



Preserving America's Heritage

## ACHP CHECKLIST FOR FEMA STATEWIDE PROGRAMMATIC AGREEMENTS

### Laying the groundwork:

- Identify specific goals for streamlining consultation and determine whether a Statewide Programmatic Agreement (PA) is the appropriate mechanism for accomplishing those goals;
- If a Statewide PA is in place, determine whether FEMA is best served by renewing or amending the existing PA or by creating an entirely new PA;
- Review recent FEMA Statewide PAs from other states (*can be obtained from FEMA Headquarters*) to determine whether these examples might serve as good models;
- Create an outline of provisions to be included in the Statewide PA and a consultation schedule outlining consultation mileposts;
- Consult with the appropriate State Historic Preservation Officer (SHPO), relevant Indian tribes, and Native Hawaiian organizations (NHOs) and invite their participation when developing the Statewide PA to address properties of traditional religious and cultural significance that *may* be affected by actions carried out under the scope of the Statewide PA;
- Identify and outreach to other consulting parties, including individuals, organizations, and entities (e.g. the National Trust for Historic Preservation, statewide not-for-profit historic preservation organizations, and local historic preservation groups) likely to be interested and invite their participation; and
- Determine the level of public involvement that will be required and initiate outreach as necessary.

### Preamble (Whereas clauses):

- Clearly identify the program or programs covered by the Statewide PA;
- Briefly identify the reason(s) for the Statewide PA (What is FEMA trying to accomplish and why?), and the legal authority for its execution, 36 CFR 800.14(b) of the NHPA;
- Cite other existing PAs if they are affected by or related to this Statewide PA;
- Include or reference any other important background information;
- Identify the SHPO, ACHP, and other consulting parties that participated in the development of the Statewide PA;
- Document FEMA's consultation with Indian tribes or NHOs that *may* ascribe traditional religious and cultural significance to historic properties that *may* be affected by undertakings covered by the Statewide PA, and indicate whether such tribes were invited to concur in the PA;
- Document how the public was afforded an opportunity to comment on the Statewide PA; and
- Identify the role of each consulting party as either a signatory, invited signatory, or concurring party.

### Stipulations:

- Include a preamble at the beginning that states: "To the extent of its legal authority FEMA shall ensure that the following measures are carried out:"

- Identify the roles and responsibilities of FEMA, the SHPO, the State Emergency Management Agency, and FEMA applicants, including FEMA's role as the decision maker or final arbiter for determinations and findings;
- Include provisions that clarify coordination responsibilities with the National Park Service (NPS) when FEMA funds work effecting National Historic Landmarks (NHLs);
- Include provisions for tribal consultation reflective of FEMA's government-to-government responsibility toward federally recognized Indian tribes (see 36 CFR 800.2(c)(2) and <http://www.achp.gov/regs-tribes.html>) for programs that have the potential to affect historic properties of interest to Indian tribes and Native Hawaiian organizations;
- Include annual reporting requirements and a subsequent review of annual reports by signatories and invited signatories;
- Include provisions that clarify different approaches to disaster and non-disaster coordination;
- Include provisions to avoid duplication of federal efforts when multiple federal agencies are involved (e.g. clarify how and when Lead Agency determinations will be made and how consulting parties will be notified);
- Reference relevant federal historic preservation standards and guidance, including professional qualifications for FEMA Section 106 staff and consultants;
- Accurately describe the tailored process for Section 106 review, referencing 36 CFR Part 800 where appropriate rather than paraphrasing the regulations - address project review during both emergency and non-emergency situations and the potential need to reinitiate project review when scopes of work change;
- Include provisions for the identification and participation of other consulting parties and the public in individual project review appropriate to the scale of project and its likely effects on historic properties - outreach should be conducted in a way that enhances the identification and stewardship of historic properties;
- Include provisions for Standard Treatment Measures and project-specific Memoranda of Agreement (MOA) - clarify how and when the ACHP may participate in adverse effect consultations;
- Include procedures for responding to emergency situations and architectural and archaeological discovery situations, including findings of human remains;
- Include provisions for the curation of archaeological collections and associated documentation;
- Include provisions addressing anticipatory demolition and related actions;
- Provide a process for addressing objections raised by the general public;
- Provide a process for dispute resolution between the signatories, invited signatories, and concurring parties wherein FEMA will consult with the ACHP; and
- Include simple and clear provisions for duration, amendments, withdrawals, termination, and execution of the PA.

#### **Appendices:**

- A brief summary of the various FEMA programs mentioned in the preamble;
- Flowcharts and implementation protocols completed in consultation with the parties to the PA;
- A list of Programmatic Allowances or Exempt Activities; and
- A list of clearly defined Standardized Treatment Measures.

#### **Other considerations:**

- Be precise and consistent when using and defining terms and acronyms (e.g. define *Phase I(b) Survey*, use *historic properties* instead of *cultural resources*)
- Use plain, unambiguous language, and write in the active voice (e.g. identify who will carry out provisions, the sequencing of events, and important timeframes);

- ❑ Before outlining the tailored project review process, reiterate FEMA's ability to use 800.3(a)(1) (no potential to cause effect) to limit further review under Section 106; and
- ❑ Limit exemptions from Section 106 review to actions with little to no potential to affect historic properties regardless of whether a historic property is present, provided the undertaking meets specified conditions and is reviewed and approved by a qualified FEMA cultural resource professional.

*September 20, 2010*