



Preserving America's Heritage

## ACHP SUBMISSION GUIDELINES FOR FEMA

### **Inviting the ACHP to Participate in Programmatic Agreements that Govern Section 106 Review Related to FEMA Programs, Complex Projects, or Multiple Undertakings per 36 CFR § 800.14(b)**

The Advisory Council on Historic Preservation (ACHP) requires federal agencies to provide relevant background information when it proposes to develop Programmatic Agreements (PAs) pursuant to its regulations, "Protection of Historic Properties" (36 CFR Part 800) which implement Section 106 of the National Historic Preservation Act (NHPA). The Federal Emergency Management Agency (FEMA) should therefore include adequate background documentation when inviting the ACHP to participate in the development of PAs for the implementation of FEMA programs (e.g. a Statewide-PA applicable to a variety of programs), complex projects, or multiple undertakings. The purpose of providing background documentation is for FEMA to explain its decision to develop a PA as a Program Alternative, as provided in Subpart C of 36 CFR § 800. The ACHP will advise FEMA and all consulting parties whether it will participate within *15 days of stamped receipt of the notification, if adequate documentation has been provided*. Such documentation should address the following questions:

- What are the goals of the proposed PA? What problem or issue is FEMA attempting to resolve with this PA? What circumstances warrant a departure from the normal Section 106 process?
- What types of undertakings/program areas would the PA cover and why is it important for FEMA to have this PA? What effects, if any, are anticipated to be similar and repetitive to historic properties? What effects, if any, cannot be fully determined prior to approval of particular types of undertakings?
- Did FEMA already have an executed PA for these undertakings/programs in this particular state? If yes, did the PA lapse? Include a hard copy of the previous PA.
- If FEMA already had an executed PA, how effective has it been and how will a new PA improve upon the existing PA? Has any consulting party expressed dissatisfaction with the existing or former PA and if so, what steps is FEMA taking to resolve these concerns and address the deficiencies of the previous PA?
- If FEMA did not already have an executed PA in a particular state, will FEMA be using another PA as a model or template? Why has FEMA chosen the template or model?
- Who has FEMA consulted to date with regard to the development of a PA? How far along is FEMA in the PA development process? Is there a draft PA? If yes, include a hard copy of the draft and provide an electronic copy.
- What is the current relationship between FEMA, the State Historic Preservation Officer (SHPO), and the state emergency management agency (SEMA)? How will the PA clarify roles and responsibilities of these parties?
- What is FEMA's strategy for meeting the requirements of 36 CFR § 800.2(c) (*Participants in the Section 106 Process – Consulting Parties*) and 36 CFR § 800.2(d) (*Participants in the Section 106 Process – the Public*) during the negotiation of the PA? In addition, provide the ACHP with a current contact list of anticipated consulting parties.

- *State Historic Preservation Officer* - Does the SHPO support the development of a PA? Have they advised FEMA of their goals in executing a PA? If so, what are those goals?
- *Indian tribes and Native Hawaiian organizations* - What Indian tribes or NHOs have been consulted, or will be consulted, if actions to be covered by the PA may affect properties of traditional cultural and religious significance to Indian tribes or NHOs?
- *Grantees and sub-grantees* – How will grantees and sub-grantees roles and responsibilities be addressed in the PA? How will FEMA involve them in the negotiation of the PA?
- *Representatives of local governments* - What level of outreach has been conducted with local or county governments? Has FEMA specifically coordinated with Certified Local Governments?
- *Additional consulting parties* - What efforts have been made to seek the views of statewide preservation groups or other civic, professional, or statewide organizations?
- *The public* – To what extent has FEMA solicited public involvement in the negotiation of the PA? What level of public participation does FEMA believe is required in drafting the PA?

### **Inviting the ACHP to Participate in the Resolution of Adverse Effects per 36 CFR § 800.6(a)(1)**

In order for the ACHP to determine whether or not Appendix A “*Criteria for Council Involvement in Reviewing Individual Section 106 Cases*” is applicable to an undertaking, appropriate background documentation is required when an Agency notifies the ACHP per 36 CFR § 800.6(a)(1). FEMA should follow the documentation standards outlined in 36 CFR § 800.11(e) and provide copies of relevant correspondence exchanged among FEMA and other consulting parties. The ACHP will advise FEMA and all consulting parties whether it will participate in the development of a Memorandum of Agreement (MOA) within *15 days of stamped receipt of the notification, if adequate documentation has been provided*. Initial submission of adequate documentation is important to avoid subsequent requests for additional documentation. Such documentation should include the following items:

- A description of the undertaking, specifying the federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;
- A description of the steps taken to identify historic properties;
- A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;
- A description of the undertaking's effects on historic properties;
- An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and
- Copies or summaries of any views provided by consulting parties and the public (*a brief summary plus copies of correspondence is preferred*).

The ACHP is aware that background information is often contained within FEMA consultation letters to SHPOs and tribes. However, since copies of those letters are not routinely shared with the ACHP, FEMA will need to submit copies of those letters and actual SHPO and tribal responses to the ACHP. The ACHP cannot make its decision on participation until all available background documentation is provided. FEMA should ensure that complete and relevant documentation is included in the invitation to the ACHP if it wishes to avoid delays in the process.

### **Submitting Executed Memoranda of Agreements – Resolution Without the ACHP per 36 CFR § 800.6(b)(1)(iv)**

When the ACHP has notified FEMA that it will not participate in consultation, FEMA must notify the

ACHP of the outcome of the undertaking. In order to conclude the Section 106 review for an adverse effect determination, FEMA must submit a copy of the executed MOA to the ACHP along with the documentation specified in 36 CFR § 800.11(f). This information must be submitted prior to FEMA approving the undertaking or implementing project activities. FEMA should transmit the MOA with a cover letter explaining the following:

- Any substantive revisions or additions to the documentation provided to the ACHP cited in 36 CFR § 800.11(e);
- An evaluation of any measures considered to avoid or minimize the undertaking's adverse effects; and
- A summary of the view of the consulting parties and the public.

The Section 106 process is complete when FEMA receives a letter from the ACHP acknowledging receipt of the MOA.

*September 20, 2010*