

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
NEW HAMPSHIRE STATE HISTORIC PRESERVATION OFFICER,  
NEW HAMPSHIRE GOVERNOR'S OFFICE OF EMERGENCY MANAGEMENT,  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**WHEREAS**, the Federal Emergency Management Agency (FEMA) makes assistance available to states, communities, and other eligible entities for disaster housing; hazard mitigation; prevention of and preparedness for emergencies and disasters; and public assistance, such as the repair, restoration and replacement of public infrastructure 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., the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2201 et seq., and implementing regulations contained in Title 44 of the Code of Federal Regulations; and

**WHEREAS**, FEMA has determined that implementation of these Programs will result in Undertakings that may affect historic properties listed in or eligible for the National Register of Historic Places (historic properties), and FEMA has consulted with the New Hampshire State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council), pursuant to 36 CFR Part 800, implementing Section 106, herein after referred to as "Section 106", and 110(f) of the National Historic Preservation Act (NHPA), 16 U.S.C. Part 470; and

**WHEREAS**, the State of New Hampshire will receive financial and technical assistance from FEMA and will in turn provide assistance to eligible applicants and as such the New Hampshire Governor's Office of Emergency Management (OEM) will typically 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 has determined that there are no Federally recognized Indian tribes (Tribes) in the State of New Hampshire; however, the implementation of these Programs may result in Undertakings that have an effect on historic properties that have religious and cultural significance to currently unidentified, non-resident Tribes, and FEMA may request that these Tribes participate as a consulting party to fulfill the requirements of Section 106; and

**WHEREAS**, FEMA, SHPO, OEM, 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 minimizing delays to FEMA's delivery of disaster assistance.

NOW, THEREFORE, FEMA, SHPO, OEM, 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 OEM, SHPO and the Council, FEMA shall ensure that the following measures are implemented:

### I. LEAD AGENCY COORDINATION

- A. When FEMA is determined to be the Lead Agency, and has obtained the consent of the participating Federal Agency or agencies, FEMA will coordinate the Section 106 review activities of all Federal agencies that participate in Undertakings funded by the Programs.
- B. If an applicant requests FEMA funding for a project previously reviewed by another Federal agency and for which the Section 106 consultation has been completed, additional Section 106 consultation will not be required on FEMA's part, as long as the project is identical. The applicant and/or OEM shall certify to FEMA that a project has not changed in scope or detail (i.e., that the project plans bear the same date as those referenced in the previous comment letter) and document prior SHPO concurrence relative to this undertaking by submitting the SHPO's concurrence or comment letter for inclusion in FEMA's project records.

### II. APPLICABILITY

- A. This Agreement applies to the Programs implemented after execution by all parties and will remain in effect until the expiration of the Agreement. In the event that a specific disaster declaration occurs prior to the expiration date, the Agreement shall remain in effect for that specific disaster so long as the disaster remains open for funding.
- B. FEMA has determined that the following types of activities have limited potential to cause effects to historic properties, and FEMA has no further 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 of the Stafford Act, Individuals and Households Program), with the exception of ground disturbing activities and construction related to temporary or permanent housing (44 CFR Part 206.107(b)(4)) {"Permanent housing construction"};
- C. This Agreement will only apply to historic properties that retain National Register integrity, pursuant to 36 CFR Part 60.

- D. FEMA will have met its Section 106 responsibilities when the undertaking is in conformance with one or more of the Allowances in Appendix B – Allowances: Undertakings Not Requiring SHPO or Council Review. FEMA will determine when an Undertaking meets the applicable criteria listed in Appendix B. FEMA will document this determination in the project file and may authorize the release of funding for the Undertaking.
1. When historic structures are involved, determinations of eligibility will be made by FEMA staff who meet the qualifications as stipulated in III.A.1. When requested, SHPO staff will be available as resources and for consultation through written requests, telephone conversations or electronic media.
  2. Qualified FEMA staff will document in the FEMA project file the reason for reaching its determination and/or for selecting one or more of the Allowances in Appendix B.
- E. 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, New Hampshire State agency, or contractor staff who meet the Secretary of Interior's (SOI's) 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 some individuals or groups, including Native American groups, possess special expertise related to Traditional Cultural Properties, and FEMA may utilize this expertise and consult with them for the purpose of site identification and determining if any such properties are eligible for the National Register, and may as per IV.A.3, invite them to participate as consulting parties in the Section 106 process.
- B. All time designations will be in calendar days. If any signatory does not comment on a determination related to a proposed action within an agreed upon timeframe, FEMA may assume the signatory's concurrence with FEMA's determination.
- C. FEMA responsibilities:
1. FEMA may request that Federal, New Hampshire State agency, or applicant staff who meet the Qualifications in III.A.1 conduct the identification, evaluation of National Register eligibility and determination of effect for historic properties on behalf of FEMA, as described in 36 CFR 800.4(b, c).

2. FEMA will review all National Register eligibility and effect determinations resulting from the performance of these delegated activities, prior to submitting such determinations to the SHPO.
3. FEMA will provide the SHPO and Council with an annual written report of activities of the previous calendar year on or before March 31st of the following year, for each year that this Agreement is in effect. An extension may be requested if FEMA is fully committed to delivering disaster assistance. The parties will review this information to determine if amendments to the Agreement are necessary. Upon the request of any signatory, a meeting will be held subsequent to the issuance of the annual report to review the report and/or discuss issues in greater detail. This Annual Report will summarize the actions taken to implement the terms of this Agreement, including:
  - a. A summary of projects by FEMA program;
  - b. The number of properties added to the New Hampshire Historical Inventory and the New Hampshire Archaeological Inventory;
  - c. A summary of the treatment measures undertaken;
  - d. A summary of archaeological activities conducted under the program;
  - e. Suggestions, if any, for additional actions that could be considered for inclusion in Appendix B.
4. Prior to authorizing the release of funds for individual projects requiring special conditions pursuant to this agreement, FEMA will fully inform the OEM of all stipulations and conditions to insure that they are understood and conveyed to the Sub-grantee, pursuant to III.E.1.

D. SHPO responsibilities:

1. The SHPO, if requested, will concur or non-concur with FEMA's National Register eligibility and determinations of effect 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. If, as a result of a specific Disaster, SHPO staff is unable to meet the demands of the situation, SHPO will consult with FEMA at the earliest possible time to seek a solution.

E. OEM Responsibilities:

1. OEM, as grantee, will ensure that all sub-grantees are fully informed as to their responsibilities as stipulated in this Agreement. This includes providing them with guidance about in-kind repairs, pursuant to the Secretary of Interior's Standards, and insuring they understand and acknowledge any additional stipulations that may be placed upon construction or repair or hazard mitigation projects as a result of Section 106 consultation or other means of compliance as provided for in this Agreement. OEM will also ensure that sub-grantees understand that failure to comply with the terms of this Agreement could jeopardize Federal participation in the project.
2. Although the administrative action of acquiring properties in buyout projects are exempt from Section 106 review, as per Appendix B, VIII, OEM will ensure that applicants secure the properties from physical alteration, illegal entry, and damage until the requirements of the Agreement are fulfilled. OEM will ensure that applicant communities agree to these provisions as a condition of the grant before FEMA will release any project funding.

**IV. INITIAL COORDINATION FOLLOWING DECLARATION OF THE DISASTER**

Upon the Presidential declaration of a disaster, FEMA, through OEM, will notify SHPO of the Declaration and provide a list of the designated counties. Within 10 days of establishing the Disaster Field Office (DFO) in New Hampshire, FEMA will coordinate with the SHPO and OEM to establish points of contact and protocols for the implementation of the Agreement. FEMA will further provide information to the SHPO about the types of damages identified during the Preliminary Damage Assessment (PDA). FEMA and OEM will provide guidance on program issues and processes. OEM 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. In the aftermath of the Disaster, determine with the SHPO those standing structures listed in the National Register (NR) or New Hampshire Historical Inventory identified during the PDA that have not retained National Register integrity pursuant to 36 CFR Part 60. For those undertakings involving historic structures that lack integrity as agreed by FEMA and SHPO, FEMA will terminate its Section 106 review for that undertaking and document the decision in the project file. If FEMA and the SHPO do not agree on whether a listed property has retained its integrity, FEMA will review all Undertakings that may affect the property in accordance with Stipulations V. through VII.
2. Consult with other Federal agencies having jurisdiction for Undertakings related to the Programs to ensure compliance with applicable historic preservation laws and regulations.

3. Develop with the SHPO a feasible plan for involving the public in the Section 106 review process. In doing so, FEMA 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. FEMA, in consultation with the SHPO, may invite interested groups or persons to participate as consulting parties in the Section 106 process in accordance with 36 CFR 800.3(f) ("Identify other consulting parties").
4. If FEMA is informed that a National Historic Landmark (NHL) site has been damaged as a result of the disaster, FEMA will promptly notify the SHPO and the Secretary's National Historic Landmarks Program Manager at the National Park Service Regional Office in Philadelphia.

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 Secretary of the Interior;
  - b. properties listed in the New Hampshire Historical Inventory;
  - 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 special interest groups.
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 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 groups, 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, chipping of vegetation debris, or other types of large scale work efforts, if applicable, that will have minimal or no effect on historic properties. Details will be worked out during the first post-disaster meeting between FEMA and SHPO, based on the scale and nature of the undertakings.

## 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) ("Emergency situations: Applicability").
- B. As a result or in anticipation of the Disaster, but within 30 days after the time of discovery of the emergency, 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 SHPO and Council prior to the expiration of the 30 days. FEMA will immediately assume the SHPO's and Council's concurrence unless otherwise notified.
  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. In all cases, FEMA will be clear that an "expedited project review" is being requested. 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 carry out the following review for all non-emergency Undertakings related to the delivery of FEMA's disaster response and recovery program and FEMA's other programs, with the noted exception of the different time frames for SHPO and consulting party comments relative to the two types of Programs.

- A. Area of Potential Effects (APE): For all project reviews 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) ("Identify historic properties" and "Evaluate historic significance"), FEMA will determine, in consultation with the SHPO, if the APE contains properties or is likely to contain properties (including archaeological properties) that are listed in or eligible for the National Register.
- C. If no historic properties are present, or if an Undertaking is designed to avoid affecting the character defining features or integrity of such historic properties as defined in 36 CFR §800.16(1), 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 10 days after receipt, FEMA will complete the Section 106 review and may approve funding. In the case of FEMA's other programs, the SHPO or any consulting party shall make any objections known within the standard 30 days as provided for in 36 CFR §800.4(d)(1).
- D. If an Undertaking may affect identified historic properties, or if the SHPO objects to the determination of "no historic properties affected" within 10 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 Secretary of Interior Standards for the Treatment of Historic Properties (Standards), or any other applicable Secretary of Interior's Standards. FEMA will also consider any views provided by consulting parties and the public related to such effects.