or with respect to a given class of undertakings will require

many individual requests for Council comment under 36 CFR § § 800.4 through 800.6, and that making such requests will be inefficient or otherwise inconsistent with effective program management. Under such circumstances the agency suggests to the Council, or to an SHPO, that a PA be developed prescribing a review process tailored to its particular program, to stand in place of the normal Section 106 review process. Alternatively, the Council, an SHPO, or some other party may suggest to an agency that a PA is appropriate, and the agency may agree. The parties then notify the potentially concerned public and consult to reach agreement. The responsible agency and the Council are always consulting parties on a PA, together with one or more SHPOs or the National Conference of SHPOs (NCSHPO). Other parties participate in consultation and sign the PA depending on the nature of the program and its effects. The process of consultation toward a PA under 36 CFR § 800.13 is extremely flexible--to accommodate the diversity of Federal programs, the regulations avoid prescribing a particular procedure. Once agreement is reached, the consulting parties execute the PA, which then goes into effect, superseding the terms of 36 CFR § § 800.4 through 800.6 with respect to actions under the program the PA covers.

Who prepares an agreement document?

NAE determinations. Under 36 CFR § 800.5(d), the Federal agency official is responsible for making an NAE determination, and therefore is responsible for documenting it. A document memorializing an agreement on which an NAE determination is based may, however, be developed by another party. For example, if an SHPO writes to an agency saying that in his or her opinion an undertaking will have no adverse effect if specified conditions are carried out, the agency can then write to the Council committing itself to carry out the conditions, appending the SHPO's letter with whatever supporting documentation is necessary for the Council's review, and making its NAE determination. In some cases the Council, too, may draft conditions upon which an NAE determination can be based.

MOAs. The regulations at 36 CFR § 800.5(e) permit agencies and SHPOS to develop MOAs without Council participation, provided the responsible agency notifies the Council when it initiates consultation with the SHPO. This notification affords the Council the opportunity to participate if it chooses. MOAs developed without Council participation are submitted by the agency to the Council for review; acceptance of such an MOA by the Council concludes the Section 106 review process. Such MOAs are commonly called two-party MOAs because a minimum of two parties (the agency official and the SHPO) sign them before they are sent to the Council. Other parties may sign as concurring parties.

The regulations also permit the Council to participate formally in the consultation process. In such an event, the Council is a formal signatory to the MOA along with the agency official, the SHPO, and any other parties. Such an MOA is commonly referred to as a three-party MOA because it has a minimum of three signatories (agency official, SHPO, and Council). Three-party MOAs are often prepared by the Council, but can be prepared by any of the other consulting parties, once the parties have reached agreement on its content.

The Council can also participate informally in the consultation process, so an agency official or SHPO can ask the Council to provide a draft two-party MOA that the consulting parties can then

finalize and send to the Council for review and acceptance. The Council will help develop such drafts to the extent that time and personnel limitations permit.

PAs. PAs are usually prepared in final form by the Council, though they are often prepared in draft by an agency official or an SHPO or group of SHPOs, or by others. The Council must be consulted in the development of a PA. [36 CFR § 800.13] Certain kinds of frequently used PAs, covering the programs of local governments using Community Development Block Grants (CDBG) and related program funds, are commonly prepared by SHPOs or local governments with minimum Council participation, however.

When should two-party MOAs and three-party MOAs be used?

Three-party MOAs are created as the result of consultation under 36 CFR § 800.5(e), in which the Council elects to participate in consultation, or is invited to consult by the agency or SHPO. The regulations do not specify the conditions under which the Council should be invited to participate, except that 36 CFR § 800.10 requires that the Council participate in consultation concerning direct and adverse effects on National Historic Landmarks. It is recommended, however, that agency officials and SHPOs invite the Council to participate when the undertaking under review is complicated or potentially controversial, when there is substantial public interest in the historic preservation issues involved, when the undertaking presents issues about which Council policy is not established, or when the national perspective the Council can bring to bear on preservation issues is required or may be useful.

Conversely, the Council need not be invited to participate in consultation where the undertaking under review is relatively simple, noncontroversial, and routine. In such cases two-party MOAs are most appropriate. However, 36 CFR § 800.5(e) requires that the responsible Federal agency notify the Council when an adverse effect on historic properties is found and consultation begins toward a two-party agreement. Upon receiving such notification, or upon otherwise learning about the undertaking, the Council may elect to participate formally in the consultation. It should also be remembered that the Council can be consulted informally during a two-party consultation. This may be particularly appropriate if the consulting parties want to avail themselves of the expedited 30-day Council review that is provided for two-party MOAs under 36 CFR § 800.6(a)(1) with respect to a generally routine undertaking with a few unusual elements, or if the consulting parties are unfamiliar with the mechanics of MOA preparation.

NAE determinations. NAE determinations are usually memorialized in letters signed by the relevant agency official, sometimes with attached conditions or exhibits, and are sent to the Council with appropriate supporting documentation. SHPOs may concur in NAE determinations in the same letter that is signed by the agency official, or in a separate letter. Other parties may concur in NAE determinations. Unless an agency has legal authority to delegate its Section 106 responsibilities to another party, the agency official's signature on the NAE document is mandatory. NAE determinations are shown at Figures 1 and 2 of this publication.

MOAs. At minimum, two parties sign every MOA. Normally the two parties are the Federal agency official responsible for the undertaking and the SHPO. If the SHPO declines to sign the MOA, or fails to respond within 30 days after receiving an agency request for his or her

signature, the agency official can ask the Council to sign the MOA in lieu of the SHPO. [36 CFR § 800.1(c)(1)(ii)]

When a two-party MOA is accepted by the Council, the Council's authorized representative signs it on an acceptance line. The Council's representative signs three-party MOAs in the same manner as the agency officials and SHPOs. MOAs are shown at Figures 3 and 4 of this publication. A Federal agency official may only delegate MOA signature authority to a representative of a State or local government if the agency has legal authority to delegate its Section 106 responsibilities. Where multiple Federal agencies are involved in an undertaking, all may sign the MOA, or signature authority may be formally delegated to a lead agency. Where the undertaking will affect the lands of an Indian tribe, the tribe must be invited to concur in any agreement document. With respect to two-party and three-party MOAs, other parties who have participated in consultation may be invited to concur. For example a local preservation organization may be invited to concur in an MOA if the agency and SHPO (and the Council, if it is a participant) agree to do so.

PAs. PAs are signed by the representative of the responsible agency or local government and by the Council. They are also usually signed by an SHPO, several SHPOs, or the president of NCSHPO, depending on the nature of the program they cover. Other parties may concur in a PA.

What is the meaning of an agreement document?

Execution and implementation of an agreement document, whether it be an NAE determination, an MOA, or a PA, evidences a Federal agency's fulfillment of its responsibilities under Section 106. In other words, agreement documents indicate both that the agency has taken the effects of the undertaking into account, and that the agency has afforded the Council a reasonable opportunity to comment.

An agreement document obligates the parties to carry out its terms. If the terms cannot be carried out the document must be amended, or further comments of the Council must be sought in accordance with the regulations.

Under what circumstances are agreement documents revised?

Agreement documents are normally revised if the nature of the undertaking changes. For example, the locations where effects will occur or the nature of those effects may be altered, or unanticipated effects may be identified after the agreement document is concluded. Revisions also are made if the measures originally agreed upon become insufficient to address the preservation problems involved, or if they are unduly expensive or otherwise infeasible. Revisions are sometimes made to accommodate a change in approach occasioned by professional concerns, such as a change in the research questions addressed in an archeological data recovery program. Finally, revisions may be necessary if a considerable amount of time passes between execution of the agreement document and implementation of its terms, during which time concepts of historic significance and how to deal with various kinds of historic properties may change.

How can an agreement document's terms be revised?

If after executing an MOA an agency determines that it will be unable to carry out the MOA's terms, the agency should request an amendment in accordance with 36 CFR § 800.5(e)(5). Any other party to an agreement document may request an amendment--for example, a party may request an amendment if that party believes a change has occurred in the undertaking, which creates new preservation problems that must be addressed. Amendments are negotiated in the same manner as original agreements. Although the regulations do not specify a process for amending agreements associated with NAE determinations, or for amending PAs, these documents too should be revised, where necessary, through consultation among the original participants.

What if an agreement document's terms are not carried out?

Since implementation of an agreement document evidences fulfillment of an agency's Section 106 responsibilities, it follows that failure to implement its terms evidences that the agency's Section 106 responsibilities have not been fulfilled.

NAE determinations. Agencies are required by the regulations to carry out the measures they agree to in reaching NAE determinations. [36 CFR § 800.5(d)(2)] If an agency fails to do so it has not complied with Section 106 and must resubmit the undertaking for review.

MOAs. Failure to carry out an MOA's terms requires that the agency resubmit the undertaking to which the MOA pertains for Council comment, by preparing a new MOA or amending the existing MOA. If consultation to prepare a new MOA or amendments proves unproductive, the agency is required to seek Council comment in accordance with 36 CFR § 800.6(b). [36 CFR § 800.6(c)(1)]

PAs. Failure to carry out a PA's terms requires that the responsible agency comply with the regulations on a case-by-case basis with respect to individual undertakings that would otherwise be covered by the PA. [36 CFR § 800.13(g)]

III. Suggestions for good agreement document writing

Since an agreement document binds its parties to do or refrain from specified actions, it is vital that the document be clear, consistent, understandable, and subject to as little misinterpretation as possible. The following suggestions are offered to help preparers of such documents avoid ambiguities that may cause problems in implementation.

Be sure to identify the undertaking clearly

The undertaking that is the subject of the agreement document should be clearly identified in the document, in a manner consistent with the way the undertaking is identified in the supporting documentation submitted to the Council. In an MOA, the undertaking is usually identified in the first "Whereas" clause, as shown in Figures 3 and 4 in Part V of this publication, "Standard Memorandum of Agreement Formats."

In a letter making an NAE determination, the undertaking is usually identified in the text of the letter with reference to accompanying documentation. The identification is usually similar to the following text:

We have determined that our installation rehabilitation program, described in the enclosed Installation Rehabilitation Program Plan dated March 29, 1992, will have no adverse effect

Identify the responsible agency

Since the Federal agency responsible for the undertaking is also responsible for ensuring that the terms of the agreement document are carried out, it is vital for that agency to be identified clearly in the document. Where an agency's regional office or field office is the responsible party, and therefore signs the agreement document, this should be clearly indicated. For example:

WHEREAS, the Rhode Island State Office of the Bureau of Land Management has determined

Assign duties only to signatory or concurring parties

An agreement document cannot impose obligations on parties that do not sign it. Therefore, if an agreement document says that "Party X will carry out action Y," Party X must sign the document as a consulting or concurring party. Where Party X is the applicant for or recipient of Federal assistance, permit, or license, and is not a signatory, the agreement document must bind the Federal agency responsible for the assistance, permit, or license to ensure that Party X carries out the duties assigned it. For example:

The Corps of Engineers will require the applicant to carry out the following:

Or

The Corps of Engineers will ensure that the following measures are carried out:

Beware the use of passive voice

An example of the use of passive voice is the statement: "Building X will be rehabilitated in accordance with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings." The statement gives no indication as to who will rehabilitate the building. It indicates only that somehow, mysteriously, the building will be rehabilitated. No one is assigned responsibility, and the party who actually has responsibility could, if so inclined, deny that such responsibility had legally been assigned to him or her.

There are two ways to remedy this problem. The first, naturally, is to use the active voice and say: "Agency A will rehabilitate Building X in accordance with suchandso standards." The alternative is to specify that "Agency A will ensure that the following [conditions or stipulations] are carried out," and then say "Building X will be rehabilitated" The former approach is desirable when it is certain who will actually carry out the specified activity. The latter is preferable when the party ultimately responsible for the activity is known, but the party who will actually do it--for example, one of several applicants for Federal assistance or a contractor not yet selected--is not known.

Include all agreed-upon provisions

An agreement document should be comprehensive, including all the items agreed to by the parties involved in its preparation, either in the text of the document or by reference. The fact that an agency has stated that it will do something in a context other than the agreement document may be found later to have little force if the commitment is not referenced in the document itself. For example, if an agency says in an Environmental Impact Statement that it will take (or will not take) particular actions with respect to a historic property, this statement should be reiterated or referenced in the relevant Section 106 agreement document.

Remember the "cold" reader

An agreement document should be clear to the "cold" (outside) reader. It should always be remembered that an agreement document may be scrutinized by a court of law, and must be able to withstand such scrutiny. Each sentence should be straightforward and to the point, and written in language that can be easily understood. If specialized terms are used they should be defined. Terms that are meaningful only to the parties preparing the agreement should be avoided or rephrased to be meaningful to others.

Identify shorthand references

The full name of each entity involved in an agreement document should be spelled out the first time the entity is referred to, with the acronym or other shorthand referent (Council, SHPO, Bureau, etc.) placed in parentheses or brackets immediately following the name. Thereafter the acronym or other shorthand can be used throughout the document. For example:

**The Bureau of Land Management (BLM) has consulted with the Rhode
Island State Historic Preservation Officer (SHPO)**

Structure the document logically

An agreement document should be organized in a clear, structured form. For example, if several historic properties are being dealt with in different ways, the conditions or stipulations addressing each should be grouped together, rather than scattered throughout the document. Similarly, if activities that have been agreed upon will occur in sequence, that sequence should be reflected in the document. For example, if a building will be documented, then moved, and then rehabilitated, a condition or stipulation providing for documentation should come before one for moving, which should precede one for rehabilitation.

Identify properties clearly and completely

In the case of a PA, it is likely that the historic properties actually subject to effect will not be known, so they cannot be identified in the document itself. In an NAE determination or MOA, however, the properties to which the document refers should be clearly identified.

If the document does not cover all historic properties subject to effect by the undertaking, it should specify which such properties are not covered. In the latter instance, documentation accompanying the agreement document should specify why all historic properties are not

covered, and how Section 106 has been or will be complied with in respect to those properties not covered by the document.

The properties to which an MOA applies are usually specified in the "Whereas" clauses. For example:

WHEREAS, Agency A has determined that its Installation Y rehabilitation project will have an effect upon Building X

Properties are usually similarly specified in letters making determinations of NAE: Agency A has determined that, subject to the following conditions, its Installation Y rehabilitation project will have no adverse effect on Building X. Where multiple properties are involved, the agreement document should make clear which conditions or stipulations refer to which properties. For example:

Agency A will rehabilitate Building X in accordance with such and so standards.

Or

Agency A will ensure that archeological site 53BB782 is excavated and reported in accordance with the attached "Research A Design for the Excavation of Archeological Site 53BB782"

In some cases an MOA may address both known historic properties and some that have not yet been identified. For example, an MOA might address rehabilitation of a historic building, but also provide for monitoring ground disturbance in the event a suspected but unverified archeological site existed under the building. Similarly, an MOA covering a highway construction project might cover both identified historic properties subject to effect by the construction itself, and not-yet fully identified properties in larger areas where the presence of the highway would be likely to stimulate growth.

In such a case stipulations establishing a process for identifying and treating properties not yet fully identified should be included. (For further discussion and examples of such stipulations see page IV-131, "Monitoring disturbance of archeological sites"; "Archeological survey"; and "Archeological plan implementation." The fact that unidentified historic properties might be affected should be acknowledged in the "Whereas" clauses, for example:

WHEREAS, Agency A has determined that its Installation Y rehabilitation project will have an effect upon Building X and possibly on other historic properties

Cover the whole undertaking

Each agreement document should cover all the effects of the subject undertaking on all historic properties, so that compliance with Section 106 is unambiguously attained for the entire undertaking. Consulting parties should try to avoid using multiple agreement documents for different aspects of the same undertaking, or for different types or groups of properties affected by the same undertaking.

Provide complete citations

Plans, standards, and guidelines to be used in carrying out activities under an agreement should be clearly and accurately identified in the agreement document, with full legal citations. For example:

Agency A will rehabilitate Building X in accordance with the "Plan for the Rehabilitation of Building X" by Roger A. Rehab, dated March 29, 1993, and attached hereto as Appendix D.

Or

Agency A will rehabilitate Building X in accordance with the recommended treatments in the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*, U.S. Department of the Interior, National Park Service, 1983.

If an agency anticipates that a guideline to be cited may be revised before the agreement document is implemented, and the agency wants the revised guideline to be followed, this can be stated in the following form:

Agency A will rehabilitate Building X in accordance with the recommended treatments in the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* U.S. Department of the Interior, National Park Service, 1983 (*Standards and Guidelines*), subject to any pertinent revisions that the Secretary of the Interior may make in the *Standards and Guidelines* prior to finalization of rehabilitation plans.

A similar form may be used if an agency refers to draft guidelines, but the agency anticipates that the guidelines will become final before the agreement is implemented and desires that the final, rather than the draft, guidelines be followed. For example:

Agency A will rehabilitate Building X in accordance with the *Standards for Rehabilitating Historic X-Type Buildings in the State of Rhode Island*, Rhode Island SHPO, draft dated March 29, 1992 *Standards for Rehabilitation*, subject to any pertinent revisions that the Rhode Island SHPO may make in the *Standards for Rehabilitation* prior to finalization of rehabilitation plans.

Use consistent terminology

Decide at the outset what terms to use for things, and use them consistently throughout. For example, don't refer to something as an "undertaking" in one paragraph and a "project" in another, or to the Bureau of Land Management as the "Bureau" in one place and "BLM" in another, or to something as a "historic property" in one place and a "historic site" in another.

Use terms that are consistent with statutory definitions where applicable

Where statutory definitions exist, their use is preferred. For example, "historic property" is defined at Section 301(5) of NHPA, and unless there is some very good reason to do otherwise, that definition should be used in preference to such alternatives as "historic site" or "cultural resource."

Define terms

Unusual or specialized terms should be defined, as should terms that have a particular meaning with reference to the undertaking covered by the agreement document. For example, if the document provides for something to be done throughout an undertaking's area of potential effects [see 36 CFR (185) 800.2(c)], that area should be clearly defined, with an appropriate map attached or referenced in the document.

In the standard MOA formats shown as Figures 3 and 4 in Part V, an optional "Whereas" clause is provided, which refers to appended definitions. Of course, if no terms are used that need to be defined, no such appendix or clause need be included. In NAE determinations, definitions can be contained in the body of a letter, in appendices, or in other documentation provided.

Think ahead

An agreement document is prospective: it describes actions that an agency agrees to perform in the future. No one can anticipate everything that may happen in the course of an undertaking's future implementation, but the drafter should think about possibilities and try to provide for them in the document. Especially if the undertaking will take a long time to begin or complete, the agreement document should provide for periodic review and possible revision in the event conditions change before the agreement is fully implemented. In the context of such an undertaking changes are also likely in personnel, so it is particularly important that the agreement document be clear, complete, and comprehensible to an unfamiliar reader who may have to implement or interpret it years after it was executed.

Include all statutory authorities

One purpose of an agreement document is to show unambiguously that the Federal agency involved has met its pertinent historic preservation responsibilities, in the event of litigation or other challenge. Accordingly, it is important not to leave any relevant statutory authorities out of the agreement document. For example, if the property involved is a National Historic Landmark (NHL), the agreement document should make it plain that by carrying out the agreement's terms, the agency is complying with Section 110(f) of NHPA, as well as with Section 106. Similarly, if the agency proposes leasing or exchanging a historic property, or entering into a contract for its management, the agreement document should refer to Section 111 of NHPA as well as to Section 106.

IV. Example format for "No Adverse Effect" determination

The Council has no single standard format for use in making NAE determinations, but two possible examples are offered in this section for reference and use where applicable. In these examples, and in the MOA and PA formats in the following sections, boldface is used to indicate language that is almost always appropriate, while items that always or often vary from case to case are shown in standard typeface and bracketed when they appear within a sentence.

NAE determination submitted with full documentation

The NAE determination example provided in Figure 1 assumes that the agency is complying with 36 CFR § 800.5(d)(1)(ii), which requires the agency to submit its determination to the Council with full documentation and to notify the SHPO. This option is usually employed where the SHPO has not concurred in the agency's determination or where the determination is complicated or controversial.

NAE determination with summary documentation

The NAE determination example provided in Figure 2 assumes compliance with 36 CFR (185) 800.5(d)(1)(i), where an agency obtains the SHPO's concurrence in its determination and simply notifies the Council with summary documentation.

V. Standard Memorandum of Agreement formats

In the formats that follow, language that is almost always appropriate is shown in boldface, while items that always or often vary from case to case (e.g., agency designation), options, and instructions are in standard typeface.

Two-party MOA format

The Council's regulations provide for Council review and approval of MOAs developed by Federal agencies and SHPOs without formal Council participation. [36 CFR § 800.6(a)] The example in Figure 3 is the preferred format for such MOAs.

Three-party MOA format

Where the Council has formally participated as a consulting party in the development of an OA, the format shown in Figure 4 is preferred.

VI. Standard Programmatic Agreement formats

PAs in general

The format shown at Figure 5 is preferred for PAs in general. This format is quite flexible and is designed for application to a wide range of programs.

PA with local government

The format for PAs with local governments, shown at Figure 6, is more specific and is for use by local governments with reference to Community Development Block Grants (CDBGs) and other programs.

The Department of Housing and Urban Development (HUD) is authorized by law to delegate its Section 106 responsibilities to local government recipients of CDBGs and certain other grants. Many local governments use such grants to support programs of rehabilitation and neighborhood

revitalization for which Programmatic Agreements are appropriate. Note that other HUD programs for which HUD is not authorized by law to delegate Section 106 responsibilities (e.g., Section 202 Housing for the Elderly) can be included under a PA of this kind if HUD is a signatory to the PA.

VII. Standard conditions or stipulations

The following section provides examples of standard language for use in the substantive parts of agreement documents, where the actual measures agreed upon are described.

Some of the provisions described below are specific to NAE determinations, while others are appropriate only for MOAs or PAs. Others are appropriate for all kinds of agreement documents. As a convention, provisions appropriate in NAE determinations will be referred to as conditions while those appropriate in MOAs and/or PAs will be referred to as stipulations. The applicability of each provision will be indicated in the section heading.

The examples of language provided here should be used as guidelines, and adapted to the particular circumstances of the case, not used in a rigid way. In all cases, the objective is to make the agreement document clear as to the intent and the responsibilities of each party. The consulting parties should keep in mind that the document is a legal instrument that must be understandable to all who follow or review its terms, and should be sure that the terms of the document are clear and unambiguous. Although it is desirable that the document be concise, clarity and completeness should not be sacrificed in the interests of brevity.

Most of the model provisions given below are grouped with reference to the kinds of resources (e.g., individual buildings and structures, archeological sites, etc.) to which they relate. One group includes stipulations that are specifically appropriate in PAs. The final group, covering procedural matters, contains stipulations that are applicable to a wide range of agreement document types. As in the previous sections, in the following model provisions language that is almost always appropriate is shown in boldface, while items that always or often vary from case to case, options, and instructions are in standard typeface.

Provisions applicable to all types of historic properties

The model provisions that follow may be appropriate for use as NAE conditions or MOA or PA stipulations with respect to a wide range of historic property types (e.g., historic buildings, landscapes, archeological sites).

Conveyance of historic properties to non-Federal parties

General discussion. Transfer, lease, or sale of a historic property to a non-Federal party may be considered to have no adverse effect on the property under 36 CFR (185) 800.9(c)(3) where "adequate restrictions or conditions are included [in the transfer instrument] to ensure preservation of the property's significant historic features." If such restrictions or conditions are not included, or if the reviewing parties cannot be sure that the restrictions or conditions included

will ensure preservation, the transfer, lease, or sale should be treated as having an adverse effect and made the subject of an MOA or PA.

It is not possible to present widely applicable models for restrictions and conditions because of the wide variety of transfer arrangements, the variety of historic property types and values subject to effect as a result of transfer, and the variety that exists in applicable State laws under which a property may be administered and conveyed after it passes out of Federal ownership. Figure 7 presents a sample covenant that may be useful as a starting point, but this model should be discussed in detail with knowledgeable counsel and adjusted to comport with the legal requirements of the State in which the conveyance takes place and the circumstances of the transaction.

In addition to conditions or stipulations referring to restrictions and conditions, agreement documents that provide for transfer of a property also usually provide for its documentation through photographs, drawings, and written descriptions. This facilitates monitoring compliance with the restrictions or conditions that have been imposed.

NAE determinations. Generally speaking, a restriction or condition may be viewed as adequate to ensure preservation, and therefore may serve as the basis for an NAE determination, where that restriction or condition

- encumbers title to the property with a clear and enforceable preservation easement or other covenant,
- is applicable to those aspects of the property that make it eligible for inclusion in the National Register,
- designates a person who has agreed to hold the covenant (covenantee), and
- is in perpetuity.

MOAs and PAs. If the restrictions or conditions do not constitute an enforceable covenant in perpetuity, or if a covenantee has not been identified, preservation is not ensured, and the matter should be handled under an MOA or PA rather than under an NAE determination.

NAE condition/MOA or PA stipulation: language for transfer, exchange, lease, or sale A proposed covenant or other restriction/condition should be attached to the NAE determination, MOA, or PA covering the property transfer involved, and referred to as follows:

The [covenant/restriction/condition] attached hereto as Appendix _____ will be included in the [transfer instrument] and recorded in the real estate records of _____ County, State of _____, for the [transfer/exchange/lease/sale] of [property].

Section 111 leases, exchanges, and management contracts

General discussion. Section 111 of NHPA gives special authority to Federal agencies to lease historic properties to non-Federal parties, to exchange such properties, and to enter into contracts for the management of such properties. Federal agencies may perform these transactions after consultation with the Council, provided the lease, exchange, or management contract is designed to ensure the preservation of the property involved. Such transactions are of course also reviewed

under Section 106, and may be the subjects of NAE determinations, MOAs, or PAs. Special language should be included in the agreement document to make it clear that the document evidences the agency's compliance with Section 111 as well as with Section 106.

NAE determination language: Section 111 transaction

Pursuant to Section 111 of the National Historic Preservation Act, the [name of agency] requests the Council's consultation and concurrence in the [agency's] decision to [lease/exchange/enter into a contract for the management of] [name of property]. Pursuant to 36 CFR § 800.5(d), we have determined that this undertaking will have no adverse effect on the [name of property]. The proposed terms of the [lease/exchange/management contract] are included in the attached documentation.

MOA or PA special "Whereas" clause: Section 111 transaction

WHEREAS the [name of agency] has consulted with the Council in accordance with Section 111 of the National Historic Preservation Act, and sought the comments of the Council in accordance with Section 106 of the same Act;

MOA or PA stipulation: inclusion of Section 111 lease or exchange

The [name of agency] will ensure that the [covenant/restriction/condition] attached hereto as Appendix _____ will be included in the [specify transfer instrument] [and recorded in the real estate records of _____ County, State of _____] for [lease/exchange] of [name of property] in order to ensure preservation of [name of property].

MOA or PA stipulation: inclusion of Section 111 management contract

The [name of contractor] shall be required to adhere to the terms of the contract attached hereto as Appendix _____.

The management contract should specify how the contractor will adhere to the relevant recommended approaches in the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*, and/or to other applicable professional standards and guidelines.

Marketing a historic property

General discussion. Often, where a Federal agency no longer needs a historic property and cannot maintain it, but where a recipient for the property has not been identified, an MOA may be executed, which provides for the property to be marketed. A provision for the relocation of a historic property may also be included in a marketing plan. Such provisions are not appropriate as the bases for NAE determinations, and are seldom included in PAs, but might be included under unusual circumstances.

The marketing provision is designed to bring any existing economic forces in the community favoring preservation into play on behalf of the property involved. A legitimate marketing attempt that fails to elicit an acceptable proposal for use of the property is often taken as evidence that the property cannot be preserved; thus it provides a rationale for demolition.

MOA or PA stipulation: marketing

In consultation with the SHPO, the [name of agency] shall prepare a marketing plan for the [name of property], which shall include the following elements:

- 1. An information package about the property, including but not limited to:**
 - **photographs of the property;**
 - **a parcel map;**
 - **information on the property's historic significance;**
 - **information on the property's cost;**
 - **information on [identify any Federal assistance that may be available to purchasers; for example, applying the cost of demolition to the purchase price or to the cost of rehabilitation];**
 - **information on Federal [and other] tax benefits for rehabilitation of historic structures;**
 - **notification that the purchaser will be required to [rehabilitate/maintain] the property in accordance with the recommended approaches in the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (U.S. Department of the Interior, National Park Service, 1983); and**
 - **notification of any requirement for inclusion of a restrictive covenant in the transfer document.**
- 2. A distribution list of potential purchasers or transferees.**
- 3. An advertising plan and schedule.**
- 4. A schedule for receiving and reviewing offers.**

Upon the SHPO's agreement with the marketing plan, the [name of agency] shall implement the plan.

The [name of agency] shall review all offers in consultation with the SHPO prior to acceptance. The [name of agency] shall ensure that transfer of the property incorporates the covenant attached hereto as Appendix _____.

If there is no acceptable offer that will conform to the requirements of rehabilitation and maintenance, the [name of agency], with the approval of the SHPO, may transfer the [property] without preservation covenants. In that event, the property shall be recorded prior to transfer in accordance with stipulation [cite separate stipulation providing for recordation of the property].

Moving a historic property

General discussion. Where a property is to be moved from its existing site, the SHPO should be afforded an opportunity to review and approve the new site. When reviewing potential sites the agency official should look for similarity of surrounding architecture, topography, land use, and vegetation. Obviously, a site closely resembling the original site is preferable. At the same time, however, the site should be one at which the property can be effectively used for modern purposes. Historic bridges, for example, are often moved to local parks and incorporated into pedestrian, equestrian, and bicycle transportation systems.

The property should be documented in its original location, following the relevant portions of the *Secretary of the Interior's Standards and Guidelines for Documentation*. [48 FR 44728-37] The property should be moved in accordance with the recommended approaches in *Moving Historic Buildings* (John Obed Curtis, 1979, American Association for State and Local History), and, in consultation with the SHPO, by a professional mover who has the capability to move historic structures properly. The SHPO or local preservation groups may be able to suggest names of qualified movers. If the building will stand vacant for a period of time before, during, or after the move, provision should be made for it to be adequately secured and protected during that time.

Within a definite period shortly after the move, provision should be made for the SHPO to re-evaluate the property on its new site and, if the property is included in the National Register, to make a recommendation to the Secretary of the Interior as to its continued inclusion. If title to the property will pass to a non-Federal party after the move, subject to a restriction such as a preservation easement, an interim contract should be prepared and executed prior to the move to ensure that the new owner will accept the restriction once the property has been relocated, and a stipulation providing for the restriction should be included in the MOA. (See page IV-112, "Conveyance of historic properties to non-Federal parties," above for example.)

If the property owner or developer seeks historic preservation tax credits with respect to the property, the agency official should work with the applicant to coordinate the independent reviews by the Department of the Interior for tax certification with those required under Section 106 by the Council.

NAE determinations. An NAE determination may be appropriate where a historic property that is movable by nature (e.g., a ship, a train, an airplane) will be moved in advance of an undertaking. An adverse effect might occur, however, if the property's use would be affected, if its structural integrity might be compromised, if its new location would make it vulnerable to deterioration or damage, or if its new location is a historic property.

MOAs and PAs. Moving properties that are not inherently movable (e.g., buildings, structures such as bridges and walls, objects such as prehistoric rock art boulders) obviously almost always has adverse effects on them; moving such properties, where necessary, should be the subject of an MOA or PA.

NAE condition/MOA or PA stipulation: moving properties [NAE for inherently movable properties with no other adverse effects; MOA or PA in other cases]

The [name of agency] shall ensure that the SHPO is afforded 30 days to review and comment on the new site for [name of property]. The [name of agency] shall take the SHPO's comments into account in reaching a final decision about moving the property. Before the [name of property] is moved, the [name of agency] shall document the property in its original setting and context in accordance with the documentation plan attached hereto as Appendix _____. The agency official shall ensure that the property is moved in accordance with the approaches recommended in *Moving Historic Buildings* (John Obed Curtis, 1979, American Association for State and Local History), in consultation with the SHPO, by a professional mover who has the capability to move historic structures properly.

The [name of agency] shall ensure that the [name of property] is properly secured and protected from [vandalism/weather damage/etc.] during the period it is unoccupied.

Prior to moving the [name of property], the [name of agency] will execute a contract with [name of recipient] ensuring that after the [name of property] is relocated the [name of recipient] will accept title to the [name of property] subject to the covenant referenced in Stipulation _____.

Within 90 days of the move, the [name of agency] shall afford the SHPO the opportunity to re-evaluate the property on its new site [and make a recommendation to the Secretary of the Interior as to its continued inclusion in the National Register].

Landscaping on or around a historic property

General discussion. Landscaping is often used to avoid or reduce adverse effects on historic properties. For example, landscaping can be used to screen incompatible neighboring structures or activities from the immediate surroundings of a historic building or neighborhood, to reduce noise, or to protect an archeological site from vandalism. Provision for landscaping may be included in all kinds of agreement documents under Section 106.

Landscaping plans should be prepared in consultation with the SHPO and attached to NAE determinations, MOAs, or PAs. Alternatively, they may be developed as conditions of an NAE determination, MOA, or PA and approved by the SHPO.

NAE conditions/MOA or PA stipulations: landscaping

The [name of agency] shall ensure that the [name of property] is landscaped in accordance with the landscaping plan entitled [full citation including date] and attached hereto as Appendix _____.

Or

The [name of agency] shall ensure that the [name of property] is landscaped in accordance with a landscaping plan designed in consultation with and approved by the SHPO to [outline what the plan is intended to do].

Interim protection of a historic property

General discussion. Sometimes a considerable amount of time passes between the time an agreement document is concluded and the time its terms are carried out. During this time, the historic properties that are the subjects of the agreement may experience deterioration, vandalism, or other destructive impacts. Accordingly, it is often useful to include a condition or stipulation in an agreement document that provides for protection of the relevant properties until the actions specified in the agreement document can be implemented.

NAE condition/MOA stipulation: interim protection

The [name of agency] shall ensure that the [name of property] is immediately secured and protected against damage until the measures agreed upon in [this agreement/or cite specific paragraph of NAE document or specific stipulations in MOA] are implemented.

PA stipulation: interim protection

The [name of agency] shall ensure that historic properties scheduled for treatment in accordance with [cite stipulations] are protected against damage until the applicable treatment measures are implemented.

Provisions specific to historic buildings or structures, or to historic districts made up of buildings or structures.

The following provisions are for reference specifically in preparing conditions or stipulations providing for rehabilitating, adding to, documenting, and salvaging historic buildings or structures.

Rehabilitating historic buildings or structures

General discussion. The principal concern in Section 106 review of a rehabilitation project is to ensure that the project's design respects the historically significant architectural, social, natural, and aesthetic characteristics of the property and its environment. Although they must be adapted to the individual needs of each undertaking, the recommended approaches given in the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (hereafter *Standards and Guidelines*) are the standards against which a design's success in addressing this concern is measured. Determining the "fit" between the recommendations and a given design requires careful professional review. Therefore, an agreement document for a rehabilitation project should clearly reference plans and specifications that have been prepared with reference to the *Standards and Guidelines* and subjected to professional review. Alternatively, under some circumstances as discussed below, an agreement document can provide for a design review process using the *Standards and Guidelines* and including professional review and approval of plans and specifications.

If the individual who is proposing the project covered by the agreement document is also applying for a historic preservation investment tax credit under the Federal tax code, the development of the agreement document should be coordinated with the National Park Service (NPS), which is responsible for certifying projects for such tax credits.

NAE determinations. Under 36 CFR § 800.9(c)(2), if rehabilitation will be carried out in conformance with the Standards and Guidelines, this can serve as the basis for an NAE determination. In order to ensure that rehabilitation will be done in conformance with the *Standards and Guidelines*, plans and specifications for the project should be in hand at the time the NAE determination is made.

MOAs and PAs. Because Section 106 is to be complied with early in the planning of undertakings, it is not uncommon or inappropriate for agencies to initiate Section 106 review of rehabilitation projects before they are actually designed, or based on designs that are very preliminary in nature--for example, based on a site plan, schematic elevation, or narrative description. Often the agency will agree to involve the SHPO in the further development of the design.

The agreement document in such a case is normally an MOA, or a PA covering, for example, a local government's Community Development Block Grant (CDBG) program. In either case, the document should provide for the detailed project design to be developed in consultation with the SHPO and submitted to the SHPO for approval. Where the SHPO does not approve, the matter should be submitted by the agency to the Council for consultation and resolution of the disagreement. (See, "Dispute resolution," for model dispute resolution provisions.) Where a local government's historic preservation program has been certified under Section 101(c)(1) of NHPA and carries out design review using the Standards and Guidelines, and provided the SHPO concurs, the Certified Local Government (CLG) may review the detailed plans in lieu of the SHPO. In certain difficult cases, or cases in which the SHPO is unable or unwilling to provide design review assistance, the Council may participate in this activity in addition to or instead of the SHPO.

NAE condition/MOA or PA stipulation: rehabilitation according to an already-developed plan

The rehabilitation of [name of property] will be carried out in accordance with [full citation of specific plans, including date].

MOA or PA stipulations: provision for subsequent rehabilitation plan development, review, and implementation

The [name of agency] shall ensure that the design of the project is compatible with the historic and architectural qualities of the [name of property] and is consistent with the recommended approaches to rehabilitation set forth in the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (U.S. Department of the Interior, National Park Service, 1983), and that the design and specifications for the project are developed in consultation with the [SHPO or CLG] and submitted to the [SHPO or CLG] for approval.

Additions to/new construction within or adjacent to historic buildings or structures

General discussion. Adding exterior elements to historic buildings and structures (e.g., new wings, floors, etc.), and constructing new buildings or structures within historic districts, generally has adverse effects on the historic buildings, structures, or districts involved. Such

additions may have effects on archeological resources or on other historically important aspects of the property, just as may any other construction project. Such effects should be addressed in agreement documents using appropriate conditions given elsewhere in this publication.

OAs and PAs that deal with new construction usually include specific stipulations to promote design compatibility between the new construction and the existing historic properties. The new design should seek compatibility with the adjacent or surrounding historic property in terms of scale, massing, color, and materials, and should be responsive to the recommended approaches to new construction set forth in the Standards and Guidelines. Except in certain unusual cases, replication or imitation of historic architectural forms is strongly discouraged. New construction, while sensitive to the setting in which it occurs, should clearly reflect its own time. As with rehabilitation, if detailed project plans are the subject of consultation, they should be referred to specifically in the resulting agreement document. If not, provision should be made for use of the Standards and Guidelines, and for subsequent review and approval by the SHPO or, where applicable, a CLG.

NAE determinations. An NAE determination may be appropriate where new construction is of such a minor nature as to fall within a reasonable definition of rehabilitation, within the meaning of Section 800.9(c)(2) of the regulations, and in some cases where no physical effect on historic properties is involved and the design of the new construction is tightly controlled. In either case it is usually necessary to have detailed plans in hand in order to demonstrate that no adverse effect will occur.

MOAs and PAs. Because it is seldom possible to avoid all adverse effects from new construction, new construction is usually best viewed as a subject for an MOA or PA.

NAE condition/MOA or PA stipulation: reference to specific plans for new construction

The construction of [name of project] will be carried out in accordance with [full citation of specific plans, including date].

MOA or PA stipulation: requirement for use of Standards and Guidelines with further review and approval

The [name of agency] shall ensure that the project design for new construction is compatible with the historic and architectural qualities of the [name of property] in terms of scale, massing, color, and materials, and is responsive to the recommended approaches to new construction set forth in the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (U.S. Department of the Interior, National Park Service, 1983), and that the design and specifications for the project are developed in consultation with the [SHPO or CLG] and submitted to the [SHPO or CLG] for approval.

Recording historic buildings or structures

General discussion. Where a historic structure or building must be demolished, substantially altered, allowed to deteriorate, or transferred out of Federal ownership or control, its recordation is usually provided for as a result of Section 106 review.

Recordation is required of Federal agencies by Section 110(b) of NHPA whenever an agency action, or an action assisted by a Federal agency, may substantially alter or demolish a historic property. Section 110(b) requires that in such a case appropriate records be made of the property and deposited in the Library of Congress or in another appropriate repository designated by the Secretary of the Interior. In the Department of the Interior's *Guidelines for Federal Agency Responsibilities* under Section 110 of the National Historic Preservation Act (53 FR 4727-46) the Section 106 review process is identified as the mechanism for determining the level and kind of documentation to be prepared under Section 110(b), and for identifying repositories in lieu of the Library of Congress. In other words, the level and kind of recordation to be carried out, and the repositories where the records will be placed, are established by the parties consulting under Section 106. In some cases, the parties agree that the agency will consult with the Historic American Buildings Survey/Historic American Engineering Record (HABS/HAER) Division of NPS to establish what kind and level of recordation is appropriate, and how to file the resulting documentation with the Library of Congress. *The Section 110 Guidelines* call for this to be done in all cases involving National Historic Landmarks (NHLs); otherwise HABS/HAER consultation occurs at the discretion of the parties consulting under Section 106.

NAE determinations. Recordation is sometimes done as part of a rehabilitation project falling under the exception to the Criteria of Adverse Effect set forth in 36 CFR § 800.9(c)(2), or as part of a property transfer project falling under the exception set forth in 36 CFR § 800.9(c)(3). In such a circumstance recordation might be a condition of an NAE determination. An NAE determination might in theory also be appropriate if the building or structure involved were significant only for the information it contained. If the information could be retrieved through recordation and salvage, the exception set forth in 36 CFR § 800.9(c)(1) might apply. In Council experience, however, this circumstance almost never occurs in practice.

MOAs and PAs. Except in the very rare circumstances noted above, where alteration of a historic building or structure will be substantial, or demolition is contemplated, an MOA or PA is the appropriate vehicle for stipulating recordation.

NAE condition/MOA or PA stipulation: reference to a specific plan for recordation

The [name of agency] shall ensure that the [name of property] is recorded in accordance with [title of recordation plan or proposal with date] attached hereto as Appendix _____, prior to its [demolition/alteration/rehabilitation/transfer].

NAE condition/MOA or PA stipulation: outline of recordation measures in agreement

The [name of agency] shall ensure that the following recordation measures are carried out {in consultation with the SHPO/in consultation with [CLG or other party]} prior to its [demolition/alteration/rehabilitation/transfer] of the [name of property].

[List measures.]

NAE condition/MOA or PA stipulation: provision for HABS/HAER to establish recordation standards

Prior to the [demolition/alteration/rehabilitation/transfer] of the [name of property], the [name of agency] shall contact [name and address of appropriate

NPS Regional Office HABS/HAER contact] **to determine what level and kind of recordation is required for the property. Unless otherwise agreed to by NPS, the [name of agency] shall ensure that all documentation is completed and accepted by HABS/HAER prior to the [demolition/alteration/rehabilitation/transfer], and that copies of this documentation are made available to the SHPO and appropriate local archives designated by the SHPO.**

Salvage of architectural elements

General discussion. Sometimes the consulting parties agree that a historic building or structure has to be demolished, but that the building or structure contains significant architectural features that might be reused or should be saved for curation. An agreement document may as a result provide that, prior to demolition of the property and after the property has been properly recorded (see, "Recording historic buildings or structures,"), the SHPO or the SHPO's designee, such as a local museum, should be allowed to select architectural elements for curation or use in other projects. These items should then be carefully removed and delivered to the SHPO or the SHPO's designee. In other cases, the document may provide for the agency itself, or the developer of a new project, to use salvaged material in the new construction.

NAE determinations. Since architectural salvage is always associated with demolition, it is inappropriate as an NAE condition unless the building or structure involved is significant only for the information it contains and that information can be retrieved through recordation and salvage. In such an event the exception set forth in 36 CFR § 800.9(c)(1) might apply. In Council experience, however, this circumstance is so rare as to be negligible.

MOAs and PAs. In most cases, architectural salvage stipulations are included in MOAs; on rare occasions, such a stipulation is included in a PA.

MOA or PA stipulation: reference to specific salvage plans

The [name of agency] will ensure that the plan for salvage and reuse of architectural elements from the [name of property], entitled [full citation with date] and attached here to as Appendix _____ is implemented.

MOA or PA stipulation: generic architectural salvage stipulation

The [name of agency] will ensure that the SHPO or [his/her designee] has the opportunity to select architectural elements for [specify potential use: curation, public education, reuse, incorporation into new construction, etc.]. The [name of agency] shall ensure that the items selected are removed in a manner that minimizes damage and are delivered with legal title to the SHPO or [her/his designee] [or specify recipient].

Provisions specific to the treatment of archeological sites

The following provisions are for reference in developing conditions and stipulations for the treatment of archeological sites.

In-place preservation of archeological sites

General discussion. Archaeological sites may be preserved in place in the context of an undertaking by designing the undertaking to avoid such sites or by incorporating them into the undertaking in a nondestructive manner (in open space, under fill, under buildings raised on piles or platforms, etc.). Where such preservation is agreed upon it should be carried out in accordance with a plan that takes into account such project- and site-specific factors as the potential for subsidence, erosion, and changes in soil chemistry, the possibility of vandalism during or after the project, the accessibility of the site for future study and public interpretation, etc. Ideally this plan should be prepared during Section 106 review and referenced in the agreement document, but in some cases the parties may agree that it will be prepared subsequently.

NAE determinations. In-place preservation may be specified as a condition of an NAE determination if a plan to ensure such preservation is in hand, so that the absence of adverse effect can reasonably be ensured.

MOAs and PAs. In-place preservation may be specified as an MOA or PA stipulation if such a plan is in hand or if it will be developed subsequently.

NAE condition/MOA or PA stipulation: reference to specific in-place preservation plan

The [name of agency] shall implement the preservation plan entitled [full citation, including date] attached as Appendix _____ in order to ensure that [name of property] is preserved in place.

MOA or PA stipulation: provision for subsequent in-place preservation plan development and review

The [name of agency] shall ensure that a plan to preserve [name of property] in place is developed in consultation with the SHPO and submitted to the SHPO for review. Unless the SHPO objects within _____ days after receipt of plan, the agency official shall ensure that the plan is implemented. The plan shall take into account:

[List relevant issues.]

Data recovery: archeological documentation and archeological salvage

General discussion. Where an archeological property must be destroyed or substantially altered, or transferred out of Federal control without reliable protective restrictions or conditions, agreement is usually reached to conduct archeological research on the property to recover information that would otherwise be lost. As a means of documenting the property, archeological data recovery is required by Section 110(b) of NHPA. *The Section 110 Guidelines: Annotated Guidelines for Federal Agency Responsibilities* under Section 110 of the National Historic Preservation Act (Advisory Council on Historic Preservation and National Park Service 1989; hereafter *Section 110 Guidelines*) discuss this requirement, and identify the Section 106 review process as the mechanism for establishing the level and kind of data recovery to be carried out in satisfaction of the requirement of Section 110(b).

NAE determinations. If the property from which data are to be recovered is valuable only for the information it contains, and if the research proposed by the responsible agency is sufficient to preserve such information substantially, then under 36 CFR § 800.9(c)(1) the recovery of data from the property, and its subsequent alteration, destruction, or transfer, may be the subject of an NAE determination.

Where an NAE determination is made, the proposed data recovery plan or research design should be in hand and it, together with the agency's commitment to implement it, should be included in the NAE documentation prepared pursuant to 36 CFR § 800.5(d)(1).

MOAs and PAs. If the property proposed for data recovery has historical, cultural, or architectural values other than its potential to produce information, data recovery and the ensuing destruction, alteration, or transfer of the property should be the subjects of an MOA. An MOA should also be used if the data recovery plan or research design is unusually complex, if its implementation may be controversial, or if it has not yet been prepared. If the data recovery plan has not yet been prepared, the MOA should provide for its preparation, review, approval, and implementation. Provision for data recovery may also be included in PAs, which are particularly appropriate where the agreement document must provide for the subsequent preparation, review, approval, and implementation of a data recovery plan.

NAE condition/MOA or PA stipulation: reference to data recovery plan

The [name of agency] shall ensure that the [data recovery plan/research design/scope of work] entitled [give full reference] is implemented prior to and in coordination with those project activities that could disturb [name of property].

NAE condition/MOA or PA stipulation: provision for subsequent data recovery plan development and review

The [name of agency] shall ensure that a [data recovery plan/research design/scope of work] is developed in consultation with the SHPO for the recovery of archeological data from [name of property]. The [plan/design/scope] shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Archeological Documentation* (48 FR 44734-37) and take into account the Council's publication, *Treatment of Archeological Properties* (Advisory Council on Historic Preservation, (draft) 1980), subject to any pertinent revisions the Council may make in the publication prior to completion of the [data recovery plan/research design/scope of work], and [relevant SHPO or other guidance]. It shall specify, at a minimum:

- **the property, properties, or portions of properties where data recovery is to be carried out** [if this information is not specified in the agreement document];
- **any property, properties, or portions of properties that will be [destroyed/altered/transferred] without data recovery;**

- **the research questions to be addressed through the data recovery, with an explanation of their relevance and importance;**
- **the methods to be used, with an explanation of their relevance to the research questions;**
- **the methods to be used in analysis, data management, and dissemination of data, including a schedule;**
- **the proposed disposition of recovered materials and records;**
- **proposed methods for involving the interested public in the data recovery;**
- **proposed methods for disseminating results of the work to the interested public;**
- **proposed methods by which [specify relevant Indian tribes, local governments, other specific groups] will be kept informed of the work and afforded the opportunity to participate;**
- **a proposed schedule for the submission of progress reports to the [agency/SHPO/Council/others]; and**
- [other provisions specific to the project, property, or situation]
- **The [data recovery plan/research design/scope of work] shall be submitted by the [name of agency] to the SHPO [and] the Council [and] [specify other parties] for ____ days review. Unless the SHPO [or] the Council {or [specify other parties]} object[s] within ____ days after receipt of the [plan/design], the [name of agency] shall ensure that it is implemented.**

Curation of materials and data from archeological sites

General discussion. Provisions for the curation or other disposition of materials and records from archeological survey or data recovery should be included in the plan or research design that guides the work. If not, however, it is appropriate to include such provisions in the relevant agreement document.

Records of surveys and data recovery should always be retained in an appropriate archive or other curatorial facility and disseminated as appropriate to facilitate research and management without unduly endangering historic properties. Material recovered from survey and data recovery projects, if it is the property of the Federal Government, must be curated in accordance with 36 CFR Part 79. Material that is not the property of the Federal government should be curated by an establishment meeting 36 CFR Part 79 standards unless the owner of the material requires that it be returned. If return is required, the collection should be curated by an establishment meeting 36 CFR Part 79 standards while it is under Federal jurisdiction during analysis and preparation of reports, but the collection may then be returned to its owner, who

may be entitled to Federal and State tax benefits for donating such material to an appropriate institution.

In some cases exceptions may be made to the requirement that materials be curated in accordance with CFR Part 79. For example, where the law permits, human remains should be reburied after appropriate analysis rather than curated. In some cases, too, materials may be destroyed in the course of, or subsequent to, analysis. For example, radiocarbon age determination destroys the sample analyzed, and soil samples are often discarded after analysis is completed.

NAE determinations, MOAs, and PAs. Conditions or stipulations providing for curation may be included in all types of agreement documents.

NAE condition/MOA or PA stipulation: provision for curation of federally owned collection or a nonfederally owned collection whose owner does not require that it be returned

The [name of agency] shall ensure that all materials and records resulting from the [survey/data recovery] conducted at [name of property or area] are curated {by [specify facility if possible]} in accordance with 36 CFR Part 79, {provided, however, that [specify exception, if any]}.

NAE condition/MOA or PA stipulation: provision for curation of a nonfederally owned collection whose owner requires that it be returned

The [name of agency] shall ensure all records resulting from the [survey/data recovery] conducted at [name of property or area] are curated {by [specify facility if possible]} in accordance with 36 CFR Part 79, and that all materials resulting from the [survey/data recovery] are maintained {by [specify facility if possible]} in accordance with 36 CFR Part 79 until their analysis is complete and they are returned to their owner[s], {provided, however, that [specify exceptions]}.

Reburial of human remains excavated from archeological sites

General discussion. Agreement documents may provide for the reburial of human skeletal remains and grave-associated artifacts recovered during archeological research. Ideally a reburial plan may be included as part of a data recovery plan or research design; if not, a specific stipulation may be appropriate. If a particular group, such as a group of descendants, is concerned about reburial of a given skeletal population, reburial should occur in consultation with such group, or might be delegated to it.

NAE determinations, MOAs, and PAs. Because of their cultural and associative significance, graves and the properties in which they are found are seldom if ever significant only for the information they contain. As a result, the excavation and destruction of properties containing graves should be dealt with under an MOA or PA, rather than under an NAE determination employing the exception set forth in 36 CFR § 800.9(c) (1). Accordingly, provision for reburial should usually be included in MOAs and PAs, not in NAE determinations. On occasion, an NAE determination may be acceptable where preliminary investigations indicate a small possibility

that human remains will be encountered, but there is no specific evidence of their existence. Such circumstances should be discussed on a case-by-case basis with the Council staff.

MOA or PA stipulation: provision for reburial where no specific group is involved

The [name of agency] shall ensure that any human remains [and grave-associated artifacts] excavated during the data recovery at [name of property] are reburied [after analysis as specified in the data recovery plan/research design] within [specify time limit] in a location where their subsequent disturbance is unlikely [or specify location] and in a manner as similar as possible to the manner in which they were originally interred.

MOA or PA stipulation: provision for reburial in consultation with a specific group

The [name of agency] shall ensure that any human remains [and grave-associated artifacts] excavated during the data recovery at [name of property] are reburied [after analysis as specified in the data recovery plan/research design] {within [specify time limit]} in consultation with [specify group].

MOA or PA stipulation: provision for delegation of reburial responsibility

The [name of agency] shall ensure that any human remains [and grave-associated artifacts] excavated during the data recovery at [name of property] are delivered to [specify group] for reburial [after analysis as specified in the data recovery plan/research design] {within [specify time limit]}.

Controlled grading of archeological sites

General discussion. Mechanized grading or bulldozing of an archeological site under archeological supervision is sometimes specified as a final step in data recovery. Although destructive, such a procedure is less damaging than unsupervised grading and is a useful adjunct to more controlled forms of data recovery where a construction or land use project will totally destroy a site.

NAE determinations, MOAs, and PAs. Grading may be specified in an MOA or PA, or in an NAE determination where the exception for data recovery set forth in 36 CFR § 800.9(c)(1) applies.

NAE condition/MOA or PA stipulation: controlled grading

After completion of the fieldwork component of the data recovery program provided for in [cite appropriate condition or stipulation], the [name of agency] will ensure that the [name of property] is graded under the supervision of an archeologist meeting the *Secretary of the Interior's Professional Qualifications Standards*, (48 FR 44738-9) and in accordance with the following procedures:

[specify procedures--e.g., equipment to be used, depth of cuts, recording methods to be employed, time provided for recovery/recordation of features, etc.]

Monitoring disturbance of archeological sites

General discussion. Archeological monitoring means observing the conduct of an excavation or construction project in order to recover archeological information and materials if they are unearthed. Monitoring is never an appropriate substitute for proper identification and consideration of archeological sites during project planning, but agreement documents often provide for monitoring as a safeguard against the loss of archeological data that may have been missed during planning and Section 106 review.

For example, if construction will pass close to, but not actually through, an archeological site, monitoring may be used to ensure that construction stays within specified limits, and that if any archeological materials are encountered they are effectively dealt with. Monitoring may also be used where a site from which a sample has been excavated is being removed, to ensure that any significant features that may have been missed during the controlled excavation are recorded. Finally, monitoring may be used where archeological sites may occur but could not be dealt with in advance of construction, because they were deeply buried or covered by buildings or structures that could not be removed.

NAE determinations, MOAs, and PAs. Depending on the circumstances, monitoring may be specified under an NAE determination, an MOA, or a PA. For example, where no adverse effect on an archeological site is expected although construction will occur close to it, an NAE determination might be conditioned on monitoring as a safeguard. An MOA or an NAE determination made with reference to 36 CFR § 800.9(c)(1) might provide for monitoring of destruction after completion of data recovery, and a PA might establish monitoring as a standard practice to be employed by an agency program under specified circumstances. Monitoring to identify deeply buried or otherwise obscured sites is normally provided for in an MOA or PA.

NAE condition/MOA or PA stipulation: provision for monitoring during nearby construction

The [name of agency] will ensure that particular care is taken during construction to avoid affecting any archeological remains that may be associated with the [name of property]. Restrictions on construction work and areas will be accomplished by {erection of a temporary fence/flagging/[specify other measures]}. Suitable arrangements for archeological monitoring will be made in consultation with the SHPO prior to construction in this area. At a minimum, such monitoring will include recording and reporting of major features or artifact concentrations uncovered, and recovery/curation of a sample of uncovered remains where practicable.

NAE condition/MOA or PA stipulation: provision for monitoring during destruction

After completion of the fieldwork component of the data recovery program provided for in [cite appropriate condition or stipulation], the [name of agency] will ensure that an archeologist meeting the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-9) monitors removal of the [name of property]. At a minimum, such monitoring will include recording

and reporting of major features or artifact concentrations uncovered, and recovery/curation of a sample of uncovered remains where practicable.

NAE condition/MOA or PA stipulation: provision for monitoring an area where deeply buried or otherwise obscured sites may occur

The [name of agency] will ensure that the monitoring plan entitled [full citation, including date] and attached hereto as Appendix ____ is implemented during excavation in [specify location or locations].

Or

The [name of agency] will ensure that an archeologist meeting the *Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9)* monitors excavation in [specify location or locations]. At a minimum, such monitoring will include recording and reporting of major features or artifact concentrations uncovered, and recovery/curation of a sample remains uncovered where practicable.

Archeological survey

General discussion. Ordinarily, archeological surveys are carried out during the early phases of Section 106 review, and provide one basis for effect determination. Thus, in most cases such surveys will be complete before agreement documents are prepared, and there will be no need to include provisions for survey in the documents themselves. There are instances, however, in which Section 106 review may be conducted before surveys have been done. In such instances the agreement document may need to include provisions for survey, which result in appropriate reports and the evaluation of any discovered properties. If the survey results in the discovery of historic properties, the document should provide for effects on those properties to be further considered under the regulations. Some agreement documents cross-reference a data recovery stipulation, providing that properties discovered during survey that are important only for the information they contain can be subjected to data recovery while other kinds of properties require further consideration.

NAE determinations. The conduct of an archeological survey is rarely a condition of an NAE determination, for the obvious reason that one cannot determine that no adverse effect will occur if one does not yet know what properties may be subject to effect. In rare cases, however, usually where there is little likelihood that the survey will in fact result in the identification of archeological sites, survey may be a condition of an NAE determination whose primary focus is on historic properties that have already been identified.

MOAs. For similar reasons, archeological survey is rarely the subject of an MOA. In some cases, however, the need for survey may be recognized late in the process of consultation on an MOA, perhaps because of changes in project design or the recognition of previously unanticipated effects. In some cases, the problem of access to land or the presence of dense vegetation, landscaping, pavement, or recent buildings in a project's area of potential effect may make it necessary to defer a survey for identification of unknown archeological sites while concluding an agreement on known properties.

PAs. PAs most commonly provide for archeological survey; a PA, for example, may establish mechanisms for the conduct of archeological surveys with respect to an entire agency program, or a very large project, or all projects in a State or region.

NAE condition/MOA or PA stipulation: archeological survey

The [name of agency] shall ensure that an archeological survey of [specify area to be surveyed] is conducted, in a manner consistent with the *Secretary of the Interior's Standards and Guidelines for Identification* (48 FR 44720-23) and taking into account NPS publication, *The Archeological Survey: Methods and Uses* (1978: GPO stock # 024-016-00091) and [specify relevant guidelines of SHPO, etc.]. The survey shall be conducted in consultation with the SHPO, and a report of the survey, meeting the standards of the SHPO, shall be submitted to the SHPO for review and approval.

The [name of agency] shall evaluate properties identified through the survey in accordance with 36 CFR § 800.4(c). If the survey results in the identification of properties that are eligible for the *National Register*, the [name of agency] shall comply with 36 CFR § 800.5.

Alternative NAE condition/MOA or PA stipulation: cross-reference to data recovery stipulation

The [name of agency] shall evaluate properties identified through the survey in accordance with 36 CFR § 800.4(c) [or specify alternative process designed for program or expected property types]. If the survey results in the identification of a historic property that is valuable solely for the information it may contain, the [name of agency] shall ensure that they are treated in accordance with [cite stipulation dealing with data recovery]. If the survey results in the discovery of a property that is valuable for another reason, the [name of agency] shall comply with CFR § 800.5.

Archeological report dissemination

General discussion. Every archeological survey and data recovery project should result in a final report or reports that meet accepted professional standards. At minimum, the report should be provided to signatories of the MOA and to NPS for possible peer review and submission to the National Technical Information Service (NTIS) of the Department of Commerce, Springfield, VA. When release of locational information to the public could jeopardize archeological sites, precise locational data should normally appear in a separate appendix so that it can be withheld from the NTIS publication and other publications in accordance with Section 304 of NHPA. NAE determinations, MOAs, and PAs. Archeological report dissemination provisions may be included in all kinds of agreement documents.

NAE condition/MOA or PA stipulation: archeological report dissemination

The [name of agency] shall ensure that all final archeological reports resulting from actions pursuant to this [agreement/determination] will be provided to the SHPO, [the Council], and [specify other parties], and to NPS for possible peer review and submission to the National Technical Information

Service (NTIS). The agency official shall ensure that all such reports are responsive to contemporary professional standards, and to the Department of Interior's *Format Standards for Final Reports of Data Recovery Program* (42 FR 5377-79). Precise locational data may be provided only in a separate appendix if it appears that its release could jeopardize archeological sites.

Provision of information to database

General discussion. Besides providing for dissemination of data in hard copy, agreement documents may establish provisions for the inclusion of data electronically in existing databases, such as inventories maintained by SHPOs, local governments, or agencies.

NAE determinations, MOAs, and PAs. Provision of information to databases can be a condition or stipulation of any kind of agreement document.

NAE condition/MOA or PA stipulation: database input

The [name of agency] will ensure that information resulting from the archeological [survey/data recovery project] provided for in [cite appropriate condition or stipulation] is provided to the [specify recipient] in a form acceptable to the [specify recipient] for inclusion in the [specify database].

Programmatic provisions

This section presents formats for provisions dealing with agency programs of rehabilitation, planning, and other activities. Such provisions are appropriate for use as stipulations in Programmatic Agreements only.

Rehabilitation program implementation

General discussion. Where a whole rehabilitation program is the subject of Section 106 review (for example, a program carried out by a local government using CDBG funds), it may well involve not only properties that are known to be historic, but also properties that have not yet been evaluated, or even identified. A PA developed for such a program should provide a systematic process for identification, evaluation, and application of appropriate standards, including the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*, the *Secretary of the Interior's Standards and Guidelines for Identification and Evaluation*, and other relevant standards and guidelines.

Most rehabilitation programmatic agreements provide for systematic coordination with the SHPO with respect to identification, evaluation, and review of plans and specifications. Where a local government's historic preservation program has been certified under Section 101(c)(1) of NHPA, however, and the local government carries out design review in a manner consistent with the *Standards and Guidelines*, the consulting parties may agree that the local historic preservation commission will carry out such activities with little or no SHPO participation.

PA stipulations: rehabilitation program

The [name of agency/City] shall ensure that a survey of the [program target area] is undertaken to identify properties that might meet the criteria for listing in the National Register of Historic Places (36 CFR <185> 60.4), and

shall apply the criteria to each identified property in consultation with the SHPO. The survey shall be conducted in consultation with the SHPO and will take into account the *Secretary of the Interior's Standards and Guidelines for Identification and Evaluation* (48 FR 44720-26) {and [specify other applicable standards and guidelines]}.

Until the survey is completed, properties that may be affected by [agency projects/program components/CDBGproject/etc.] will be evaluated by the [name of agency/City], in consultation with the SHPO, against the National Register criteria, in accordance with 36 CFR <185> 800.4(c).

The [name of agency/City] shall ensure that properties meeting the National Register Criteria are rehabilitated in accordance with the recommended approaches in the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (U.S. Department of the Interior, National Park Service, 1983) (Standards and Guidelines).

The [name of agency/City] shall ensure that a plan for each rehabilitation project, including [specify architectural specifications/work write-up/photographs, etc.] is provided to the [SHPO/specify local preservation commission] for review and concurrence before the project begins, and that photographs of the properties taken upon completion of the rehabilitation are provided to the [SHPO/specify local preservation commission]. The [name of agency/City] shall retain documentation of the rehabilitation, including work write-ups and photographs, as part of the permanent project records.

If the recommended approaches in the *Standards and Guidelines* cannot be met, if the [SHPO/specify local preservation commission] does not concur in the rehabilitation plan, or if the project will result in demolition of, or other adverse effect to, a property that meets the National Register criteria, the [name of agency/City] shall comply with 36 CFR <185> 800.5(e).

Each year the [name of agency/City] will notify the public of its current [specify title, e.g., CDBG] program, and make available for public inspection documentation on the program. Included in this documentation will be information on the type(s) of activities undertaken with program funds during the prior year and activities projected for the current year; information on identified historic properties, and/or areas where historic properties may be present, which might be affected by these activities; the amount of program funds available in the current program year; and how interested persons can receive further information on the program and advise the [name of agency/City], the [SHPO/specify local preservation commission], and the Council of any concerns they may have about program effects on historic properties.

Historic preservation plan development and implementation

General discussion. Agencies with ongoing responsibilities for the administration of historic properties, of land that is known or thought to contain historic properties, or of buildings, structures, or districts that may be historic in whole or in part, often find it advantageous to develop and adopt historic preservation plans (HPPs). In various contexts, HPPs are also referred to as Historic Properties Management Plans (HPMPs), Historic Resources Management Plans (HRMPs), Cultural Resource Management Plans (CRMPs), and by other terms. Programmatic Agreements covering the management of historic properties on a Federal installation, on a body of land under Federal jurisdiction, or in a community often provide for the creation and/or use of an HPP. This can be done in one of two ways:

Where the HPP has been produced. Where the HPP has been developed and has been the subject of review under Section 106, if all the consulting parties agree, it can be adopted through the mechanism of a PA and thereafter be used by the agency in lieu of standard review under the regulations.

Where the HPP has not yet been produced. Where the HPP has not yet been produced and/or agreed to, the PA may provide for its development, and outline its content. The PA also should spell out how the HPP will be reviewed, adopted, and implemented in lieu of standard review under the regulations.

PA stipulation providing for use of an existing HPP

The [name of agency] will implement the [title and other references to identify the HPP precisely] in lieu of compliance with 36 CFR § § 800.4 through 800.6 [and 36 CFR § 800.11 (if the HPP deals with properties discovered during implementation of undertaking)].

The [name of agency] will prepare a report [annually, or specify other time interval] on its implementation of the HPP, and provide this report to the SHPO [and] Council {and [specify others]} for review, comment, and consultation as needed.

PA stipulation providing for development and implementation of an HPP

Within [specify time period], the [name of agency] will develop a Historic Preservation Plan (HPP) for the [installation, land area, district, etc.] in accordance with the standards and guidelines attached as Appendix _____. The [name of agency] will ensure that the HPP is developed in consultation with the SHPO {and [specify others]}.

When the HPP is complete in draft form, the [name of agency] will provide copies of the draft to the SHPO [and] the Council {and [specify others]} for review and acceptance. Disagreements or questions about the draft HPP will be resolved through consultation among the parties.

Upon acceptance of the HPP by the SHPO [and] the Council, {and [specify others]}, the [name of agency] will finalize and implement it in lieu of compliance with 36 CFR § § 800.4 through 800.6 [and 36 CFR § 800.11 (if the HPP deals with properties discovered during implementation of undertakings)].

The [name of agency] will prepare a report [annually, or specify other time interval] on its implementation of the HPP, and provide this report to the SHPO [and] Council {and [specify others]} for review, comment, and consultation as needed.

PA sample language: appendix establishing scope and content of HPP

The Historic Preservation Plan (HPP) for [name of installation, land area, district, etc.] shall be prepared in accordance with the following guidelines.

- 1. The HPP will be prepared by or under the supervision of an individual who meets, or individuals who meet, at a minimum, the "professional qualifications standards" for [specify which one or more of the standards should be met--historian, archeologist, architect, etc.] in the *Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9)*.**

[Alternative qualifications standards may be specified if the consulting parties agree--e.g., the standards of a relevant professional organization, or standards adopted by an SHPO, an Indian tribe, etc.]

- 2. The HPP will be prepared with reference to:**

[Here specify applicable guidance material, such as the *Secretary of the Interior's Standards and Guidelines for Preservation Planning (48 FR 44716-20)*; the *Section 110 Guidelines (53 FR 4727-46)*; regulations, guidelines, and other documents produced by the responsible agency; SHPO standards and guidelines; preservation plans that already exist for the area or adjacent areas; etc.]

- 3. The HPP will be prepared in consultation with:**

[Here identify other parties known or thought to have interests or expertise that should be represented in development of the HPP, such as relevant professional groups, historical or archeological societies, historic preservation boards or commissions, Indian tribes and other Native American groups. Since consultation with the SHPO has been specified in the body of the PA, it need not be specified here.]

- 4. The essential purpose of the HPP will be to establish processes for integrating the preservation and use of historic properties with the mission and programs of the [name of agency] in a manner appropriate to the nature of the historic properties involved, the nature of the [installation, land area, district, etc.], and the nature of the [agency's] mission, programs, and planning processes.**

5. In order to facilitate such integration, the HPP, including all maps and graphics, will be made consistent with [specify database management system, geographical informationsystem, etc., used by the agency].

6. The HPP will include the following:

[Use or adapt as applicable.]

a. Foreword. The foreword shall explain the basis upon which the HPP is being prepared.

b. Introduction. The introduction shall explain the organization and use of the various sections of the HPP.

c. Overview. This element of the HPP will synthesize available data on the history, prehistory, architecture,architectural history, landscape architecture, andethnography of the [installation, land area, district, etc.] and its surrounding area, to provide a context in which toevaluate and consider alternative treatment strategies for different classes of historic properties. The overview shall include, but not be limited to:

[Here insert specific matters to be addressed: e.g., the architecture and landscape architecture of a facility, a particular class of archeological sites, a pattern of historical land use, a known or suspected area of traditional cultural importance to a Native American group.]

d. Inventory. This element of the HPP will includedescriptions of all properties within the [installation, land area, district, etc.] that are known or thought to meet the National Register criteria (36 CFR § 60.4), including but not limited to the following information on each such property:

[Specify information needs relevant to different property types, etc.]

The inventory will be prepared based on [specify data sources to be used. See *Section 110 Guidelines*,

Section 110(a)(2) Discussion § (b)(1)
for example].

e. Predictions. [Note: This section is applicable only where historic properties have not been fully identified.] **Based on the overview, this element of the HPP will predict the distribution and nature of** [historic properties/specify those kinds of historic properties whose distribution and nature have not been fully documented] **within the** [installation, land area, district, etc.]. **This element will also offer an estimate of the accuracy of the predictions, and outline ways that the predictions will be tested, refined, and verified to the extent needed through field survey and other further research.**

f. Identification system. [Note: This section is applicable only where historic properties have not been fully identified.] **Based on the overview and predictions, this element of the HPP will establish procedures for the identification and evaluation of historic properties that may be affected by** [management of the installation/land use activities within the area, etc.]. **This element of the HPP will take into account the *Section 110 Guidelines*, Section 110(a)(2) Discussion § § (b)(2) through (b)(10) as applicable, and will provide for identification and evaluation to take place in a timely manner during the planning of any actions that might affect historic properties.**

g. Management system. **This element of the HPP will establish procedures for the management of historic properties within the** [installation, land area, district, etc.], including but not limited to:

[Note: Use or adapt as applicable.]

i. procedures for the use of historic properties for agency purposes or the purposes of others, in a manner that does not cause significant damage to or deterioration of such properties, with reference to the *Section*

110 Guidelines, Section 110(a)(1), Discussion § (b), {and specifically proving for [specify as needed]};

ii. procedures for affirmatively preserving historic properties, with reference to the *Section 110 Guidelines*, Section 110(a)(1), Discussion § (c), {and specifically providing for [specify as needed]};

iii. procedures for the maintenance of historic properties, with reference to the *Section 110 Guidelines*, Section 110(a)(2), Discussion § (d)(1)(i), {and specifically providing for [specify as needed]};

iv. procedures for the avoidance or mitigation of adverse effects on historic properties, with reference to the *Section 110 Guidelines*, Section 110(a)(2), Discussion § (d)(1)(iii), {and specifically providing for [specify as needed]}; and

v. procedures of consultation with relevant parties during implementation of the HPP, with reference to the *Section 110 Guidelines*, Part III, {and specifically providing for [specify as needed]}.

Archeological plan implementation

General discussion. In some cases, it may not be efficient to develop a complete HPP as outlined above, but it may be appropriate to develop a somewhat more restricted plan applicable

only to archeological survey, identification, evaluation, and treatment. This is sometimes the case where large and complicated undertakings are involved (e.g., reservoirs, surface mines, major urban developments, long pipelines), or where project impacts are widespread and indirect (e.g., regional irrigation projects), but where many or all predicted property types subject to effect are archeological. Such a plan should be developed in consultation with the SHPO, the Council, and other concerned persons (e.g., landowners, local communities, Indian tribes) and should be responsive to applicable professional standards. The PA adopting the plan should provide that properties meeting the National Register criteria for reasons other than their archeological information value (e.g., historic buildings, Native American cemeteries and other cultural sites) will be reviewed under the regulations in the standard manner. Alternatively, the PA might establish special processes for the review of effects on such properties.

PA stipulation: provision for implementation of archeological plan

The [name of agency] shall ensure that historic properties valuable for their potential contribution to archeological research are identified, evaluated, and treated in accordance with the archeological plan entitled [provide full citation with date] and attached hereto as Appendix _____. The [name of agency] shall ensure that historic properties valuable for other reasons are considered further in accordance with 36 CFR § § 800.4 through 800.6.

General provisions

With very rare exceptions, every agreement document that stipulates work to be done should contain one or more general provisions designed to ensure, as applicable, that reports on the work conducted are properly prepared and distributed, that the work is carried out by qualified persons, that changes in personnel or organizations carrying out major agreed-upon measures are subject to review, and that mechanisms are available for the resolution of disputes about implementation of the measures agreed to.

Reporting

General discussion. Copies of final reports on surveys, archeological data recovery, architectural recording, historical research, and other preservation activities should be supplied to the SHPO and other interested parties.

NAE condition/MOA or PA stipulation: general reporting

The [name of agency] shall ensure that [a] report[s] on all activities carried out pursuant to this [determination/agreement] [is/are] provided to the SHPO, [to the Council] {and to [specify others]} and, upon request, to other interested parties.

Qualification of personnel

General discussion. All historic preservation work done pursuant to an agreement document should be conducted by or under the supervision of a person or persons meeting appropriate professional qualifications standards. Generally, these are the standards of the Secretary of the Interior set forth in the *Secretary of the Interior's Professional Qualifications Standards* (48 FR

44738-9, hereafter *Qualification Standards*), but it may be appropriate to cite other standards under particular circumstances. For example:

- where a professional specialty is called for that is not covered by the *Qualifications Standards* (e.g., landscape architecture; cultural anthropology);
- where more detailed standards are desirable (e.g., those of the Society of Professional Archaeologists, or detailed standards used by the SHPO); or
- where there is good reason to waive application of the *Qualifications Standards* (e.g., on some Indian lands, Pacific and Caribbean islands, and small communities where competence in dealing with local cultural systems and detailed knowledge of local history may be more important than specific professional training).

Note that there is nothing in Section 106 or 36 CFR Part 800 that prohibits an agency from using paraprofessionals, volunteers, trainees, students, or others who are not fully qualified professionals in the conduct of historic preservation work. In order to encourage quality control, however, all such work should be supervised by appropriately qualified individuals.

NAE condition/MOA or PA stipulation: qualifications where only one kind of expertise is required

The [name of agency] shall ensure that all historic preservation work carried out pursuant to this [determination/agreement] is carried out by or under the direct supervision of a person or persons meeting at a minimum the [cite pertinent standards].

NAE condition/MOA or PA stipulation: qualifications where multiple kinds of expertise are required

The [name of agency] shall ensure that all [specify first type of work] carried out pursuant to this [determination/agreement] is carried out by or under the direct supervision of a person or persons meeting at a minimum the [cite standards pertinent to first type of work]; that all [specify second type of work] is carried out by or under the direct supervision of a person or persons meeting at a minimum the [cite standards pertinent to second type of work] . . . [etc.]

Review of implementation

General discussion. Particularly in the case of a PA, but also in the case of an MOA or NAE determination whose terms will be carried out over a considerable period of time, it is appropriate to include provision for one or more kinds of review during the process of implementation. One such provision is the establishment of a date on which the agreement document, if not implemented, will become null and void, causing the undertaking to be reviewed anew under the regulations. A less severe approach is to provide for review of the terms of the agreement document at a particular time by the consulting parties. Many PAs include provision for annual or other periodic review. Finally, an agreement document can provide for review of specific important changes, such as changes in personnel or organizations responsible for major implementing actions.

NAE condition/MOA or PA stipulation: establishment of date on which agreement becomes null and void

If [specify substantive conditions/stipulations--e.g., "stipulations B through F above"] have not been implemented {by [date]}, this [determination/agreement] shall be considered null and void, and the [name of agency], if it chooses to continue with the undertaking, shall re-initiate its review in accordance with 36 CFR Part 800.

NAE condition/MOA or PA stipulation: provision for review if terms are not carried out by particular date

If [specify substantive conditions/stipulations--e.g., "stipulations B through F above"] have not been implemented {by [date]}, the [parties to this agreement/specify parties if NAE] shall review this [determination/agreement] to determine whether revisions are needed. If revisions are needed, the [parties to this agreement/specify parties if NAE] will consult in accordance with 36 CFR Part 800 to make such revisions.

NAE condition/MOA or PA stipulation: provision for annual or other periodic review

The [parties to this agreement/specify parties if NAE] shall consult [annually/specify review period] to review implementation of the terms of this [determination/agreement] and determine whether revisions are needed. If revisions are needed, the [parties to this agreement/specify parties if NAE] will consult in accordance with 36 CFR Part 800 to make such revisions.

NAE condition/MOA or PA stipulation: provision for annual or other periodic review

The [name of agency/specify other party--e.g., holder of permit or license] shall not {be permitted by the [name of agency] to} [specify change--e.g., alter the terms of a contract/change supervisory personnel] without first affording the [parties to this agreement/specify parties if NAE] the opportunity to review the proposed change and determine whether it will require that revisions be made in this [determination/agreement]. If revisions are needed, the [parties to this agreement/specify parties if NAE] will consult in accordance with 36 CFR Part 800 to make such revisions.

Dispute resolution

General discussion. Where designs, plans, or specifications are to be submitted to the SHPO, the Council, a CLG, or another party for review in accordance with the terms of an agreement document, the document should provide a mechanism for resolving any objections the reviewing party may have. If objections from the public may occur, provision should be made for taking these objections into account and acting on them appropriately. The document should also provide a way to note objections and take final actions in the event an objection cannot be resolved.

To address these needs, most agreement documents should contain one or more dispute resolution conditions or stipulations. The character of such conditions or stipulations varies depending on the nature of the property, the nature of the undertaking, the likelihood of dispute, and the likely disputants. Consulting parties may select or adapt one or more of the models given

below, as appropriate. The first provides for resumption of consultation pursuant to the regulations in the event of dispute among the parties, the second for a flexible process of rendering a final advisory recommendation, and the third for review of public objection.

NAE condition/MOA or PA stipulation: dispute resolution among consulting parties (Version 1)

Should the [specify reviewing party or parties: e.g., SHPO, CLG, Indian tribe, Council, etc.] **object within ____ days to any** [plans provided for review/specifications provided/actions proposed] **pursuant to this** [determination/agreement], **the** [name of agency] **shall consult with the objecting party to resolve the objection. If the** [name of agency] **determines that the objection cannot be resolved, the** [name of agency] **shall request the further comments of the Council pursuant to 36 CFR § 800.6(b). Any Council comment provided in response to such a request will be taken into account by the** [name of agency] **in accordance with 36 CFR § 800.6(c)(2) with reference only to the subject of the dispute; the** [agency's] **responsibility to carry out all actions under this** [determination/agreement] **that are not the subjects of the dispute will remain unchanged.**

NAE condition/MOA or PA stipulation: dispute resolution among consulting parties (Version 2)

Should the [specify reviewing party or parties: e.g., SHPO, CLG, Indian tribe, Council, etc.] **object within ____ days to any** [plans provided for review/specifications provided/actions proposed] **pursuant to this** [determination/agreement], **the** [name of agency] **shall consult with the objecting party to resolve the objection. If the** [name of agency] **determines that objection cannot be resolved the** [name of agency] **shall forward all documentation relevant to the dispute to the Council. Within ____ days after receipt of all pertinent documentation, the Council will either:**

1. **provide the** [name of agency] **with recommendations, which the** [name of agency] **will take into account in reaching a final decision regarding the dispute; or**
2. **notify the** [name of agency] **that it will comment pursuant to 36 CFR § 800.6(b), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the** [name of agency] **in accordance with 36 CFR § 800.6(c)(2) with reference to the subject of the dispute.**

Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; the [agency's] **responsibility to carry out all actions under this** [determination/agreement] **that are not the subjects of the dispute will remain unchanged.**

NAE condition/MOA or PA stipulation: review of public objections

At any time during implementation of the measures stipulated in this [determination/agreement], should an objection to any such measure or its manner of implementation be raised by a member of the public, the [name of agency] shall take the objection into account and consult as needed with the objecting party, the SHPO, [specify others as needed] or the Council to resolve the objection.

VIII. Complete sample documents

This section provides complete sample documents as illustrations of the ways in which agreement documents may be drafted. These sample documents involve various programs, undertakings, and effects, but use some of the same fictitious parties: the Bureau of Indoor Recreation (BIR), the city of Bluewater in the State of Hypothetical, the Harris House Historians Association, the Bluewater Indian Tribe, and the Hypothetical State Historic Preservation Officer.

Figure 8 illustrates an NAE determination submitted with summary documentation. In this hypothetical case, BIR proposes to fund city rehabilitation of the Bluewater Swimming Pool and associated rehabilitation and new construction to create the Bluewater Sports Center. The undertaking affects three historic properties: the Bluewater Downtown Historic District, which will not be physically affected since the pool has been located in the district for 75 years and new construction will be designed to avoid adverse visual effects; the C. W. Harris House, which will be rehabilitated according to the Standards and Guidelines and for which 35-percent plans and specifications already exist for review; and archeological site 57Blu729, which will be destroyed but for which a data recovery plan is complete and available for review.

Given these circumstances, BIR has determined that the undertaking will have no adverse effect on historic properties. Note that in the example, the SHPO has concurred in BIR's determination. Had the SHPO not concurred, BIR would need to send additional documentation to the Council to support its position.

Figure 9 provides a sample two-party MOA. The hypothetical case in Figure 9 is the same as that used in Figure 8, with several important exceptions. The C. W. Harris House cannot be rehabilitated as part of the Bluewater Sports Center. Rather, it will be marketed for sale and the new owner will be permitted to move it to a new site. Archeological site 57Blu729 will be destroyed (as in the Figure 8 case), but in Figure 9 an archeological recovery plan has not yet been developed. Given these circumstances, BIR has determined there will be adverse effects to historic properties and has submitted a signed two-party MOA, which mitigates adverse effects, for Council acceptance. The city of Bluewater, the Harris House Historians Association, and the Tribal Council and Cultural Committee of the Bluewater Indian Tribe have participated in consultation and the city has been invited to concur in the MOA. (**Note:** BIR could have chosen a three-party MOA, in which case the Council would have participated as a consulting party. A three-party MOA would be identical except that the Council would be listed as a consulting party in the first "Whereas" clause; the words, "its subsequent acceptance by the Council" would not appear in the final paragraph; and a signature block, rather than an acceptance line, would be provided for the Council.)

A sample Programmatic Agreement is illustrated in Figure 10. This hypothetical case does not involve a particular undertaking. Rather, BIR proposes to administer a broad funding program for local recreation centers. The PA anticipates that projects funded in the future might adversely affect historic properties and provides a procedure for ensuring that these historic properties are given sufficient consideration as specific future projects are carried out. Consultation among BIR, the Council, NCSHPO, and the Association of American Recreators, has resulted in agreement on procedures that BIR will use.

The final sample document, a sample PA with a local government, is shown in Figure 11. In this situation the city of Bluewater proposes to administer its Community Development Block Grant program with funds from HUD. Consultation has determined that administration of this program will have an effect on properties included in or eligible for inclusion in the National Register of Historic Places. This PA contains stipulations by which the city will ensure careful consideration of historic properties as it implements community development programs. Numerous interested persons have participated in consultation and been invited to concur in this Programmatic Agreement.

IX. Conclusion

This publication is provided as a guideline for the preparation of the various agreement documents developed through the consultation of parties involved in determining ways to reduce or avoid the adverse effects of an undertaking on historic properties. The language and formats suggested here, again, are not intended to be used as inflexible models; the examples are presented to show what a document might need for legal sufficiency and clear intent to all readers. Each undertaking that involves historic properties will have distinct concerns, and participants in review are encouraged to review all possible solutions before developing one specific approach.

Figure 2. No Adverse Effect (NAE) determination submitted with summary documentation

[Name] **Director**, [Eastern/Western] **Office of Project Review Advisory Council on Historic Preservation** [Address of Washington DC or Golden, CO office]

Dear [name]:

The [name of agency] **is** [planning/considering/other appropriate term] **the** [name of undertaking]. **In consultation with the** [name of State] **State Historic Preservation Officer (SHPO), we have applied the Criteria of Effect and Adverse Effect found in 36 CFR § 800.9 of your regulations to this undertaking and determined that it will have no adverse effect on historic properties. As indicated by** [his/her signature below/the attached letter], **the SHPO has concurred in our determination. The following summary documentation* is attached for your review:**

- **A description of the** [name of undertaking];
- **A** [map or other documentation] **showing the area of potential effect;**

- **A summary description of the historic [property/properties] subject to effect;**
- **Our reasons for believing that the undertaking will have no adverse effect on historic properties;**
- **A copy of the SHPO's letter of [date] indicating concurrence in our determination [or have SHPO sign concurrence line on letter]; and**
- **[Copies/A summary] of the views of [specify interested persons who have submitted comments, if any].**

[Use one or more of the following paragraphs only if relevant.]

Since our determination that this undertaking will have no adverse effect is based on the special exception set forth in 36 CFR § 800.9(c) [specify subsection (1), (2), (3)], we are also enclosing [specify research design or scope of work for data recovery under subsection (1), plan for rehabilitation under subsection (2), or covenant or other restriction under subsection (3)].

In making our determination, we have agreed with the SHPO to carry out the following actions to ensure that adverse effect will be avoided:

[List actions agreed to.]

Please review the material enclosed and contact [name and telephone number of contact person] if you have any questions. If we do not hear from you within 30 days after your receipt of this letter, we will assume that you do not object to our determination, and will proceed with [the undertaking/our planning process/our review of the application/etc.], subject to [the agreement noted above and] the provisions for treating historic properties discovered during implementation of an undertaking contained in 36 CFR § 800.11.

Sincerely,

[name of agency official]

*** - The regulations do not specify the content of summary documentation.**

The list provided represents material that is desirable to include in summary documentation to promote efficient Council review.

Figure 3. Two-party Memorandum of Agreement (MOA)

MEMORANDUM OF AGREEMENT SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION PURSUANT TO 36 CFR § 800.6(a)

WHEREAS, the [name of agency] has determined that [name of undertaking] will have an effect upon [name of property or properties], [a property/properties] [included in/eligible for inclusion in] the National Register of Historic Places, and has consulted with the [name of State] State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, [names of other consulting parties, if any] participated in the consultation [and has/have been invited to concur in this Memorandum of Agreement]; and

WHEREAS, the definitions given in Appendix ___ are applicable throughout this Memorandum of Agreement;

THEREFORE, [name of agency] and the [name of State] SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

Stipulations

[Name of agency] will ensure that the following measures are carried out:

[Insert stipulations here.]

Execution of this Memorandum of Agreement by [name of agency] and the [name of State] SHPO, its subsequent acceptance by the Council, and implementation of its terms, evidence that [name of agency] has afforded the Council an opportunity to comment on the [name of undertaking] and its effects on historic properties, and that [name of agency] has taken into account the effects of the undertaking on historic properties.

[NAME OF AGENCY]

By: _____ Date: _____

[Name and title of signer]

[NAME OF STATE] **STATE HISTORIC PRESERVATION OFFICER**

By: _____ Date: _____

[Name and title of signer]

Concur:*

[NAME(S) OF CONCURRING PARTY/PARTIES]

By: _____ Date: _____

[Name and title of signer]

ACCEPTED for the Advisory Council on Historic Preservation

By: _____ Date: _____

[Name and title of signer, provided by Council]

*** Optional: for use where other parties concur in MOA**

Figure 4. Three-party Memorandum of Agreement (MOA)

MEMORANDUM OF AGREEMENT

WHEREAS, the [name of agency] has determined that [name of undertaking] will have an effect upon [name of property or properties], [a property/properties] [included in/eligible for inclusion in] the National Register of Historic Places, and has consulted with the [name of State] State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); [and Section 110(f) of the same Act (16 U.S.C. 470h- 2(f))] and

WHEREAS, [names of other consulting parties, if any] participated in the consultation [and has/have been invited to concur in this Memorandum of Agreement]; and

WHEREAS, the definitions given in Appendix ___ are applicable throughout this Memorandum of Agreement;

NOW, THEREFORE, [name of agency], the [name of State] SHPO, and the Council agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

Stipulations

[Name of agency] will ensure that the following measures are carried out:

[Insert stipulations here.]

Execution of this Memorandum of Agreement and implementation of its terms evidence that [name of agency] has afforded the Council an opportunity to comment on the [name of undertaking] and its effects on historic properties, and that [name of agency] has taken into account the effects of the undertaking on historic properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

[Name and title of signer]

[NAME OF AGENCY]

By: _____ Date: _____

[Name and title of signer]

[NAME OF STATE] **STATE HISTORIC PRESERVATION OFFICER**

By: _____ Date: _____

[Name and title of signer]

[Note: Signature blocks listed above can be in any order.]

Concur: *

[NAMES(S) OF CONCURRING PARTY/PARTIES]

By: _____ Date: _____

[Name and title of signer]

*** Optional: For use where other parties concur in MOA.**

Figure 5. Programmatic Agreement (PA)

PROGRAMMATIC AGREEMENT AMONG THE [NAME OF AGENCY], THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,[AND] THE [designate SHPO, SHPOs, National Conference of SHPOs, other parties] REGARDING IMPLEMENTATION OF THE [identify program, etc.]

WHEREAS, the [name of agency] proposes to administer the [name of program or project] authorized by [cite statutory authority]; and

WHEREAS, the [name of agency] has determined that the [program/project] may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places and has consulted with the Advisory Council on Historic Preservation (Council) and the {[name of State] State Historic Preservation Officer (SHPO)/National Conference of State Historic Preservation Officers (NCSHPO)/others} pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act; (16 U.S.C. 470f), [and Section 110(f) of the same Act (16 U.S.C. 470h-2(f))] and

WHEREAS, [names of other consulting party/parties, if any] participated in the consultation and [has/have] been invited to [execute/concur in] this Programmatic Agreement; and

WHEREAS, the definitions given in Appendix ___ are applicable throughout this Programmatic Agreement;

NOW, THEREFORE, [name of agency], the Council, and the [SHPO/NCSHPO/other] agree that the [program/project] shall be administered in accordance with the following stipulations to satisfy [name of agency]'s Section 106 responsibility for all individual [undertakings of the program/aspects of the project].

Stipulations

[Name of agency] will ensure that the following measures are carried out:

[Insert stipulations here.]

The Council and the [SHPO/NCSHPO/other] may monitor activities carried out pursuant to this Programmatic Agreement, and the Council will review such activities if so requested. The [name of agency] will cooperate with the Council and the [SHPO/NCSHPO/other] in carrying out their monitoring and review responsibilities.

Any party to this Programmatic Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR § 800.13 to consider such amendment.

Any party to this Programmatic Agreement may terminate it by providing thirty (30) days 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. In the event of termination, the [name of agency] will comply with 36 CFR § § 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.

In the event the [name of agency] does not carry out the terms of this Programmatic Agreement, the [name of agency] will comply with 36 CFR § § 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.*

Execution and implementation of this Programmatic Agreement evidences that [name of agency] has satisfied its Section 106 responsibilities for all individual undertakings of the program.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

[Name and title of signer]

[NAME OF AGENCY]

By: _____ Date: _____

[Name and title of signer]

[NAME OF STATE] HISTORIC PRESERVATION OFFICER**

By: _____ Date: _____

[Name and title of signer]

[OTHER SIGNATORIES, IF ANY]

[Note: Signature blocks listed above can be in any order.]

Concur: ***

[NAME(S) OF CONCURRING PARTY/PARTIES]

By: _____ Date: _____

[Name and title of signer]

* Although this language merely repeats the requirement of 36 CFR 800.13(g), it is sometimes useful.

** Where multiple SHPOs are involved, include a signature line for each. Where NCSHPO is consulting party, provide for its representative's

signature rather than that of an individual SHPO, in the same format as shown.

***** Optional: for use where other parties concur in PA.**

Figure 6. Programmatic Agreement (PA) with local government

PROGRAMMATIC AGREEMENT CITY OF [NAME OF CITY][COMMUNITY DEVELOPMENT BLOCK GRANT/OTHER NAME] PROGRAM*

WHEREAS, the city of [name of city] (City), State of [name of State], proposes to administer its Community Development Block Grant (CDBG) program with funds from the Department of Housing and Urban Development under Title I of the Housing and Community Development Act of 1974, [or identify the range of programs/program elements and authorities involved besides CDBG, e.g., rental rehabilitation, etc.]; and

WHEREAS, for the purposes of this Agreement, the City's (CDBG/ other name] program (Program) encompasses the following activities:

[List activities included, e.g., rehabilitation, street improvements, etc.]; **and**

WHEREAS, the City has determined that the administration of its program may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places and has consulted with the [name of State] State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR § 800.13 of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), [and Section 110(f) of the same Act (16 U.S.C. 470h-2(f))]; and

WHEREAS, [names of other consulting party/parties, if any] participated in the consultation and [has/have] been invited to [execute/concur in] this Programmatic Agreement,]; and

WHEREAS, the definitions given in Appendix ___ are applicable throughout this Programmatic Agreement;

NOW, THEREFORE, the City, the SHPO, and the Council agree that the program shall be administered in accordance with the following stipulations to satisfy the City's Section 106 responsibilities for all individual undertakings of the program.

Stipulations

The City will ensure that the following measures are carried out:

[Insert stipulations here.]

The Council and the SHPO may monitor activities carried out pursuant to this Programmatic Agreement, and the Council will review such activities if so requested. The City will cooperate with the Council and the SHPO in carrying out their monitoring and review responsibilities.

This Programmatic Agreement will continue in full force and effect until [specify month and year: usually coincides with end of annual grant cycle]. At any time in the six-month period prior to this date, the City may request the Council and SHPO in writing to review the City's program and consider an extension or modification of this Programmatic Agreement. No extension or modification will be effective unless all parties to the Programmatic Agreement have agreed to it in writing.

Any party to this Programmatic Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR § 800.13 to consider such amendment.

Any party to this Programmatic Agreement may terminate it by providing thirty (30) days 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. In the event of termination, the City will comply with 36 CFR § § 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement. In the event the City does not carry out the terms of this Programmatic Agreement, the City will comply with 36 CFR § § 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.**

Execution and implementation of this Programmatic Agreement evidences that the City has afforded the Council a reasonable opportunity to comment on the program and that the City has taken into account the effects of the program on historic properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

[Name and title of signer]

[NAME OF CITY]

By: _____ Date: _____

[Name and title of signer]

[NAME OF STATE] STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

[Name and title of signer]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ***

By: _____ Date: _____

[Name and title of signer]

[OTHER SIGNATORIES, IF ANY]

[Note: Signature blocks listed above can be in any order.]

Concur: ****

[NAME(S) OF CONCURRING PARTY/PARTIES]

By: _____ Date: _____

[Name and title of signer]

*** Where other programs besides CDBG are included, these should be recited in the title, or a name should be assigned that incorporates all programs covered, and defined in the "Whereas" clauses. The terminology of the PA model must then be adjusted throughout. If programs that HUD cannot**

delegate to the city are included, HUD must be a signatory to the PA, and HUD's role in PA implementation should be identified within the body of the agreement.

**** Although this language merely repeats the requirement of 36 CFR § 800.13(g), it is sometimes useful.**

***** Optional: for use where programs are included for which HUD cannot delegate Section 106 responsibilities.**

****** Optional: for use where other parties concur in MOA.**

Posted 1996

Memorandum of Agreement Example(s)

Example 1:

**MEMORANDUM OF AGREEMENT
BETWEEN
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER,
THE PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY
AND THE TOWNSHIP OF MIDDLETOWN, BUCKS COUNTY
SUBMITTED TO
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE MIDDLETOWN TOWNSHIP PROPERTY ACQUISITION**

WHEREAS, the Federal Emergency Management Agency (FEMA) proposes to administer Federal disaster assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, to Bucks County (Applicant) through the Pennsylvania Emergency Management Agency (PEMA), for the acquisition and demolition of one residential structure located at 28 Bridgetown Pike, Middletown Township, Bucks County, Pennsylvania (Undertaking) that was damaged during disaster FEMA-1294-DR-PA (Hurricane Floyd); and

WHEREAS, FEMA has determined that the Undertaking will have an effect upon a structure that is listed on the National Register of Historic Places as part of the Bridgetown Historic District, and has consulted with the Pennsylvania State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, as amended, implementing Section 106 of the National Historic Preservation Act (NHPA) (16 USC 479f); and

WHEREAS, PEMA and the Applicant participated in the consultation and have been invited to sign this Memorandum of Agreement (MOA); and

WHEREAS, FEMA has consulted with the Advisory Council on Historic Preservation (Council) and the Council determined that their participation was not necessary for the Undertaking at this time; and

WHEREAS, FEMA has determined that this structure has been subject to repetitive damage from flooding, and that relocation or elevation of the structure is not technically feasible;

NOW, THEREFORE, FEMA, SHPO, PEMA and the Applicant agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effects of the Undertaking on historic properties.

STIPULATIONS

To the extent of its legal authority and in coordination with SHPO, PEMA, and the Applicant, FEMA will ensure that the following stipulations are implemented:

I. ARCHAEOLOGICAL INVESTIGATION

Prior to demolition, FEMA shall ensure that an archaeological survey is conducted in the area of

the project where ground disturbance may occur, and that the work is conducted in a manner consistent with the *Secretary of the Interior's Standards and Guidelines for Identification* (46 FR 44720-23) and taking into account the National Park Service's publication *The Archaeological Survey: Methods and Uses* (1978) and the Bureau for Historic Preservation / Pennsylvania Historical and Museum Commission's *Cultural Resource Management in Pennsylvania: Guidelines for Archaeological Investigations* (July 1991). This survey will include background research. Based on this investigation, archaeological testing may be conducted in all or a portion of the Area of Potential Effect (APE) to locate subsurface deposits or resources. A report on the findings of the survey will be submitted to the SHPO, who will then have 30 days to review and accept the report, or provide comment.

If eligible archaeological resources are identified and will be affected by the project, FEMA will apply the Criteria of Adverse Effect in accordance with 36 CFR Part 800.5. If the project will have an effect on these resources, FEMA will make a reasonable effort to avoid these resources. If the eligible resources cannot be avoided, the effect will be adverse. If the resources are eligible chiefly for the significant information in prehistory or history they are likely to yield through data recovery, FEMA will ensure that they are treated in accordance with the criteria listed below. If archaeological resources are identified which are eligible for any other reason, FEMA shall comply with 36 CFR 800.6.

FEMA shall ensure that any human remains encountered during the archaeological investigations are brought to the attention of the SHPO and the Council within 24 hours of the discovery. The SHPO will respond within one working day. No activities that might disturb or damage the remains will be conducted until all parties have determined whether excavation is necessary and/or desirable. All procedures will follow the guidance outlined in the National Park Service publication *National Register Bulletin 41: Guidelines for Evaluating and Registering Cemeteries and Burial Places*, the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601) and the Pennsylvania Historical and Museum Commission's *Policy for the Treatment of Burials and Human Remains* (1993).

FEMA shall ensure that all final archaeological reports and public information materials resulting from actions pursuant to this Agreement will be provided to the SHPO for review and comment. All final data recovery reports will be completed and provided to the SHPO within two years of the completion of the archaeological fieldwork. The reports shall meet the professional standards set forth by the Department of the Interior's *Format Standards for Final Reports of Data Recovery Program* (42 FR 5377-79) and will be prepared in accordance with the Bureau for Historic Preservation / Pennsylvania State Historical and Museum Commission's *Cultural Resource Management in Pennsylvania: Guidelines for Archaeological Investigations* (July 1991). The SHPO will have 30 days to review and comment on all submissions.

II. RECORDATION

Prior to project implementation (after approval but before demolition), FEMA will ensure that the property is recorded in its present setting and context. Recordation will include:

- Archival quality photographs (35mm or large format black & white) of exterior elevations and streetscape photos keyed to a project site map, including nearby structures related to the subject structure.
- Archival quality photographs (35mm or large format black & white) of the associated nearby structures, photos keyed to a project map.

- A sketch floor plan of the property to scale.
- A brief architectural description and summary of the historical significance of the property.
- FEMA will ensure that one set of original prints, the photograph negatives, the floor plan sketches, and architectural description and summary is submitted to the SHPO for acceptance and retention in its permanent records. A second set will be provided to the Applicant.

III. SALVAGE

Following the completion of Recordation activities, the local historical society will be allowed the opportunity to salvage, at their own expense, any historically significant architectural features of the property. The items selected shall be documented, marked, cataloged, and removed in a manner that minimizes damage.

IV. DEMOLITION

To ensure the protection of any prehistoric or historic archaeological resources that might be located in the project area, FEMA will require that the demolition of the structure be performed in a manner that minimizes ground disturbance. FEMA will require that any fill used for grading or ground restoration will be obtained from a previously disturbed off-site source, and that no on-site grading of previously undisturbed soil shall take place.

V. PUBLIC PARTICIPATION

The public and interested parties have been notified of the proposed project, and have had the opportunity to comment, as follows:

- Public Notice listed in the *Bucks County Courier Times* on April 28, 2000 invited any interested parties to comment on the proposed project.
- As of November 30, 2000, no citizen or organization has contacted FEMA, PEMA, Bucks County Commissioners, or Middletown Township Supervisor's Offices in opposition to the proposed project.

VI. POST-REVIEW DISCOVERIES

If previously unidentified historic properties or archaeological resources are discovered during ground-disturbing work related to the Undertaking, the Applicant shall stop that portion of the project immediately, contact the SHPO, and satisfy the requirements of 36 CFR Part 800.13.

VII. DISPUTE RESOLUTION

If any objection or dispute should arise within the time frame provided by this MOA to any plans, specifications, or actions provided for review pursuant to this MOA, FEMA will consult further with the objecting party to seek resolution. If FEMA determines that the dispute cannot be resolved, FEMA shall forward all documentation relevant to the dispute to the Council in accordance with 36 CFR Part 800.11(e) including FEMA's proposed resolution of the dispute. Within 30 calendar days after receipt of all pertinent documentation, the Council will either:

- Advise FEMA that it concurs with FEMA's resolution to the dispute;
- Provide FEMA with recommendations, which FEMA will take into account in reaching a final decision regarding the dispute; or
- Notify FEMA that it will comment pursuant to 36 CFR Part 800.7(c), and proceed to comment. Any comment provided will be taken into account by FEMA in accordance with 36 CFR Part 800.7(c)(4) with reference to the subject of the dispute.
- Any recommendation or comment provided by Council will 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 will remain unchanged.

Failure to fulfill the terms of this MOA requires that FEMA again request Council's comments in accordance with 36 CFR Part 800.7. If FEMA cannot fulfill the terms of this MOA, it shall not take or sanction any action or make any irreversible commitment that would result in an adverse effect with respect to eligible or designated historic properties covered by this MOA or would foreclose Council's consideration of modifications or alternatives to the Undertaking that could avoid or mitigate the adverse effect until the comment process has been completed.

VIII. AMENDMENTS AND NON-COMPLIANCE

If any of the signatories to this MOA believe that the terms of the MOA cannot be adhered to, or that any amendment to the terms of this MOA must be made, that signatory shall immediately consult with the other signatories to develop amendments to this MOA. The process of amending this MOA shall be the same as that exercised in creating the original MOA. If an amendment cannot be agreed upon, the dispute resolution process set forth in Stipulation VI will be followed.

IX. ANTICIPATORY DEMOLITION

FEMA agrees that it will not grant assistance to an applicant who, with intent to avoid the requirements of this MOA or the NHPA, intentionally causes a significant adverse affect to the property listed in this MOA, or having legal power to prevent it, allows a significant adverse effect to occur. FEMA may, after consultation with Council, determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the Applicant. FEMA shall specifically advise PEMA of this requirement.

X. EXPIRATION OF AGREEMENT

This agreement shall expire if its terms are not carried out within one year from the date of execution, unless the signatories agree to an extension for fulfilling its terms. If the terms of this agreement have not been accomplished within one year, the dispute resolution process set forth in Stipulation VI will be followed.

XI. EXECUTION

Execution of this MOA by FEMA, SHPO, PEMA and the Applicant, and the subsequent filing of this MOA with the Council, and the implementation of its terms constitute evidence that FEMA has taken into account the effects of the Undertaking on historic properties, and that FEMA has satisfied its Section 106 responsibilities.

This MOA may be executed in parts, and FEMA will ensure that each party is provided with a copy of the fully executed MOA. This MOA will become effective on the date that it is signed by all the signatories.

**SIGNATORY RECORD FOR MEMORANDUM OF AGREEMENT
28 BRIDGETOWN PIKE
MIDDLETOWN, BUCKS COUNTY, PENNSYLVANIA**

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: _____ Date: _____

Gene Gruber
Regional Environmental Officer
FEMA Region III

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Brent D. Glass
Executive Director
Pennsylvania Historical and Museum Commission

PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY

By: _____ Date: _____

David Smith
Director

BUCKS COUNTY, PENNSYLVANIA

By: _____ Date: _____

Charles H. Martin
Chairman, County Commissioners

Example 2:

**MEMORANDUM OF AGREEMENT
AMONG
FEDERAL EMERGENCY MANAGEMENT AGENCY,
TEXAS STATE HISTORIC PRESERVATION OFFICER,
TEXAS DIVISION OF EMERGENCY MANAGEMENT,
AND THE CITY OF VICTORIA
REGARDING RELOCATION OR DEMOLITION OF FLOOD
DAMAGED STRUCTURES
RELATED TO FEMA-1257-DR-TX**

WHEREAS, the Federal Emergency Management Agency (FEMA), proposes to administer the Federal disaster Hazard Mitigation Grant Program (HMGP) involving the relocation or demolition of damaged properties in Victoria, Texas, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 93-288, as amended, and its implementing regulations contained in 44 CFR Part 206 for disaster FEMA-1257-DR-TX and located at:

- 1511 Siegfried
- 1305 Parsifal
- 1309 Parsifal
- 1503 Parsifal

WHEREAS, The City of Victoria (City), as the subgrantee, has made application to the State of Texas Division of Emergency Management (DEM), as the grantee, for funding under FEMA's Hazard Mitigation Grant Program to accomplish the removal of substantially damaged structures from the floodplain through either relocation or demolition, under consideration for participation in this project (Undertaking);

WHEREAS, The City will undertake the relocation or demolition in accordance with Stipulation I of this MOA;

WHEREAS, all parties to this Memorandum of Agreement (MOA) will consult for future proposed Undertakings under the Hazard Mitigation Grant Program (HMGP) to accomplish acquisition, demolition, relocation or other actions if needed;

WHEREAS, FEMA has determined, in consultation with the Texas State Historic Preservation Officer (SHPO) that the proposed action of demolition may have an adverse effect on the above listed structures which FEMA has determined to be eligible for inclusion on the National Register of Historic Places (National Register) pursuant to Section 106 of the National Historic Preservation Act of 1966 as implemented and amended (NHPA);

NOW, THEREFORE, FEMA and SHPO agree that the project shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

To the extent of its legal authority and in coordination with the SHPO, DEM, and the City, FEMA will ensure that the following measures are carried out for the demolition of the historic properties;

I. DEMOLITION OF HISTORIC PROPERTIES

Where the City has determined that a structure has suffered repetitive damage from flooding and must be relocated or demolished, and that structure has been determined to be eligible for inclusion in the National Register, the property shall be documented in accordance with Stipulation II below, then relocated or demolished;

II. RECORDATION

- A. For each structure eligible for inclusion in the National Register, DEM *as the Grantee* will ensure the *Subgrantee accomplishes* recordation measures as specified below, prior to relocation or demolition: *(changes per Bob Gibson)*
1. Photographs: 3" by 5" or 4" by 6" photographs with color, 35mm negatives of exterior views (1 front view per property and 4 corner views per property, plus additional photos of special architectural exterior and/or interior details) shall be provided, printed on standard commercial photographic paper; and
 2. Floor plan sketches of each structure with accurate outside dimensions (and accurate inside dimensions where it is safe to enter the structure.)
- B. The completed documentation will be accepted by the SHPO prior to clearance of the structures from their respective sites. The SHPO will review and comment within 30 calendar days from receipt of the recordation materials.
- C. A copy of the completed and accepted documentation with original photographs and photographic negatives will be provided to the SHPO and to the Victoria County Historical Commission.
- D. The City will allow interested organizations and private individuals who wish to obtain the historic structures for re-use to submit proposals to the City. The historic structures must be relocated outside of the designed floodplain or floodway.

III. DISCOVERIES AND UNFORSEEN EFFECTS

The City shall notify DEM, who will notify FEMA as soon as practicable, if it appears that the Undertaking will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. FEMA will require the DEM to take all reasonable measures to avoid or minimize harm to the property until FEMA concludes consultation with the SHPO. If the newly discovered property has not previously been included in or determined eligible for the National Register, FEMA may assume that the property is eligible for purposes of this MOA. FEMA will notify the SHPO at the earliest possible time and consult to develop actions that will take the effects of the Undertaking into account. FEMA will notify the SHPO of any time constraints, and FEMA and the SHPO will mutually agree upon time frames for this consultation. The DEM and the City may participate in this consultation. FEMA will develop written recommendations reflecting its consultation with the SHPO and will require the DEM to modify the project as necessary to implement these recommendations.

IV. DISPUTE RESOLUTION

- A. If an objection or dispute should arise within the time frames provided by this MOA, FEMA will consult further with the objecting party to seek resolution. If FEMA determines that the objection

cannot be resolved, FEMA shall forward to the Advisory Council on Historic Preservation (Council) all documentation relevant to the dispute, including FEMA's proposed resolution to the objection.

B. Within 14 calendar days after receipt of all pertinent documentation, the Council will either:

1. Advise FEMA that it concurs with FEMA's proposed resolution whereupon FEMA will respond to the objection accordingly; or
2. Provide FEMA with recommendations, which FEMA will take into account in reaching a final decision regarding the dispute; or
3. Notify FEMA that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment on the subject in dispute. Any Council comment provided in response to such a request will be taken into account by FEMA in accordance with 36 CFR 800.7(c)(4) with reference only to the subject dispute; FEMA's responsibility to carry out all actions under this MOA that are not subjects of the dispute will remain unchanged.

C. Failure of the Council to provide recommendations or to comment within the specified time period shall not preclude FEMA from authorizing DEM or the City to implement the Undertaking in accordance with Stipulation I of this MOA.

V. ANTICIPATORY DEMOLITION

FEMA and DEM agree that they will not grant assistance to an applicant who, with intent to avoid the requirements of this MOA or the NHPA, has intentionally, significantly, 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. FEMA may, after consultation with the Council, determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. DEM shall ensure that individual project participants are advised of this requirement.

VI. FAILURE TO COMMENT

Failure by the SHPO or DEM to provide written comments to any documentation submitted pursuant to this MOA within the agreed upon time frame, or if not indicated, within thirty (30) calendar days, shall not preclude FEMA from proceeding in accordance with the MOA.

VII. AMENDMENTS AND NON-COMPLIANCE

If any of the signatories to this MOA believes that its terms cannot be carried out, or that an amendment to the terms of this MOA must be made, that signatory shall immediately consult with the other signatories to develop amendments to the MOA. The process of amending this MOA shall be the same as that exercised in creating the original MOA. If an amendment cannot be agreed upon, the dispute resolution process set forth in Stipulation IV above will be followed.

VIII. TERMINATION

FEMA, SHPO, DEM or the City may terminate this MOA by providing thirty (30) calendar days written notice to the other parties, provided the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

IX. EXECUTION

Execution of this MOA by FEMA, SHPO, DEM, the City, and the subsequent filing of this MOA with the Council, and the implementation of its terms, constitute evidence that FEMA has taken into account the adverse effects of the Undertaking on historic properties, and that FEMA has satisfied its Section 106 responsibilities.

This MOA may be executed in parts with a separate page for each signatory, and FEMA will ensure that each party is provided with a copy of the fully executed MOA. This MOA will become effective on the date that the Council receives the signed MOA.

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: _____
R.L. (Buddy) Young, Regional Director, Region VI

Date: _____

TEXAS STATE HISTORIC PRESERVATION OFFICER

By: _____
Stanley O. Graves, Deputy State Historic Preservation Officer

Date: _____

TEXAS DIVISION OF EMERGENCY MANAGEMENT

By: _____
Tom Millwee, State Coordinator

Date: _____

CITY OF VICTORIA

By: _____
Denny L. Arnold, City Manager

Date: _____

Filed With: ADVISORY COUNCIL ON HISTORIC PRESERVATION

HABS/HAER Mitigation Documentation Policy

United States Department of Interior

National Park Service
P.O. Box 37127
Washington, DC 20013-7127

Kate C. Milley
National Park Service
Northeast Field Area
U.S. Custom House
200 Chestnut St.
Philadelphia, PA 19106

October 1, 1997

Dear Colleague:

The attached document proposes certain nationwide changes in the use of Historic American Buildings Survey and Historic American Engineering Record documentation as mitigation for adverse effects of Federal undertakings. In June, a letter was sent to your office enclosing a copy of this document and comments were invited. Of the few comments that have been received, only one state voiced strong concerns with the rest expressing support for the proposal. As stated previously, it is the desire of both the Council and the National Park Service to implement these proposals as soon as possible. Therefore, the policies as stated in the enclosed document will be implemented as of the date of this letter.

Any questions regarding these changes should be addressed to National Park Service personnel in the various system offices with whom you have been working.

We hope that these proposed changes will lead to a simpler and easier mitigation documentation process and appreciate your support in these matters.

Sincerely,

/signed

Katherine Stevenson
Associate Director
Cultural Resources Stewardship
And Partnerships

/signed/

John Fowler
Executive Director
Advisory Council on Historic
Preservation

cc: NPS Regional Offices

HABS/HAER MITIGATION DOCUMENTATION: A REENGINEERING PROPOSAL

October 1, 1997

On October 22, 1996, staff from most of the National Park Service field offices that have responsibility for HABS/HAER mitigation documentation met in Washington, D.C. with representatives of the HABS/HAER Washington office. This meeting, held to discuss the mitigation documentation program and process, was the first such national meeting held on the subject. A number of issues covering national coordination, workloads, and the purpose and operation of the mitigation documentation program were covered. At the end of the meeting, a 3-member committee was formed to summarize the issues raised and solutions suggested in a document that could be presented to a wider audience, including NPS partner organizations, for comment and action.

The resulting summary and recommendations include the following components:

Introduction: A summary of the history and current status of the mitigation documentation program.

New policy recommendations: For immediate implementation.

Options and recommendations for other process improvements: For future implementation.

INTRODUCTION

The HABS/HAER collection documents historic buildings, sites, structures and objects that include residential, commercial, public, monumental, religious, military and industrial resources. Various building technologies and materials are represented, as well as periods and styles from the 17th to the 20th centuries. The collection includes records of properties in all of the States and several of the territories, comprising resources of national, State, and local significance, including both the unique and the vernacular.

Through its more than 60 years of existence, the HABS/HAER collection has accepted drawings, photographs, and written documentation from many sources. HABS/HAER records have been contributed through the Depression-era public works projects that initiated the HABS program; by students on summer teams and in university courses; through the Peterson prize competition; through donations; through HPF-funded projects sponsored by SHPOs; and through mitigation documentation resulting from Section 106 compliance.

By accepting documentation into the Library of Congress collection from these varied sources, the collection has developed and maintained a representative quality and continues to carry out its goal to provide architects, engineers, scholars, and interested members of the public with comprehensive documentation of buildings, sites, structures and objects significant in American history and the growth and development of the built environment.

What is the basis for and value of mitigation documentation?

The National Historic Preservation Act requires that Federal agencies make appropriate records of historic properties that will be substantially altered or demolished by their actions, and that these records be deposited in the Library of Congress or another appropriate agency designated by the Secretary of Interior. The Secretary of Interior's Guidelines for Architectural and Engineering Documentation specify that the National Park Service determine the appropriate level of documentation for such mitigation, and that the level of documentation reflects the significance of the resource.

By recording Federally-owned or manager structures and properties being affected by Federal projects, HABS/HAER mitigation documentation increases the breadth and depth of the collection. The volume of mitigation documentation has grown significantly since records began being produced in the 1970s and has greatly increased the size of the HABS/HAER collection. Mitigation documentation currently forms one-third of the entire HABS/HAER collection.

How is the system put into practice?

In practice, HABS/HAER mitigation documentation is linked to the Section 106 review process, in which Federal agencies or their designees are directed, usually in a Memorandum of Agreement with the State Historic Preservation Officer, to contact the appropriate NPS field office for a determination of the level and type of documentation for each property to be affected; NPS must review and accept the documentation before demolition or other work may be carried out. The application of this practice varies from one part of the country to another, and from one state to another. Some States have a large number of Adverse Effect findings, and routinely require HABS/HAER documentation for as many as fifty properties per year, many of local significance. Other States rarely make use of the mitigation documentation program, either because they require other forms of mitigation or because they specify other forms of documentation which are not deposited in the Library of Congress.

Mitigation documentation is generally specified as Level II or Level III, as defined in the Secretary's Standards for Architectural and Engineering Documentation. The Standards state that Level I is appropriate only for nationally significant structures; since nationally significant properties rarely come through the 106 process, Level I documentation including measured drawings are normally not required.

What problems are associated with the current system?

Time and cost for Federal agencies. Mitigation documentation can be time-consuming and expensive for Federal agencies. No procedural guidelines exist that require NPS System Support Offices to stipulate and review documentation within any minimum period of time. The entire process, from the first contact made to the NPS to final acceptance of the documentation, may take several months, or even years, after execution of an MOA. Because of the specialized requirements, most agencies hire consultant firms to prepared documentation. The expertise of consultants and the cost to produce large-format photographs contribute a significant amount to the cost of mitigation documentation. *The question is whether all of the resources currently being documented to HABS/HAER standards warrant the amount of time and public funds that are expended to carry out the documentation.*

Lack of consistent “value added.” Many properties are already extensively documented in other forms before NPS receives a request for a determination of the level of mitigation documentation. Such forms include National Register nominations, State inventory forms, and/or assessment reports prepared by agencies or consultant firms. In such cases, NPS generally requires that existing information be reformatted to fit the HABS/HAER requirements and that large-format photographs be added.

Many properties documented through the mitigation program represent property types already extensively documented in the HABS/HAER collection, and cannot be said to add usefully to it from a research point of view. Resources in some States are documented far more than in other States, so the overall collection is not uniformly representative of the nation’s historic properties.

Inconsistent use of the HABS/HAER collection. There is some concern that the HABS/HAER collection is sometimes used as a “catchall” for mitigation documentation that is not most suited to the collection, due to the absence of other recording options. Although the collections were founded to record structures, Memoranda of Agreement now frequently require documentation of properties that are of primarily historical interest. These may include fragments of railroads or mines, or shells of manufacturing buildings with no equipment. The main product of such documentation might be a narrative of the history of a company and/or description of a manufacturing process; the documentation of the associated structure itself is almost incidental, and often does not merit large-format photography, the HABS/HAER standard. *While the historical information is valuable and important, the HABS/HAER collection may not be the most appropriate place for it.*

Time and cost for the National Park Service. As a result of the reorganization of the NPS and the downsizing of the Federal government, SSO staffs have been greatly reduced from those of the former Regional Offices, yet the volume of mitigation documentation has not decreased. In several SSOs, the stipulation and review of mitigation documentation forms the largest single workload of any program or activity and absorbs a disproportionate amount of staff time. Much of this time is invested in checking for and editing the detailed format requirements of the HABS/HAER collection.

What are the objectives in developing these recommendations?

- Maintain the quality and breadth of the HABS/HAER collection as a representation of the variety of the nation's historic resources.
- Focus on the collection's role as a resource-based archive
- Significantly reduce the number of properties documented for the HABS/HAER collection through the mitigation process by restricting acceptance in the collection to properties that add usefully to it.
- Decrease the workload of NPS SSOs in handling mitigation documentation without adding significantly to the workload of SHPO staffs.
- Ensure that adequate alternative forms of mitigation are available for properties not documented in the HABS/HAER collection, in part by defining a standard of archival documentation available for SHPO use.
- Retain the ability to require HABS/HAER documentation for any property when exceptional circumstances make documentation useful and desirable.
- Develop recommendations within the existing legal and regulatory authorities. [The definition of the levels of HABS/HAER documentation (both the levels of significance each applies to and the form of the documentation), as well as the role of the NPS in determining the appropriate level for additions to the collection, are stated in the Secretary's Guidelines and cannot be easily modified. However, the National Historic Preservation Act does give the Secretary of the Interior authority to specify other repositories of documentation.]
- Adopt any change in practice as national policy, to ensure consistency of practice, fairness to Federal agencies, manageable workloads, and uniform documentation standards.

NEW POLICY RECOMMENDATIONS

The following are recommended for immediate implementation:

1. Mitigation documentation involving National Historic Landmarks, properties eligible for the National Register at the national level of significance, and some specifically identified, individually eligible properties significant at the State and local levels will continue to be carried out to HABS/HAER standards. The level of documentation for these projects only will be specified by the NPS SSOs and documentation will be housed in the Library of Congress collections.
2. NPS will no longer stipulate HABS/HAER mitigation documentation for the following categories of properties significant at the State or local level. SHPOs may determine the appropriate form of documentation (non-HABS/HAER) and designate appropriate State and/or local repositories for the documentation. In cases where the SHPO believes that a particular property in one of the following categories does merit inclusion in the HABS/HAER collection and warrants an exception to this policy, the SHPO should consult with the appropriate NPS SSO.
 - a. Contributing properties in a historic district (unless individually eligible).
 - b. Properties for which a current and complete National Register nomination is on file in the National Register in Washington, DC.
 - c. Structures to be moved, reconstructed or altered.
 - d. Property types determined by HABS/HAER and SHPOs to be already comprehensively documented in the HABS/HAER collection (e.g. Pratt truss bridges). [This will be done as our ability to search the database is increased].
 - e. Portions of linear resources, such as canals, ditches, railroads or roads, of which other portions remain intact.
 - f. Minor elements of a complex (e.g., sheds and garages in a Forest Service admin. area), unless architecturally distinctive.
 - g. Ruins, collapsed structures or shells of structures, which may be eligible for the National Register because of their historical importance or associations, but which have little structural/architectural interest and/or integrity.
 - h. Sites with few above-ground resources, which might more appropriately be recorded with an archeological site form.
3. SHPOs will determine independently the kind and amount of documentation they desire for these categories of properties and forward the completed documentation to the appropriate repository(ies) in their State. Contacting NPS SSOs is unnecessary.

4. By the end of the calendar year, NPS will develop draft alternative documentation guidelines for the use of the SHPOs. These will provide basic information about graphic, photographic and written documentation, archival standards and potential repositories. SHPOs may choose to provide these guidelines directly to agencies and consultants or use them as a basis for developing their own documentations standards and guidelines for mitigation documentation purposes.

AFTER NCSHPO ANNUAL MEETING

A number of steps need to be taken in order to finalize and implement the new policy on HABS/HAER mitigation documentation:

1. After the current revisions have been made to the HABS/HAER database, HABS/HAER staff and SHPOs identify as specifically as possible the gaps and surpluses in the HABS/HAER collection.
2. Prior to revising the guidelines or policy directives NPS will consult with the following parties:

National Council of State Historic Preservation Officers (obtain comments from staff involved in Section 106 reviews whenever possible)

Advisory Council on Historic Preservation

American Institute of Architects (member of HABS/HAER tripartite agreement)

Library of Congress (also member of tripartite agreement)

Representatives of professional associations whose members often prepare mitigation documentation.

3. NPS issue a policy directive, allowing SHPOs to specify appropriate repositories for documentation of specific types of properties (or whatever option has been agreed upon). Identify who has primary responsibility for this task.
4. NPS organize orientation session for SHPO staff, to review the reason(s) for the change, the administrative options, and the roles the various agencies can play in partnership with each other. (These sessions should take place before the effective date of the policy directive.) Since many Federal agencies initiate documentation before 106 consultation is complete, outreach and orientation to Federal and State agencies will also be needed.

OPTIONS AND RECOMMENDATION FOR OTHER PROCESS IMPROVEMENTS

During the October 1996 meeting of National Park Service personnel engaged in stipulating and processing HABS/HAER mitigation documentation, there was general agreement that the current formatting requirements should be reviewed to identify alternatives that would be more flexible, take advantage of already available information, and reduce preparation and review costs for both the NPS and the federal agencies preparing mitigation documentation. It was also apparent from the discussions that there is variation among the NPS offices currently handling the mitigation program in terms of how they manage the program and work with the federal agencies and their contractors preparing HABS/HAER materials. This variation includes differences in the mitigation guidelines provided to agencies and contractors and in the expectations what the agencies and the contractors would produce.

A number of recommendations for streamlining the mitigation documentation process were identified as a result of those discussions. These options should be pursued internally in addition to the above policy recommendations, and may be followed up independently of the above process.

1. Standardize the mitigation documentation guidelines and procedures nationally.

The Library of Congress' requirements for accepting materials into the HABS/HAER collection provides a standardized baseline for the documentation stipulated and transmitted by NPS offices. However, there remains considerable variation among the NPS offices on how the program is actually managed. In the absence of policy of guidelines issued by the national office geared to the needs of agencies and contractors, each office has written its own version of the HABS/HAER guidelines and developed its own procedures for managing the stipulation and review process. This creates confusion among our constituents who deal with more than one NPS office; it also has effectively precluded a servicewide adoption of cost-effective management policies that some offices have successfully adopted to reduce their workload.

Recommendations:

--Standardize mitigation documentation guidelines and procedures nationally; produce a short, straightforward guideline for use by agencies and contractors on preparing HABS/HAER mitigation documentation. This guideline should deal exclusively with what we expect the agencies/contractors to prepare and eliminate the transmittal details that NPS handles.

--Require the agencies/contractors to produce documentation that meets the standards for transmittal before NPS accepts it, thus eliminating costly and time-consuming reworking by NPS personnel.

--Produce an electronic template for basic written documentation formats, such as the HABS outline format and "Short Form" and the HAER format, that could be distributed on the World Wide Web.

2. Identify alternative forms of documentation, such as National Register forms, that could be accepted into the HABS/HAER collections.

In many cases, written reports, including National Register forms, have been prepared by or for federal agencies as part of the Section 106/110 process for identifying and evaluating potentially eligible properties. Under current HABS/HAER policy, these materials must be reformatted into a specific format; agencies are forced to bear the cost of reformatting this information, although there is no significant gain in information from the original documentation. Reviews of the written documentation to ensure that the specified formats are met is one of the most time-consuming aspects of managing the program for NPS. Any reformulation of the documentation standards would require concurrence of the Library of Congress to ensure that the integrity and accessibility of the collection would be retained.

Recommendations:

--Cite alternative forms of documentation—National Register documentation is the most obvious—this could be cited by identifying the source on the Index to Photographs sheet when included with a standard HABS/HAER Level II or Level III submittal, or reports of a substantial nature that are included with National Register documentation also could be included in the HABS/HAER collection with the standard cover sheet that would provide the LOC with the necessary cataloging information it requires.

--Identify a process for cross-referencing existing information in other publicly-accessible databases, thus allowing the agency to submit only the basic cover sheet and photographs, accompanied by reference to other written documentation. For example, the documentation for a property that has been listed on the National Register could reference the National Register database.

Sample Letters and Forms

This section includes a number of sample letters and forms used in FEMA's historic review under the Section 106 process. These samples will be available on FEMA's Environmental and Historic Review bulletin board at a future date (visit <http://hq.fema.gov>, click on *FEMA Bulletin Boards* and then click on *Environmental and Historic Review*.)

1. Identification and Evaluation/Effect Determination Letters to the State Historic Preservation Officer
2. Letter inviting the Council to be a Consulting Party
3. Letter Initiating a Section 106 Consultation Meeting
4. Notice of Adverse Effect to the Council
5. Letters Associated with the Development of Section 106 Agreements
6. Letters Indicating the Completion of Treatment Measures
7. Letter to the Council Requesting an Extension to the Emergency Period
8. Letter Notifying the Council of an Emergency Review
9. Response Letters from the SHPO on FEMA's Section 106 Determinations
10. Response Letters from the Council
11. "Historic Review Assessment For Determination of Adverse Effect" Form (Public Assistance)

Identification and Evaluation Determination Letters



Federal Emergency Management Agency

Town of Princeville Office
310 Mutual Blvd.
Princeville, NC 27886
Phone: (252) 641-5825
Fax: (252) 641-5723

June 16, 2000

Renee Gledhill-Earley
State Historic Preservation Office
North Carolina Division of Archives & History
4617 CMS Center
Raleigh, NC 27699-4617

Re: FEMA DR- NC-1292 Public Assistance Program
Town of Princeville Section 106 Standing Structure Survey

Dear Ms. Earley:

As you are aware, the Federal Emergency Management Agency's (FEMA) Public Assistance Program is involved with disaster recovery work in the Town of Princeville. In our letter to your office on May 22, we notified you of FEMA's intentions to conduct a Section 106 survey of the flood damaged buildings within Princeville which have been condemned and may be demolished. URS Corporation has completed inventory and evaluation work on our behalf and will be preparing a survey report for us during the next couple of weeks. In a recent telephone conversation between you and Ms. Kilner, your office was gracious enough to allow FEMA to submit *National Register* eligibility determinations on several buildings that need quick action. The homeowners are eager to rebuild on-site.

At this time, 12 properties have been identified which, in FEMA's opinion, are not eligible for listing on the *National Register of Historic Places* either individually or as part of a potential historic district. Attached to this letter is supporting documentation including a memo from URS Corporation about the 12 houses, a map indicating the location of the buildings, and a set of photographs and survey forms completed by architectural historians for each property.

*National Historic Preservation Act Desk Reference
Summer 2001*

Renee Gledhill-Earley
June 16, 2000
Page Two

Pursuant to 36 CFR Part 800, FEMA respectfully requests the North Carolina SHPO's comments regarding our *National Register* eligibility determinations, at your earliest convenience. If you have any questions about the enclosed materials, please contact Ms. Science Kilner, Lead Historic Preservation Specialist at (252) 641-5826, or me at the number listed above. Thank you for your attention to this matter and we look forward to further consultation with your office regarding the Town of Princeville.

Sincerely,

Brad Gair
Deputy Federal Coordinating Officer

BG/sk/jld

Enclosures



Federal Emergency Management Agency

Region IV - Mitigation Division

3003 Chamblee Tucker Road

Atlanta, GA 30341

Phone: (770) 220-5406

Fax: (770) 220-5440

July 24, 2000

Renee Gledhill-Earley
State Historic Preservation Office
North Carolina Division of Archives & History
4617 CMS Center
Raleigh, NC 27699-4617

Re: FEMA DR- NC-1292 Public Assistance Program
Town of Princeville Section 106 Standing Structure Survey

Dear Ms. Gledhill-Earley:

In accordance with Section 106 of the National Historic Preservation Act and Programmatic Agreement executed between our agencies, please find enclosed a draft cultural resources survey report for Princeville, NC. This report has been prepared on our behalf by URS Corporation and contains the balance of historic properties surveyed in Princeville and not previously submitted to your office for review.

A total of 84 properties were inventoried and evaluated for *National Register* eligibility in Princeville. Sixty-nine properties are proposed not eligible. Your office concurred on June 29th that 25 of these were in fact not eligible. A total of 15 properties are proposed eligible, including 12 contributing resources to an historic architectural district, two historic properties for a multiple resource listing, and an individually eligible property.

Although, not part of FEMA's Public Assistance Program undertaking, several historic properties were evaluated for *National Register* eligibility to assist the Town in its Heritage Trail development efforts. These include the community cemeteries, a baptismal site on the Tar River, the Dancy House, and Mount Zion Primitive Baptist Church. This additional work was justified pursuant Presidential Executive Order 13146 which established the President's Council on the Future of Princeville, North Carolina, signed on February 29.

*National Historic Preservation Act Desk Reference
Summer 2001*

Renee Gledhill-Earley
July 24, 2000
Page Two

Of the buildings that are recommended eligible for the *National Register* or contributing resources to an architectural district, it is uncertain at this time which actually will be demolished despite condemnation notices having been posted. In most cases, the homeowners have yet to decide to rebuild or demolish. Should demolition proceed, we would advise your office and consult further on appropriate treatment measures for historic buildings.

I respectfully request the North Carolina SHPO's comments regarding our *National Register* eligibility determinations and draft report, at your earliest convenience. Please note the enclosed report already includes some of my own comments, which will be addressed in URS' final report, along with any of your own. If you have any questions about the enclosed materials, please contact me at (770) 220-5422. Thank you for your continued attention and I look forward to further consultation with your office regarding the Town of Princeville.

Sincerely,

Science Kilner
Lead Historic Preservation Specialist

Enclosures (2)

*National Historic Preservation Act Desk Reference
Summer 2001*

Daniel Abeyta
Acting State Historic Preservation Officer
Department of Parks and Recreation
P.O. Box 84296
Sacramento, CA 94296-0001

Subject: Building Elevations FEMA-1155-DR-CA, HMGP #1155-066-0006, List2, 3, and 4.

Dear Mr. Abeyta:

Pursuant to Section 800.4(b)-(c) of 36 CFR Part 800, the Federal Emergency Management Agency (FEMA) has taken steps necessary to identify historic properties within the area of potential effect for the above referenced HMGP projects. Contained in this letter are the historical significance evaluations for 11 residential dwellings located throughout the Sacramento Valley.

Each address has been listed in the table attached to this letter along with the date of construction, architectural style, integrity, and a National Register eligibility determination.

FEMA has determined that these properties do not appear to be eligible for the National Register of Historic Places (or as in the case of 1761 Circle Drive, Isleton, the eligibility will not be adversely affected by the proposed project) and requests your concurrence with this determination. Should you not object with this finding within 30 days of receipt of this letter, FEMA's responsibilities under Section 106 of the National Historic Preservation Act will have been fulfilled.

Thank you for your review of this project. If you have any questions regarding this matter please do not hesitate to contact me at (415) 923-7027.

Sincerely,

Sandro Amaglio
Regional Environmental Officer

Enclosures



FEDERAL EMERGENCY MANAGEMENT AGENCY

REGION IX

Building 105

Presidio of San Francisco

San Francisco, CA 94129

Dr. Knox Mellon
Acting State Historic Preservation Officer
Office of Historic Preservation
1416 9th Street, Room 1442-7
Sacramento, California 95814

Subject: Contra Costa County Public Works Department, Antioch Creek
Flood Control Channel Realignment and Enlargement Project,
FEMA-1203-DR-CA, DSR #96481

Dear Dr. Mellon:

The purpose of this letter is to transmit the results of a literature review and archaeological field survey conducted by the Federal Emergency Management Agency (FEMA) in support of a Contra Costa County Public Works Department project. The proposed project would realign and enlarge a 5,000-foot segment of the Antioch Creek channel. The county has applied for funding for this project under FEMA's Public Assistance Program.

In summary, the archeological field reconnaissance of the area of potential effect (APE) for the project identified no archeological resources within the project area. The survey did not result in the identification of built environment features. Therefore, no cultural resources are known to exist within the project area. FEMA requests an expedited consultation pursuant to 36 CFR 800.3(g).

Project Description

The project area is located on the eastern edge of the city of Antioch, and is bounded on the west by the developing Antioch Southeast Area, on the south by Lone Tree Way, on the east by Empire Avenue and Neroly Road, and on the north by the Contra Costa Canal. This project proposes to relocate 5,000 linear feet of the artificial channel to an adjoining upland area. The current drainage was constructed in 1989, but was damaged by flooding in the 1998 El Niño storms. The relocated channel would be widened to approximately 180 feet, providing additional space within the channel boundaries for an enhanced riparian corridor as well as

allowing for a larger flow capacity. A 10-foot meandering low-flow channel with 2:1 slopes for a width of 38 feet would be placed in the bottom of the new channel. Thirty-five foot wide benches on either side of the low-flow channel would be created with 3:1 slopes to the top of the corridor. One bench would be converted to a 12-foot wide concrete trail built for pedestrians and maintenance purposes. The other bench, a 12-foot wide area, would be maintained with grasses only, to serve as an emergency access path. This bench would not be accessible to the public. The riparian corridor would apply to approximately 3,815 linear feet of the creek. The balance of the channel bank would either be culverts, rock riprap, or a low flow transition channel.

At the outlet of the existing 84-inch culverts, rock riprap would be installed. Downstream from here approximately 125 feet, a 24-inch outfall pipe would be installed on the north bank. Further downstream (690 feet), an inlet structure would be placed for the Canada Valley Road crossing. The crossing, including inlet and outlet structures, would result in the loss of approximately 250 linear feet of creek. Within the crossing, a 60-inch storm drain outfall would discharge. Continuing downstream approximately 775 feet, a 48-inch outfall structure would be installed on the north bank. Downstream another 650 feet, the inlet structure for the Route 4-bypass crossing would result in the loss of approximately 880 linear feet of creek. Within the bypass crossing culverts, a 36-inch outfall would discharge into the structure itself as well as an undetermined size outfall discharging into the outlet structure. Once the new channel has been constructed, the existing drainage channel would be filled in. Figures 1 and 2 depict the general and specific project locations, respectively.

FEMA, in accordance with revised implementing regulations of the National Historic Preservation Act (NHPA; May 18, 1999) found at 36 CFR 800.3(a), has determined that the Proposed Action is an undertaking.

APE Determination

FEMA has determined that the undertaking's APE is defined as a 5,000-foot-long by 180-foot-wide corridor along the new alignment of the channel which will conform to the current channel at its beginning and ending points (west and northeast McBail Property boundaries). The APE also includes the 5,000-foot-long by 60-foot-wide segment of the current channel, which will be filled. Pursuant to the revised implementing regulations of the NHPA found at 36 CFR 800.4(a)(1), FEMA seeks your concurrence with its determination of the APE. Figure 2 depicts the APE for this undertaking.

Literature Review

Pursuant to the revised implementing regulations of the NHPA found at 36 CFR 800.4(a)(2), a cultural resources literature review was initiated twice at the

Northwest Information Center (NWIC) of the California Historical Resources Information System on January 19, 2001, by FEMA's archaeological consultant. The record search was performed by Mr. Damon Mark Haydu, a Researcher II at the NWIC on January 25, 2001, (NWIC File No: 01-51). The record search encompassed the project area and a 0.25-mile radius around it. The record search indicated no recorded Native American cultural resources, and two recorded historic cultural resources within 0.25 mile of the project APE. One historic site consists of a foundation of the Lone Tree School, which dates back to at least 1911. This resource is located approximately 300 feet south of the APE. The other historic site, located approximately 0.25 mile northwest of the project APE, consists of debris from a collapsed building (perhaps a barn) which also dates back to at least 1911.

Six cultural resources studies have been conducted within 0.25 mile of the project APE. Five of these studies have been conducted within the project APE:

- S-10509 (Jensen & Associates. 1986.)
- S-13256 (Bramlette, A.G., et. al. 1991.)
- S-16917 (Rice, C., A. Samuelson, and W. Self. 1994.)
- S-18187 (Meyer, J. and D.A. Fredrickson. 1996.)
- S-18641 (Meyer, J. 1996.)

One previous cultural resources study has been conducted outside the project APE, but within 0.25 miles:

- S-10508 (West, G.J. 1982.)

Native American Consultation

Pursuant to the revised implementing regulations of the NHPA found at 36 CFR 800.4(a)(4), the California Native American Heritage Commission (NAHC) was contacted by FEMA to request a review of its Sacred Lands Files and a list of individuals or groups it believes should be contacted for information or concerns related to the project area. The NAHC responded on January 30, 2001, with a negative search of its Sacred Lands Files.

An informational letter was sent by FEMA on February 19, 2001, to 16 groups or individuals listed by the NAHC. To date, zero (0) responses have been received.

Natural Setting

Land surrounding the existing channel consists of annual grassland, yellow star thistle, and an apple orchard located to the west of the channel. A barren, unpaved easement (approximately 50 feet wide) for the Contra Costa Water District also runs

through the area. The north-trending portion of the new drainage channel is planned to parallel this easement.

Prehistory, History, and Ethnography

The project site is located near the Carquinez Strait on the eastern shore of San Pablo Bay. San Pablo Bay lies at the point where the San Joaquin and Sacramento rivers flow into the San Francisco estuary system. At one time, the basin now occupied by the estuary is believed to have been a great river valley, with its mouth at an ocean coast as much as 15 to 18 miles offshore of the present coastline. By about 11,000 years ago, as sea levels rose in response to glacial melt, ocean waters had begun to rise through the Golden Gate, creating the San Francisco Bay estuary. By about 6,000 years ago, the Bay shore would have resembled its historic configuration as a wide, relatively shallow estuary ringed by extensive salt marshes.

The 19th and 20th centuries again saw marked changes in the natural setting of the Bay. Between 1850 and 1880, extensive hydraulic mining in the Sierra foothills washed tremendous volumes of silt into the Sacramento and San Joaquin rivers and their tributaries. It is estimated that approximately 300 million cubic meters of sediment were deposited in the San Pablo Bay between 1849 and 1914 as the result of mining, and erosion stemming from upstream deforestation and overgrazing. Landfills in the Bay began as early as 1850, and by 1950 as much as one-third of the Bay had been filled to create land for urban development and other uses. These extensive changes in natural setting must be considered in examining the locations of archaeological sites: it is likely that the locations of many of the oldest coastal sites have been inundated, and many sites may be further from the Bay shore than at the time of occupation.

The project area was inhabited by Native Americans of the Ohlone, or Costanoan, group at the time of Spanish entry into the Bay region. There were numerous politically autonomous Ohlone tribelets or groups in the Bay area. The project area, the southern edge of the Carquinez Strait, was probably the territory of the Karkin Ohlone tribelet. The Ohlone are thought to have entered the Bay region about 1,500 years ago, probably displacing populations already present. The Ohlone were hunter-gatherers, utilizing both semi-permanent villages and more specialized seasonal camps, and a wide range of hunting and foraging strategies. The resources of San Francisco Bay and its marshes probably were particularly important to many Ohlone groups. Primary staple foods included acorns, fish and shellfish, as well as a variety of large and small game. A wide variety of plant and animal foods were collected. Plant materials were used skillfully and extensively, for shelter, clothing, twine and nets, and finely made basketry. A wide variety of shell ornaments were manufactured, and bone and ground and chipped stone tools are common archaeologically. Although material cultural was relatively simple, the Ohlone were enmeshed in an extensive trade network: obsidian from distant sources

in the Sierra and eastern California as well as from the closer Santa Rosa sources is fairly common in Bay region archaeological sites.

The entry of the Spanish into the region, in 1769, and the missionization process that followed, were highly disruptive to Ohlone culture. Introduced diseases decimated local native populations. Although it had been the intent of the Spanish to return Ohlones to the land after they had acquired farming and ranching skills and been converted to Catholicism, in fact only a handful of Ohlone individuals ever received land grants from the Spanish or Mexican governments. Instead, most mission survivors, deprived of their ancestral skills and land, found marginal subsistence as laborers on Mexican ranchos or on the fringes of towns. Nonetheless, many Ohlone retained their cultural identity. There has been a significant cultural revival in the past few decades. Ohlone representatives are active participants in most local prehistoric archaeological projects.

Cultural Resources Inventory Methods and Results

In order to fully address the project APE, an intensive pedestrian cultural resources inventory utilizing 30-foot-wide survey transects was conducted by FEMA's archaeological consultant, Brian Hatoff of URS Corporation, on January 17, 2001. No cultural resources were discovered in the course of the survey.

Recommendations and Conclusions

Pursuant to the revised implementing regulations of the NHPA found at 36 CFR 800.11(d), this letter provides a description of the proposed undertaking, an APE determination, accompanying maps, and the steps FEMA has taken under Section 800.4(b) to identify historic properties. As described above, no properties eligible to the National Register of Historic Places were identified through a literature review or pedestrian survey of the project area. Therefore, no effect to historic properties is anticipated from the proposed project.

Although the survey was conducted in as thorough a manner as possible, there is always the possibility that previously unidentified archaeological resources could be discovered during project construction. Therefore, pursuant to 36 CFR 800.13(a), FEMA requests that the Programmatic Agreement (PA) for this disaster (FEMA-1203-DR-CA) be invoked for unanticipated discoveries. Section VII of the PA identifies the steps to be taken in the event of an unanticipated discovery. It is FEMA's opinion that inclusion of this option under 36 CFR 800.13 will satisfy issues related to unanticipated discoveries for this project. Should human remains be encountered, work in the vicinity must halt and the County Coroner will be notified immediately. If the remains are determined to be Native American, the coroner will contact the NAHC.

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FEMA understands that no timeframes are attached to your consideration of our request for an expedited review. FEMA also understands the “review clock” will begin upon notification of your approval (if you approve of this request). Therefore, unless we hear from your office within 30 days of our receipt of notification of acceptance of our request for an expedited consultation (assuming you approve of the request for expedited consultation), FEMA will assume it has satisfied its Section 106 responsibilities for this undertaking. Please feel free to telephone me at (415) 923-7284, or Mr. Hatoff at (510) 874-3195, if you have any questions.

Sincerely,

Sandro Amaglio
Regional Environmental Officer

Enclosures

Letter Inviting the Council to be a Consulting Party

Mr. Don L. Klima
Director, Office of Planning and Review
Advisory Council on Historic Preservation
12136 West Bayaud Avenue, Suite 330
Lakewood, Colorado 80226

Attention: Ms. Lee Keatinge

Subject: Seismic Structural Retrofit and Rehabilitation of the
San Francisco Conservatory of Flowers
Golden Gate Park, San Francisco, California
FEMA-1008-DR-CA; HMGP-1008-6-996

Dear Mr. Klima:

Pursuant to 36 CFR 800.14(b)(1)(ii), the Federal Emergency Management Agency (FEMA) formally requests that the Advisory Council for Historic Preservation (Council) takes part in the Section 106 consultation process regarding the federal undertaking indicated above. This project involves a highly significant National Register eligible district (please see attached letter dated June 28, 1999) that has been a source of pride to the City of San Francisco for many years. A number of prominent local groups have taken an interest in the project, and are carefully monitoring the planning, execution, and effects of the undertaking on this historic property. Included among the interested parties is First Lady Hillary Clinton, who paid a special visit to the Conservatory of Flowers on December 11, 1998 as part of her tour promoting the "Save America's Treasures" program.

Additionally, FEMA, in consultation with the California State Historic Preservation Officer (SHPO), the California Office of Emergency Services, and the City of San Francisco, has determined that the most appropriate and expeditious way for FEMA to meet its Section 106 compliance responsibilities would be to prepare and execute a Programmatic Agreement (PA) for the undertaking. Because there is a possibility that the current scope of work for the seismic structural retrofit and rehabilitation, which depends in part on the results of a testing phase still to be performed, may change at a future date, thus making it impossible to accurately determine at present all potential effects to historic properties within the district, it is felt that execution of a PA would indeed be the most viable solution to FEMA's compliance responsibilities. (Please see attached letter on the subject from the California SHPO, dated July 8, 1999).

In closing, let me state that FEMA strongly feels that Council involvement in the consultation process for this undertaking would be most beneficial. I look forward to

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Summer 2001*

receiving your response to this request. Should you have any questions or concerns, please do not hesitate to call me at (415) 923-7284.

Sincerely,

Sandro Amaglio
Regional Environmental Officer

Attachments

cc: California SHPO

Letter Initiating a Section 106 Consultation Meeting

Ms. Nancy Ward
Governor's Authorized Representative
Governor's Office of Emergency Services
P.O.Box 419023
Rancho Cordova, California 95741-9023

Reference: Section 106 Consultation Meeting for:
170 Fell Street and 135 Van Ness Avenue, San Francisco
FEMA-0845-DR-CA, P.A. 075-91003
Subgrantee: San Francisco Unified School District

Dear Ms. Ward:

The Federal Emergency Management Agency (FEMA) is proposing to provide funding for the 170 Fell Street and 135 Van Ness Avenue buildings (Buildings), related to damages caused by the Loma Prieta Earthquake. Both Buildings occupy the same city block (bounded by Hayes Street on the north, Van Ness on the east, Fell Street on the south, and Franklin on the west), and are collectively listed as San Francisco City Landmark No.140. Both of these Buildings have been determined to be eligible for the National Register of Historic Places.

The Buildings are also designated as "Contributory" to San Francisco's Civic Center Historic District. FEMA has previously determined the Area of Potential Effects for this undertaking to include the entire limits of this Historic District that is generally bounded by Golden Gate Avenue to the north, Franklin Street to the west, Jones Street to the east, and Market Street to the south.

By letter dated August 31, 1998 to the Governor's Office of Emergency Services (OES), the San Francisco Unified School District (SFUSD) requested a revised Improved Project designation for the Buildings. The SFUSD wishes to relocate its Administrative Complex function that it carried out in the Buildings at the time of the disaster, to other sites within San Francisco. The proposed Improved Project consists of purchasing existing buildings, performing tenant improvements and/or seismic upgrades to these existing buildings and other work necessary to relocate the Administrative Complex functions to these sites.

The SFUSD intends to apply the funding originally made available by FEMA for the repair of the Buildings to costs associated with this relocation and acquisition process.

FEMA has determined that this decision by the SFUSD, in addition to changing the originally defined undertaking, may have an Adverse Effect to historic properties and is initiating consultation in accordance with 36 Code of Federal Regulations § 800.5(e), regulations implementing Section 106 of the National Historic Preservation Act. FEMA is inviting the SHPO, the Advisory Council on Historic Preservation (Council), the SFUSD, the OES, the San Francisco Landmarks Preservation Advisory Board, and the Foundation for San Francisco's Architectural Heritage to participate in this Consultation meeting. The meeting is scheduled for:

Thursday, April 15th, 1999
10:00 A.M.
FEMA Region IX
Presidio of San Francisco
Building 105
Third Floor Conference Room (Robbie Room)

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Due to the nature of the revised Undertaking and its potential effects on historic properties, FEMA intends to propose, and discuss at the consultation meeting, a Programmatic Agreement approach to address the process, and the definition of the role and responsibilities of all parties involved, in the implementation of Section 106 for this undertaking. For your convenience and prior to the meeting, I will provide you with a Draft of the proposed Programmatic Agreement, in addition to an agenda for the meeting itself.

Looking forward to see you at the meeting. If you have any questions, please do not hesitate to contact me at 415-923-7284.

Sincerely,

Sandro Amaglio
Regional Environmental Officer

cc: Advisory Council
San Francisco Heritage Commission
SFUSD
S.F.LPAB

Notice of Adverse Effect to the Council

September 22, 1999

Ms. Martha Catlin
Historic Preservation Specialist
Advisory Council on Historic Preservation
1100 Pennsylvania Ave. NW, Rm 809
Washington, DC 20004

Re: FEMA 1018-004 DR KY Hazard Mitigation Grant Program Project
Red River Diversion Channel, Clay City, Powell County, Kentucky

Dear Ms. Catlin:

Pursuant to Section 106 of the National Historic Preservation Act, the Federal Emergency Management Agency has determined, in consultation with the Kentucky Heritage Council, that the above listed undertaking will result in an adverse effect to a historic property eligible for listing in the *National Register of Historic Places*. Thus, please consider this notice to the Council of FEMA's intent to prepare a Memorandum of Agreement with the Kentucky Heritage Council in view of mitigating the adverse effect.

For your review, please find enclosed project information as specified in 36 CFR Part 800.11(e). If you should have any questions or require additional information, please contact me at (770)220-5422. Thank you for your attention to this project.

Sincerely,

Science Kilner
Lead Historic Preservation Specialist

Cc: Karen Forbes, FEMA FPO

Enclosures

Notice of Intent to Prepare Memorandum of Agreement

FEMA 1018-004 DR KY Hazard Mitigation Grant Program Project Red River Diversion Channel, Clay City, Powell County, Kentucky

Proposed Undertaking Description:

A portion of Clay City is situated in a horseshoe bend of the Red River. During severe flooding events such as Disaster 1018 in 1994, much of this area is inundated, which causes extensive damage to structures therein. To alleviate the repetitive flooding problem, the applicant has requested funding from FEMA's Hazard Mitigation Grant Program to excavate a diversion channel which would allow flood water to bypass the horseshoe bend during peak flow periods. The channel would be approximately 2,100 feet in length and 50 feet in width (See attached sketch and map). Completion of this project would improve flood protection to approximately 118 homes and 22 businesses, and associated infrastructure in Clay City. The Area of Potential Affect generally consists of the area to be excavated as well as a temporary construction/staging area along the channel.

The preferred location of the channel, in part, will re-excavate an abandoned historic logging flume. That channel existed historically to serve a 19th century sawmill. The flume transported logs from the river into a pond for log storage. The pond remains on the site today, however the flume portion of the channel has long since been filled in. The pond is surrounded by pasture or agricultural fields, while the flume area is bordered by several homes.

Cultural Resources Survey and Results:

Through consultation with the landowner, the Kentucky Heritage Council identified the project area as the site of a large sawmill which operated between the 1880s and 1909, when it burned. The Kentucky Union Sawmill complex was the second largest mill in the country during the late 1880s. The only remaining visible feature from the sawmill facility consists of a brick arch/spillway (See enclosed photographs).

A phase I archaeological survey was conducted in portions of the area of potential affect to identify additional features associated with the 19th century sawmill site as well as to determine if any prehistoric remains may be present. The actual survey area was delineated in consultation with the Kentucky Heritage Council. The survey resulted in no other significant features being uncovered.

Description of Affected Historic Property:

The affected historic property consists of a late 19th century brick arch/spillway (See photographs). The structure is approximately 20 feet long, 4 feet wide, 6 feet high, and has wing walls which extend approximately 15 feet on either side of the inflow end. The structure served as a large culvert underneath a tramline which was used by the sawmill as well as provided a discharge for the log reservoir. The tramline is no longer evident. While the brick feature remains largely intact, the visual integrity of the arch/spillway has been compromised by modern construction of a concrete block wall on both ends of the structure. These walls were intended to maintain a certain level of water in the pond.

The arch/spillway appears to be eligible under Criterion A and C of the *National Register*. The structure was a component, although a relatively minor one, of the Kentucky Union Sawmill. As noted earlier, this facility was one of the largest in the nation at that time. Logging was a major industry in the region during the late nineteenth century and the facility was an integral part of the local economy. Furthermore, the arch/spillway embodies the materials, workmanship, and construction techniques of the late 19th century for this type of structure. Thus, the arch/spillway is significant as a structure and because of its historical context.

Description of Undertaking's Effects on Historic Property:

Excavation of the proposed diversion channel will affect the identified historic feature. The arch/spillway would be situated within the alignment of the channel, thus requiring it to be removed.

Applicability of Adverse effects Criteria:

The criteria of adverse effect apply to the identified historic property because completion of the diversion channel would result in physical destruction of the brick arch/spillway. Alternative projects, such as elevation and buyout, were considered to resolve the flooding problem and these were found to be cost prohibitive relative to the preferred

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proposal. Avoidance of the arch/spillway through redesign of the channel also would result in a significant increase in project costs. Intact removal and encasing of the feature were discussed as mitigation measures. These were discounted because while the feature is historically significant the consensus was that it did not merit such costly preservation measures. Furthermore, removal could result in destruction of the spillway in the process because its structural integrity may have deteriorated through time. Through the consultation process, recording the feature was determined to be the preferred mitigation alternative. Erecting a historical marker also would have been a suitable mitigation measure, however the museum assumed this task some time ago. The historical marker is located within a quarter mile of the project site and details the sawmill's historical significance.

Coordination with Interested/Consulting Parties:

Aside from consultation conducted with the Kentucky Heritage Council, as discussed above, the City and local museum were involved. The City of Clay City is aware of the cultural resources present within the site of the proposed diversion channel and has been party to the Section 106 review process. While they have been cooperative, they are eager to resolve the adverse effects and complete their project to minimize damage from future flooding incidents. This project was first considered over 10 years ago. The City has not expressed a desire to preserve the identified historic feature.

The Red River Historical Society/Museum also has been involved with this project. Staff have been a valuable local information resource. Furthermore, one of the Museum principals is a trained archaeologist. In fact, the museum has expressed an interest in salvaging unique/significant historic artifacts for future display, if any are discovered during excavation. The museum also has not expressed an interest in preserving the brick arch/spillway. Since they are located near the project site they have offered to monitor during excavation activities and notify SHPO and FEMA in the event of significant discoveries.

The proposed diversion channel has been well publicized locally through public meetings and newspapers as part of a NEPA Environmental Assessment.



Federal Emergency Management Agency

Region III
One Independence Mall, Sixth Floor
615 Chestnut Street
Philadelphia, PA 19106-4404

CERTIFIED MAIL RETURN RECEIPT REQUESTED

MT

Mr. Don L. Klima, Director
Office of Planning and Review
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington, D.C. 20004

Dear Mr. Klima,

The Federal Emergency Management Agency (FEMA) is currently reviewing a proposed project submitted on behalf of the applicant, Upland Borough (FEMA-1294-01-DR-PA), by the Pennsylvania Emergency Management Agency (PEMA) for funding under the Hazard Mitigation Grant Program (HMGP). The Borough proposes to acquire and demolish four (4) twin housing units, which were substantially damaged by flooding during Hurricane Floyd in September 1999. Information provided by the Pennsylvania Historic and Museum Commission (PHMC) indicates that all eight properties contribute to the historic resources in the immediate area.

The purpose of this letter is to invite the Council to participate in the consultation process, per the requirements of Section 106 of the National Historic Preservation Act (NHPA), 36 CFR Part 800.

FEMA has applied the criteria of adverse effect and has determined that the proposal to acquire and demolish these four structures located in Upland Borough, Delaware County, Pennsylvania will have an adverse effect on historic resources. However, FEMA believes that the four criteria for Council involvement listed in Appendix A to Part 800 are not applicable to the proposed project.

As required in Section 800.11(e) of the Council's revised regulations, we have enclosed supporting documentation for a finding of adverse effect, as well as maps and photographs of the

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project and site area. We are planning to prepare a Draft Memorandum of Agreement, which will be developed with recommendations from PHMC.

I would appreciate your decision to participate in the consultation process as soon as possible. If you decide not to participate and do not notify this office within the required 15 days, Region III will proceed with consultation with PHMC, PEMA, and Upland Borough. If you have questions or need additional information, please contact the Project Officer, Franki Coons, at (215) 931-5721.

Sincerely,

Thomas M. Majusiak, Director
Mitigation Division

cc: Karen Forbes, FEMA Federal Preservation Officer
Ronald Killins, Sr. PEMA State Hazard Mitigation Officer
Brenda Barrett, Pennsylvania Historic and Museum Commission

Enclosures

Letters Associated with the Development of Section 106 Agreements



Federal Emergency Management Agency

Region IV – Mitigation Division

3003 Chamblee Tucker Road

Atlanta, GA 30341

Phone: (770) 220 5406

Fax: (770) 220 5440

January 24, 2001

Chuck Ellstrom
Public Assistance Program
North Carolina Division of Emergency Management
1830-B Tillery Place
Raleigh, NC 27604

Re: FEMA 1292-DR-NC Public Assistance Program
Demolition of Historic Properties, Princeville, NC

Dear Mr. Ellstrom:

Pursuant to Section 106 of the National Historic Preservation Act and the Programmatic Agreement in effect between our agencies, please find enclosed a Memorandum of Agreement for signing for the above referenced project. Could you please have Mr. Tolbert endorse the four signatory pages with his name on them and return the originals to me, as soon as possible. Note that this Agreement has been mailed simultaneously to the other parties for their signature. The agreement is being signed in counterparts in view of saving time. Once all parties have signed, I will forward an original of the executed agreement for your records and FEMA will complete the stipulated recordation work.

If you should have any questions please contact me at (770) 220-5422. Thank your for your attention to this matter.

Sincerely,

Science Kilner
Lead Historic Preservation Specialist
Mitigation Division

Enclosure

*National Historic Preservation Act Desk Reference
Summer 2001*

Mr. Don L. Klima
Director, Office of Planning and Review
Advisory Council on Historic Preservation
12136 West Bayaud Avenue, Suite 330
Lakewood, Colorado 80226

Subject: City/County of San Francisco, Seismic Structural Retrofit and Rehabilitation of the San Francisco Conservatory of Flowers, FEMA-1008-DR-CA, HMGP #1008-6996

Dear Mr. Klima:

The Federal Emergency Management Agency (FEMA) received numerous comments on the draft version of the Programmatic Agreement (PA) for the subject project. Thank you for reviewing and making recommendations to this document. FEMA took these comments into account and revised the PA accordingly. A copy of the final PA is enclosed, along with seven (7) originals of your signature page. This PA is being executed in counterparts, so each signature appears on a separate page.

Please sign your five original signature pages and return them to me at the address above. Once I have received all signatures, I will forward the PA to the Advisory Council on Historic Preservation (the Council) for acceptance. Upon receipt of the Council's acceptance, the PA will be in effect, and I will distribute a complete original PA to each of the signatories. The Section 106 process for this undertaking will then be complete.

I would also like to take this opportunity to clarify a statement made by Mr. John Fowler (Executive Director of the Council) in a letter to Mr. James Lee Witt (Director of FEMA) dated August 26, 1999. Mr. Fowler wrote that "this agreement [the subject PA] will serve as a model for future project specific PAs that FEMA may develop under our new regulations." Subsequent telephone conversations clarified that Mr. Fowler was referring to the process of the development of future documents for FEMA projects in general and not to the content of specific present and future projects of the City/County of San Francisco.

Thank you for your assistance. If you have any questions, please feel free to call me at (415) 923-7284.

Sincerely,

Sandro Amaglio
Regional Environmental Officer

Enclosures

*National Historic Preservation Act Desk Reference
Summer 2001*

Mr. Tony Irons
Office of the City Architect
City Hall, Room 495
Dr. Carlton B. Goodlett Place
San Francisco, California 94102

Subject: City/County of San Francisco, Seismic Structural Retrofit and Rehabilitation of the San Francisco Conservatory of Flowers, FEMA-1008-DR-CA, HMGP #1008-6996

Dear Mr. Irons:

The Federal Emergency Management Agency (FEMA) has received all signatures, and the Programmatic Agreement (Agreement) for the San Francisco Conservatory of Flowers is now in effect. One set of the Agreement with original signatures is enclosed.

A copy of the Final Environmental Assessment (EA) and of the executed Finding of No Significant Impact (FONSI) for this project is also enclosed for your convenience.

Thank you again for your assistance and cooperation. If you have any questions, please feel free to call me at (415) 923 7284.

Sincerely,

Sandro Amaglio
Regional Environmental Officer

Enclosures

Lisa-Anne M. Wong
Deputy City Attorney
City Hall, Room 234
Dr. Carlton B. Goodlett Place
San Francisco, California 94102

Subject: Agreement Amendment request. City/County of San Francisco, Seismic Structural Retrofit and Rehabilitation of the San Francisco Conservatory of Flowers, FEMA-1008-DR-CA, HMGP #1008-6996

Dear Ms. Wong:

I am in receipt of your letter dated October 27, 1999, which followed your meeting of October 25, 1999, with the Office of Historic Preservation (OHP) representative, Mr. Robert Mackenson, the City of San Francisco (City) Architectural Conservator Consultant (Consultant), Christina Wallace, and Mr. Edgar Lopez, Project Manager, on the subject project.

In the letter, you have asked my concurrence on the amendments to the executed Programmatic Agreement (Agreement) that have been proposed at the meeting by of the OHP, and eventually to seek the Advisory Council in Historic Preservation (Council) concurrence on the same. Additionally, you have stated in the letter that the City is in agreement with the proposed amendments.

FEMA has determined, in coordination with the Council, that the changes requested by the OHP to the Project Documents Review Process can be accepted without implementing Stipulation J. of the Agreement. More specifically, both proposed changes, the a) revision of Stipulations F.3. and F.4. to allow FEMA, the SHPO, and the City ten (10) business days to object to the Consultant determination, and b) the inclusion of an intermediary review of Phase II of the project documents, Between 50% design development and 90 % construction documents, do not alter the nature and the intent of the review process as stipulated in the executed Agreement, for which a formal Amendment process is not required.

This letter serves as acknowledgement and acceptance of the proposed changes to the Document Review Process, which shall be included in contract between the City and the Consultant.

*National Historic Preservation Act Desk Reference
Summer 2001*

Thank you for your assistance. If you have any questions, please feel free to call me at (415) 923-7284.

Sincerely,

Sandro Amaglio
Regional Environmental Officer

Enclosure

cc: Lee Keatinge, Council
Daniel Abeyta, SHPO

Mr. Don L. Klima
Director, Office of Planning and Review
Advisory Council on Historic Preservation
12136 West Bayaud Avenue, Suite 330
Lakewood, Colorado 80226

Attention: Ms. Lee Keatinge

Subject: Northwestern Pacific Railroad, North Coast Railroad Authority, FEMA-1155-DR-CA and FEMA-1203-DR-CA

Dear Mr. Klima:

Pursuant to 36 CFR 800.14(b), the Federal Emergency Management Agency (FEMA) has formally requested that the California State Historic Preservation Officer (SHPO) concur with FEMA's decision to prepare a Secondary Programmatic Agreement (Agreement) to address FEMA's Section 106 compliance requirements regarding the Federal undertaking indicated above. This project involves repair and restoration of the north end of the Northwestern Pacific (NWP) Railroad. Between Willits, California, and Arcata, California, primarily along the Eel River Canyon, the NWP Railroad was substantially damaged in the floods of 1997 and 1998. Due to the extent of damages, the NWP Railroad was shut down in February 1998. The North Coast Railroad Authority (NCRA) has requested that FEMA funds an improved project under Presidential Disasters (FEMA-1155-DR-CA and FEMA-1203-DR-CA) to bring the NWP Railroad to Class I Federal Railroad Administration operational standards. Enclosed for your reference are text and maps, which provide the project description including proposed repairs.

Because there is a possibility that the current scope of work for the proposed repairs may change at a future date, the area of potential effects is not yet defined, and cultural resources surveys are incomplete for the project, it is currently impossible to accurately determine at present all potential effects to historic properties resulting from the project. Thus, it is FEMA's opinion that execution of an Agreement would be the most viable solution to address its Section 106 compliance responsibilities for this project. FEMA envisions the key elements of the Agreement to include:

- Provisions for the identification and completion of pedestrian cultural resources surveys, on those lands not previously subject to cultural resource surveys, which meet current standards and where repair activities have the potential to cause new disturbance.
- Provisions for Native American participation in the Section 106 compliance process, as well as other members of the public likely to have an interest in the project.

*National Historic Preservation Act Desk Reference
Summer 2001*

- Identification of proposed actions that can be categorically exempted from Section 106 compliance.
- Provisions for developing treatment plans for cultural resources formally listed or evaluated and found by the SHPO to be eligible for listing on the National Register of Historic Places which would be affected by the proposed project.
- Provisions for treatment of Native American human remains.
- Provisions for inadvertent discoveries.

In closing, let me state that FEMA strongly feels that an Agreement between FEMA and SHPO would be the most efficient way for FEMA to meet its Section 106 compliance responsibilities for this project. However, if the Council believes its involvement is also required in this Agreement as set forth in 36 CFR 800.14, please let me know as soon as possible. I look forward to receiving your response. Should you have any questions or concerns, please do not hesitate to call me at (415) 923-7284.

Sincerely,

Sandro Amaglio
Regional Environmental Officer

Enclosures

cc: Daniel Abeyta, State Historic Preservation Office

Letters Indicating the Completion of Treatment Measures



Federal Emergency Management Agency

Region IV - Mitigation Division
3003 Chamblee Tucker Road
Atlanta, GA 30341
Phone: (770) 220-5406
Fax: (770) 220-5440

March 23, 2001

Renee Gledhill-Earley
State Historic Preservation Office
North Carolina Division of Archives & History
4617 CMS Center
Raleigh, NC 27699-4617

Re: FEMA DR- NC-1292 Public Assistance Program
Demolition of Historic Properties, Princeville, NC

Dear Ms. Gledhill-Earley:

In accordance with Section 106 of the National Historic Preservation Act and Memorandum of Agreement recently executed between our agencies, please find enclosed for your review the recordation report for the above project. Ten of the 13 contributing resources to the *National Register* eligible historic district in Princeville were photographically documented as stipulated in the Agreement.

Exterior photographs were taken for each structure and pertinent streetscapes also were photographed. Some of the streetscapes have companion "panoramic" shots, which were made with a wide-angle panoramic camera. These shots are included for your perusal as a possible alternative to the standard streetscape photograph. They are significantly wider than the 4x5 camera and, therefore, could show a streetscape with the subject house centered in the photograph. These panoramic photographs could be especially useful in more densely populated areas, where there are several structures in close proximity to one another. We are interested in your thoughts concerning the use of these types of photographs in the future.

Please note that there were no significant interior features to document in the ten structures. Many had been gutted shortly after the flood. For now, we have not provided you with the negatives for this work. We anticipate needing to make additional prints for distribution to interested parties over the next several weeks. Once these prints are made, we intend to forward the negatives to you.

*National Historic Preservation Act Desk Reference
Summer 2001*

Renee Gledhill-Earley
March 23, 2001
Page Two

Once these properties have been demolished, the structures remaining in the district will include the former schoolhouse (old townhall), Mount Zion Primitive Baptist Church, and Glennie's Store. If you have any questions about the enclosed materials, please contact me at (770) 220-5422. Thank you for your continued attention and I look forward to concluding the consultation with your office regarding the Town of Princeville.

Sincerely,

Science Kilner
Lead Historic Preservation Specialist

Cc: Chuck Ellstrom, NCEM
Jack Bond, Princeville

Enclosure



Federal Emergency Management Agency

Region IV – Mitigation Division
3003 Chamblee Tucker Road
Atlanta, GA 30341
Phone: (770) 220 5406
Fax: (770) 220 5440

September 13, 2000

Ms. Martha Catlin
Historic Preservation Specialist
Advisory Council on Historic Preservation
1100 Pennsylvania Ave. NW, Rm 809
Washington, DC 20004

Re: Re: FEMA 1018-004 DR KY Hazard Mitigation Grant Program Project
Red River Diversion Channel, Clay City, Powell County, Kentucky

Dear Ms. Catlin:

In accordance with Section 106 of the National Historic Preservation Act, please be advised that the Federal Emergency Management Agency has mitigated the adverse affect of demolishing a historic property in the above community. Mitigation included architectural and historical recordation as stipulated in the Memorandum of Agreement executed in January between our agencies. Please find enclosed for your file, a letter from the Kentucky Heritage Council approving the documentation.

If you have questions, please contact me at (770) 220-5422.

Sincerely,

Science Kilner
Lead Historic Preservation Specialist

Cc: Karen Forbes, FEMA FPO

Enclosure

Letter to the Council Requesting an Extension to the Emergency Period

Mr. John Fowler
Executive Director
Advisory Council on Historic Preservation
1100 Pennsylvania Ave., NW, Room 809
Washington, DC 20004

Dear Mr. Fowler:

This is to request that the Federal Emergency Management Agency (FEMA) be permitted an additional period of time, not to exceed November 15, 1999, to carry out its Section 106 responsibilities in accordance with 36 CFR §800.12(b)(2) during ongoing response and recovery efforts in North Carolina (1291-DR-NC and 1292-DR-NC), South Carolina (1299-DR-SC) and Virginia (1293-DR-VA) as a result of Hurricane Floyd. Flood waters have just receded, and thus FEMA and State damage assessment teams are only now beginning their work in many of the affected areas.

Confirmation of your concurrence is appreciated. Should you have any questions, please contact me at (202) 646-3807.

Sincerely,

Karen A. Forbes
Federal Preservation Officer

cc: Kyle Mills
Environmental Liaison Officer
1291-DR-NC, 1292-DR-NC

Tom Morello
Environmental Liaison Officer
1299-DR-SC

Catherine Pomerantz
Environmental Liaison Officer
1293-DR-VA

Letter Notifying the Council of an Emergency Review

Mr/Mrs/Ms [name]
Historic Preservation Officer
Advisory Council on Historic Preservation
[Address 1]
[Address 2]

Re: Presidential Disaster Declaration FEMA-xxxx-DR-xx, [location]

Dear [name]:

Numerous structures were damaged or destroyed in [location] as a result of [type of disaster] on [date]. As a result of the [disaster], the [name of property] was severely damaged. The City determined that the [name of property] was in imminent danger of collapse onto a city street, creating a serious public safety hazard. On [date], the City, working closely with the property owner, directed partial demolition to render the structure safe.

This is to confirm that you were notified and afforded opportunity to comment on [date], in accordance with 36 CFR §800.12(b)(2) regarding this structure. Due to the serious nature and urgency of this situation we were unable to provide you with a seven-day notice per the regulation.

We were able to take photographs of the structure before partial demolition occurred and are working with the [SHPO] on the disposition of the negatives and photographs. I am enclosing photographs for your information and files. If you have any questions about this emergency action, please do not hesitate to call me at [phone number].

Sincerely,

[Federal Coordinating Officer or Environmental Liaison Officer]

Enclosures

cc: [SHPO]
[PAO]
[FPO]
[SPAO]

Response Letters from the SHPO on FEMA's Section 106 Determinations

OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION
PO Box xxxxxx
Sacramento, CA xxxxx-xxxx
(916) xxx-xxxx Fax: (916) xxx-xxxx
calshpo@chp.parks.ca.gov

January 31, 2001

Reply to: FEMA 98027U

Mr. Matthew T. Naclerio, Public Works Director
City of Alameda, Public Works Department
Alameda Point, Building 1
950 West Mall Square, Room 110
Alameda, CA 94501-7552

Attention: Mr. C.W. Chung, Associate Civil Engineer

Re: Alameda Free Carnegie Library – Seismic Repair and Rehabilitation
FEMA-0845-DR-CA, HMGP #0845-63-116

Dear Mr. Naclerio,

In accordance with the existing Memorandum of Agreement (MOA), pursuant to Stipulations IV.B and IV.C (Project Documents Review), you have asked for my comments on the 100% Construction Documents (dated December 22, 2000), including Specifications (project documents) for the subject building, which were received by me on December 28, 2000, and January 5, 2001. Thank you for consulting me. In general, the documents evidence considerable thought and care in the proposed treatments to rehabilitate the building. However, there are still some outstanding concerns for resolving specific details of the proposal.

I am also in receipt of the Federal Emergency Management Agency's (FEMA) comments on the same documents (dated January 16, 2001, and received by me on January 18, 2001), also pursuant to the above stipulations.

Please be advised that I concur with all of FEMA's comments, questions, and concerns as listed in order of the Criteria, by Document number. Further, several items are of especial concern as to the impact they may have on historic fabric, and I will re-emphasize them here. These items are:

[list of concerns]

*National Historic Preservation Act Desk Reference
Summer 2001*

After reviewing the submitted 100% Construction Documents and Specifications, I have determined that they do not yet conform to all of the Criteria. Therefore pursuant to Stipulations IV.C. and IV.E. of the MOA, there are still outstanding concerns for the Project Documents as related to the Criteria.

Please refer any Architectural/Engineering questions regarding this undertaking to either Jeanetter Schulz (xxx.xxx.xxxx) or Steade Craigo (xxx.xxx.xxxx) of Architectural Review, and any that pertain to regulatory matters to Hans Kreutzbeg, Chief of Project Review (xxx.xxx.xxxx).

Sincerely,

/signed/

Dr. Knox Mellon
State Historic Preservation Officer

cc: Sandro Amaglio, FEMA
Dave Gardner, FEMA
Bruce David Bradsby, Muller and Caulfield
Alan Dreyfuss, Architect
Paul Jacks, EOS
OHP Staff

OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION
PO Box xxxxxx
Sacramento, CA xxxxx-xxxx
(916) xxx-xxxx Fax: (916) xxx-xxxx
calshpo@chp.parks.ca.gov

October 27, 2000

Reply to: FEMA 980906A

Mr. Sandro Amaglio
Regional Environmental Officer
Region IX—Federal Emergency Management Agency
Building 105—Presidio of San Francisco
San Francisco, CA 94129

RE: San Francisco Fire Stations #35; HMGP 0845-506-133; FEMA 0845-DR-CA

Dear Mr. Amaglio:

I have received the “SFFD Station No. 35/Fireboat Pier Seismic Retrofit, Pier 22 ½, drawings prepared by the San Francisco Bureau of Architecture (Bureau) dated 3/2000 (received October 6, 2000) and your letter sated October 12, 2000 (received October 16, 2000) regarding the above-cited undertaking.

Your letter suggests that Condition 2, discussed in our various letters, has been resolved to be consistent with the recommended treatments in the *Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Standards)*. You further conclude that the project overall is now also consistent with the *Standards* and as such is an exception to the Criteria of Adverse Effect 36 CFR 800.9(c)2, and there has “no adverse effect” on the historic property.

Based on information from the Bureau’s drawings (especially drawing sheet A 3.1) and on my review of FEMA’s most recent correspondence I have concluded that, as described, the project is consistent with the *Standards* and I therefore concur with your determination. If the project is subsequently modified in any way, I will need to reconsider my determination. As indicated in the Programmatic Agreement, FEMA will contact the SHPO if notified by the Bureau of a change in the approved scope of work.

*National Historic Preservation Act Desk Reference
Summer 2001*

I appreciate the opportunity to provide comment and input on this important project. Should you have any outstanding questions pertaining to A/E issues, please call Steade Craig or Jeanette Schulz. Please direct any questions that pertain to regulatory matters to Hans Kreutzberg.

Sincerely,

/signed/

Daniel Abeyta, Acting
State Historic Preservation Officer

cc: Dave Gardner, FEMA

*National Historic Preservation Act Desk Reference
Summer 2001*

OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION
PO Box xxxxxx
Sacramento, CA xxxxx-xxxx
(916) xxx-xxxx Fax: (916) xxx-xxxx
calshpo@chp.parks.ca.gov

July 20, 2000

Reply to: FEMA 951024K

Mr. Sandro Amaglio
Regional Environmental Officer
Region IX—Federal Emergency Management Agency
Building 105—Presidio of San Francisco
San Francisco, CA 94129

RE: Port Costa School Building; FEMA 1044

Dear Mr. Amaglio:

In accordance with the applicable provisions of the Section 106 Programmatic Agreement (PA) that covers the undertaking cited above, I have reviewed the documentation FEMA provided to me on June 22, 2000.

Based on my review of this documentation, I find that the undertaking, if carried out in accordance with this documentation, appears to conform to the SOI Standards and would therefore qualify for a finding of “no adverse effect.” This determination may be subject to reconsideration under applicable terms of the 1044 PA if the project documents need to be modified.

Please direct any A/E-related questions to Stead Craig or Bob Mackensen of my staff and any that pertain to regulatory matters to Hans Kreuzberg.

Sincerely

/signed/

Daniel Abeyta, Acting
State Historic Preservation Officer

Response Letters from the Council

Advisory Council On Historic Preservation

The Old Post Office Building
1100 Pennsylvania Ave., NW, #809
Washington, DC 20004

January 18, 2000

Mr. Sandro Amaglio
Regional Environmental Officer
Region IX—Federal Emergency Management Agency
Building 105—Presidio of San Francisco
San Francisco, CA 94129

RE: *Programmatic Agreement regarding the Northwestern Pacific Railroad, North Coast
Railroad Authority, FEMA-1155-DR-CA and FEMA 1203-DR-CA*

Dear Mr. Amaglio:

We received your notification and supporting documentation on January 13, 2000, regarding the Federal Emergency Management Agency's (FEMA) proposal to fund repair and restoration of the northern segment of the Northwestern Pacific Railroad, an undertaking that may adversely affect properties that are eligible for inclusion in the National Register of Historic Places. Based upon the information you provided, we have concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800) does not apply to this undertaking. Accordingly, we do not believe that our participation in the consultation to develop and finalize a Memorandum of Agreement for this undertaking is needed. However, should circumstances change and you determine that our participation is required, please notify us.

Pursuant to 36 CFR 800.6(b)(iv), you will need to file the final Programmatic Agreement (PA), developed in consultation with the California State Historic Preservation Officer (SHPO), and related documentation at the conclusion of the consultation process. The filing of this PA with the Council is required in order for FEMA to complete its compliance responsibilities under Section 106 of the National Historic Preservation Act.

*National Historic Preservation Act Desk Reference
Summer 2001*

If you have any questions or require further assistance from the Council, please contact me at (xxx) xxx-xxxx or via e-mail at xxxxxxx@achp.gov.

Sincerely

/signed/

Lee Keatinge

Program Analyst

Western Office of Planning and Review

**Advisory
Council On
Historic
Preservation**

The Old Post Office Building
1100 Pennsylvania Ave., NW, #809
Washington, DC 20004

August 26, 1999

Mr. Sandro Amaglio
Regional Environmental Officer
Region IX—Federal Emergency Management Agency
Building 105—Presidio of San Francisco
San Francisco, CA 94129

RE: *Seismic Structural Retrofit and Rehabilitation of the San Francisco Conservatory of
Flowers, Golden Gate Park, San Francisco, CA
FEMA-1008-DR-CA, HMGP-1008-6-996*

Dear Mr. Amaglio:

The Council received the Federal Emergency Management Agency's (FEMA) letter on August 17, 1999, regarding the upcoming consultation to develop a Programmatic Agreement (PA) for the seismic structural retrofit and rehabilitation of the San Francisco Conservatory of Flowers. In accordance with 36 CFR §800.6(a)(1) of the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800), we have determined that this undertaking meets the criteria in Appendix A, and accordingly, we accept your invitation to participate in consultation.

We have determined that this undertaking meets Criterion 2 of Appendix A since this agreement will serve as a model for future project specific PA's that FEMA may develop under our new regulations. Further, Criterion 3 appears to apply because not only is there substantial local interest in the preservation of this property, but the Conservatory of Flowers was recognized by the First Lady during her tour promoting the "Save America's Treasures" program. We have provided written notification of the Council's decision to enter the consultation on this project to Director James Lee Witt as required by 36 CFR §800.6(a)(1)(iii)(see enclosed).

We look forward to working with FEMA to develop the PA. If you have any questions or wish to discuss this further, please contact Lee Keatinge of the Council's Denver office at (xxx)xxx-xxxx, or via e-mail at xxxxxxxx@achp.gov.

Sincerely,

/signed/
Don Klima
Director, Office of Planning and Review

FEDERAL EMERGENCY MANAGEMENT AGENCY

HISTORIC REVIEW ASSESSMENT FOR DETERMINATION OF ADVERSE EFFECT

PA ID NO.	PROJECT NO.	LATITUDE/LONGITUDE
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ADDRESS/LOCATION OF FACILITY/SITE	HISTORIC NAME AND ID #
-----------------------------------	------------------------

HISTORIC STATUS NHL NR/NR eligible State Register or other Contributing to Historic District

1. Describe disaster damage, particularly as it relates to character-defining features:

2. The proposed scope of work will (check all that apply):

Repair or replace non character-defining features Repair and or/replace historic features/elements in kind to return facility to pre-disaster condition
 Alter or remove historic features/elements. Add non-historic features/elements to a historic facility, setting or
 Disturb, destroy or make archeological resources Include mitigation, an alternate project or an improved project.
 Other _____

3. Describe measures to prevent or minimize loss or impairment of character-defining features:

4. Attachments:

Maps Field Notes Scope of Work Site Plan Nation Register Nomination Form
 Drawings Research Material Project Worksheet Specifications Summary Views of Interested Parties
 Photographs Archeological Other

5. Conclusions:

5a. No Character-defining features will be affected.
 5b. The above action(s) meets the conditions for a Programmatic Allowance #_____ of the Programmatic Agreement governing historic review.
 5c. The above action(s) substantially conforms with the applicable parts of the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation.
 5d. Further consultation with the SHPO and applicant in accordance with the Programmatic Agreement is required.
 5e. Development of Memorandum of Agreement is required to treat the adverse effect.

6. Assessment of Adverse Effect (check one) No Adverse Effect Adverse Effect

7. Specialist: Your signature shows that you have reviewed this form and related material for conformity with requirements in FEMA's Programmatic Agreement governing compliance with the National Historic Preservation Act; applicable parts of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards), the Secretary of the Interior's Guidelines for Archeological Documentation (Guidelines), or any other applicable Secretary of the Interior's Standards, 44 CFR Part 206, and FEMA Management Policies, and have provided your best professional opinion.

COMMENTS

NAME	FIELD OF EXPERTISE	DATE
------	--------------------	------

8. Action Taken and Date

Technical Assistance Publications and Documents

National Register of Historic Places Bulletins **(available on-line at <http://www.cr.nps.gov/nr/publications/bulletins.htm>)**

The National Register Bulletin Series provides you with guidance to document, evaluate and nominate historically significant sites to the National Register. The series is divided into four sections: the Basics, Property Types, Technical Assistance, and General Guidance. We also have several brochures that provide information on the programs of the National Register.

Most Bulletins and Brochures are available in electronic versions in hard copy, which can be ordered on-line. Those publications that are available ONLY in electronic versions on-line are indicated by an asterix (*). The parenthetical numbers are in reference to a former numbering system which is being phased out.

National Register Bulletins

The Basics

- [How to Apply the National Register Criteria for Evaluation](#) (#15)
- [How to Complete the National Register Registration Form](#) (#16A)
- [How to Complete the National Register Multiple Property Documentation Form](#) (#16B) (A [video](#) on the multiple property approach is also available.)
- [How to Prepare National Historic Landmark Nominations](#)
- [Researching a Historic Property](#) (#39)

Property Types

- [Guidelines for Evaluating and Registering Archeological Properties](#)
(This expands the former *Historical Archeological Sites and Districts* Bulletin [#36]*)
- [Guidelines for Evaluating and Documenting Historic Aviation Properties](#)
- [Guidelines for Evaluating and Nominating Aids to Navigation](#) (#34) (download in [WordPerfect 5.1 format, self-extracting file](#))
- [Guidelines for Identifying, Evaluating, and Registering America's Historic Battlefields](#) (#40)
- [Guidelines for Evaluating and Registering Cemeteries and Burial Places](#) (#41)
- [How to Evaluate and Nominate Designed Historic Landscapes](#) (#18)
- [Guidelines for Identifying, Evaluating and Registering Historic Mining Properties](#) (#42)

- Guidelines for Evaluating and Nominating Properties That Have Achieved Significance Within the Past Fifty Years (#22)
- How to Apply National Register Criteria to Post Offices (#13)(download in WordPerfect 5.1 format, self-extracting file)
- Guidelines for Evaluating and Documenting Rural Historic Landscapes (#30)
- Guidelines for Evaluating and Documenting Properties Associated with Significant Persons (#32)
- Guidelines for Evaluating and Documenting Traditional Cultural Properties (#38) (A video on evaluating traditional cultural properties is also available)
- Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places (#20)

Technical Assistance for Preparing Nominations

- Defining Boundaries for National Register Properties (with Appendix, Definition of National Register Boundaries for Archeological Properties)
- How to Improve the Quality of Photographs for National Register Nominations (#23)
- Telling the Stories: Planning Effective Interpretive Programs for Places Listed in the National Register of Historic Places
- Using the UTM Grid System to Record Historic Sites (#28)*
- Reviewing National Register Nominations (#19) *

General Guidance

- Guidelines for Local Surveys: A Basis for Preservation Planning (#24) (download in WordPerfect 5.1 format, self-extracting file OR zipped file)
- Examples of National Register Nomination Documentation: Concise Documentation (#35) (download in WordPerfect 5.1 format, self-extracting file)*
- Code of Federal Regulations: 36 CFR Part 60 National Register of Historic Places
- National Register Casebook: Examples of Documentation

Preservation Briefs

(available on-line at http://www2.cr.nps.gov/tps/tpscat_1.htm)

Preservation Briefs assist owners and developers of historic buildings in recognizing and resolving common preservation and repair problems prior to work. The briefs are especially useful to preservation tax incentive program applicants because they recommend those methods and approaches for rehabilitating historic buildings that are consistent with their historic character. In addition to purchasing the printed PBs from GPO, please don't miss the online **Illustrated Preservation Briefs**.

Government Printing Office

Historic Buildings Preservation Briefs #1-14 (set).

The "classic" package, many of the issues and topics parallel the early history of the NPS preservation program. Briefs 1-14 can *only* be purchased in this set. This most recent collection contains the newly revised Preservation Briefs #2 on repointing historic masonry buildings. Popular for classrooms, rehabilitation workshops, and preservation conferences. 1998. GPO stock number: 024-005-01026-2. \$16.00.

Preservation Brief 1: Assessing Cleaning and Water-Repellent Treatments for Historic Masonry Buildings. Robert C. Mack, FAIA, and Anne E. Grimmer. Surveys a variety of cleaning methods and materials and provides guidance on selecting the most appropriate method and the *gentlest means possible*. Discusses water-repellent coatings and waterproof coatings together with the purpose of each, the suitability of their application to historic masonry buildings, and possible consequences of their inappropriate use. 16 pages. 27 illustrations. 2000. GPO stock number: 024-005-01207-9. \$2.25 per copy.

Preservation Brief 2: Repointing Mortar Joints in Historic Masonry Buildings. Robert C. Mack, FAIA, and John P. Speweik. Provides general guidance on appropriate materials and methods for repointing historic masonry buildings. This publication revises the 1980 edition of *Preservation Briefs 2: Repointing Mortar Joints in Historic Brick Buildings*. The new PB#2 includes guidance for all types of historic masonry. 16 pages. 36 illustrations. 1998. GPO stock number: 024-005-01192-7. \$2.00 per copy.

Preservation Brief 3: Conserving Energy in Historic Buildings. Baird M. Smith, AIA. Provides information on materials and techniques to consider or avoid when undertaking weatherization and energy conservation measures in historic buildings. 8 pages. 8 illustrations. 1978.

Preservation Brief 4: Roofing for Historic Buildings. Sara M. Sweetser. Provides a brief historic of the most commonly used roofing materials in America. Presents a sound preservation approach to roof repair, roof replacement, and the use of alternative roofing materials. 8 pages. 1978.

Preservation Brief 5: The Preservation of Historic Adobe Buildings. Provides information on the traditional materials and construction of adobe buildings, and the causes of adobe deterioration. Makes recommendations for preserving historic adobe buildings. 8 pages. 15 illustrations. 1978.

Preservation Brief 6: Dangers of Abrasive Cleaning to Historic Buildings. Anne E. Grimmer. Cautions against the use of sandblasting to clean various buildings and suggests measures to mitigate the effects of improper cleaning. Explains the limited circumstances under which abrasive cleaning may be appropriate. 8 pages. 10 illustrations. 1979.

Preservation Brief 7: The Preservation of Historic Glazed Architectural Terra-Cotta. de Teel Patterson Tiller. Discusses deterioration problems that commonly occur with terra-cotta and provides methods for determining the extent of such deterioration. Makes recommendations for maintenance and repair, and suggests appropriate replacement materials. 8 pages. 11 illustrations. 1979.

Preservation Brief 8: Aluminum and Vinyl Siding on Historic Buildings: The Appropriateness of Substitute Materials for Resurfacing Historic Wood Frame Buildings. John H. Myers, revised by Gary L. Hume. Discusses the appearance of various types of historic wood siding and makes recommendations for repair and replacement. Outlines the very limited instances under which substitute siding may be an acceptable alternative. 7 pages. 5 illustrations. Rev., 1984.

Preservation Brief 9: The Repair of Historic Wooden Windows. John H. Myers. Provides useful information on evaluating and repairing historic wooden windows found in typical rehabilitation projects. Emphasizes practical methods for homeowners or developers. 8 pages. 10 illustrations. 1981.

Preservation Brief 10: Exterior Paint Problems on Historic Woodwork. Kay D. Weeks and David W. Look, AIA. Identifies and describes common types of paint surface conditions and failures. Provides guidance on preparing historic woodwork for repainting, including limited and total paint removal. 12 pages. 14 illustrations. 1982.

Preservation Brief 11: Rehabilitating Historic Storefronts. H. Ward Jandl. Explores the role of the storefront in historic buildings and provides guidance on rehabilitation techniques for historic storefronts as well as compatible storefront designs. 12 pages. 12 illustrations. 1982.

Preservation Brief 12: The Preservation of Historic Pigmented Structural Glass (Vitrolite and Carrara Glass). Provides information on the early manufacture, installation, and use of this decorative building product commonly found in 20th century buildings; reasons for its damage; and a general approach for its maintenance, repair, and replacement. 8 pages. 16 illustrations. 1984.

Preservation Brief 13: The Repair and Thermal Upgrading of Historic Steel Windows.

Sharon C. Park, AIA. Presents brief historical background on the development, use, and styles of rolled steel windows popular in the first half of the 20th century. Explains steps for cleaning and repairing damaged steel windows; also provides information on appropriate methods of weatherstripping and options for storm panels or the installation of thermal glass. 12 pages. 10 illustrations. 1984.

Preservation Brief 14: Exterior Additions to Historic Buildings: Preservation Concerns. Kay D. Weeks. Uses a series of examples to suggest ways that attached additions can successfully serve contemporary uses as part of a rehabilitation project while preserving significant historic materials and features and the building's historic character. 12 pages. 30 illustrations. 1986.

Historic Buildings Preservation Brief #15-23 (set)

By popular demand, a second packaging of the Preservation Brief at a bargain price! Preservation Brief 15-23 can *only* be purchased in this set. 1991. GPO stock number: 024-005-01085-8. \$15.00 per set.

Preservation Brief 15: Preservation of Historic Concrete: Problems and General Approaches. William B. Coney, AIA. Focus on reinforced concrete (cast-in-place or reinforced), useful for anyone undertaking repair or limited replacement. The guidance addresses the causes of concrete deterioration, the signs of deterioration, and actual concrete repair. 12 pages. 27 illustrations. 1987.

Preservation Brief 16: The Use of Substitute Materials on Historic Building Exteriors. Sharon C. Park, AIA. Includes a discussion of when to use substitute materials, cautions regarding their expected performance, and descriptions of several substitute materials together with advantages and disadvantages. Summary charts included. 16 pages. 34 illustrations. 1988.

Preservation Brief 17: Architectural Character - Identifying the Visual Aspects of Historic Buildings as an Aid to Preserving Their Character. Lee H. Nelson, FAIA. Essential guidance to help property owners and architects identify those features of historic buildings that give the building its visual character so that their preservation can be maximized in rehabilitation. 12 pages. 27 illustrations. 1988.

Preservation Brief 18: Rehabilitating Interiors in Historic Buildings - Identifying Character-Defining Elements. H. Ward Jandl. Assists building owners in identifying significant interior spaces, features, and finishes so they may be preserved in rehabilitation work. The guidance applies to all building types and styles, from 18th century churches to 20th century office buildings. 8 pages. 11 illustrations. 1988.

Preservation Brief 19: The Repair and Replacement of Historic Wooden Shingle Roofs. Sharon C. Park, AIA. Discusses historic wooden roofing, expectations for longevity, and repair and replacement options. Identifies roofing material that duplicates the appearance of a historic roof, offers guidance on proper installation, and provides information on coatings and maintenance procedures to help preserve the roof. 12 pages. 16 illustrations. 1989.

Preservation Brief 20: The Preservation of Historic Barns. Michael J. Auer. Identifies historic barn types, helps owners understand the historic character of their barns, and offers advice on the maintenance, repair, and rehabilitation of old and historic barns. 12 pages. 30 illustrations. 1989.

Preservation Brief 21: Repairing Historic Flat Plaster--Walls and Ceilings. Marylee MacDonald. Guides building owners on repairing historic plaster using traditional materials (wet plaster) and techniques. Suggests replacement options if the historic plaster is severely deteriorated. Useful chart on various plaster bases and compatible basecoats and finish coats. 14 pages. 17 illustrations. 1989.

Preservation Brief 22: The Preservation and Repair of Historic Stucco. Anne E. Grimmer. Describes the evolution of stucco as a popular building material, beginning with a brief history of how stucco is applied, and how its composition, texture, and surface patterns have changed. Includes guidelines for the historic property owner or manager on

how to plan for and carry out repair of historic stucco, with sample mixes for 18th, 19th, and 20th century stucco types. 12 pages. 33 illustrations. 1990.

Preservation Brief 23: Preserving Historic Ornamental Plaster. David Flaharty. Discusses ornamental plaster production, explaining the processes of run-in-place and cast ornamentation using three common decorative forms as examples: the cornice, ceiling medallion, and coffered ceiling. Guidance will help an owner identify deterioration causes and better understand complex restoration techniques. Useful advice on selecting and evaluating a restoration contractor is included. 12 pages. 34 illustrations. 1990.

Historic Buildings Preservation Brief #24-34 (set)

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Preservation Brief 24: Heating, Ventilating, and Cooling Historic Buildings: Problems and Recommended Approaches. Sharon C. Park, AIA. Underscores the importance of careful planning in order to balance preservation objectives with the interior climate needs of the building. Useful charts included. 14 pages. 28 illustrations. 1991.

Preservation Brief 25: The Preservation of Historic Signs. Michael J. Auer. Discusses the history of sign types pre-1800 to the 20th century, including symbol signs, flat signs, fascia signs, hanging signs, goldleaf signs, rooftop signs, and neon signs. Makes recommendations for their repair and re-use. 12 pages. 29 illustrations. 1991.

Preservation Brief 26: The Preservation and Repair of Historic Log Buildings. Bruce L. Bomberger. Focuses on horizontally laid or vertically positioned logs, but the preservation and repair treatments are essentially the same for all log structures. Discusses traditional splicing-in techniques, the use of epoxies, and replacement, as well as guidance on the repair and replacement of chinking and daubing. 14 pages. 32 illustrations. 1991.

Preservation Brief 27: The Maintenance and Repair of Architectural Cast Iron. John G. Waite; historical overview by Margot Gayle. Discusses the role of cast iron in the industrial development of our country during the 19th century and the resulting advances in building design and technology and ornamental detailing. Provides essential guidance on maintaining and repairing architectural cast iron within rehabilitation projects. 12 pages. 30 illustrations. 1991.

Preservation Brief 28: Painting Historic Interiors. Sara B. Chase. Discusses wall paint and decorative surface treatments from the late 17th century to the 1950s. Describes the usefulness of a complete paint investigation for preservation and restoration projects. Provides guidance on the common causes of interior paint failure and preparing surfaces for repainting. Makes recommendations about paint with health and safety factors in mind. 16 pages. 22 illustrations. 1992.

Preservation Brief 29: The Repair, Replacement, and Maintenance of Slate Roofs. Jeffrey S. Levine. Describes the causes of slate roof failures and provides comprehensive guidance on their sensitive repair and, when necessary, their appropriate replacement. A useful Repair/Replacement Guideline is included to assist owners prior to work. 16 pages. 42 illustrations. 1992.

Preservation Brief 30: The Preservation and Repair of Historic Clay Tile Roofs. Anne E. Grimmer and Paul K. Williams. Reviews the history of clay roofing tiles and describes many types and shapes of historic tiles, as well as their method of attachment. Provides

general guidance for historic property owners on how to plan and carry out a project involving the repair and selected replacement of historic clay roofing tiles. 16 pages. 33 illustrations. 1992.

Preservation Brief 31: Mothballing Historic Buildings. Sharon C. Park, AIA. Describes process of protecting a deteriorating historic building from weather as well as vandalism when funds are not currently available to begin a preservation, rehabilitation, or restoration project. 14 pages. 27 illustrations. 1993.

Preservation Brief 32: Making Historic Properties Accessible. Thomas C. Jester and Sharon C. Park, AIA. Introduces the complex issue of providing accessibility at historic properties, and underscores the need to balance accessibility and historic preservation. Provides guidance and many examples of successful projects. 14 pages. 43 illustrations. 1993.

Preservation Brief 33: The Preservation and Repair of Stained and Leaded Glass. Neal A. Vogel and Rolf Achilles. Gives a short history of stained and leaded glass in America. surveys basic preservation and documentation issues and addresses common causes of deterioration and presents protection, repair, and restoration options. 1993. 16 pages. 25 illustrations. 1993.

Preservation Brief 34: Applied Decoration for Historic Interiors: Preserving Historic Composition Ornament. Jonathan Thornton and William Adair, FAAR. Describes the history, appearance, and characteristics of this uniquely pliable material. Provides guidance on identifying compo and suggests appropriate treatments, depending upon whether the project goal is preservation or restoration. 16 pages. 52 illustrations. 16 pages. 51 illustrations. 1994.

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Preservation Brief 35: Understanding Old Buildings: The Process of Architectural Investigation. Travis C. McDonald, Jr. Explains architectural investigation as the critical first step in planning an appropriate treatment--understanding how a building has changed over time and assessing levels of deterioration. Addresses the often complex investigative process in broad, easy-to-understand terminology. 1994. 16 pages. 23 illustrations. 1994. *GPO stock number: 024-005-01143-9. \$1.75 per copy.*

Preservation Brief 36: Protecting Cultural Landscapes: Planning, Treatment, and Management of Historic Landscapes. Charles A. Birnbaum, ASLA. Describes cultural landscapes as special places that reveal aspects of our country's origins and development through their form and features and the ways they were used. Provides a step-by-step process for preserving historic designed and vernacular landscapes to ensure a successful balance between historic preservation and change. 20 pages. 50 illustrations. 1994. *GPO stock number: 024-005-01144-7. \$1.75 per copy.*

Preservation Brief 37: Appropriate Methods of Reducing Lead-Paint Hazards in Historic Housing. Sharon C. Park, AIA, and Douglas C. Hicks. Recommends an appropriate methodology for planning and implementing measures to reduce lead-paint hazards in historic houses while preserving their character-defining features. Follows a well-balanced approach that is sensitive to the health and safety of children who live in historic houses as well as those involved in rehabilitation and restoration projects. Includes useful decisionmaking charts. 16 pages. 32 illustrations. 1995. *GPO stock number: 024-005-01149-8. \$1.75 per copy.*

Preservation Brief 38: Removing Graffiti from Historic Masonry. Martin E. Weaver. Focuses on cleaning methods that can be used to remove surface-applied graffiti without damaging historic masonry. Emphasizes prompt removal as the key to preventing recurrence of graffiti, as well as the importance of developing a maintenance program in advance to be prepared when graffiti occurs. Includes "tips" for successful graffiti removal, a discussion of barrier coatings, and useful charts designed to guide the graffiti-removal process. 15 pages. 23 illustrations. 1995. *GPO stock number: 024-005-01158-7. \$2.00 per copy.*

Preservation Brief 39: Holding the Line: Controlling Unwanted Moisture in Historic Buildings. Sharon C. Park, AIA. Outlines a way to diagnose moisture problems and choose remedial treatments within a historic preservation context. Considers the five major sources of moisture, including the exterior building envelope, ground moisture infiltration, interior condensation, leaking pipes, and moisture from cleaning or construction. Provides guidance on managing moisture deterioration, repairing and maintaining historic building materials, and correcting common problem areas. Includes charts on types of diagnostic tools, recommended treatments and treatments that should always be avoided. 16 pages. 30 illustrations. 1996. *GPO stock number: 024-005-01168-4. \$1.75 per copy.*

Preservation Brief 40: Preserving Historic Ceramic Tile Floors. Anne E. Grimmer and Kimberly A. Konrad. Summarizes the historical use of glazed and unglazed ceramic tiles as a traditional flooring material, and describes different types of tiles, including quarry tiles, encaustic tiles and geometric tiles, and mosaic tiles. Provides useful guidance for maintaining and preserving historic ceramic tile flooring, on cleaning treatments, and on protective and code-required, slip resistant coatings. Also contains information on various repair options, as well as the selective replacement of damaged tiles. Useful sources for replacement tiles. 16 pages. 25 illustrations. 1996. *GPO stock number: 024-005-01169-2. \$1.75 per copy.*

Preservation Brief 41: The Seismic Retrofit of Historic Buildings: Keeping Preservation in the Forefront. David Look, AIA, Terry Wong, and Sylvia Rose Augustus. Discusses the issues of protecting historic buildings in seismic areas from earthquake damage. Stresses the importance of working with a team of specialists familiar with historic building construction and the alternative approaches to seismic retrofit that make a building safe without destroying significant historic materials. Provides essential guidance on evaluating historic buildings, the extent of strengthening to consider, design approaches, and the visual impact of these changes. 16 pages. 37 illustrations. 1997. *GPO stock number: 024-005-01184-6. \$2.00 per copy.*

Preservation Tech Notes

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Preservation Tech Notes (Set #1). NTIS order number: PB88-192257.

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Summer 2001*

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Windows No. 15: "Interior Storms for Steel Casement Windows," by Charles Fisher and Christina Henry. (1986)

Replacement Frames and Sash

Windows No. 4: "Replacement Wooden Frames and Sash," by William Feist. (1984)

Windows No. 6: "Replacement Wooden Sash and Frames With Insulating Glass and Integral Muntins," by Charles Parrott. (1984)

Windows No. 12: "Aluminum Replacements for steel Industrial Sash," by Charles Fisher. (1986)

Windows No. 13: "Aluminum Replacement Windows with Sealed Insulating Glass and Trapezoidal Muntin Grids," by Charles Parrott. (1985)

Windows No. 18: "Aluminum Replacement Windows with True Divided-Lights, Interior Piggyback Storm Panels, and Exposed Historic Wooden Frames," by Charles Parrott. (1991)
Screens, Awnings, and Other Accessories

Windows No. 7: "Window Awnings," by Laura Muckenfuss and Charles Fisher. (1984)

Relevant FEMA Program Policies

Public Assistance Policies

9521.2 Private Nonprofit Museum Eligibility

- 1. Date Published:** August 17, 1999
- 2. Response and Recovery Directorate Policy Number:** 9521.2
- 3. Title:** Private Nonprofit Museum Eligibility
- 4. Purpose:** This policy clarifies what constitutes a museum as an eligible private non-profit (PNP) facility for the purpose of funding repair or replacement.
- 5. Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after its publication date. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations under the provisions of the Public Assistance (PA) Program. This policy does not address museum collections or individual holdings; that topic will be the subject of a separate policy.
- 6. Background:**
 - A. Publicly owned museums have long been eligible for disaster recovery assistance. More recently, Congress specifically added PNP museums as eligible facilities. Museums were included on the list of PNP essential governmental services listed in House Report No. 100-517, which accompanied H.R. 2707 (the bill which became the Stafford Act).
 - B. This policy was developed to guide consistent treatment of PNP museums.
- 7. Policy:**
 - A. PNP museums are confined facilities which are constructed or manufactured whose primary purposes are to:
 - Preserve a documented collection of artistic, historic, scientific or other objects, and
 - Exhibit the documented collection to the general public.Subject to the provisions that follow, PNP museums may be eligible for public assistance grant funding.
 - B. Specific inclusions:
 - The museum buildings that are used for the preservation and exhibition of the documented collection.

- Permanent facilities (e.g., walkways and driveways) of outdoor areas dedicated to museum-type exhibits.
- PNP-owned historical buildings, including their appurtenances such as barns and other outbuildings, intended for preservation and exhibition of artifacts when they are within a defined area and maintained to exhibit the historical culture.
- PNP-owned fixed facilities and equipment that are part of arboretums and botanical gardens.
- Infrastructure (water, power, sewer/septic) necessary to support the museum building.

C. Exclusions:

- Administrative buildings and other assets that are not essential to the preservation and exhibition of objects for the general public are not eligible for public assistance funding.
- The grounds at museums and historical sites are not eligible.
- The definition of PNP museums does not include open natural areas or features, and it does not include entities that promote the preservation and conservation of such areas.

8. Supersession: Memorandum from Craig S. Wingo to Nicholas B. Nikas dated October 5, 1995; Subject: FEMA-1044-DR-CA, Clarification of Term “Museum” as applied to Santa Catalina Island Conservancy, and other relevant provisions of previous policy documents.

9. Authorities: Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended, Section 102 (9) and Section 406(a)(2); 44 CFR 206.221(e)(6).

10. Originating Office: Infrastructure Division, Response and Recovery Directorate

11. Review Date: Two years from date of publication.

12. Signature:

Signed
Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

13. Distribution: Regional Directors, Regional and Headquarters R&R Division Directors

9523.4 Demolition of Private and Public Facilities

- 1. Date Published:** November 9, 1999
- 2. Response and Recovery Directorate Policy Number:** 9523.4
- 3. Title:** Demolition of Private and Public Facilities
- 4. Purpose:** This policy provides guidance in determining the eligibility of structures for demolition under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended (Stafford Act).
- 5. Scope and Audience:** This policy is intended to guide Federal Emergency Management Agency (FEMA) personnel responsible in making eligibility determinations for the Public Assistance grant program. The provisions of this policy relating specifically to Section 404 Hazard Mitigation buyouts and relocations are a formalization, continuation and refinement of the concept contained in the 1995 policy memorandum referenced in Paragraph 9. The other provisions of this policy are unchanged from the Interim policy issued on September 14, 1999.
- 6. Background:** This policy applies to the exercise of authorities for emergency work and permanent recovery. Recent disasters highlighted the lack of common understanding of the appropriate application of the authorities of Sections 403 and 407 of the Stafford Act. This policy supersedes Interim Policy #9523.4 issued on September 13, 1999 and incorporates provisions for the application of emergency authorities to Section 404 Hazard Mitigation buyout and relocation projects.

FEMA sometimes is requested to pay for the demolition of public and private structures in the aftermath of declared disasters. The most frequent use of demolition authority is to use Section 403 of the Stafford Act to fund the demolition of unsafe structures that endanger the public. Section 406 of the law, which funds the permanent repair of eligible structures, also has been used to fund demolition when demolition has been part of funding of a FEMA-approved Section 406 project. Section 407 of the law may be used to clear debris and wreckage resulting from a major disaster when it is determined to be in the public interest.

7. Policy:

- A. Insurance. When demolition is covered by an insurance policy, the insurance proceeds must be used as the first source of funding.
- B. Special Considerations. Historic and environmental requirements must be addressed unless otherwise exempted. The following table provides general guidance.

Stafford Act Reference	National Environmental Policy Act	Other Federal Laws (National Historical Preservation Act, Endangered Species, Clean Water Act), Regulations, EO's
Section 403 and 407	Not required (statutorily excluded; see Section 316 of the Stafford Act)	Required (some laws have special procedures in emergency circumstances)
Section 406	Depends on Associated Eligible Action (a) Not required with repair substantially to pre-disaster condition project. Statutorily excluded; see Section 316 of the Stafford Act. (b) Required when determined as independent from a repair to pre-disaster condition project. (c) Required with improved or alternate projects.	Required

C. Basic Eligibility for Demolition. In order to be eligible for demolition and debris removal, an eligible applicant must incur an eligible expense. Upon meeting the above requirements, Public Assistance Program funds may be used for demolition and debris removal.

1. Section 403 Funding.

a. Publicly-owned and eligible Private Nonprofit (PNP) structures. Demolition and removal of debris is eligible for publicly-owned structures and the eligible structures of eligible PNP organizations when:

- the structures were damaged by the disaster, and
- the structures are determined to be unsafe and pose an immediate danger to the public, and
- the work is completed within the completion deadlines outlined in 44CFR 206.204 for emergency work.

b. Privately-owned damaged structures.

- Privately-owned damaged structures may be eligible for Public Assistance grant funding for demolition (and the removal of debris from the demolition) if they meet the criteria in the three bullets contained in Paragraph 7.C.1.a. and liability and legal permission requirements are met.

- Generally, the removal of the debris from private property is not an eligible cost unless the disaster caused very severe and widespread damage and the removal of the debris is necessary: to eliminate an immediate threat to life, public health and safety; to eliminate immediate threats of significant damage to improved public or private property; or to ensure the economic recovery of the affected community to the benefit of the community-at-large.
 - Except in very unusual circumstances, such as erosion under slabs on a hillside, slabs or foundations do not constitute debris or wreckage, nor do they present a health or safety hazard to the general public. Broken slabs, or slabs incapable of supporting a new structure, typically do not constitute a public health or safety hazard. Slabs removed primarily for reconstruction purposes are not eligible for removal as disaster-related debris.
 - Individuals and private organizations (except for eligible PNPs with documentation of their efforts on property for which they are responsible) will not be reimbursed for their efforts on their own properties.
- c. Debris removal using the economic recovery criterion normally is restricted to the removal of disaster-related debris from large commercial areas to expedite restoration of the economic viability of the affected community.
- d. To address current health and safety requirements, the following building demolition costs are eligible: capping wells, pumping and capping septic tanks, and filling in basements and swimming pools. The removal or covering of pads and driveways is not considered part of the emergency demolition of structures.
- e. Structures condemned as safety hazards before the disaster are not eligible for demolition and resulting debris removal under Public Assistance grant authority.
- f. Habitable (but not yet damaged) structures are not eligible for demolition under Public Assistance grant authority even when they are in serious danger of total destruction (e.g., on a failing slope).
2. Section 407 Funding.
- a. This authority may be used to fund removal of debris and wreckage caused by a major disaster when the Director, FEMA, determines that the removal would be in the public interest.

- b. Generally, the removal of debris is in the public interest only when it is necessary to:
- eliminate immediate threats to life, public health, and safety, or
 - eliminate immediate threats of significant damage to improved public or private property, or
 - ensure economic recovery of the affected community to the benefit of the community at large. The use of this criterion normally is restricted to the removal of disaster-related debris from large commercial areas to expedite restoration of the economic viability of the affected community.
- c. Structures may not be demolished using this authority unless the structures can be defined as debris or wreckage caused by the major disaster. The following criteria also apply:
- the structures were damaged by the disaster, and
 - the structures are determined to be unsafe and pose an immediate danger to the public (or the Regional Director otherwise determines that their removal is clearly in the public interest), and
 - the structures have been uninhabited since the major disaster.
- d. While timely action is required, the timeline for emergency work does not govern the use of this authority.
- e. Structures condemned as safety hazards before the disaster are not eligible for demolition and resulting debris removal under Public Assistance grant authority.
- f. Except in very unusual circumstances, such as erosion under slabs on a hillside, slabs or foundations do not constitute debris or wreckage, nor do they present a health or safety hazard to the general public. Broken slabs, or slabs incapable of supporting a new structure, typically do not constitute a public health or safety hazard. Slabs removed primarily for reconstruction purposes are not eligible for removal as disaster-related debris.
- g. The removal of substantially damaged structures and the removal of slabs, driveways, fencing, garages, sheds and similar appurtenances are eligible costs when the property is part of a Section 404 Hazard Mitigation buyout and relocation project. In each case, the principle structure must have been substantially damaged by the disaster, as determined by the local building official.

3. Section 406 Funding of Permanent Work.
 - a. Demolition of a structure and removal of debris may be funded when demolition is required:
 - as part of a Public Assistance program repair, replacement, or construction project,
 - as part of a relocation required by the FEMA Regional Director under 44 CFR 206.226(e)(2), or
 - as part of an approved relocation cost when a Public Assistance program structure is being moved out of the 100 year floodplain.
 - b. Demolition also may be funded when it is part or all of an approved alternate project for the welfare of the general public.

8. Supersession: This policy replaces RR #9523.4, *Interim Policy on Demolition of Private and Public Facilities*, issued September 14, 1999.

9. Reference: Memorandum dated March 30, 1995, "*Demolition of Flood Damaged Structures Under Section 403 of the Stafford Act*," from Richard W. Krimm, Associate Director, Response and Recovery Directorate, to Richard T. Moore, Associate Director for Mitigation.

10. Authorities: Stafford Act, Sections 403, 406 and 407; 44 CFR 206.

11. Originating Office: Infrastructure Division, Response and Recovery Directorate.

12. Review Date: Two years from date of publication.

13. Signature:

Signed

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

14. Distribution: Regional Directors, Regional and Headquarters R&R Division Directors

9524.6 Collections and Individual Objects

- 1. Date Published:** August 17, 1999
- 2. Response and Recovery Directorate Policy Number:** 9524.6
- 3. Title:** Collections and Individual Objects
- 4. Purpose:** This policy clarifies terms associated with the eligibility of collections and individual objects of exceptionally significant cultural value located within or on the property of public or private nonprofit facilities, for the purpose of funding stabilization and treatment. The policy also establishes and describes the eligibility criteria for collections and individual objects.
- 5. Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after its publication date. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations under the provisions of the Public Assistance (PA) program.
- 6. Background:**
 - A. Under 44 CFR 206.226 (f) and (g), “equipment and furnishings” of an eligible facility are eligible for FEMA assistance, as are “library books and publications,” including cataloging and other work incidental to replacement. The Mexican Museum appeal in 1991 (FEMA-845-DR; P.A. 075-90561) addressed the inclusion of displayed “art objects” as eligible “equipment and furnishings” of an eligible public or private nonprofit facility. Further, the appeal addressed FEMA’s treatment of these objects.
 - B. This policy broadens the scope of eligible collections and objects beyond “art objects,” to include other collections and objects of exceptionally significant cultural value. The policy also broadens the function of eligible objects beyond those “on display,” and it re-defines FEMA’s approach to treatment measures for eligible collections and objects.
 - C. Relevant definitions have been adapted from those used in the professional conservation and cultural resources community to best meet FEMA’s needs. Specifically, definitions are derived from those published by the American Association for State and Local History (AASLH), the American Association of Museums (AAM), and American Institute for Conservation of Historic and Artistic Works (AIC).

7. Policy

A. Definitions:

- 1) An individual object of exceptionally significant cultural value is a non-living artifact, specimen, or work of art whose value is intangible because of its artistic, historic, scientific, educational, or social importance as an individual piece.
- 2) A collection of exceptionally significant cultural value is a set of non-living objects acquired and preserved because of their potential value as examples, as reference material, or as objects of artistic, historic, scientific, educational, or social importance as a collection.
- 3) The owner of the collection or object has legally purchased or obtained the collection or object, and inventoried/catalogued it as part of the institution or individual's collection.
- 4) The responsible institution is the entity formally assigned the responsibility to care for the collection or objects by the owner during the period in which the collection or object suffered damage. The responsible institution is normally also the owner of the collection or object, except in some cases where the collections or objects are on loan.
- 5) An accessioned collection or object is one that has been formally accepted as worthy of being collected by the institution and has been legally conveyed to and recorded by the institution as part of their collection.
- 6) A reproduction is a collection or object that is an imitation in materials, form, and workmanship of an original collection or object of exceptionally significant cultural value. The reproduction itself may or may not possess exceptionally significant cultural value in its own right for artistic, historic, scientific, educational, or social importance.
- 7) Complete devastation or loss refers to a state in which a disaster destroys the collection, or a portion thereof, or object in its entirety; thus, stabilization of the collection or object to a point where it retains its physical integrity and conveys the characteristics for which it is exceptionally significant is no longer practicable or possible.

B. Eligibility.

- 1) All damaged collections and individual objects of exceptionally significant cultural value are eligible for FEMA assistance if the damage is the result of a major disaster event, the collections or objects are located within a designated disaster area, and the owner of the collections or objects is an eligible applicant.

For collections or individual objects that are on loan, the responsible institution must be an eligible applicant in order for the collections or objects to be eligible for treatment.

- 2) FEMA's Preservation Officer or designee (in consultation with FEMA's conservation consultant, the facility's representative responsible for the collection or object, and a State official) has determined that the collection or object possesses exceptionally significant cultural value and the collection or object meets other criteria established in this policy.
 - 3) The eligible facility has accessioned and catalogued/inventoried, or in the case of loan, inventoried and documented the collections or objects.
 - 4) The collections or objects are in storage, on display, or are part of an exhibition and are accessible to the general public for educational purposes. This applies to both eligible public and private nonprofit facilities. Collections and objects located outside the facility, such as outdoor sculpture and exhibits/displays, are also eligible for FEMA assistance.
 - 5) The collections or objects are non-living.
 - 6) The collections or objects have exceptionally significant cultural value in their own right. Some reproductions may be eligible under this clause because they possess exceptionally significant cultural value (artistic, historic, scientific, educational, or social); however, collections or objects that can be replaced are not eligible as "collections and objects of exceptionally significant cultural value," although they may be eligible as "equipment and furnishings" according to 44 CFR 206.226(f).
- C. Insured Collections and Objects: In accordance with 44 CFR 206.250(c), "actual and anticipated insurance recoveries" from collections and individual objects of exceptionally significant cultural value "will be deducted from otherwise eligible costs." FEMA will approve assistance for collections and objects of exceptionally significant cultural value only under the conditions of 44 CFR 206.252, 206.253, requiring the grantee to obtain and maintain such types of insurance as are reasonable and necessary to protect against future loss to such collections and objects from the types of hazards which caused the major disaster.
- D. Materials and Equipment Used to Conserve, Exhibit, Display, or Store Eligible Collections and Objects

The materials and equipment associated with the storage, display, preservation, or exhibition of collections or objects of exceptionally significant cultural value are eligible for FEMA assistance as "equipment and furnishings" of a facility, according to 44 CFR 206.226(f). This may include (but is not limited to): equipment regulating temperature or humidity; exhibit panels; models; video and

audio equipment; and, multimedia containing oral histories or photographs of significant cultural value. FEMA will provide assistance to replace or repair the damaged item (or other incidental expenses required to replace or repair the item), but will not provide assistance for original research associated with replacement. General equipment and furnishings not essential to the collection may be eligible for assistance under the provisions of 44 CFR 206.226.

E. Treatment of Eligible Collections and Individual Objects

- 1) Determination of Treatment Measures: FEMA's Preservation Officer or designee (in consultation with FEMA's conservation consultant, the facility's representative, and a State official) will determine the appropriate treatment measures for the eligible collections or objects.
- 2) Complete Devastation or Loss: FEMA's Preservation Officer will determine the extent of damage to the collections or objects; those that have been completely destroyed by the disaster will not receive any FEMA assistance.
- 3) Stabilization and Restoration: The goal of FEMA assistance for damaged collections and objects will be to treat the damaged collection or object through stabilization, in order to prolong its existence, maintain its integrity, and minimize deterioration from the damaging effects of the disaster. FEMA will not restore the collection or object to its pre-damage condition. FEMA will, however, take the minimum steps necessary to return the collection or object to a condition in which it can function in the same capacity as it did prior to the disaster. However, FEMA's Preservation Officer or designee (in consultation with FEMA's conservation consultant, the facility's representative, and the State official) will use professional judgement to determine if additional treatment beyond stabilization is necessary to maintain the integrity of the collection or object and return it to its pre-disaster function.

Example 1: A wagon in a living history museum, possessing significant cultural value and functioning as a wagon for educational purposes, should be minimally restored to a condition in which the institution may again use the wagon for this purpose. However, if the wagon's intended use is to be part of a display or exhibit, then FEMA will take the minimum steps necessary to stabilize the wagon so that it may return to the display.

Example 2: A damaged painting of significant cultural value, which functioned prior to a disaster as part of an exhibition, may require additional treatment measures beyond stabilization. These measures may be necessary in order to restore the aesthetic qualities that convey the value of the painting so that the painting may be returned to public display.

- 4) Professional Standards and Guidelines: The treatment will be conducted by a qualified conservation professional with the appropriate specialty, in accordance

with the American Institute for Conservation of Historic and Artistic Works' (AIC) Code of Ethics and Guidelines for Practice. When non-intervention best serves to promote the preservation of the collection or object, it may be appropriate to recommend that no treatment be performed.

- 5) Extent of Compensation: FEMA's Preservation Officer or designee (in consultation with FEMA's conservation consultant, the facility's representative, and a State official) will determine the extent of compensation to the applicant that will be provided for the treatment of the collection or object.
- 6) Eligible Costs of Expertise: Reasonable costs associated with the development of the treatment plan and the subsequent treatment for the collection or object, as determined by FEMA, are considered eligible costs of expertise for FEMA assistance.
8. **Supersession**: This policy updates and replaces relevant provisions of previous Public Assistance policy documents.
9. **Authorities**: Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended; 44 CFR 206.226; 44 CFR 206.250; 44 CFR 206.252-253.
10. **Originating Office**: Infrastructure Division, Response and Recovery Directorate
11. **Review Date**: Two years from date of publication.
12. **Signature**:

Signed

Lacy E. Suiter
Executive Associate Director
Response and Recovery Directorate

13. **Distribution**: Regional Directors, Regional and Headquarters R&R Division Directors

9525.13 Alternate Projects

- 1. Date Published:** July 31, 2001
- 2. Readiness, Response and Recovery Directorate Policy Number:** 9525.13
- 3. Title:** Alternate Projects
- 4. Purpose:** This policy provides guidance on allowable uses and limitations of alternate project funds when restoration of the original damaged facility is not in the best interest of the public.
- 5. Scope and Audience:** This policy is applicable to all major disasters declared on or after the publication date of this policy. It is intended for Federal Emergency Management Agency (FEMA) personnel in making eligibility determinations for the Public Assistance Program.
- 6. Background:** When an applicant determines that the public welfare would not be best served by restoring a damaged facility or its function, the applicant may request approval of an alternate project from FEMA through the Grantee. An "alternate project" is different from an "improved project." An improved project restores the facility and maintains its function, or maintains the function in another facility.

The proposed alternate project must be a permanent project that benefits the general public. Federal funding is reduced to a rate of 75%¹ of the Federal share of the approved estimate of eligible repair costs of the damaged facility or the Federal share of the actual cost of completing the alternate project, whichever is less. Title 44 Code of Federal Regulations (CFR) 206.203(d)(2) describes the basic requirements for alternate projects. This policy discusses applications of the regulation.

- 7. Policy:** The following policy guidelines provide more detail on uses and limitations for the application of alternate project funding.
 - A. The funding is reduced to a rate of 75%² of the Federal share of the approved estimate of eligible repair costs of the damaged facility or of the Federal share of the actual costs of completing the alternate project(s), whichever is less. The eligible repair costs include the costs of meeting mandated requirements of 44 CFR 206.226. Alternate project funding in a disaster with 75/25% cost sharing would receive Federal funding of 56.25% (75%x75%) of the eligible cost of the original project.

¹ Ninety percent (90%) for publicly-owned facilities on unstable soil. Prior to the enactment of the Disaster Mitigation Act of 2000 on October 30, 2000, the rate for all alternate projects was 90%.

² Ninety percent (90%) for publicly-owned facilities on unstable soil.

- B. Projects must meet the basic requirements outlined in 44 CFR 206.203(d)(2).
- C. Funds may be used to repair or expand other selected public facilities, to construct new facilities, purchase equipment, or to fund hazard mitigation measures in accordance with other provisions of this policy.
- D. The proposed alternate project must serve the same general area that was being served by the originally funded project.
- E. A proposal for an alternate project must be submitted within 12 months of the applicant's Kickoff Meeting. The proposal must include a description of the project, an estimate of costs, starting date for work, targeted completion date, location, and identification of any historic, environmental or other legal considerations associated with the new location.
- F. Mitigation Projects: The types of mitigation projects that may be approved for alternate project funds is very broad. The following guidelines are provided:
 - 1) Mitigation measures may mitigate potential damages to a facility that would be eligible for funding under Section 406 of the Stafford Act. However, the funding cannot duplicate any other mitigation funding.
 - 2) Mitigation measures may be of the same type as would be eligible for funding under Section 404 of the Stafford Act, if they meet a need for:
 - a) governmental services and functions in the area affected by the major disaster, in the case of government applicants, or
 - b) the eligible Private Nonprofit organization's (PNP) services and functions in the area affected by the major disaster.
 - 3) The mitigation measure does not have to mitigate the same type of damage that was caused by the disaster and does not have to be for the same type of disaster.
- G. Multiple Uses of the Funds: Alternate project funds from a single project do not have to be used on a single project. Alternate project funds from multiple projects may be pooled or divided.
 - 1) Alternate project funds can be divided and used on multiple projects to repair, expand, mitigate or construct a facility that would be an eligible facility under the PA Program.
 - 2) Alternate project funds may be used across all permanent work categories (such as, expanding an existing building and replacing a sewer line).

H. Examples: Some potentially eligible examples follow:

- 1) Upgrading a substandard undamaged road that is subject to repeated flooding in order to better serve the general public and reduce the repetitive flood damages.
 - 2) Upgrading a facility to mitigate future disaster damage whether or not the facility was damaged by the event. Upgrades might range from something as simple as hurricane clips or bracing, to a large project.
 - 3) Relocating undamaged facilities, such as roads and utilities that are subject to repetitive damages, as a mitigation measure.
 - 4) Demolishing an outdated maintenance building (non-emergency work) and using the remainder to construct a new water treatment plant.
 - 5) Abandoning a county bridge and using the funds to build a new county maintenance shop.
 - 6) Instead of replacing a damaged/destroyed facility, using the funds to increase the capacity of a new building, to mitigate areas subject to flooding and to add a wing to an existing building being repaired.
 - 7) Instead of repairing a transportation administrative building, using the funds to acquire and renovate a building to serve as a school for the arts.
 - 8) Purchasing pieces of equipment (such as scientific equipment, telecommunications switches, fire trucks, vehicles, etc.) that exceed \$5,000 per unit, have a useful life of a year or more, and would be eligible under the Public Assistance Program in a subsequent disaster.
- I. Insurance is required for the new project in accordance with Section 311 of the Stafford Act.

J. Limitations: Ineligible uses of alternate project funds include:

- 1) Repayment of debts;
- 2) Meeting shortfalls in a financial budget;
- 3) Creating a new master plan for rebuilding a school, university, or hospital campus;
- 4) Landscaping projects;

- 5) The purchase of supplies, furniture and equipment costing less than \$5,000 per unit (considered an operating expense); and
- 6) The funds may not be used to pay the non-Federal share of any project, nor any operating expenses.
- 7) Facilities that would not be eligible for Public Assistance Program funding in a subsequent disaster.

Additional requirements and limitations are cited in 44 CFR 206.203(d)(2).

- K. A facility that is not repaired, replaced, or sold must be rendered safe and secure or demolished.
- L. The value, or anticipated fair market value, of salvaged materials from the original facility (less the estimated costs necessary to demolish the facility, grade the site, or make the facility safe and secure) should be an adjustment on the *PW* that has been written for the repair of the original project. Regardless of what the applicant decides to do with the original project after accepting the alternate funding option, the salvage issue is to be resolved in the original *PW*.
- M. There are no environmental reviews required at the original facility. Environmental compliance costs associated with the new site are the responsibility of the applicant.
- N. FEMA will ensure that an appropriate review of the alternate project site(s) [that is, where FEMA funds are being applied] is carried out in accordance with Section 106 of NHPA. The cost of this review is a FEMA eligible cost and is in addition to the capped amount for the alternate project. Costs associated with the measures to treat an adverse effect are not funded by FEMA and are not included in the capped eligible funding for the alternate project.

To encourage the applicant to protect its historic resources and as a condition of the FEMA grant for the alternate project, FEMA will require the applicant to consult with the State Historic Preservation Officer (SHPO) to identify if the damaged facility is listed or eligible for listing on the National Register of Historic Places, and agree to measures the applicant should take to protect the historic property from any negative impacts that may result from an applicant's action under the requirements stipulated in Section 7.K. of this policy. The applicant must provide FEMA with documentation of the consultation with the SHPO. If the damaged facility is a National Historic Landmark (NHL), the applicant will immediately contact FEMA to allow FEMA to participate in the consultation process. The applicant will be responsible for all costs associated with the consultation and any measures agreed upon by the applicant and SHPO.

8. Supersession:

- A. Memorandum from Craig S. Wingo to David P. Grier dated December 4, 1995; Subject: Request for Guidance, FEMA-1031-DR-SD, PA ID# 029-00000; Codington County, County Road #4.
- B. This policy also updates and replaces relevant provisions of previous public assistance policy documents on this subject.

9. Authorities: Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, Sections 101 and 406(c)(1) and (2); 44 CFR 206.203(d)(2).

10. Originating Office: Recovery Division, Readiness, Response and Recovery Directorate.

11. Review Date: Five years from date of publication.

12. Signature:

Signed

Lacy E. Suiter
Assistant Director
Readiness, Response and Recovery Directorate

13. Distribution: Regional Directors, Flood Insurance and Mitigation Directorate Assistant Director, Regional and Headquarters Recovery Division Directors

Tribal Policy

Final Agency Policy for Government-to-Government Relations with American Indian and Alaska Native Tribal Governments

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice; final policy statement.

SUMMARY: This final policy statement has been developed to guide FEMA's interactions with American Indian and Alaska Native Tribal governments in response to a policy memorandum issued by the President on April 29, 1994. President Clinton's memorandum directed agency and department heads to ensure that the Federal Government operates within a government-to-government relationship with Federally recognized Tribal governments. This policy reflects the extensive and insightful comments received over the last twelve months. The comments received and the Agency's response to those comments are contained within an accompanying notice detailing statements of consideration.

EFFECTIVE DATE: September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Younker, Federal Emergency Management Agency, 500 C Street SW. Washington, DC 20472, (tel.) (202) 646-2776 or (email) Maria.Younker@fema.gov.

SUPPLEMENTARY INFORMATION: On June 24, 1997, as Director of the Federal Emergency Management Agency (FEMA), I presented a draft Agency policy on American Indian and Alaska Natives to Tribal leaders on the Standing Rock Sioux Reservation. At that time, I encouraged the beginning of a dialogue between FEMA and this nation's first inhabitants on issues associated with emergencies and disasters.

Following that historic meeting, I wrote to the leaders of all of the Federally recognized Tribes, State Governors, State Emergency Management Directors, and national constituency and officials organizations requesting their review and comment on the draft policy. On November 17, 1997, we published the policy in the Federal Register for public comment (62 FR 61329). On February 17, 1998, we published another Federal Register notice extending the comment period until March 15, 1998 (63 FR 7793). Subsequently, we published an announcement of the Agency's consultation sessions on the draft policy in the Federal Register on March 6, 1998 (63 FR 11260).

With the publication today of the final Agency policy, we commit FEMA to the deliberate and thoughtful implementation of this policy. We intend to select not more than five Tribal governments to begin to refine the policy. With the practical experience of working with Tribal governments on emergency management programs, we believe that we can identify and resolve significant programmatic issues, as well as identify any resource and staffing requirements to support this policy. Within one year of the publication of this policy, we shall develop a five-year implementation plan.

The final Federal Emergency Management Agency Policy for government-to-government Relations with American Indian and Alaska Native Tribal Governments follows:

In the face of disasters, the citizens of the United States have historically come together to assist those who have suffered losses. It is in this spirit that the Federal Emergency Management Agency commits itself to building a strong and lasting partnership with American Indians and Alaska Natives to prepare them for the hazards they face, to reduce their disaster vulnerabilities, to respond quickly and compassionately when disasters strike, and to assist them to recover in their aftermath.

Introduction:

The Federal Emergency Management Agency recognizes and acknowledges that American Indian and Alaska Native Tribal governments hold a unique status in the United States of America with the rights and benefits of sovereign nations. The Federal Emergency Management Agency has developed this policy to affirm the Agency's understanding, support, and pursuit of a government-to-government relationship with American Indian and Alaska Native Tribal governments.

This policy outlines the guiding principles under which all employees of the Federal Emergency Management Agency are to operate with regard to Federally recognized American Indian and Alaska Native Tribal governments. This policy does not apply to interactions with any other Tribal governments or any other Alaska Native Tribal governments.

The Federal Emergency Management Agency acknowledges the trust relationship between the U.S. government and American Indian and Alaska Native Tribal governments as established by specific statutes, treaties, court decisions, executive orders, regulations, and policies. The Federal Emergency Management Agency further acknowledges the precedents of the Constitution, the President of the United States, and the U.S. Congress as the foundation of this policy's content. This policy is intended to be flexible and dynamic to provide for the evolution of the partnerships between and among the Federal Emergency Management Agency, Tribal governments, State and local governments, and other Federal agencies. Working within existing statutes and authorities, the Federal Emergency Management Agency will endeavor to be consistent in its dealings with Tribal governments throughout the country.

This policy is consistent with existing law and does not alter or supersede the authorities of the Federal Emergency Management Agency or those of any other Federal departments and agencies. Further, this policy does not diminish or modify existing Tribal government authority in any way, nor does it suggest recognition of Tribal authority that does not currently exist beyond the inherent attributes of sovereign Tribal authority to protect Tribal interests and welfare. The Federal Emergency Management Agency has authority to work with Tribal governments concerning emergency management programs under existing law.

Definitions and Terms:

Federal Emergency Management Agency: An independent agency of the U.S. Government established by Reorganization Plan No. 3 of 1978, whose employees are subject to the policies and guiding principles contained herein. Also referred to in this document as "the Agency."

Indian Tribe: Means an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Tribal Government: The recognized governing body of an Indian Tribe, band, nation, pueblo, village, or community, including any Alaska Native Village defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688).

Policy Principles:

The following policy principles define the commitment of the Federal Emergency Management Agency and its employees to build a strong and lasting partnership with American Indian and Alaska Native Tribal governments. These principles will serve to guide and direct the Agency's interactions with American Indian and Alaskan Native Tribal governments.

These principles mirror and reinforce the philosophy embodied in President Clinton's April 29, 1994, Memorandum for the Heads of Executive Departments and Agencies entitled "Government-to-Government Relations with Native American Tribal Governments".

The Federal Emergency Management Agency recognizes and commits to a government-to-government relationship with American Indian and Alaska Native Tribal governments.

The Federal Emergency Management Agency recognizes that the Tribal right of self-government flows from the inherent sovereignty of Tribes as nations and that Federally recognized Tribes have a unique and direct relationship with the Federal government.

The Federal Emergency Management Agency will consult, to the extent practicable and to the extent permitted by law, with American Indian and Alaska Native Tribal governments before taking actions that affect Federally recognized Tribal governments to ensure that Tribal rights and concerns are addressed.

The Federal Emergency Management Agency recognizes that, as a sovereign government, each Tribal government has the right to set its own priorities and goals for the welfare of its membership, which include the considerations Tribal governments make to fulfill their responsibilities to their non-Tribal residents, relatives, employees, and neighbors. The Federal Emergency Management Agency will involve Tribal governments in consultations to the extent practicable to seek their input on policies, programs, and issues so that they may evaluate the potential impacts for themselves.

The Federal Emergency Management Agency acknowledges the trust relationship between the Federal Government and American Indian and Alaska Native Tribal governments as established by specific treaties, court decisions, statutes, executive orders, regulations, and policies.

In recognition of this trust responsibility, the Federal Emergency Management Agency will evaluate to the extent possible the impact of policies, programs, and activities on Tribal trust resources and assure that it considers the rights and concerns of Tribal governments in its decision-making.

The Federal Emergency Management Agency will identify and take appropriate steps to the extent practicable to eliminate or diminish procedural impediments to working directly and effectively with Tribal governments.

The Federal Emergency Management Agency recognizes that there may be legal, procedural, organizational, or other impediments that affect its working relationships with Tribes. To the extent practicable and permitted by law, the Federal Emergency Management Agency will apply the requirements of Executive Order 12875, "Enhancing the Intergovernmental Partnership," and Executive Order 12866, "Regulatory Planning and Review," to design solutions and tailor Agency programs to address specific or unique needs of Tribal governments.

The Federal Emergency Management Agency will work in partnership with other Federal departments and agencies to the extent practicable to enlist their support of cooperative efforts to further the goals of this policy.

The Federal Emergency Management Agency recognizes the importance of interagency communication, coordination, and cooperation to pursue and implement its Tribal policy and to fulfill the Agency's commitment to work with Tribal governments in a government-to-government relationship.

The Federal Emergency Management Agency will encourage cooperation and partnership between and among Federal, Tribal, State, and local governments to resolve issues of mutual concern related to emergency management.

Effective emergency management requires the cooperation, partnership, and mutual consideration of neighboring governments, whether those governments are neighboring Tribal, State, or local governments. Accordingly, the Federal Emergency Management Agency will encourage pursuing partnerships in the interest of emergency management. The Agency's support is not intended to lend Federal support to any one party to the jeopardy of the interests of another. In the field of emergency management, problems are often shared and the principle of partnership between equals and neighbors often serves the best interests of both.

The Federal Emergency Management Agency acknowledges as precedents the policy commitments and decisions of the executive, legislative, and judicial branches of the United States Government.

The Federal Emergency Management Agency's policy for government-to-government relations with American Indian and Alaska Native Tribal governments reinforces and incorporates the commitments contained in various Presidential policies emphasizing that such a government-to-government relationship be pursued. The Agency's policy also recognizes the 1988 U.S. House of Representatives Concurrent Resolution #331, which declares the policy "To acknowledge the contribution of the Iroquois Confederacy of Nations... and to reaffirm the continuing government-to-government relationship between Indian tribes and the United States established in the Constitution." Further, this policy acknowledges the importance and precedence of treaties, court decisions, statutes, executive orders, and regulations regarding Tribal policy without extensive citations.

The Federal Emergency Management Agency will use its best efforts to institutionalize this policy within the fundamental tenets of the Agency's mission.

The Federal Emergency Management Agency will fully and effectively incorporate to the extent practicable all of the principles of this policy into the daily activities and operations of Agency employees. This policy is designed to reflect an ongoing and long-term planning and management effort.

As Director of the Federal Emergency Management Agency, I designate the Preparedness, Training and Exercises Directorate to serve as our liaison with American Indian and Alaska Native Tribal governments on policy issues. Further, each of the Agency's ten regional offices has designated an individual as the focal point for the coordination and implementation of this policy.

This policy is subject to periodic review based upon lessons learned in the course of its implementation. Therefore, as Director of the Federal Emergency Management Agency, I am hereby directing all Agency components and staff to implement this policy by incorporating all of the principles above in their activities, policies, and programs.

Dated:

James L. Witt,
Director.

Emergency Response Program Management Consultants (ERPMC) Sample Work Plan

General Information:

Disaster Number:

TO Number:

TO Name: Conservator

Key Staff

	NAME	OFFICE NO./PAGER NO.	FAX NO
FEMA Project Monitor			
ERPMC Task Manager			
ERPMC Team Leader			

Scope of Work

ERPMC's Conservator III shall inspect and evaluate the condition of numerous paper items at the State University Armory, damaged as a result of flooding associated with Hurricane Floyd. The Conservator shall work with FEMA, state, and local representatives to develop estimates of the damages and recommend appropriate conservation treatment measures. A report of findings shall be submitted to the Project Monitor.

ERPMC's Conservator III mobilized to the Martin, NY, job site on February 15, 2001, for an initial one-day site visit and evaluation. It is unknown at this time if additional sites will be required. Two trips for field activity are provided for in this proposal. All activity on this task is anticipated to be intermittent in nature. At this time, all work on the Task Order is expected to be completed not later than April 30, 2001.

Assumptions

The level of effort for this task is being estimated at up to seven days of intermittent work to be incurred between February 15 and April 30, 2001.

Two one-day trips to the report location have been estimated. Travel time and associated expenses for the Conservator III from the point of origin to the report location in Martin, NY, have been provided for in this proposal.

*National Historic Preservation Act Desk Reference
Summer 2001*

Note that ERPMC's core management team and administrative support all included as contractually negotiated with FEMA's contracting officer.

Task Description/Schedule

TASK NO.	TASK DESCRIPTION	ESTIMATED DURATION
1	ERPMC's Conservator III shall inspect and evaluate the condition of numerous paper items located in the basement storage vault at State University Armory. The damaged materials include, but are not limited to: The Martin Times, graduate theses, New York legal supplements, special acts, ledgers, books, encyclopedias, City of Martin yearbooks, State Registers and Manuals, and donated private collections of books. These items were damaged as a result of the flooding associated with Hurricane Floyd. The Conservator shall work with FEMA, State, and local representatives to develop estimates of the damages and recommend appropriate conservation treatment measures. A report of findings shall be submitted to the Project Monitor upon completion.	7 Days Total Effort (intermittent)

SAMPLE—Mission Assignment to Natural Resources Conservation Services (NRCS)

Statement of Work

Determination of Eligibility for the National Register Under FEMA’s Hazard Mitigation Grant Program (HMGP).

1. Purpose:

To provide qualified individuals to conduct research, fieldwork, and make recommendations regarding National Register eligibility for all structures that are candidates for acquisition for FEMA-DR-0000-VA HMGP projects. This review is critical to the fast-tracking HMGP review process.

2. Background:

As a result of Hurricane Floyd, the Commonwealth of Virginia, in cooperation with FEMA, has developed a strategy to “fast-track” acquisition projects funded under HMGP. As part of the review of HMGP projects, FEMA must complete an evaluation of structures under the guidelines of the National Historic Preservation Act. Due to time constraints and limited resources, the FEMA Region III Mitigation Division is unable to complete these tasks.

3. Contract Tasks:

For those structures identified by FEMA, NRCS will use individuals meeting the Secretary of Interior’s professional qualifications and standards to evaluate the structure’s potential for affecting a historic property or district. This evaluation shall be in accordance with the forms and standards required by the Virginia SHPO. More specifically, the NRCS will:

- Determine whether the structure is listed or eligible to be listed as a historic property on the National Register
- Determine whether the structure may be part of a historic district listed or eligible for the National Register
- Determine whether the proposed FEMA activity has the potential to affect an identified historic property

The NRCS will provide the eligibility recommendation and the file of supporting information to FEMA. FEMA will, in turn, review the recommendation and, as appropriate, forward it to the SHPO as FEMA’s recommendation. FEMA may request the

*National Historic Preservation Act Desk Reference
Summer 2001*

NRCS to reassess some elements of the recommendation. The approximate number of structures to be evaluated is 50-100.

The cost for this project should not exceed \$13,000.

Reporting Requirements

Following completion of the above tasks, the NRCS will complete a report for each structure, detailing the findings as a result of the above tasks, including supporting documentation, photographs, and forms. Photographs of each structure, along with a template form, will be provided to the NRCS by FEMA. FEMA will also provide dates of construction when available. This report should be submitted to the FEMA Region III office by the end of the performance period.

Performance Period

The evaluation and reporting must be complete for each structure within 30-45 days of receipt of the photographs from FEMA.

Coordination

The point of contact for this project is Lee Smith or his designee, located at the following address:

FEMA Mitigation Division
Region III
Philadelphia, PA

Any coordination or contact with the VA SHPO must take place through the Regional Office and the point of contact for this project.