

**FIRST AMENDED PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
THE CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

WHEREAS, the Federal Emergency Management Agency (FEMA), incorporated into the Department of Homeland Security, Emergency Preparedness and Response Directorate, assists States, communities, and other eligible entities with disaster housing; hazard mitigation; prevention of and preparedness for emergencies and disasters; and the repair, restoration and replacement of public infrastructure (Programs), pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§ 5121-5206) (Stafford Act), the National Flood Insurance Act of 1968, as amended (42 U.S.C. § 4001 et seq.), and implementing regulations in Title 44 of the Code of Federal Regulations (44 CFR); and

WHEREAS, FEMA has determined that implementation of the Programs may affect properties in the State of California listed in or eligible for the National Register of Historic Places (National Register) (historic properties), and has consulted with the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP), pursuant to 36 CFR Part 800, the regulations implementing Sections 106 and 110(f) of the National Historic Preservation Act (16 U.S.C. 470f and 470h-2) (NHPA); and

WHEREAS, FEMA has determined that implementation of the Programs may affect historic properties with religious and cultural significance to Federally recognized Tribes (Tribes), on or off Tribal lands, and FEMA may request that these Tribes participate in the terms of this Programmatic Agreement (Agreement) to help fulfill the requirements of Section 106; and

WHEREAS, with regard to such Tribal participation, any Tribal Historic Preservation Officer (THPO) who is signatory to this Agreement will be consulted in lieu of the SHPO on Tribal lands, thus the term "SHPO" will be understood to include any THPO that is signatory to this Agreement, except with regard to termination of this Agreement (Stipulation XIII.); and

WHEREAS, as a result of a Presidentially declared Emergency or Disaster (Disaster), the State of California will receive financial and technical assistance from FEMA, and in turn will provide assistance to qualified applicants to alleviate the effects of the Disaster, and as such the California Governor's Office of Emergency Services (OES) will be responsible for administering the Programs, has participated in this consultation, and has been invited to execute this Agreement; and

WHEREAS, the signatories agree that implementation of the Programs will be more effective if, pursuant to 36 CFR § 800.14(b), an Agreement is established to: specify procedures, roles, and responsibilities in the historic review process; eliminate further SHPO and ACHP review of certain routine activities with little potential to adversely affect historic properties; and promote efficiency so that the effects of the Programs on historic properties are considered while delays to FEMA's delivery of Disaster assistance are minimized;

NOW, THEREFORE, FEMA, the SHPO, OES, and ACHP agree that the Programs will be administered pursuant to the following Stipulations to satisfy FEMA's Section 106 responsibilities for all of its Undertakings, and effectively integrate historic preservation issues with the needs of FEMA's Undertakings. FEMA will not fund any Undertaking until it is reviewed pursuant to this Agreement.

STIPULATIONS

To the extent of its legal authority and in coordination with the SHPO, OES, and ACHP, FEMA will require that the following Stipulations be implemented:

I. LEAD AGENCY COORDINATION

- A. FEMA, when determined to be the Lead Agency, will coordinate the Section 106 activities of any other Federal agencies that participate in an Undertaking related to FEMA Programs. FEMA will resolve any disputes among signatory or consulting parties to this Agreement, according to the terms of this Agreement.
- B. FEMA may request that a Tribe become signatory to this Agreement through an Addendum. In this case, this Agreement would not be amended unless further changes were made. The execution of the Addendum, and the participation of the Tribe in the terms of this Agreement, will evidence that the Tribe has accepted the terms of this Agreement. A sample Tribal Addendum is attached as Appendix B.

II. APPLICABILITY

This Agreement applies to any of the referenced FEMA Programs for every open past, present, or future Disaster. If agreed to otherwise in writing by FEMA, the SHPO, and ACHP, this Agreement may be suspended for a specific Disaster.

III. GENERAL

- A. Professional Qualifications:
 - 1. FEMA's cultural resource staff, and any such State agency or consultant staff contracted by FEMA, will meet the Secretary of Interior's (Secretary's) *Professional Qualifications Standards (Qualifications)*, as determined by FEMA's Federal Preservation Officer (FPO) or designee, for their respective disciplines.
 - 2. The signatories acknowledge that Tribes possess special expertise in assessing the National Register eligibility of properties with religious and cultural significance to them.
- B. Time designations: All time designations will be in calendar days. If any party does not comment on a proposed action within time frames stipulated in this Agreement, FEMA may assume that party's concurrence with FEMA's determination, and proceed in accordance with this Agreement.

C. FEMA responsibilities:

1. May request Federal, State agency, or applicant staff who meet the *Qualifications*, as determined by FEMA's FPO or designee, to identify and evaluate historic properties on behalf of FEMA, as described in 36 CFR § 800.4(b-c). FEMA will provide 100 percent funding for these delegated activities through standard procurement procedures (Form 40-1) under the Stafford Act.
2. Will review any National Register eligibility determinations resulting from these delegated activities.
3. Will provide the SHPO and ACHP with an annual report on this Agreement for the previous calendar year, on March 31st of each year that this Agreement is in effect. This report will summarize the actions taken to implement this Agreement, and recommend any actions or revisions to be considered during the next year. These parties will review this information to determine if amendments are necessary.

D. The SHPO, at its discretion, may:

1. Delegate any or all of its responsibilities under this Agreement to persons who are not currently members of the SHPO staff, but who may serve as SHPO representatives for decisions and actions required by this Agreement. The SHPO will consult with FEMA about the selection of any representatives, the scope of their responsibilities, and implementing procedures for their decisions and actions.
2. Delegate the responsibility for preparing documentation about effects of Undertakings on historic properties to a preservation consultant hired by an applicant, who meets the *Qualifications*. This will be a reimbursable expense for the applicant, subject to the cost-share provisions of the FEMA-State Agreement. The applicant will submit in writing the names and qualifications of potential consultants to the SHPO for approval. The SHPO will comment on the consultants within 5 days of receipt of this information.

E. OES responsibilities:

OES will ensure that all applicants are fully informed about their responsibilities as stipulated in this Agreement. This includes providing applicants with guidance about in kind repairs, pursuant to the Secretary's *Standards for the Treatment of Historic Properties 1995 (Standards)*, and ensuring that applicants understand and acknowledge any additional stipulations placed on Undertakings as a result of Section 106 consultation or other terms of this Agreement. OES will also ensure that all applicants understand that failure to comply with these terms will jeopardize Federal funding of an Undertaking.

F. ACHP responsibilities:

If the California Office of Historic Preservation is an applicant for FEMA assistance, or if FEMA determines that SHPO review of an Undertaking may appear to be a conflict of interest, ACHP will review the Undertaking in lieu of the SHPO.

IV. INITIAL COORDINATION FOLLOWING DECLARATION OF A DISASTER

- A. Upon declaration of a Disaster, FEMA will meet with the SHPO and OES to establish points of contact and protocols for implementation of this Agreement. The SHPO may, and OES will, attend a Disaster scoping meeting(s); and FEMA and OES, as appropriate, will present information about the Section 106 review process to all applicants. For the declared Disaster area, the SHPO will provide or make available to FEMA, in writing, or in electronic form clearly accessible by FEMA:
1. All information regarding properties included in the California State Historic Preservation Office Inventory of Historical Resources (IHR). This information will include the California Historical Resources Status Codes that reflect the results of applying the National Register or other criteria applicable to properties included in the IHR.
 2. Any information that may identify areas with a high potential for archaeological resources. However, the SHPO may determine that it does not have such information, or that the information is not useful in identifying such areas. In that event, FEMA may request and obtain such information, if available, from the appropriate California Historical Resources Information System (CHRIS) Information Center.
 3. Any information that may identify areas where archaeological resources do not exist. However, the SHPO may determine that it does not have such information, or that the information is not useful in identifying such areas. In that event, FEMA may request and obtain such information, if available, from the appropriate CHRIS Information Center.
- B. FEMA may obtain information about Traditional Cultural Properties; properties with sacred, religious and cultural significance to Tribes; and knowledgeable contact persons (Tribal or otherwise) from the California Native American Heritage Commission (CNAHC). If FEMA requests, the SHPO may advise FEMA about consultation with Tribes or other Native American groups or individuals; and will advise FEMA about evaluating properties of traditional, religious and cultural significance to the Tribes; and avoiding, minimizing, or mitigating effects to such properties.
- C. Prior to implementation of the Programs, FEMA will, to the extent practicable:
1. Develop with and provide to the SHPO a list of historic properties (standing structures) that have not retained integrity as a result of the disaster. This Agreement will apply only to historic properties that retain integrity, pursuant to 36 CFR Part 60. If FEMA and the SHPO do not agree on whether a property has retained integrity, through consultation not to exceed 21 days, FEMA will review any related Undertakings pursuant to Stipulations V. through VIII., or proceed with Stipulation XI.C. through XI.I. (Dispute Resolution).

2. Consult with any other Federal agencies or Tribes with jurisdiction for Undertakings, to ensure compliance with applicable historic laws and regulations, and to mutually determine the lead Federal agency for specific Undertakings.

D. At the time of the Disaster scoping meeting(s), the SHPO will:

1. Develop with and provide to FEMA any available information about unevaluated properties that are not in the IHR, but may be historic. If the SHPO determines that it does not have such information, FEMA may request and obtain such information, if available, from the appropriate CHRIS Information Center;
2. Identify SHPO staff or consultants who may assist FEMA with its Section 106 responsibilities, and identify any specific activities that the SHPO may be able to perform at FEMA's request; and
3. If FEMA requests, may assist in consulting with the CNAHC, and otherwise, to identify Tribes, individuals, or organizations with jurisdiction or a demonstrated interest in Undertakings, historic properties, or properties of religious and cultural significance in the Disaster area. FEMA will contact these interested parties to inform them of this Agreement and to request information on damaged 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 of or in anticipation of a Disaster, FEMA may be requested to perform or fund emergency protective measures, in response to an immediate threat to human health and safety or improved property, that may adversely affect historic properties, or properties listed in the California Register of Historical Resources. For any Undertakings that the Federal Coordinating Officer (FCO) determines are of an emergency nature, FEMA may conduct an expedited review:
 1. The expedited review period will begin when FEMA determines that an emergency action is required, and will remain in effect until the review is complete, but for not more than 30 days.
 2. The FCO or designee will certify in writing to the FPO or designee a potential need for FEMA to conduct an expedited review for individual Undertakings. Should the FPO or designee concur, he/she will then certify this need in writing to the SHPO. Should FEMA find it necessary to extend the expedited review period beyond 30 days, FEMA will, in 30-day increments, request an extension from ACHP in writing. FEMA will immediately assume ACHP's concurrence unless notified otherwise.
- C. If the expedited review procedures apply, FEMA may fund an emergency action after completing the following review:

1. FEMA will provide the SHPO with available information about the condition and historical status 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 in writing, or through telephone conversations, electronic media, or meetings, at its discretion. The SHPO may provide comments to FEMA within 3 days of receipt of the information, unless FEMA determines the nature of the emergency action warrants a shorter time period.
2. Should the SHPO not comment within 3 days, FEMA may fund the action based on available information.
3. If FEMA objects to any SHPO comments, or if the SHPO objects to FEMA's proposal to conduct an expedited review, to the documentation provided, or to proposed treatment measures, FEMA will consult with the SHPO and attempt to resolve the dispute, within 3 days of receipt of the objection. If the dispute is not resolved, FEMA will request ACHP's advice in accordance with 36 CFR § 800.2(b)(2). ACHP will advise FEMA within 3 days of receipt of the request, unless FEMA determines the nature of the emergency action warrants a shorter time period.

VI. PROGRAMMATIC ALLOWANCES

- A. FEMA will determine if the actions of an Undertaking conform to the Programmatic Allowances (Allowances) in Appendix A. If so, FEMA will document this determination in the project file and may fund the Undertaking.
- B. For all other activities, FEMA will conduct Section 106 review pursuant to Stipulation V. or VII.

VII. STANDARD PROJECT REVIEW

Except as described in Stipulation VI., FEMA will conduct the standard project review for all non-emergency Undertakings:

- A. Area of Potential Effects (APE): For standing structures, the APE will be the individual facility [as defined in 44 CFR § 206.201(c)] when a proposed Undertaking is limited to the repair or rehabilitation of the facility's interior and/or exterior. FEMA will determine the APE, and may consult with the SHPO, for all other Undertakings, including APEs for ground disturbing activities.
- B. If FEMA determines that there is a reasonable potential for archeological properties to be within the APE, FEMA will also determine the level of effort necessary to identify and define the limits of these properties.
- C. FEMA will identify and evaluate properties to determine if they are listed in or eligible for the National Register. If FEMA does not identify any historic properties, or determines that an Undertaking avoids archeological historic properties (both directly and indirectly) or character-defining features of historic standing structures, FEMA will make a documented determination of

“no historic properties affected” as described in 36 CFR § 800.4(d)(1). Unless the SHPO or any other consulting party objects within 21 days of receipt of this documented determination, FEMA will complete the review and may fund the Undertaking. If the SHPO or any other consulting party objects to the determination, FEMA may request ACHP review, as described in 36 CFR § 800.4(d)(1)(ii), or will proceed as follows.

- D. If FEMA determines that an Undertaking may affect historic properties, FEMA will apply the criteria of adverse effect, described in 36 CFR § 800.5(a)(1), or determine whether the Undertaking meets the *Standards*, or any other applicable Secretary standards or guidelines.

1. FOR STANDING STRUCTURES:

- a. If FEMA, in consultation with the SHPO, determines that the Undertaking does not meet the adverse effect criteria, or that it meets the applicable *Standards*, FEMA will make a determination of “no adverse effect,” as described in 36 CFR § 800.5(b), notify the SHPO and any other consulting party, and provide project documentation described in 36 CFR § 800.11(e). Unless the SHPO or any other consulting party objects within 21 days of receipt of this documented determination, FEMA will complete the review and may fund the Undertaking.
- b. If the SHPO or any other consulting party objects to the “no adverse effect” determination, FEMA will require the applicant to revise the scope of work, in consultation with the objecting party, to clearly conform to the applicable *Standards*. FEMA will also review the revised scope of work for funding eligibility. If the applicant revises the scope of work accordingly, FEMA will notify the SHPO and any other consulting party, complete the review, affirm its original determination, and may fund the Undertaking.
- c. If the objection is not resolved through revision of the Undertaking as described above, FEMA may proceed in accordance with 36 CFR § 800.5(c)(2-3), or will initiate adverse effect consultation pursuant to Stipulation VIII.

2. FOR ARCHEOLOGICAL PROPERTIES:

If the SHPO or any other consulting party objects to FEMA’s “no adverse effect” determination, or to its determination that identified historic properties will be avoided (both directly and indirectly) through project redesign, procedures, or requirements agreed upon among all consulting parties, FEMA may request ACHP review under 36 CFR §§ 800.4(d)(1) or 800.5(c)(3), or will initiate adverse effect consultation pursuant to Stipulation VIII.

VIII. RESOLUTION OF ADVERSE EFFECTS ON HISTORIC PROPERTIES

- A. If FEMA determines that an Undertaking will adversely affect a historic property, it will also determine whether the effects of the Undertaking will be resolved with a Memorandum of Agreement (MOA), in accordance with 36 CFR § 800.6(b), or with a Secondary Programmatic

Agreement (Secondary Agreement). FEMA will notify the SHPO, ACHP, and any other consulting party of these determinations, and provide documentation described in 36 CFR § 800.11(e).

1. Memorandum of Agreement: FEMA may develop an MOA in accordance with 36 CFR § 800.6(c) to stipulate measures to minimize or mitigate adverse effects on historic properties. The MOA may include feasible measures that may serve an equal or greater public benefit than recordation or archeological data recovery, while promoting the preservation of historic properties. FEMA may develop a list of such measures in consultation with any consulting parties. These measures may include, but are not limited to: preservation planning, interpretive programs, mitigation banking, technical preservation studies and experiments, or development of a historic properties database using Geographic Information Systems.
 2. Secondary Programmatic Agreement: FEMA, the SHPO, OES, ACHP if participating, and any other consulting party may develop a Secondary Agreement to identify programmatic conditions or treatment measures for multiple similar Undertakings by an applicant.
 3. Should FEMA and the SHPO agree that an Undertaking may adversely affect a historic property, but that the Undertaking substantially complies with the applicable *Standards*, these parties may also agree that conditions or measures are not necessary, and that an MOA or Secondary Agreement will not be developed. FEMA will confirm this agreement in writing with the SHPO and any other consulting party. Unless any of these parties objects within 21 days of receipt, FEMA will complete the review and may fund the Undertaking. Should FEMA and the SHPO not agree as described above, FEMA will proceed in accordance with Subsection 1. or 2. of this Stipulation, rather than with Stipulation XI.
- B. FEMA will involve the public in the resolution of adverse effects in accordance with 36 CFR § 800.6(a)(4).
- C. Should FEMA determine that an Undertaking may adversely affect a National Historic Landmark (NHL), it will also notify the Secretary (through the NHL Program Manager at the National Park Service Pacific Great Basin Support Office in Oakland, California) and invite the Secretary to participate in consultation. When ACHP participates in consultation related to an NHL, it will report the results to the FEMA Director and the Secretary.

IX. CHANGES TO AN APPROVED SCOPE OF WORK

OES, or the Recipient, will notify FEMA as soon as practicable of any proposed change to the approved scope of work for an Undertaking involving a historic property. FEMA may authorize the applicant to proceed with the change if it meets an Allowance, or if, for a standing structure, FEMA and the SHPO agree that the change conforms to the *Standards*. If FEMA and the SHPO determine that the change cannot be modified to conform to the *Standards*, FEMA will initiate adverse effect consultation pursuant to Stipulation VIII.

X. UNEXPECTED DISCOVERIES

- A. OES 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. OES 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. In the case of human remains, OES will also require the applicant to immediately notify the local law enforcement office and the county coroner/medical examiner. Pursuant to the California Health and Safety Code (Code), if the coroner/medical examiner determines that the human remains are or may be of Native American origin, the discovery will be treated in accordance with §§ 5097.98 (a-d) of the Code.
- B. FEMA will consult with the SHPO as soon as practicable to develop actions to take into account the effects of the Undertaking. FEMA will notify the SHPO of any time constraints, and these parties will mutually agree upon time frames for this consultation. OES and the applicant may also participate in this consultation. FEMA will then provide the SHPO with written recommendations that take into account the effects of the Undertaking. If the SHPO does not object to FEMA's recommendations within an agreed upon time frame, FEMA will require the applicant to modify the scope of work accordingly.

XI. DISPUTE RESOLUTION

- A. Should the SHPO, OES, ACHP, or any other consulting party (including consulting parties participating in the review of specific Undertakings subject to this Agreement) object in writing within time frames established by this Agreement to any plans, specifications, determinations, or other actions subject to review pursuant to this Agreement, FEMA will consult with that party for not more than 21 days to resolve the objection. Should FEMA object in writing within established time frames, FEMA will consult with these other parties, as appropriate, for not more than 21 days to resolve the objection.
- B. If the objection is resolved within 21 days, FEMA may proceed with the disputed action in accordance with the resolution.
- C. If FEMA determines within 21 days that the objection cannot be resolved, FEMA will forward to ACHP all documentation relevant to the objection, including FEMA's proposed resolution. Within 30 days of receipt, ACHP will:
 - 1. Concur in 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 objection; or
 - 3. Notify FEMA that the objection will be referred for comment in accordance with 36 CFR § 800.7(a)(4), and proceed to do so. FEMA will take the resulting comment into account in accordance with 36 CFR § 800.7(c)(4).

- D. Should ACHP not respond within 30 days, FEMA may assume ACHP's concurrence in FEMA's proposed resolution.
- E. FEMA will take into account any ACHP recommendations or comments, and any comments from the other signatories or consulting parties, in reaching a final decision regarding the objection. The signatories will continue to implement all other terms of this Agreement, that are not subject to objection.
- F. FEMA will provide the signatories with its final written decision regarding any objection resolved pursuant to this Stipulation.
- G. FEMA may authorize any disputed action to proceed, after resolving the related objection pursuant to this Stipulation.
- H. At any time while this Agreement is in effect, should a member of the public object in writing to implementation of its terms, FEMA will notify the other signatories in writing and take the objection into consideration. FEMA will consult with the objecting party and, if that party so requests, the other signatories, for not more than 21 days. In reaching its decision regarding the objection, FEMA will take into consideration all comments from these parties. Within 14 days after closure of this consultation period, FEMA will provide the other parties with its written decision. FEMA's decision will be final.
- I. Any dispute regarding National Register eligibility that is not resolved pursuant to this Stipulation will be resolved in accordance with 36CFR § 800.4(c)(2).

XII. ANTICIPATORY ACTIONS

- A. FEMA will not grant assistance to an applicant who, with intent to avoid the requirements of this Agreement or Section 106 of the NHPA, has 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 consultation with ACHP, FEMA may determine that circumstances justify granting such assistance despite an adverse effect created or permitted by the applicant, and will complete consultation for the Undertaking pursuant to Stipulation VIII.
- B. OES will routinely advise its applicants in writing that they may not initiate construction on projects for which they are requesting Federal funds prior to compliance with this Agreement. OES will also routinely advise its applicants that they will jeopardize Federal funding if such construction is initiated. Any Recipient is also hereby advised of this information.

XIII. DURATION, AMENDMENTS, AND TERMINATION

- A. Duration: Unless terminated pursuant to Stipulation XIII.C., this Agreement will remain in effect for a specific Disaster until FEMA, in consultation with all other signatories, determines that this Agreement has been fulfilled in a satisfactory manner. Upon such determination, unless amended otherwise, this Agreement will terminate for that Disaster, but will continue for previous or future

Disasters. FEMA will provide all other signatories with written notice of its determination and of such termination. Unless amended otherwise, this Agreement will expire on December 31, 2013.

- B. Amendments: Any signatory may propose that this Agreement be amended, whereupon the signatories will consult for not more than 60 days to consider the amendment. The amendment process will comply with 36 CFR §§ 800.6(c)(1) and (7). This Agreement may be amended only upon the written agreement of the signatories. If not amended, this Agreement may be terminated in accordance with Stipulation XIII.C. below. Appendix A, Section B, may be amended in writing by FEMA and the SHPO without amending the Agreement proper.
- C. Termination: Any signatory, except OES or a THPO, may terminate this Agreement by providing a 30-day written notice to the other signatories, provided they consult during this period to seek amendments or other actions that would prevent termination. A THPO may terminate its Addendum to this Agreement through this same process. Should the signatories agree on an alternative to termination, they will proceed in accordance with that agreement. Should consultation fail, the signatory will promptly notify the other signatories in writing of termination. Termination of this Agreement will require compliance with 36 CFR Part 800. This Agreement may be terminated without further consultation by the execution of a subsequent Agreement that explicitly terminates or supersedes it, or by implementation of Program Alternatives, pursuant to 36 CFR § 800.14.

XIV. EXECUTION OF THIS PROGRAMMATIC AGREEMENT

- A. This Agreement takes effect on the date of signature by ACHP.
- B. Any FEMA Programs authorized by the United States Congress in the future may be included in this Agreement without its amendment. At FEMA's discretion, any change in the FEMA name, Programs, or organizational structure will not affect this Agreement.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that FEMA has afforded ACHP a reasonable opportunity to comment on FEMA's administration of all referenced Programs pursuant to the Stafford Act and the National Flood Insurance Act, and also that FEMA has satisfied its Section 106 responsibilities for all individual Undertakings of the Programs.

DEPARTMENT OF HOMELAND SECURITY

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: Karen E. Armes
Karen E. Armes, Acting Regional Director, Region IX

Date: 3/3/2005

By: Alessandro Amaglio
Alessandro Amaglio, Environmental Officer, Region IX

Date: 22 FEB 2005

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: Milford Wayne Donaldson
Milford Wayne Donaldson, State Historic Preservation Officer

Date: 10 FEB 2005

CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES

By: Paul Jacks
Paul Jacks, Governor's Authorized Representative

Date: 2/11/05

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler
John M. Fowler, Executive Director

Date: 3/14/05

APPENDIX A: PROGRAMMATIC ALLOWANCES

- A. For the purpose of applicability of this Appendix, when referenced in an Allowance, “in kind” means that the result will match all physical and visual aspects of existing historic materials, including form, color, finish, texture, and workmanship. “In kind” mortar will also match the strength and joint tooling of existing historic mortar.

For activities where the above definition does not apply, or where substitute materials on known historic properties are necessary, additional review pursuant the Agreement and reference to the Secretary of Interior’s *Standards for the Treatment of Historic Properties (Standards)*, *Standard No. 6*, 36 CFR Part 68; and the National Park Service Technical Preservation Services *Preservation Brief 16: The Use of Substitute Materials on Historic Building Exteriors* are required.

Historically these Allowances have been used for projects of relatively small scope.

- B. The following Programs and activities will not require review by the SHPO or ACHP pursuant to Stipulation V. or VII.:
- I. Providing Federal assistance to individuals and households pursuant to Section 411 of the Stafford Act, Individual and Family Grant Programs, except for ground disturbing and construction activities related to temporary housing;
 - II. Providing Federal assistance pursuant to Section 422 of the Stafford Act, Simplified Procedures, by restoring a facility to its pre-disaster condition, using in kind materials; and
 - III. Providing Federal funds for acquiring properties in buyout projects. OES will ensure that each applicant agrees to secure its property from physical alteration, illegal entry, and damage until any applicable requirements of this Agreement are fulfilled. The applicant community will agree to these terms as a condition of its acquisition grant before FEMA will release any related funding.
- C. The following activities will not require review by the SHPO or ACHP pursuant to Stipulation V. or VII. This list may be revised without amending this Agreement, with a letter concurred by FEMA and the SHPO.

I. GROUND DISTURBING ACTIVITIES AND SITE WORK

- A. Ground disturbing activities related to the repair, in-place replacement, or hardening of:

- 1. footings, foundations, retaining walls, other earth retaining or slope stabilization systems (such as gabion baskets), and utilities (such as sewer, water, storm drain, electrical, gas, communication, and leach lines, and septic tanks), and

2. culvert systems within rivers, streams, or drainage ways, when the work is performed substantially to pre-disaster conditions, or with a modest increase in size or capacity, and the excavation does not disturb native soil.

If the repaired or replaced items are at least 45 years old, this Allowance applies only when the work is performed in kind to exactly match existing materials and form.

- B. Installation of utilities within existing rights-of-way, but not under improved roads or roadways, provided the affected portion of the right-of-way was previously surveyed for cultural resources and does not contain historic properties.
- C. Repair or replacement of driveways, parking lots, and walkways.
- D. Repair or replacement of fencing and freestanding exterior walls, when performed in kind to exactly match existing materials and form.
- E. Repair or replacement of metal utilitarian structures, including exposed major pipelines and pump houses, when performed in kind, or to match the pre-disaster size and configuration with (superior functioning) modern materials. Any finish on modern materials must be compatible with the site and context. Bridges, water towers, and antenna towers are not considered metal utilitarian structures for the purposes of this Allowance.
- F. Installation of temporary structures for uses such as classrooms or offices. This Allowance does not apply to ground disturbing activities, or structures installed in historic districts.
- G. Installation of scaffolding, temporary barriers such as chain link fences, polyethylene sheeting, or tarps.
- H. Repair or replacement of hardscaping and related utilities, including paving, planters, trellises, irrigation, and lighting, when performed in kind to match existing materials and form.
- I. Repair or replacement, and upgrades to applicable codes and standards, of piers, docks, boardwalks, boat ramps, and dune crossovers, within existing footprints. This Allowance applies to properties that are at least 45 years old only when the work is performed in kind to exactly match existing materials and form.
- J. Debris collection from public rights-of-way, transportation, and disposal in existing licensed solid waste facilities. This Allowance does not include establishment or expansion of debris staging or disposal areas.
- K. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, when the facility is restored to its pre-disaster condition, and the sediment is used to repair eroded banks, or disposed of at an existing licensed or permitted spoil site.
- L. Dewatering flooded developed areas.

II. BUILDINGS

A. Interior Floors, Walls, Ceilings and Stairs

1. Interior rehabilitation projects limited to repairing, replacing, retaining, preserving, protecting, and maintaining in kind materials and features, consistent with the Secretary's *Standards*.
2. Repair of interior floors, walls, and ceilings to exactly match existing surfaces, including plaster, drywall, and cracks up to one inch wide. Any repair materials will match the color and workmanship of the existing materials. The repairs must be restricted to the damaged area, and care must be taken to avoid adjacent areas. This Allowance does not apply to decorative plaster trim or other finishes that contribute to the architectural significance of the property.
3. Repair or replacement of suspended or glued ceiling tiles.
4. Installation of grab bars, and other minor interior modifications for handicapped accessibility.
5. Non-destructive, concealed, or concealable testing for hazardous materials (lead paint, asbestos, etc.), or for assessment of hidden damages.

B. Utility and Mechanical Systems

1. Minor electrical and plumbing work within buildings, limited to repairing, upgrading, elevation, or in kind replacement, except that fixtures that are at least 45 years old will be repaired when possible.
2. Repair, replacement, upgrade, or installation of fire detection and suppression, security alarm, and HVAC systems, provided they do not affect the exterior of a building or require installation of new duct work or surface mounted wiring throughout the interior. Fixtures that are at least 45 years old will be repaired when possible.

C. Windows and Doors

1. Repair or replacement of damaged or deteriorated windows and doors, when performed in kind to exactly match existing materials and form.
2. Replacement of window panes in kind or with clear double or triple glazing, provided the work does not alter the existing window materials and form. This Allowance does not apply to archaic or decorative glass. Glazing that is at least 45 years old may be treated with clear window films only.
3. Door and window hardware that is at least 45 years old will be repaired when possible.

D. Exterior Walls, Cornices, Porches and Foundations

1. Repainting of surfaces, provided that destructive preparation treatments, including but not limited to, waterblasting, sandblasting, and chemical cleaning, are not used.
2. Repair or partial replacement of exterior siding, cornices, porches, balustrades, stairs, or trim when performed in kind to exactly match existing materials and form.
3. Repair or replacement of signs or awnings to closely match existing materials and form.
4. Temporary bracing or shoring for stabilization.
5. Anchoring of masonry walls to floor systems, provided the anchors are embedded and concealed from exterior view, such as in the Hilti systems.
 - a. Repair or reconstruction of parapets and chimneys to exactly match all existing materials and visual features. Bracing and reinforcing of fireplaces and chimneys, provided the bracing and reinforcing are either concealed from exterior view or removable in the future.
 - b. Stabilization of foundations and the addition of foundation bolts, provided that visible masonry foundation mortars match the color, strength, and joint tooling of any foundation mortars that are at least 45 years old.

E. Roofing

Repair, replacement, or strengthening of roofing, gutters, and downspouts, when performed in kind to exactly match existing materials and form. However, cement asbestos shingles may be replaced with asphalt shingles, and untreated wood shingles may be replaced with fire resistant wood shingles.

F. Weatherproofing and Insulation

1. Caulking and weather-stripping with compatibly colored materials.
2. Replacement or installation of insulation with an adequate vapor retarder, provided that decorative interior plaster, woodwork, or exterior siding is not altered. This Allowance does not apply to exterior insulation finishing systems (EIFS), urea formaldehyde foam insulation, or any other thermal insulation with water in its chemical composition, when installed within wall cavities or other spaces that are not vented.

G. Seismic Upgrades

Installation of the following seismic upgrades, provided they are not visible on the exterior or within character defining interiors that are at least 45 years old: cross bracing on pier and post foundations; metal fasteners; collar ties; gussets; tie downs; strapping and anchoring of mechanical,

electrical, and plumbing equipment; anchoring of furniture; 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 a road to pre-disaster geometric design standards and conditions, with in kind materials, number and width of lanes, shoulders, medians, curvatures, grades, clearances, and side slopes.
- B. Repair of road composition with in kind surface materials to maintain pre-disaster size, traffic capacity, and load classification of motor vehicles, such as reshaping and compacting roadbed soil, or repairing asphaltic or Portland cement concrete pavement. This Allowance does not apply to brick or stone paving, or to regrading of native materials to reconstruct the roadbed.
- C. Repair of traffic control devices such as signs, signals, delineators, pavement markings, and ramp and traffic surveillance systems.
- D. Repair of road lighting with in kind systems.
- E. Repair of other road appurtenances in kind, such as curbs, berms, and sidewalks, except for brick sidewalks.
- F. Repair of roadway safety elements in kind, such as barriers, guardrails, and impact-attenuation devices.

APPENDIX B
[FEDERALLY RECOGNIZED TRIBES]

ADDENDUM TO THE PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
THE CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

WHEREAS, the Federal Emergency Management Agency (FEMA), incorporated into the Department of Homeland Security, Emergency Preparedness and Response Directorate, assists communities and other eligible entities with disaster housing; hazard mitigation; prevention of and preparedness for emergencies and disasters; and the repair, restoration and replacement of public infrastructure (Programs) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§ 5121-5206) (Stafford Act), the National Flood Insurance Act of 1968, as amended (42 U.S.C. § 4001 et seq.), and their implementing regulations in Title 44 of the Code of Federal Regulations (44 CFR); and

WHEREAS, FEMA, the California State Historic Preservation Officer (SHPO), the California Governor's Office of Emergency Services, and the Advisory Council on Historic Preservation have recognized that the Programs may be implemented on lands under the jurisdiction of the _____ Indian Tribe (Tribe), which did not participate in the development of this Programmatic Agreement (Agreement); and

WHEREAS, FEMA has determined that certain Undertakings may affect properties with religious and cultural significance to the Tribe, that are listed in or eligible for the National Register of Historic Places (historic properties), on or off Tribal lands, 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 requested that the _____ Tribe execute this Addendum to facilitate the Section 106 review of Undertakings that may directly or indirectly affect Tribal historic properties.

STIPULATIONS

FEMA will require that the following Stipulations be implemented:

[**OPTION 1:** The THPO has not assumed SHPO responsibilities pursuant to § 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, on or off Tribal lands, with religious and cultural significance to the _____ Tribe. The THPO will participate in the review of all such Undertakings in accordance with this Agreement. All references to the term

“SHPO” in this Agreement are understood to include both the SHPO and the THPO for review of these Undertakings.

2. FEMA will require any other Federal agencies participating in the Undertaking to consult with the THPO in addition to the SHPO, in accordance with this Agreement and Addendum.
3. This Addendum takes effect on the last date of signature by FEMA, [any other participating Federal agency], and the THPO.

[OPTION 2: The THPO has assumed SHPO responsibilities pursuant to § 101(d)(2) of the NHPA]

1. FEMA recognizes that the _____ Tribe has assumed the Section 106 responsibilities of the SHPO on Tribal lands, pursuant to § 101(d)(2) of the NHPA, and FEMA will consult with the _____ THPO pursuant to this Agreement, in lieu of the SHPO, for all Undertakings that may affect historic properties on Tribal lands, with religious and cultural significance to the Tribe. The THPO will participate in the review of all such Undertakings in accordance with this Agreement. All references to the term “SHPO” in this Agreement are understood to refer only to the THPO for review of these Undertakings. All references to the term “SHPO” are understood to include both the SHPO and the THPO for review of such Undertakings off Tribal lands, unless the SHPO elects to not participate in such review.
2. FEMA will require any other Federal agencies participating in the Undertaking to consult with the THPO in accordance with this Agreement and Addendum.
3. The signatories recognize that the SHPO will participate as a consulting party pursuant to this Agreement if an Undertaking on Tribal lands affects historic properties off Tribal lands. The SHPO may also participate if requested in accordance with 36 CFR § 800.3(c)(1).
4. This Addendum takes effect on the last date of signature by FEMA, [any other participating Federal agency], and the THPO.

SIGNATORY PARTIES:

FEMA, [any OTHER FEDERAL AGENCY], and the THPO