

~SUMMARY OF ACHP HOSTED LISTENING SESSIONS~

Tribal Concerns and FEMA's Prototype Programmatic Agreement

Common Concerns of Participants:

Following the completion of the two listening sessions with tribes, the following themes emerged as the key issues expressed by participants:

1. **Inconsistent Communication:** FEMA could improve its communication patterns; currently communication is inconsistent and the flow of information on events and projects incomplete.
2. **Consultation Initiated by FEMA Grantees:** When state emergency management agencies consult they often lack qualified staff to complete identification, evaluation, and assessment efforts; this can increase the workload of the parties being consulted.
3. **Roles and Responsibilities:** Tribes welcome clarification of roles and responsibilities because it is not always clear who is responsible for what between FEMA's applicant, the state emergency management agency, state historic preservation office, FEMA historic preservation specialists, and FEMA program staff.
4. **Lack of Awareness – Need for Training:** Tribes do not always understand how FEMA works and would welcome FEMA training. Both FEMA staff and FEMA contractors could work on improving sensitivity to local tribal issues. There may be opportunities during disaster declarations to conduct joint training sessions to educate both FEMA staff and contractors.
5. **Viewshed Issues:** Viewshed issues are real and need full consideration, particularly in certain geographic areas. Coordination with tribes early during the project formulation process is critical to identifying these issues.
6. **Inadvertent Discoveries:** FEMA could do a better job of clarifying the process in agreements and capturing next-steps. Also, it is unlikely that construction workers performing ground disturbing work will actually notify FEMA's grant applicant regarding inadvertent discoveries.
7. **Curation:** Artifact curation needs to be clearly addressed in programmatic agreements. It is unclear when FEMA will curate items, where artifacts will be curated, when they will be curated, who is paying for curation, and what level of input the tribes have on the process.
8. **Exemptions/Allowances for Routine FEMA Funded Activities:** There are varying degrees of soil disturbance based on original construction techniques so it is hard to find a baseline for "in-kind repairs in previously disturbed soils".
9. **Expedited Review Timeframes:** Expedited review timeframes for emergency projects make sense, but not everyone has the same definition of an emergency project. Expedited review timeframes for non-disaster grant programs would be hard to accommodate given

tribal staffing levels. Requests for expedited review need to be carefully prioritized and agreed upon well in advance.

Wednesday, May 26, 2010, 4:15 pm – 4:30 pm (ET)

Participants:

1. Thlopthlocco Tribal Town (Okemah, OK)
 - Charles Coleman, Tribal Historic Preservation Officer, chascoleman@prodigy.net

Tuesday June 1, 2010, 11:00 am – 12:15 pm (ET)

Participants:

1. Lytton Band of Pomo Indians/Lytton Rancheria of California (Santa Rosa, CA)
 - Brenda L. Tomaras, Attorney for the Lytton Rancheria, btomaras@mtowlaw.com
2. Nez Perce of Idaho (Lapwai, ID)
 - Patrick Baird, THPO & Tribal Archaeologist, keithb@nezperce.org

Wednesday June 9, 2010, 4:00 pm – 4:45 pm (ET)

Participants:

1. Ak-Chin Indian Community of Arizona (Maricopa, AZ)
 - Caroline Antone, Cultural Resources Program Manager, CAntone@ak-chin.nsn.us
2. Salt River Pima-Maricopa Indian Community (Scottsdale, AZ)
 - Cliff Puckett, Emergency Manager, cliff.puckett@srpmic.nsn.gov

Discussion:

Geographic Areas of Interest:

- Ak-Chin Indian Community of Arizona - State of Arizona (FEMA Region 9).
- Lytton Rancheria - The Lytton Rancheria has interests in the state of California, principally in Sonoma County (FEMA Region 9).
- Nez Perce - The Nez Perce have interests in Washington, Oregon, Montana, Idaho, and Wyoming (FEMA Regions 8 & 10).
- Salt River Pima-Maricopa Indian Community - State of Arizona (FEMA Region 9).
- Thlopthlocco Tribal Town - Areas in Alabama, Mississippi, and Oklahoma (FEMA Regions 4 and 6)

Inconsistent Communication:

- Ak-Chin & Salt River - Both the Ak-Chin and Salt River representatives expressed concerns that it is not always clear who to contact within FEMA and that the flow of information could be improved. Sometimes the same documents will be submitted multiple times and other times not at all – they recommended establishing mechanisms within agreement documents to formalize communication and improve information flow.
- Lytton Rancheria - The Lytton Rancheria representative stated that open communication with tribes is critical and recommended that FEMA look to what the Army has done in terms of best management practices.

- Lytton Rancheria & Nez Perce - Both tribal representatives felt that FEMA attendance at multi-tribal events was a good starting point in conducting outreach for agreement documents, but that follow-up with individual tribal nations was critical for developing solid relationships. They encouraged FEMA to host both regional meetings and to travel directly to tribal nations to consult with leaders.
- Nez Perce - The Nez Perce representative said that it would be a good idea for FEMA to have designated tribal liaisons so that there was a central point-of-contact for section 106 reviews. The representative also expressed that FEMA should be mindful of its government-to-government responsibilities.

Consultation Initiated by FEMA Grantees:

- Nez Perce - The Nez Perce representative noted that the state emergency management agency does not have qualified staff and tends to rely on the SHPO and the tribe to make their judgment calls for them which increases their workloads. They wanted to know why FEMA is not more involved on consultation on some of the grant projects and why the state doesn't have qualified staff to complete identification, evaluation, and assessment efforts.

Roles and Responsibilities - Past Experiences:

- Ak-Chin - The Ak-Chin representative is the Cultural Resources Program Manager who has had some experiences with FEMA on floodplain management issues and section 106 reviews for particular projects. She is aware that FEMA Region 9 has a tribal liaison, but had not had much interaction with that person since there have not been many presidentially declared disasters in the local area. When they hear from FEMA it is mainly from FEMA contractors. To-date, they have not participated in the creation of section 106 agreement documents with FEMA.
- Lytton Rancheria – The Lytton Rancheria's representative is an attorney and she believes that most of the tribe's experiences with FEMA involved the review of wildfire grants. The Lytton Rancheria has had only had limited contact with FEMA and has not participated in the creation of section 106 agreement documents with FEMA.
- Nez Perce – The Nez Perce's representative is their Tribal Historic Preservation Officer (THPO) and Tribal Archaeologist and his experiences with FEMA involve contributions to the Nez Perce Tribal Hazard Mitigation Plan. Nez Perce representatives have had only had limited contact with FEMA and has not participated in the creation of section 106 agreement documents with FEMA.
- Salt River - The Salt River Indian Community representative is the tribal Emergency Manager who has a good relationship with local, state, and federal emergency managers. He had also recently met *Steven Golubic* (Steven.Golubic@dhs.gov), *FEMA Tribal Liaison from FEMA Headquarters*, and *John Ketchum* (John.Ketchum@dhs.gov), *FEMA's Federal Preservation Officer*, at a tribal emergency management conference in Arizona. He indicated that the tribe has a strong Environmental Protection and Natural Resources Division which would probably be the typical interface for Section 106 reviews. The representative did not think that the tribe had participated in the creation of Section 106 agreement documents with FEMA.
- Thlopthlocco Tribal Town - The representative has worked with FEMA on several programmatic agreements, most recently state-specific agreements for Alabama, Mississippi, and Oklahoma.

Lack of Awareness – Need for Sensitivity Training:

- Ak-Chin - The Ak-Chin representative receives consultation requests from FEMA contractors who sometimes are unaware of local issues of concern. There are times when special local

expertise is needed and it seems that FEMA does not have staff to meet these needs. The Ak-Chin representative is currently working on cultural resources sensitivity training the tribal fire department and is interested in FEMA's efforts to educate personnel working disaster response and recovery. The representative indicated that she would be willing to discuss joint-training for FEMA staff working in field offices.

- Lytton Rancheria - The Lytton Rancheria representative expressed concerns that FEMA staff acknowledge that the tribes are the experts on their own cultural resources and proper deference should be made to tribes. FEMA staff needs to be aware of the special expertise that tribes have on their own resources and may benefit from awareness training.
- Thlopthlocco Tribal Town - Tribes do not know what to expect from FEMA and do not understand the roles and responsibilities between local, state, and federal officials during a disaster declaration. It would be good to have these things clarified in a programmatic agreement and to make training available to tribal members working on disasters.

Viewshed Issues:

- Lytton Rancheria - The Lytton Rancheria representative indicated that they have concerns about some CRM professionals making viewshed assessments due to lack of qualifications and cultural sensitivity.
- Nez Perce - The Nez Perce representative stated that high points/ridge tops are sacred places for them and they have significant concerns with projects that might impact those areas.

Inadvertent Discoveries:

- Lytton Rancheria - The Lytton Rancheria representative indicated that it was a good idea to have tribal representatives monitoring areas of suspected sensitivity because it is not wise to rely on construction crews to identify or report discoveries. CAL TRANS provides a 3 hour cultural/historic properties awareness training to their construction crews, this might be a good thing to require on certain FEMA funded projects.
- Nez Perce - The Nez Perce representative agreed that construction workers are the least likely people to report discoveries because they are afraid of costly delays that impact the bottom line of their contracts.
- Thlopthlocco Tribal Town - FEMA could do a better job outlining how it plans to deal with inadvertent discoveries. It is not always clear to tribes who to follow-up with at FEMA and how to can keep track of inadvertent discovery cases.

Curation:

- Thlopthlocco Tribal Town - Artifact curation needs to be clearly addressed in programmatic agreements. Does FEMA have an official policy? It is unclear how FEMA approaches artifact curation and what level of consultation occurs between FEMA and the tribes on the issue.

Exemptions/Allowances for Routine FEMA Funded Activities:

- Ak-Chin - The Ak-Chin are interested in proposed language for ground disturbing work because they have concerns about these types of projects.
- Lytton Rancheria - The Lytton Rancheria representative indicated that repairs along creeks are of concern because of potential burial issues. In-kind repairs may not be harmless because previously disturbed soils may not necessarily be all that disturbed. They would like to see clarification in FEMA agreements that fill/borrow materials will come from existing state-approved, licensed/permited, borrow sites.
- Nez Perce - The Nez Perce representative indicated that in-kind repairs of sewage pipes along rivers could potentially impact important historic properties. Any exemptions/allowances for ground disturbing work must be very selective. They would like to see clarification in FEMA

agreements that fill/borrow materials will come from existing state-approved, licensed/permited, borrow sites.

Expedited Review Timeframes:

- Lytton Rancheria & Nez Perce - Both the Lytton Rancheria and Nez Perce representatives believe that expedited review timeframes are warranted for emergency situations, but that non-disaster grant projects (such as planning efforts) probably do not warrant expedited review. Tribal staff manages heavy workloads and are hesitant to agree to expedited review for projects that aren't necessarily time sensitive. FEMA needs to be clear about what types of projects are actually high priority based on health and safety issues and timing limitations related to funding.

Next Steps:

June, July, and August 2010

- FEMA conducts outreach to Tribal Historic Preservation Officers and tribal representatives and at tribal conferences and through teleconferences and meetings to solicit tribal feedback on the content of the prototype Programmatic Agreement (prototype PA). During this time FEMA will also conduct similar outreach efforts to State Historic Preservation Officers.

September 2010

- FEMA circulates the 1st draft of the prototype PA for review to the Advisory Council on Historic Preservation (ACHP), National Conference of State Historic Preservation Officers (NCSHPO), National Association of Tribal Historic Preservation Officers (NATHPO), State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), tribes, Native Hawaiian Organizations (NHOs), and the National Emergency Management Association (NEMA).

October –November 2010

- FEMA circulates a 2nd draft of the prototype PA for review.

December 2010

- FEMA submits a final version of the prototype PA to ACHP for designation.

January – December 2011

- FEMA uses the prototype PA as a model to pursue state-specific PAs without further need of ACHP participation. Priority will be given to states and territories that do not have existing PAs with FEMA.

Materials on the ACHP Website: http://www.achp.gov/fema_prototype_pa.html

1. [FEMA's SHPO Considerations Brief](#)
2. [FEMA's Tribal Considerations Brief](#)
3. [Summary of FEMA Programs](#)
4. [Prototype PA Draft Table of Contents](#)
5. [FEMA Executed PA for Hawaii](#)
6. [FEMA Executed PA for Iowa](#)
7. [FEMA Executed PA for Louisiana](#)
8. [FEMA Executed PA for Maine](#)

Materials on FEMA's Website: <http://www.fema.gov/government/tribal/natamerpolicy.shtm>

1. FEMA Tribal Policy

ACHP Points-of-Contact:

- Lydia Kachadorian, FEMA Liaison to the Gulf Coast, 202-606-8518
lkachadorian@achp.gov
- Jaime Loichinger, Historic Preservation Specialist, 202-606-8529, jloichinger@achp.gov

~ACHP HOSTED LISTENING SESSIONS ON FEMA PROTOTYPE PA~

FINAL LIST OF TRIBAL PARTICIPANTS

May and June 2010

1. Ak-Chin Indian Community of Arizona (Maricopa, AZ)
 - *Caroline Antone, Cultural Resources Program Manager, CAntone@ak-chin.nsn.us*
2. Lytton Band of Pomo Indians/Lytton Rancheria of California (Santa Rosa, CA)
 - *Brenda L. Tomaras, Attorney for the Lytton Rancheria, btomaras@mtowlaw.com*
3. Nez Perce of Idaho (Lapwai, ID)
 - *Patrick Baird, THPO & Tribal Archaeologist, keithb@nezperce.org*
4. Salt River Pima-Maricopa Indian Community (Scottsdale, AZ)
 - *Cliff Puckett, Emergency Manager, cliff.puckett@srpmic.nsn.gov*
5. Thlopthlocco Tribal Town (Okemah, OK)
 - *Charles Coleman, Tribal Historic Preservation Officer, chascoleman@prodigy.net*

Total Number of tribes = 5

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