



**FIFTH AMENDMENT TO
EMERGENCY SITUATION PROCEDURES REGARDING
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE FOR
FEDERAL EMERGENCY MANAGEMENT AGENCY UNDERTAKINGS RESPONDING TO
COVID-19 DISASTERS AND EMERGENCIES**

WHEREAS, on May 14, 2020, the Advisory Council on Historic Preservation (ACHP) approved the “Emergency Situation Procedures Regarding Section 106 of the National Historic Preservation Act Compliance for Federal Emergency Management Agency Undertakings Responding to COVID-19 Disasters and Emergencies” (Emergency Procedures) in accordance with 36 C.F.R. 800.12(a);

WHEREAS, on August 27, 2020, December 16, 2020, April 29, 2021, and August 30, 2021, the ACHP approved amendments to the Emergency Procedures that, among other things, extended the use of its Stipulations II and III through December 31, 2020, April 30, 2021, August 31, 2021, and then January 31, 2022, respectively;

WHEREAS, the Federal Emergency Management Agency (FEMA) reports that, since May 14, 2020:

- it has utilized the Emergency Procedures for the Section 106 review of 16,631 FEMA funded emergency/disaster response undertakings, including 13,267 undertakings with no potential to affect historic properties, for a total of \$36,946,042,813 (federal share as of January 24, 2022);
- approximately 81% of the 3,364 undertakings with potential to affect historic properties have been requests for reimbursement from FEMA after completion of eligible emergency work; and
- while approximately 56 proposed and completed undertakings have required ground disturbance, FEMA has determined that, in all cases, the disturbance will occur or has occurred in previously disturbed areas; and
- only one proposed or completed undertaking submitted to FEMA has resulted in adverse effects to a historic property;

WHEREAS, without amendments to the Emergency Procedures, the ability of FEMA to use such procedures would effectively end on January 31, 2021;

WHEREAS, FEMA asserts that, given the still active emergency and disaster declarations based on the persistent threat of the virus to public health and safety and the continued distribution, transport, storage, and administration of COVID testing and approved vaccines, including booster shots, FEMA’s continued reliance upon the Procedures remains critical;

WHEREAS, after previous consultation with ACHP staff and notice to the National Conference of State Historic Preservation Officers and the National Association of Tribal Historic Preservation Officers, and

in accordance with Stipulation IX.A. of the Emergency Procedures, FEMA requested the ACHP to approve the continued applicability and implementation of Stipulations II and III of the Emergency Procedures through June 30, 2022, and similarly extend the deadlines on Stipulation IV of the Emergency Procedures by an additional 150 days; and

NOW THEREFORE, in accordance with Stipulations V and IX of the Emergency Procedures, the ACHP:

1. amends Stipulation IX of the Emergency Procedures to read as follows:

“IX. Duration

This Procedure will expire on February 27, 2023. However, use of Stipulations II and III after June 30, 2022 will require:

A. A written request from the FEMA FPO to the Executive Director of the ACHP, with a copy to the Executive Director of NCSHPO and the Chair of NATHPO; and

B. The written approval of the Executive Director of the ACHP.”; and

2. amends Stipulation IV of the Emergency Procedures to read as follows:

“IV. Post COVID-19 Consultations to Consider Mitigation Measures to Resolve Adverse Effects

No later than August 28, 2022, FEMA will:

A. Reasonably gather and summarize information about the undertakings documented in accordance with Stipulation II.D, including any adverse effects to historic properties that may have resulted from them, undertakings documented in accordance with Stipulation III.D.4.ii, as well as any inadvertent discoveries; and

B. Share the summary of all undertakings, including findings of effects to historic properties, with the ACHP, the NPS NHLs, NCSHPO, NATHPO, Indian tribes and NHOs;

C. Meet with the ACHP, the SHPOs/THPOs for States and tribal lands where FEMA reported that particular undertakings may have resulted in adverse effects to historic properties, and Tribes or NHOs, and other consulting parties, including the Recipient and subrecipient of FEMA funding (Post-COVID Consulting Parties) via methods chosen by FEMA, to discuss mitigation measures that FEMA should consider to resolve any adverse effects not otherwise resolved in accordance with Stipulation III.D.3.i-iv;

D. then no later than February 27, 2023, determine, through further consultation with the Post-COVID Consulting Parties, what mitigation measures, if any, will be feasible to carry out to resolve identified adverse effects, and notify the Post-COVID Consulting Parties about such a determination in writing.

E. As such mitigation measures are completed, notify the appropriate Post-COVID consulting parties.”



Reid Nelson
Executive Director, Acting
Advisory Council on Historic Preservation

January 27, 2022
Date