



FEMA

July 12, 2012

Jan Crider
Emergency Preparedness Specialist
Response and Recover Division
Indiana Department of Homeland Security
302 West Washington Street, W046
Indianapolis, IN 46204

Re: Extension and Amendment of the Programmatic Agreement among
SHPO, IDHS and FEMA

Dear Ms Crider:

The captioned agreement has been signed by all consulting parties and a copy has been filed with the Advisory Council for Historic Preservation per their letter of May 1, 2012. The revised agreement is now in force until September 22, 2019 or the agreement is renegotiated.

Enclosed are copies of the signature pages, along with the revised allowances and a copy of the original Programmatic Agreement (PA). Please insert the signature page that you retained and file for your records.

Thanks again for your cooperation in establishing this agreement, which will promote efficiency in considering the effects of federal undertakings on historic properties while minimizing delays to the delivery of disaster and preparedness assistance.

If you have questions or comments contact me at nicholas.mueller@fema.dhs.gov or at 312-408-5438.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas Mueller".

Nicholas Mueller
Acting Regional Environmental Officer
FEMA, Region V

enclosures

**AGREEMENT EXTENDING AND AMENDING
THE PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE INDIANA STATE HISTORIC PRESERVATION OFFICER, AND
INDIANA DEPARTMENT OF HOMELAND SECURITY
FOR ALL FEMA PROGRAMS**

WHEREAS, the Federal Emergency Management Agency (FEMA), the Indiana State Historic Preservation Officer (SHPO) and the Indiana Department of Homeland Security (IDHS) have been satisfied with the performance of the Programmatic Agreement (PA) which went into effect on September 22, 2005; and

WHEREAS, that agreement expires on September 22, 2012; and

WHEREAS, all original signatories to the original PA would like to extend it for another seven years; and

WHEREAS, the signatories have agreed to minimal changes to the agreement to bring it up to date and improve its performance; and

WHEREAS, pursuant to Stipulation XIV.B of the PA, FEMA, SHPO and IDHS, by mutual agreement, may amend this agreement by the same process used to create the original agreement; and

WHEREAS, pursuant to Stipulation XIV.E of the PA, FEMA, SHPO and IDHS, by mutual agreement, may extend this agreement;

NOW, THEREFORE, FEMA, IDHS and SHPO agree that the following stipulations be incorporated into the PA currently in force.

STIPULATIONS

I. Amendments to the Programmatic Agreement

- A. **The first clause of the agreement** is amended as follows, to include legislation governing additional grant programs administered by FEMA:

WHEREAS, the Federal Emergency Management Agency (FEMA) makes assistance available to states, Commonwealths, communities, federally recognized Indian Tribes (Tribes) and other eligible entities through programs (Programs), pursuant to the Homeland Security Act of 2002, Pub. L. No. 107-296 (2002) (codified as amended at 6 U.S.C. § 101 *et seq.*); Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. § 5121 *et seq.*, (Stafford Act); the National Flood Insurance Act of 1968, Pub. L. No. 90-448 (1968) (as amended), the National Flood Insurance Reform Act of 1994, Pub. L. No.103-325 (1994) (as amended); the Post-Katrina Emergency Management Reform Act of 2006 Pub. L. No. 109-295 (2006) (as amended); implementing regulations contained in Title 44 of the Code of Federal Regulations (CFR) and such other acts, implementing regulations or Congressionally authorized programs as are enacted from time to time; and

- B. **The sixth clause of the agreement** is amended as follows, to include non-resident Indian tribes recognized by the federal government since the original agreement went into effect:

WHEREAS, FEMA has determined that the implementation of these Programs may result in Undertakings that have an effect on historic properties that have religious and cultural significance to federally-recognized, non-resident Indian Tribes, including but not limited to the following:

- Shawnee Tribe,
- Absentee-Shawnee Tribe of Oklahoma,
- Eastern Shawnee Tribe of Oklahoma,
- Delaware Nation,
- Delaware Tribe,
- Citizen Potawatomi Nation,
- Forest County Potawatomi Community of Wisconsin,
- Hannahville Indian Community-- Wisconsin Potawatomi Indians of Michigan,
- Prairie Band of Potawatomi Indians,
- Miami Tribe of Oklahoma,
- Kickapoo Tribe of Kansas,
- Kickapoo Tribe of Oklahoma,
- Kickapoo Traditional Tribe of Texas,
- Ottawa Tribe of Oklahoma,
- Peoria Tribe of Indians of Oklahoma,
- Pokagon Band of the Pottawatomi,
- Wyandotte Nation; and

- C. **Stipulation IV.B** is amended as follows to better reflect Indiana law regarding archaeological resources:

When an Undertaking will adversely affect an archaeological property, FEMA may treat the adverse effect by providing for the recovery of significant information through archaeological data recovery or other scientific means. To accomplish this objective, FEMA will follow the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" published in the Federal Register (64 FR 95N 27085-27087, May 18, 1999) and consult with the other consulting parties to prepare a data recovery plan. This data recovery plan will follow relevant Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology statute (IC 14-21-1), rules (312 IAC 21, 312 IAC 22) and the current *Guidebook for Indiana Historic Sites and Structures Inventory-Archaeological Sites*, and will include a provision that all materials, records and any artifacts which the current legal landowner does not wish to retain, resulting from archaeological survey and data recovery, are curated at a repository within the State of Indiana and in accordance with 36 CFR Part 79.

- D. **Stipulation VII.D** is amended as follows to include the current name of the Division of Historic Preservation and Archaeology:

IDHS will advise sub-grantees of the requirements of this Agreement and Indiana Codes regarding the discovery of human remains. If human remains are discovered during the course of project implementation, IDHS will notify FEMA immediately and will require the sub-grantee to stop project activities in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm until FEMA concludes

Extension and Amendment of Programmatic Agreement among FEMA, DHPA, IDHS

consultation with the signatories of this agreement. In addition, the discovery of any human remains must be reported to the appropriate County Coroner and law enforcement officials, and the discovery of any human remains dating on or before December 31, 1939 must be also reported to the Department of Natural Resources, Division of Historic Preservation and Archaeology (DHPA) within two (2) business days. The discovery must be treated in accordance with IC 14-21-1 and 312 IAC 22. If a Native American Indian burial ground is discovered, the DNR shall immediately provide notice to the Native American Indian Affairs Commission as per IC 14-21-1-25.5. FEMA will also notify the appropriate Indian Tribes who have expressed a cultural interest in such remains, pursuant to the attached MOUs. The parties will consult to determine the appropriate treatment and disposition of the remains in accordance with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), PL 101-601, and/or state codes, as applicable.


- E. **Stipulation XIV.A** is amended as follows to extend the agreement a period of seven years from the expiration of the original agreement:

This Agreement applies to the Programs implemented after execution by all parties and, subject to comment by the Advisory Council for Historic Preservation, will remain in effect from the date of execution through September 22, 2019 or until FEMA, in consultation with all other signatories, determines that the terms of this Agreement should be terminated pursuant to either Stipulation XIV.C or Stipulation XIV.D below. Upon such determination, FEMA will provide all other signatories with written notice of the determination and termination. In the event that a specific disaster declaration occurs prior to the expiration date, the Agreement will remain in effect for that specific disaster so long as the disaster remains open for funding.

II. Amendments to the Programmatic Allowances

The attached programmatic allowances, titled Appendix A, have been updated and will be in effect from the date of the signing of this amendment.

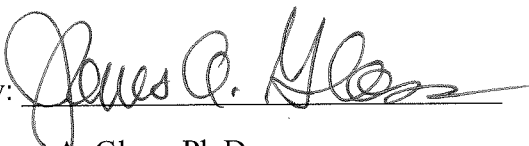
FEDERAL EMERGENCY MANAGEMENT AGENCY

By: 

Date: 5-7-12

Andrew Velasquez III
Regional Administrator, Region V

**STATE HISTORIC PRESERVATION OFFICE,
INDIANA DEPARTMENT OF HISTORIC PRESERVATION AND ARCHAEOLOGY**

By: 
James A. Glass, Ph.D.
Deputy State Historic Preservation Officer

Date: 5/22/2012

INDIANA DEPARTMENT OF HOMELAND SECURITY

By: 

Joe Wainscott
Executive Director
Indiana Department of Homeland Security

Date: 7/3/12

**PROGRAMMATIC AGREEMENT
AMONG
FEDERAL EMERGENCY MANAGEMENT AGENCY,
INDIANA STATE HISTORIC PRESERVATION OFFICER,
AND
INDIANA DEPARTMENT OF HOMELAND SECURITY
FOR ALL FEMA PROGRAMS**

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 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 may result in Undertakings that may affect properties listed in or eligible for the National Register of Historic Places (historic properties), and FEMA has consulted with the Indiana State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, implementing Sections 106, herein referred to as Section 106, and 110(f) of the National Historic Preservation Act (NHPA), 16 U.S.C. Part 470; and

WHEREAS, FEMA has afforded the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on all FEMA Programs identified in the Preamble in accordance with Section 106, and has invited the ACHP to participate in this consultation process in accordance to 36 CFR Part 800 and the ACHP has declined to formally consult or to become a signatory party, pursuant to 36 CFR § 800.6(a)(1)(C)(iii); and

WHEREAS, the State of Indiana will receive financial and technical assistance from FEMA and will in turn provide monies and other assistance to eligible sub-grantees, and

WHEREAS, the Indiana Department of Homeland Security (IDHS) will typically be responsible for administering various Grants Programs, has participated in this consultation, and has been invited to enter into this Programmatic Agreement (Agreement); and

WHEREAS, FEMA has determined that the implementation of these Programs may result in Undertakings that have an effect on historic properties that have religious and cultural significance to Federally-recognized, non-resident Indian Tribes, including the Shawnee Tribe, Absentee-Shawnee Tribe of Oklahoma, Eastern Shawnee Tribe of Oklahoma, Delaware Nation, Delaware Tribe, Citizen Potawatomi Nation, Forest County Potawatomi Community of Wisconsin, Hannahville Indian Community-Wisconsin Potawatomi Indians of Michigan, Prairie Band of Potawatomi Indians, Miami Tribe of Oklahoma, Kickapoo Tribe of Kansas, Kickapoo

Tribe of Oklahoma, Ottawa Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, and Wyandotte Nation; and

WHEREAS, FEMA has requested that these Tribes consult during the development of this Agreement and intends to enter into individual Memoranda of Understanding (MOU) with these Tribes to establish consultation protocols and fulfill the requirements of Section 106 for individual projects, and these MOUs are made a part of this Agreement on the date that FEMA and a tribal representative attach their signatures (Attachments), and

WHEREAS, FEMA, IDHS and SHPO acknowledge that implementation of these Programs will be more effective if, pursuant to 36 CFR § 800.14(b), an Agreement is in place to eliminate the need for case-by-case SHPO review of certain routine activities with little potential to adversely affect historic properties, to establish a flexible process for reviewing all other FEMA undertakings, to define the protocols, roles and responsibilities of all parties in the Section 106 review process, and to promote efficiency so that the effects of undertakings on historic properties may be adequately considered while minimizing delays to FEMA's and IDHS's delivery of disaster and mitigation assistance.

NOW, THEREFORE, FEMA, IDHS and SHPO agree that all 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.

This agreement is organized into three major categories: Section 106 Project Reviews (Sections I-VIII), Protocols and Responsibilities (Sections IX-XII) and Administrative Actions (Sections XIII-XV).

STIPULATIONS

SECTION 106 PROJECT REVIEWS

The principal day-to-day use of this Programmatic Agreement is to define the processes by which FEMA, IDHS and SHPO staff will undertake Section 106 reviews of all FEMA-funded undertakings. All undertakings are not identical. Some types of actions have an extremely limited potential to affect a historic property. This is particularly true for many FEMA-funded activities, because FEMA's primary mandate is to repair program-eligible structures, facilities or buildings that were damaged during a Presidentially-declared disaster to their pre-disaster condition or to fund mitigation measures that are designed to prevent damage to such structures, facilities or buildings from future events. Repairs are typically limited to areas that have been substantially disturbed by prior construction of a facility, such as a road or bridge; new construction is uncommon. Other types of actions have some potential to affect a historic property if precautions are not taken, such as installing riprap along an exposed stream bank in an archaeologically sensitive area or laying new pipeline beyond the footprint of an existing utility trench next to a historic town hall. Other repairs are of greater magnitude, requiring work beyond areas extensively excavated during prior construction or involving properties that are

eligible for inclusion in the National Register of Historic Places. Therefore, a flexible approach to project review is required. Four avenues of review for projects funded under FEMA's Response and Recovery Program are outlined below in Sections I-II. A separate process of review for the IDHS-administered Grants Programs is detailed in Section III. (Appendix C provides flow charts of these processes.)

I. LEVELS OF PROJECT REVIEW

Many FEMA-funded activities fall into one of two categories: (1) those types of activities that per 36 CFR §800.3(a)(1) generally have "no potential to cause effects on historic properties, assuming such historic properties were present", and therefore do not qualify as undertakings as defined in § 800.16(y) and (2) undertakings that have very limited potential to affect a historic property and are excluded from case-by-case SHPO review. Both types of activities are enumerated in Appendix A: Programmatic Allowances. More complex undertakings typically require more detailed reviews and formal consultation with SHPO. The latter process is referenced as Standard Project Review. [Note: The process for expedited reviews in emergency situations is defined in Section XII of this Programmatic Agreement.]

- A. **Allowances – Exempted Review.** In the first category, FEMA has determined that the following types of activities generally have no potential to affect historic properties and, pursuant to 44 CFR Part 206.110(m), FEMA/IDHS have no Section 106 responsibilities: Implementation of the Programs as related to assistance to individuals and households (Section 408 of the Stafford Act, Individuals and Households Program and the Other Needs Assistance Program), with the exception of ground disturbing activities and construction related to Sec. 206.117(b)(1)(ii) (Temporary housing) and 206.117(b)(3) (Replacement housing) [67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]. Other potential types of activities in this category are included in Appendix A, VIII-XIII.
- B. **Allowances – Limited Review.** In the second category, *all repairs and any mitigation work, including related activities, must be confined to areas that have been substantially disturbed by prior construction of the facility, to areas where substantial non-historical subsurface disturbance is present, or where subsoil or bedrock without cultural deposits are exposed. Areas where historical occupation, use or near-surface modification of the soil, such as plowing or landscaping, has occurred, or where historical deposits are likely to be present, are not considered substantially disturbed.* The intent is to avoid even the potential to affect an archaeological site or historic feature. *The second category also includes limited repairs to buildings where the repairs are in kind or conform to specifically listed standards.* The intent is to insure that the historic fabric and character of a building remain unchanged from those existing prior to the disaster.
- C. **Allowances – Enhanced Review.** In some instances, the area of potential effect, the extent of past disturbance and/or the likelihood of encountering a historic property are unclear following a limited review. Further review by a qualified Historic Preservation Specialist, meeting the qualifications laid out Section X.A.1, may indicate that there is little or no potential to affect a historic property and that the project would otherwise qualify under an Allowance. The intent of the enhanced review is to provide a

mechanism for a thorough review and expedited clearance of a project without the need for FEMA and SHPO to commit the staff resources required for formal consultation per 36CFR§800.4.

- D. **Standard Project Review** - In the fourth category, formal consultation with the SHPO is required to evaluate the eligibility of identified properties or to assess the potential for the project to affect properties that are listed in the National Register or may be eligible for listing in the National Register.

II. REVIEW PROCESSES FOR DISASTER-RELATED PROJECTS

FEMA and IDHS will have met their Section 106 responsibilities when an activity or undertaking is reviewed based on the guidelines contained in Sections II-VIII.

A. Allowances – Exempted Review.

1. FEMA's Environmental/Historic Preservation staff will determine when a project or action meets the criteria for a non-undertaking as defined in 36 CFR § 800.3(a)(1) and as stipulated in Appendix A - Programmatic Allowances, Sections VIII-XII.
2. When considering applicability of an Exempted Review allowance, the reviewer shall use the project's scope of work to insure conformance.
3. FEMA staff will note the fact that the project is exempt from Section 106 review in the FEMA project files in National Emergency Management Information System (NEMIS) and will conclude its review.

B. Allowances – Limited Review

1. FEMA's Environmental/Historic Preservation staff will determine when an Undertaking meets a Programmatic Allowance listed in Appendix A, I-VII. Review by a professionally qualified Historic Preservation Specialist is not required.
2. When considering applicability of a Limited Review Allowance, the reviewer shall use such resources as the project's scope of work, special considerations sheet and available maps and photographs, as necessary to insure that the Area of Potential Effect (APE) is confined to an area substantially disturbed by prior construction of the facility or through natural processes. (For projects where the extent of past disturbance or the APE required for construction cannot be determine from the records at hand, the use of one or more of the allowances is not appropriate.)
3. When requested, SHPO staff will be available as an additional resource and for informal consultation through written requests, telephone conversations or electronic media. In those instances where informal consultation with SHPO has occurred, a written notice (via e-mail or regular mail) will be sent to SHPO to confirm any decisions that were reached.
4. FEMA's Environmental/Historic Preservation staff will document the use of one or more Limited Review Allowances in the FEMA project files (in NEMIS) and attach any supporting documentation. This will conclude FEMA's Section 106 review.

C. Allowances – Enhanced Review

1. When the area of potential effect, the extent of past disturbance and/or the likelihood of encountering a historic property are unclear following a limited review, a qualified FEMA Historic Preservation Specialist (FEMA HPS) will undertake additional review.
2. At a minimum, a thorough review of the project's scope of work, special considerations sheet, maps, photographs, the Indiana Register of Historic Sites and Structures website (www.IN.gov/dnr/historic) may be required to reach a decision. Additional resources available at the offices of the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology (SHPO) as identified in Section XI.B.3 may need to be consulted. In some instances, a site visit will be necessary.
3. The FEMA HPS may enter into informal consultation with the SHPO via e-mail, phone or other means if it is deemed necessary during any phase of this review.
4. If the FEMA HPS determines that a) all work will be confined to areas substantially disturbed by prior construction or natural events, b) that a project's scope has been revised sufficiently to confine all work to substantially disturbed areas, or c) that there is no probability of encountering a historic property within the area of potential effect, the FEMA HPS will make a determination of No Historic Properties Affected in accordance with 36 CFR § 800.4(d)(1).
5. The FEMA HPS will document the basis for making this determination in the project files and will record the determination in NEMIS. Files should include a written description, maps, photographs and any stipulations necessary to avoid affecting a historic property. The Section 106 review is then concluded.
6. If the FEMA HPS determines that a historic property is, or is likely to be, present within the APE, that repairs to a building may go beyond the stipulations in Appendix A.II, or that site-specific engineering is too complex to easily determine sensitivity, FEMA will initiate Standard Project Review as outlined below.

D. Standard Project Review

1. Establish 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 facade. For all other Undertakings, including projects where the extent of past disturbance or the limits of the work area required for construction are initially unclear, a FEMA HPS will establish the APE, including those that may affect archaeological properties. FEMA may also consult with the SHPO and invite other appropriate parties (such as local governments and the public) to provide information related to the APE.
2. In accordance with the intent of 36 CFR § 800.4(b) ("Identify historic properties"), qualified FEMA staff will determine if the APE contains properties or is likely to contain properties (including archaeological properties) that are listed in or potentially eligible for the National Register.
3. A thorough review of the project's scope of work, special considerations sheet, maps, photographs, the Indiana Register of Historic Sites and Structures website

(www.IN.gov/dnr/historic), appropriate resources available at the offices of the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology (SHPO) as identified in Section XI.B.3, and a site visit are typically required. In those instances where there is a reasonable potential for archaeological properties to be present within the APE, FEMA will consult with the SHPO to determine the level of effort necessary to identify the anticipated type and location of these properties. Any resulting studies will conform to the standards in 312 IAC 21, 312 IAC 22, and the current *Guidebook for Indiana Historic Sites and Structures Inventory—Archaeological Sites*, the Secretary of the Interior's *Standards and Guidelines for Archeology*, or other format as may be agreed to by FEMA and SHPO.

4. FEMA may consult with the SHPO via e-mail, phone or other means if it is deemed necessary during any phase of this review.
5. If no historic properties are present, if an Undertaking is modified to avoid affecting the character defining features of a property, or if the review indicates that all work will be confined to substantially disturbed subsurface areas, FEMA will make a determination of No Historic Properties Affected in accordance with 36 CFR § 800.4(d)(1).
 - a. FEMA will notify the SHPO and all consulting parties of this determination and provide formal written documentation with its notice. *Guidance on documentation is provided in Appendix B.*
 - b. Unless the SHPO or any consulting party objects to this determination *within 10 (Ten) days after receipt of the documentation*, FEMA will complete the Section 106 review, enter a complete record of the consultation process in the project files, and will conclude Section 106 review.
6. If an Undertaking will affect or have the potential to affect identified historic properties, or if the SHPO objects to the finding of No Historic Properties Affected *within 10 (Ten) days after receipt of documentation*, FEMA will consult further with the SHPO and other consulting parties 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 (SOI) Standards for the Treatment of Historic Properties (Standards), or any other applicable SOI Standards. FEMA will also consider any views provided by the public related to such effects.
 - a. For standing buildings or structures:
 - 1) If FEMA and the SHPO agree that an Undertaking does not meet the adverse effect criteria or that it meets the Standards, FEMA will make a determination of "no adverse effect" pursuant to 36 CFR § 800.5(b). FEMA will notify the SHPO and all other consulting parties of this determination and provide supporting documentation pursuant to 36 CFR § 800.5(c) and specified in Section §800.11(e). Unless the SHPO or any other consulting party objects *within 10 (Ten) days after receipt of the notification*, FEMA will complete the Section 106 review, enter a complete record of the consultation process in the project files, and will conclude its Section 106 review.
 - 2) If the SHPO objects to the "no adverse effect" determination, FEMA may request, when appropriate, through IDHS that the sub-grantee revise the scope

of work to conform to the Standards, in consultation with the SHPO and consulting parties. FEMA also will ensure that the revised scope of work is reviewed for funding eligibility. If the sub-grantee modifies the scope of work to address the objections, FEMA will notify the SHPO and all consulting parties, and provide supporting documentation. Unless the SHPO or any consulting party objects *within 10 (Ten) days after receipt*, FEMA will enter a complete record of the consultation process in the project files and conclude its Section 106 review.

- 3) If the sub-grantee is unable to, or will not modify the Undertaking to meet the Standards or address the objections, FEMA will initiate adverse effect consultation pursuant to Stipulation IV.

b. For archaeological properties and historic properties of religious or cultural significance:

- 1) If FEMA and the SHPO agree that an Undertaking does not meet the adverse effect criteria, FEMA will make a determination of "no adverse effect" pursuant to 36 CFR § 800.5(b). FEMA will notify the SHPO and all other consulting parties of this determination and provide supporting documentation pursuant to 36 CFR § 800.5(c) and specified in Section §800.11(e). Unless the SHPO or any other consulting party objects *within 10 (Ten) days after receipt*, FEMA will enter a complete record of the consultation process in the project files, and will conclude its Section 106 review.
- 2) If the SHPO objects to the "no adverse effect" determination, but the identified historic properties can be avoided through redesign of an Undertaking, or through procedures/requirements agreed upon among all the consulting parties, FEMA will make a determination of "no adverse effect" pursuant to 36 CFR §800.5(b). FEMA will notify the SHPO and all consulting parties of this determination and provide supporting documentation pursuant to 36 CFR § 800.5(c) and specified in Section §800.11(e). Unless the SHPO or any consulting party objects *within 10 (Ten) days after receipt*, FEMA will enter a complete record of the consultation process in the project files, and will conclude its Section 106 review.
- 3) If the SHPO objects to the "no adverse effect" determination and the project cannot be modified or procedures/requirements cannot be agreed upon to avoid the historic property, FEMA will initiate adverse effect consultation pursuant to Stipulation IV.

7. For all other historic properties that meet the NR criteria but where Secretary of Interior Standards do not exist, such as properties of religious and cultural significance, or where avoidance is not practicable, FEMA will initiate adverse effect consultation pursuant to Stipulation IV.

III. PROJECT REVIEWS FOR STATE-MANAGED GRANTS PROGRAMS

A. Scoping Meetings

For projects funded under state-administered grants programs, such as the Hazard Mitigation Grants Program (HMGP), SHPO and IDHS staff will meet periodically to conduct a scoping meeting to review proposed buyout programs or other complex undertakings not falling under one or more of the Programmatic Allowances, including those that may affect historic properties of archaeological, religious or cultural significance.

1. Prior to this scoping meeting, IDHS will provide SHPO with a scope of work, maps and photographs to facilitate a general review of the project.
2. Based on this material, IDHS and SHPO will establish the APE for the Undertaking and will identify any actions that meet one or more of the Programmatic Allowances in Appendix A: I-XIII and any standing structures or buildings that are clearly not eligible for the National Register and do not require further Section 106 review.
3. IDHS and SHPO will reach a consensus agreement that these projects either have no potential to affect historic properties or that no historic properties are affected.
4. IDHS and SHPO will also identify those properties that require additional, professionally-prepared documentation, including property evaluations and historic contexts sufficient to make a determination of a property's National Register eligibility under all four National Register criteria.
5. IDHS will provide a written summary of the topics discussed during the scoping meeting and the determinations made about individual properties. This summary will be submitted to both SHPO and FEMA via e-mail or letter.

B. Formal Consultation

1. Pursuant to Section X.C.3 of this Agreement and prior to requesting formal consultation with SHPO, FEMA will complete documentation sufficient to determine the National Register eligibility of those properties identified during the Scoping Meeting that may be affected by the proposed project.
2. SHPO will review project documentation *within 30 (Thirty) days after receipt*.
3. Should FEMA's consultation with SHPO result in a consensus determination of No Historic Properties Affected or No Adverse Effect, FEMA will document this determination in the project files.
4. If FEMA and SHPO fail to reach a consensus determination of National Register eligibility or effect, or if a project review results in a determination of "Adverse Effect", FEMA will follow the processes outlined in Section II or subsequent sections of the agreement.

IV. RESOLUTION OF ADVERSE EFFECTS FOR HISTORIC PROPERTIES

- A. If FEMA determines that an Undertaking will adversely affect a historic property, FEMA will determine if the Undertaking will be reviewed in accordance with 36 CFR § 800.6(b),

resulting in a Memorandum of Agreement (MOA), or addressed through a Secondary Programmatic Agreement (Secondary Agreement). Following this decision, FEMA will notify the SHPO and other consulting parties, and provide the ACHP with an adverse effect notice, including documentation in accordance with 36 CFR § 800.11(e), subject to the confidentiality provisions of Sec. §800.11(c) with respect to properties of religious or cultural significance.

1. Memorandum of Agreement: FEMA may develop an MOA in accordance with 36 CFR § 800.6(c) to outline measures to avoid, minimize or treat adverse effects to historic properties. FEMA may also consider reasonable alternate treatment measures that serve an equivalent or greater public benefit than standard measures or archaeological data recovery, while promoting the preservation of historic properties. FEMA will attempt to identify all such feasible measures in consultation with the SHPO and other consulting parties identified in accordance with Section §800.2(c), where appropriate. Alternate measures may include, but are not limited to, preservation planning, interpretive programs, or development of a historic properties database with Geographic Information Systems.
 2. Secondary Programmatic Agreement: FEMA, the SHPO, IDHS, the ACHP, if participating, and other consulting parties may consult to develop a Secondary Agreement to require programmatic conditions and/or treatment measures for multiple, but similar Undertakings by a sub-grantee. A secondary programmatic agreement may also consider reasonable alternate treatment measures.
- B. When an Undertaking will adversely affect an archaeological property, FEMA may treat the adverse effect by providing for the recovery of significant information through archaeological data recovery or other scientific means. To accomplish this objective, FEMA will follow the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" published in the Federal Register (64 FR 95N 27085-27087, May 18, 1999) and consult with the other consulting parties to prepare a data recovery plan. This data recovery plan will follow relevant Indiana Department of Natural Resources, Div. of Historic Preservation and Archaeology guidelines (312 IAC 21, 312 IAC 22) and the current *Guidebook for Indiana Historic Sites and Structures Inventory—Archaeological Sites*, and will include a provision that all materials and records resulting from archaeological survey and data recovery are curated at a repository within the State of Indiana and in accordance with 36 CFR Part 79.
- C. For sites where FEMA determines that human remains and possible associated funerary remains or items of cultural patrimony as defined by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), might be present, or when other treatment measures are appropriate, FEMA will consult further with the other consulting parties, including federally-recognized Indian Tribes of record (see Attachments), to develop an appropriate approach to resolving the adverse effects.
- D. FEMA will also involve the public in the resolution of adverse effects in accordance with 36 CFR § 800.6(a)(4) ("Involve the public").

- E. When an Undertaking will adversely affect a National Historic Landmark (NHL), FEMA will notify and invite the Secretary of Interior (Secretary), through the Midwest Regional Office of the National Park Service, to participate in consultation, pursuant to 36 CFR § 800.10 ("Special requirements for protecting NHLs"). When the ACHP participates in consultation related to an NHL, the ACHP will report the outcome of the consultation to the Secretary and the FEMA Director.

V. DISPUTE RESOLUTION PURSUANT TO MOAs and SECONDARY PROGRAMMATICA AGREEMENTS

Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of an MOA and Secondary Agreement are implemented, FEMA will consult with the objecting party(ies) to resolve the objection. If FEMA determines that such objection(s) cannot be resolved, FEMA will:

- A. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR §800.2(b)(2). Upon receipt of adequate documentation, the ACHP shall review and advise FEMA on the resolution of the objection *within 30 days*. Any comment provided by the ACHP, and all comments from the parties to the MOA or Secondary Agreement, will be taken into account by FEMA in reaching a final decision regarding the dispute.
- B. If the ACHP does not provide comments regarding the dispute *within 30 days* after receipt of adequate documentation, FEMA may render a decision regarding the dispute. In reaching its decision, FEMA will take into account all comments regarding the dispute from the parties to the MOA or Secondary Agreement.

FEMA's responsibility to carry out all other actions subject to the terms of the MOA or Secondary Agreement that are not the subjects of the dispute remain unchanged. FEMA will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. FEMA's decision will be final.

VI. CHANGES TO AN APPROVED SCOPE OF WORK

IDHS will notify FEMA as soon as practicable of any proposed change to the approved scope of work for an Undertaking related to a historic property. After a review of final project plans and any other relevant project documentation, FEMA will determine if the revised scope of work is covered under one or more of the Allowances in Appendix A, and, if not, FEMA will then begin consultation with the SHPO and other appropriate parties. FEMA may authorize the sub-grantee to proceed with the change if no substantive alterations have occurred, or if, for a standing structure, the change can be modified to conform to the Standards, or any other applicable Secretary of Interior Standards. Where changes in the scope of work are substantive, or if FEMA and the SHPO determine that the change cannot be modified to conform to the Standards, or any other applicable Secretary of Interior Standards, FEMA will initiate adverse effect consultation pursuant to Stipulation IV.

VII. UNANTICIPATED AND POST-REVIEW DISCOVERIES

- A. IDHS 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. IDHS will require the sub-grantee to cease all ground disturbance 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.
- B. FEMA will notify the SHPO of the discovery within two (2) business days as per Indiana Code (IC 14-21-1-27 and 29) and consult to develop actions to take into account the effects of the Undertaking. FEMA will notify the SHPO of any time constraints, and all parties will mutually agree upon timeframes for this consultation. IDHS and the sub-grantee may participate in this consultation. FEMA will provide the SHPO with written recommendations to take into account the effects of the Undertaking. *SHPO will respond to the written recommendation within no more than 15 (Fifteen) days of their receipt.*
- C. If the SHPO does not object to FEMA's recommendations within the agreed upon timeframe, FEMA will require the sub-grantee to modify the scope of work to implement the recommendations. If the SHPO objects to the recommendations, FEMA and the SHPO will consult further to resolve this objection through actions including, but not limited to, identifying project alternatives that may result in the Undertaking having no adverse effect on historic properties, or proceeding in accordance with Stipulation III.
- D. IDHS will advise sub-grantees of the requirements of this Agreement and Indiana Codes regarding the discovery of human remains. If human remains are discovered during the course of project implementation, IDHS will notify FEMA immediately and will require the sub-grantee to stop project activities in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm until FEMA concludes consultation with the signatories of this agreement. In addition, the discovery of any human remains must be reported to the appropriate County Coroner and law enforcement officials, and the discovery of any human remains dating on or before December 31, 1939 must be also reported to the Department of Natural Resources, Office of History Preservation (DNR) within two (2) business days. The discovery must be treated in accordance with IC 14-21-1 and 312 IAC 22. If a Native American Indian burial ground is discovered, the DNR shall immediately provide notice to the Native American Indian Affairs Commission as per IC 14-21-1-25.5. FEMA will also notify the appropriate Indian Tribes who have expressed a cultural interest in such remains, pursuant to the attached MOUs. The parties will consult to determine the appropriate treatment and disposition of the remains in accordance with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), PL 101-601, and/or state codes, as applicable.

VIII. PUBLIC PARTICIPATION

- A. FEMA recognizes that the views of the public are essential to informed decision making in the Section 106 review process. FEMA will consult with the SHPO to determine if there are individuals or organizations with a demonstrated interest in the preservation of historic resources that should be made aware of an Undertaking. If such parties are identified, FEMA will provide them with information regarding the Undertaking and its effect on historic properties, consistent with the confidentiality provisions of 36 CFR § 800.11(c). When FEMA has determined that an Undertaking will have an adverse effect upon historic properties, FEMA will provide the public an opportunity to express their views on resolving the adverse effect.
- B. FEMA will notify the public of proposed actions in a manner that reflects the:
1. Nature and complexity of the Undertaking and FEMA's specific involvement;
 2. The effect of the Undertaking on historic properties;
 3. Likely interest of the public in the effects on historic properties; and
 4. Confidentiality concerns of the consulting parties (including archaeological site locations), private individuals and businesses.
- C. In accordance with the plan developed in consultation with the SHPO for involving the public, and taking into consideration the variables in VIII.B, FEMA will identify the appropriate stage of project review for seeking public input during the Section 106 process.

These stages may include:

1. Initial coordination for complex undertakings;
 2. Identification of historic properties;
 3. Assessment of adverse effects; and
 4. Resolution of adverse effects.
- D. FEMA will consider all views provided by the public regarding an undertaking, and will consider all written requests of individuals and organizations to participate as consulting parties, and in consultation with the SHPO, IDHS, and ACHP, if participating, determine which should be consulting parties. FEMA will invite any individual or organization that will assume a specific role or responsibility outlined in a MOA or Secondary Agreement to participate as a consulting party.
- E. FEMA also may provide public notices and the opportunity for public comment or participation in an Undertaking through the public participation process of the National Environmental Policy Act (NEPA) and its implementing regulations set out at 44 CFR Part 10, as well as Executive Orders 11988 and 11990 relating to floodplains and wetlands as set out in 44 CFR Part 9.

- F. At any time during the implementation of the measures stipulated in this Agreement should a member of the public raise an objection to any measure within the Agreement or its manner of implementation, FEMA will take the objection into account and consult as needed with the objecting party, the SHPO, IDHS, and the ACHP, if participating, to address the objection.

PROTOCOLS AND RESPONSIBILITIES

IX. LEAD AGENCY COORDINATION

- A. When FEMA is determined to be the Lead Agency, and has obtained the concurrence of the other participating Federal Agency or agencies, FEMA will coordinate the Section 106 review activities of all Federal agencies.
- B. If a sub-grantee requests FEMA funding for a project with the same scope of work that was previously reviewed by another Federal agency or for which the Section 106 consultation has been completed, additional Section 106 consultation will not be required on FEMA's part. The sub-grantee, IDHS, or other Grantee will 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.

X. GENERAL

A. Professional Qualifications:

1. FEMA will use Federal, Indiana State agency, or contractor staff who meet the SOI's Professional Qualifications Standards (Qualifications), as determined by FEMA's Federal Preservation Officer (FPO), in the required disciplines, to insure adequate site identification, evaluation and determination of effect pursuant to this Agreement. With respect to architectural history and historic architecture, a qualified professional should meet the *Secretary of Interior's Professional Qualifications Standards*, found in 36 CFR Part 61 (48 FR 44738-9, 1983). In the disciplines of archaeology, architecture, landscape architecture and history, specialists should meet the revised standards contained in the *Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs* (63 FR 79 20495-20508, 24 April 1998), pursuant to Section 112 of the National Historic Preservation Act); as amended (16 U.S.C. 470 *et seq.*). If FEMA conducts its own field study to determine a site's archaeological significance or directly supervises data recovery, the Principal Investigator or Field/Laboratory Supervisors should meet the standards under 312 IAC 21-3-4.
2. FEMA acknowledges that some individuals or groups, including Native American Indian groups, possess special expertise related to historic properties of religious and

cultural significance, including those of traditional religious and cultural importance, 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 Stipulation II.D, invite them to participate as consulting parties in the Section 106 process.

- B. All **time designations** will be in calendar days (36 CFR 800.16(h)). If any signatory does not comment on FEMA's determination related to a proposed action within an agreed upon time frame, FEMA may proceed to the next step in its review or with project implementation in accordance with FEMA's determination.

C. **FEMA responsibilities:**

1. FEMA may request that Federal, Indiana State agency, or sub-grantee staff who meet the Qualifications in X.A.1 conduct the identification and evaluation of historic properties on behalf of FEMA, as described in 36 CFR § 800.4(b, c).
2. Prior to requesting formal consultation with SHPO, FEMA will review all National Register eligibility and effect determinations resulting from the performance of these delegated activities.
3. For the HMGP and other State grants programs, FEMA and IDHS will coordinate their review prior to completing formal consultation with SHPO. FEMA will complete any formal consultation with SHPO, unless IDHS/SHPO consultation has been completed according to Section III of this Agreement.
4. FEMA will provide the SHPO 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. Upon the request of any signatory party, 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 Indiana Historic Sites and Structures Inventory--Archaeological Sites or Indiana Historic Sites and Structures Inventory (for buildings, structures, objects, or districts);
 - 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 A.

5. Prior to authorizing the release of funds for individual projects requiring special conditions pursuant to this agreement, FEMA will fully inform IDHS or other Grantee of all stipulations and conditions in writing to ensure that they are understood and conveyed to the Sub-grantee, pursuant to X.E.1.

D. SHPO responsibilities:

1. The SHPO will make every reasonable effort to respond to a request for concurrence with FEMA's Section 106 determinations and findings within the time frames required by this Agreement. However, if the SHPO believes that it will not be possible to respond to a particular determination or finding within the applicable time frame, then the SHPO may contact FEMA by telephone or e-mail and request a reasonable extension of time in which to respond.
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 time frames of this Agreement, SHPO will consult with FEMA at the earliest possible time to seek a solution.
3. The SHPO will be available for consultation on individual projects when requested by FEMA or IDHS.

E. Indiana Department of Homeland Security (IDHS) Responsibilities:

1. As grantee, IDHS will, with FEMA's assistance per X.C.4, 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 ensuring the sub-grantees understand and acknowledge any additional stipulations that may be placed upon construction, repair or hazard mitigation projects as a result of Section 106 consultation or other means of compliance as provided for in this Agreement. IDHS 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 is exempt from Section 106 review, as per the guidelines in Appendix A, VIII, IDHS will ensure that sub-grantees secure the properties from physical alteration, illegal entry, and damage until the requirements of the Agreement are fulfilled. IDHS will ensure that sub-grantee communities agree to these provisions as a condition of the grant before FEMA will release any project funding.

3. In preparation for FEMA's annual report to SHPO, IDHS will provide a summary of its grants activities to FEMA for inclusion in FEMA's annual report. This report will summarize the actions taken to implement the terms of this Agreement, including:
 - a. A summary of grants projects managed by IDHS;
 - b. A summary of any formal meetings with SHPO held to discuss the overall grants program, including such topics as IDHS-targeted areas for project development and the major types of projects under review;
 - c. Suggestions, if any, for additional actions that could be considered for inclusion in Appendix A – Programmatic Allowances, particularly Section XIII.

XI. INITIAL COORDINATION FOLLOWING DECLARATION OF THE DISASTER

Upon the Presidential declaration of a disaster, FEMA will notify SHPO of the Declaration, either directly or through IDHS, and provide a list of the designated counties. *Within 5 (five) days* of establishing the Joint Field Office (JFO) in Indiana, FEMA will coordinate with the SHPO and IDHS to establish points of contact and identify any special protocols or other considerations related to 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 IDHS will provide guidance on program issues and processes. IDHS and FEMA, as appropriate, will also present information related to the Section 106 review process to all sub-grantees, at the applicant briefings and kickoff meetings.

A. FEMA will:

1. Keep SHPO updated on the declaration status as JFO operations continue.
2. Consult with other Federal agencies having jurisdiction for Undertakings related to the Programs, such as when another agency is task assigned to prepare temporary housing sites, to ensure that they follow FEMA protocols when acting on FEMA's behalf.
3. Develop with the SHPO a feasible plan for involving the public in the Section 106 review process in accordance with Stipulation VII of the Agreement.

B. The SHPO will, following consultation with FEMA:

1. Identify a SHPO point or points of contact to facilitate the review of disaster related undertakings.
2. Provide FEMA with general guidance on special historic areas of concern or specific property types that may need special consideration;
3. Provide clearance for a FEMA historic preservation specialist to use a variety of historic and archaeological resources available at the offices of the Indiana

Department of Natural Resources, Division of Historic Preservation and Archaeology (SHPO), including the following:

- County, city, or township interim reports (if published) of the Indiana Historic Sites and Structures Inventory (buildings, structures, objects, and districts) and supporting site cards and marked topographic maps;
 - Indiana Cemetery and Burial Ground Registry;
 - Site forms for the Indiana Historic Sites and Structures Inventory—Archaeology;
 - Archaeological topographic site maps; computerized archaeological site records;
 - Cultural resource management reports from archaeological investigations;
 - Historic Preservation Fund grant reports from archaeological projects;
 - Miscellaneous old county surveys or Indiana or regional publications on archaeology;
 - Indiana State-Owned Properties Interim Report, Historic Sites and Structures Inventory (Historic Landmarks Foundation of Indiana, September 2003).
 - Iron Monuments to Distant Posterity, Indiana's Metal Bridges, 1870-1930 (James L. Cooper, 1987), and supporting HABS/HAER inventory cards.
 - Artistry and Ingenuity in Artificial Stone: Indiana's Concrete Bridges, 1900-1942 (James L. Cooper, 1997), and supporting HABS/HAER inventory cards.
 - Indiana Railroad Depots: A Threatened Heritage (Francis H. Parker, 1989).
 - Site cards for New Deal (WPA and CCC) resources on Indiana Department of Natural Resources properties.
 - Indiana Historic Sites and Structures Inventory: Survey of Historic Resources of State Educational Institutions--summary reports by campus and supporting site cards.
4. Identify staff or consultants to assist FEMA staff with its Section 106 responsibilities, and identify, in coordination with FEMA, specific activities that the SHPO may perform at FEMA's request for specific projects.
 5. Assist FEMA, when possible, in identifying any communities, organizations or individuals that may have an interest in historic properties affected by the Disaster.
 4. Assist local jurisdictions in evaluating the historic sensitivity of identified staging and landfill sites for debris disposal, chipping of vegetation debris, or other types of large scale work efforts, if applicable.

XII. 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), after consultation with the FPO, 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 XII.A, 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 discovering an emergency.
2. The FCO or designated representative will certify in writing to the SHPO the need for FEMA to conduct AN 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, and after consultation with FEMA's FPO, advise the SHPO and ACHP, in writing, prior to the expiration of the 30 day period in question.
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.
4. 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. If SHPO concurs with the proposed measures or if FEMA incorporates SHPO recommendations into the action, FEMA will provide SHPO with final project documentation, including a discussion of all actions taken with respect to the proposed mitigation measures, at the earliest convenient time after the emergency action is taken.
5. 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 ACHP's comments. FEMA will request that the ACHP provide final comment to FEMA *within 7 days* after receipt of FEMA's request, pursuant to 36 CFR § 800.12 (b)(2), unless FEMA determines the nature of the emergency action warrants a shorter time period.

ADMINISTRATIVE ACTIONS

XIII. ANTICIPATORY ACTION

- A. FEMA will not grant assistance to any potential sub-grantee who, with intent to avoid the requirements of this Agreement or Section 106, has intentionally 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. Under extraordinary circumstances, and after consulting with the SHPO, FEMA may determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the sub-grantee, and will complete consultation for the Undertaking pursuant to Stipulation II.
- B. FEMA will specifically advise IDHS of this Anticipatory Actions Stipulation and will require that IDHS advise its sub-grantees in writing at their kickoff meetings that they may not initiate construction on projects for which they are seeking Federal funding prior to compliance with this Agreement. IDHS will also advise its sub-grantees that they may jeopardize Federal funding if construction is initiated prior to compliance with this Agreement. IDHS will also provide a notice of these conditions to all applicants as part of all IDHS-administered mitigation grants packages.

XIV. DURATION, AMENDMENTS, AND TERMINATION

- A. This Agreement applies to the Programs implemented after execution by all parties and will remain in effect from the date of execution for a period not to exceed seven (7) years or until FEMA, in consultation with all other signatories, determines that the terms of this Agreement should be terminated pursuant to either Stipulation XIV.C or Stipulation XIV.D below. Upon such determination, FEMA will provide all other signatories with written notice of the determination and termination. In the event that a specific disaster declaration occurs prior to the expiration date, the Agreement will remain in effect for that specific disaster so long as the disaster remains open for funding.
- B. If any signatory to the Agreement determines that the Agreement cannot be fulfilled, or that an amendment to the terms of this agreement must be made, the signatories will consult to seek amendment of the Agreement. The process of amending this Agreement will be the same as that exercised in creating the originating Agreement.
- C. FEMA, SHPO or IDHS may terminate this Agreement by providing 30 days' written notice to the other parties, provided that the parties will consult during this period to seek amendments or other actions that would prevent termination. Termination of this Agreement will require compliance with 36 CFR Part 800.

- D. This Agreement may be terminated by the implementation of a subsequent Agreement that explicitly terminates or supersedes this Agreement, or by FEMA's implementation of Alternate Procedures, pursuant to 36 CFR § 800.14(a), or by supplanting regulations.
- E. FEMA, SHPO and IDHS may, by mutual agreement, extend this Agreement, provided that FEMA notifies ACHP and provides them a 15-day opportunity to comment.

XV. IMPLEMENTATION OF THIS PROGRAMMATIC AGREEMENT

- A. This Agreement may be implemented in counterparts, with a separate page for each signatory, and FEMA will ensure that each party is provided with a complete copy. This Agreement will become effective on the date that FEMA, SHPO and IDHS attach their signatures.
- B. Execution of this Agreement by FEMA, IDHS and SHPO, and implementation of its terms evidence that FEMA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

By: Janet M. Odeshoo
Janet M. Odeshoo, Acting Regional Director,
Region V

Date: 8/24/05

By: Jeanne Millin
Jeanne Millin, Regional Environmental Officer
Region V


Date: 8/24/05

INDIANA STATE HISTORIC PRESERVATION OFFICE

By: Jon C. Smith
Jon C. Smith
Deputy Historic Preservation Officer

Date: 9-22-05

INDIANA DEPARTMENT OF HOMELAND SECURITY

By: 
J. Eric Dietz
Executive Director
Indiana Department of Homeland Security

Date: 13 Sept

APPENDIX A PROGRAMMATIC ALLOWANCES

Guidance

This list of Programmatic Allowances enumerates program activities that FEMA and SHPO concur will have no effect on historic properties, and are, therefore, excluded from case-by-case Section 106 project review by SHPO. For purposes of this Agreement, actions identified in the Programmatic Allowances fall into one of two categories: (1) those types of activities that per 36 CFR §800.3(a)(1) have "no potential to cause effects on historic properties, assuming such historic properties were present", and therefore do not qualify as undertakings as defined in § 800.16(y) and (2) undertakings that so rarely have the potential to affect a historic property that they are categorically excluded from case-by-case SHPO review.

During disaster operations, the second category typically includes repairs made to existing, public structures or facilities that were damaged during a Presidentially-declared disaster or to mitigation measures that are designed to prevent damage to those structures or facilities from future events. *All repairs and any mitigation work, including related activities, must be confined to areas that have been substantially disturbed by prior construction of the facility or to areas where substantial non-historical subsurface disturbance is present or where subsoil or bedrock without cultural deposits are exposed. Areas where historical occupation, use or near-surface modification of the soil, such as plowing or landscaping, has occurred, or where historical deposits are likely to be present, are not considered substantially disturbed.* The intent is to avoid even the potential to affect an archaeological site or historic feature. *The second category also includes limited repairs to public buildings where the repairs are in kind or conform to specifically listed standards.* The intent is to insure that the historic fabric or character of a building remains unchanged from that existing prior to the disaster. A limited list of undertakings that might be funded through IDHS-administered grants programs is also included in the Allowances.

The following are examples of when an allowance applies and when it does not.

- The replacement of surface aggregate on a gravel road damaged by sheet erosion qualifies as an Allowance under III A and B.
- Repairs that consist of replacing cobblestones with asphalt pavement on a village street are not eligible under the Allowances, because such alteration of materials is specifically excluded under III B.
- Repairs, consisting of placing granular fill capped by riprap on a 6-ft high by 30-ft long eroded shoulder of a road, qualify under I, A. All repair work can be done from the existing roadbed.
- Repairs, consisting of placing granular fill capped by riprap on a 30-ft high by 30-ft long eroded shoulder, will not likely qualify, because construction equipment and materials will have to be brought to the base of the slope. This would cause disturbance to areas beyond the existing roadway and ditch line, requiring a higher level of project review.

To assist the reviewer, qualifications, clarification or specific guidance is included for individual allowances.

Parts I-VIII of the Allowances list the currently identified types of common repair activities that have minimal potential to affect a historic property. Actions that have no potential to affect historic properties and are, therefore, considered to be non-undertakings and exempt from Section 106 review per 36 CFR § 800.3(a)(I), are listed in Parts IX-XII. Allowances that might apply specifically to the grants programs are contained in Part XIII. Individual items may be added or deleted from the Allowances without amending this Agreement, with a letter concurred by FEMA and the SHPO.

Within the context of this Agreement, “in kind” shall mean that it is the same material and the result will match all physical and visual aspects, including form, color, and workmanship. “In kind” mortar will also match the strength, content, color and joint tooling of historic mortar.

A few areas in Indiana are so archaeologically sensitive or historically significant that repairs to existing infrastructure require special scrutiny if there is a chance that such a site may be disturbed. Projects located in the immediate vicinity of the following are specifically excluded from these Allowances, and require SHPO consultation in advance of making any permanent repairs:

- Any project in close proximity to a known or anticipated, large, multi-component, archaeological site, earthwork and/or mound;
- Any project situated adjacent to a burial ground, cemetery, and/or site where human remains are present, anticipated, or encountered;
- Any project in the vicinity of a known or anticipated Unique site or cultural landscape area (e.g., Wabash and Erie Canal sites);
- Any project involving a National Historic Landmark.

In addition, under Indiana Code (IC 14-21-1-26.5), an approved development plan may be required for disturbing ground within 100 feet of a burial ground or cemetery for the purpose of erecting, altering, or repairing any structure. Under this code, the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology is the designated consulting state agency.

I. REPAIRS TO PUBLIC INFRASTRUCTURE INVOLVING SITE WORK

- A. The repair, replacement, or hardening of any existing footings, foundations, retaining walls, or other stabilization system (i.e., gabion baskets, etc.). The Allowance also applies to historic features that are eligible or potentially eligible for listing in the National Register, only if the work is in kind.
- B. Repair, replacement, or hardening of utilities and/or utility systems (including sewer, water, storm drains, electrical, gas, communication, leach lines, and septic tanks) under existing improved roads/roadways or within other substantially disturbed rights of way.
**** Guidance: Hardening of utilities entails reinforcing existing elements to better withstand damage. Examples include encasing replacement pipes in concrete or stone or adding additional guy wires to existing or replacement poles.*

- C. In-kind repair or replacement of driveways, parking lots, and walkways.
 - D. In-kind repair or replacement of fencing and other freestanding exterior walls.
 - E. In-kind repair or replacement of metal utilitarian structures (i.e. pump houses, etc.) ***
Guidance: Modern materials may be used, provided their finish is compatible with the context of the site. Structures such as bridges, water towers, and antenna towers are not considered metal utilitarian structures for the purposes of this Allowance.
 - F. Installation of scaffolding, temporary barriers (i.e., chain link fences, etc.), polyethylene sheeting, or tarps, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations.
 - G. In-kind repair or replacement of hardscaping and utilities, such as paving, planters, trellises, irrigation, and lighting.
 - H. In-kind repair or minimal upgrade to codes and standards of existing piers, docks, boardwalks, boat ramps, and dune crossovers, provided the footprint matches the existing footprint.
 - I. Debris collection from public rights of way, transport, and disposal in existing licensed solid waste facilities. *** *Guidance: This Allowance does not include establishment or expansion of debris staging or disposal areas. However, it does apply to the use of temporary storage areas located in existing hard-topped areas with controlled drainage (such as parking lots), provided other issues do not exist.*
 - J. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and drainage canals, to restore the facility to its pre-disaster condition, provided the sediment is used to repair eroded banks or is disposed at an existing licensed or permitted spoil site. *** *Guidance: Any work in the immediate proximity of a historic canal or canal structure does not qualify under this allowance.*
 - K. Dewatering flooded developed areas of up to three acres.
 - L. Restoring playgrounds or athletic fields at parks or schools to pre-disaster conditions.
 - M. Installation, repair or replacement of security lighting and cameras, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations.
 - N. Directional boring under streams, ditches, roads or other barriers to repair or replace damaged utility lines, provided the ground disturbance at each bore hole does not disturb an area greater than approximately 10' by 10' within the area previously disturbed, and is in line with the original utility trench.
- II. REPAIRS TO ELIGIBLE BUILDINGS** that are more than 50 years old (or less than 50 years old if of exceptional significance) and are listed in or potentially eligible for listing in the National Register of Historic Places. The intent is to repair damaged elements while still retaining, preserving, protecting, or maintaining materials or features that contribute to

the building's historic character. (Buildings less than 50 years old do not require Section 106 review.)

A. Interior Floors, Walls, Doors and Ceilings

1. In-kind repair of interior floors, walls, doors and ceilings. *** *Guidance: This Allowance also applies to the repair of interior finishes, including plaster and wallboard, provided the repair is restricted to the damaged area and does not affect adjacent materials. The Allowance does not apply to historic architectural finishes such as decorative plaster trim, or plaster substrates for decorative materials such as murals, gold leaf, etc.*
2. Repair or replacement of suspended or glued ceiling tiles.
3. Installation of grab bars and other such minor interior modifications for handicapped accessibility, when significant interior features (such as trim or architectural details) are not altered.
4. Non-destructive or concealed testing for hazardous materials (lead paint, asbestos, etc.) or damage assessment.

B. Utilities and Mechanicals

1. Minor interior mechanical (HVAC), electrical, or plumbing work, limited to upgrading, elevation, or in-kind replacement. *** *Guidance: An exception applies to historic fixtures, which must be repaired in kind for this Allowance to apply. This Allowance does not apply to exposed new ductwork.*
2. Installation, repair or replacement of interior fire detection, fire suppression, or security alarm, lighting or camera systems. *** *Guidance: This Allowance does not apply to exposed wiring such as surface mounted wiring, conduits, piping, or to the installation of new systems where they will affect significant interior features.*

C. Windows and Doors

1. In-kind repair or replacement of windows and doors damaged by the disaster, where profiles, elevations, details and materials match those of the original windows and doors.
2. Replacement of windowpanes in kind, provided the result does not alter the existing window material and form. *** *Guidance: This Allowance does not apply to the replacement of existing archaic or decorative glass.*
3. In-kind repair of historic door and window hardware.
4. Installation of clear window films to historic windows or glazing.

D. Exterior Walls, Cornices, Porches and Foundations

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1. Repainting of surfaces, provided that destructive surface preparation treatments are not used, such as water blasting, sandblasting, power sanding, and chemical cleaning.
2. In-kind repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or trim, as long as the replacement pieces match the original in detail and material.
3. In-kind repair or in-kind replacement of signs or awnings.
4. Temporary stabilization bracing or shoring, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations.
5. In-kind repair or reconstruction of concrete/masonry walls, parapets, chimneys, or cornices, including comparable brick, and mortar that matches the color, strength, content, rake, and joint width, where occurring.
6. Bracing and reinforcing of chimneys and fireplaces, provided the bracing and reinforcing are concealed from exterior view. *** *Guidance: If the bracing is visible, this allowance does not apply.*

E. Roofing

1. In-kind repair, replacement, or strengthening of roofing, gutters, or downspouts. Also, cement asbestos shingles may be replaced with asphalt-based shingles.
2. Repairs to built up flat roofs that are obscured from view.

F. Weatherproofing and Insulation

1. Caulking and weather-stripping to complement the color of adjacent surfaces.
2. In-kind replacement of insulation in floors, attics and openings and side walls from the interior with a vapor barrier on the inside, provided that interior plaster or woodwork are not altered.

III. REPAIRS TO ROADS AND ROADWAYS

- A. Repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, number and width of lanes, shoulders, medians, curvature, grades, clearances, and side slopes, provided that all work is conducted from within the existing roadway.
- B. Repair of road composition with in-kind surface materials to maintain pre-disaster size, traffic capacity, and load classifications of motor vehicles, including the reshaping and compacting of road bed soil and the repair of asphaltic or Portland cement concrete pavements. *** *Guidance: This Allowance does not apply to the repair of brick or cobblestone paving.*

- C. Repairs to road slips and landslides that do not require grading of undisturbed soils on the up-hill side of the slip and that do not require work or staging areas in sites or properties where buildings or structure are more than fifty years old.
- D. Rebuilding or re-establishing an eroded or slumped roadbed on the downhill side of the road using such methods as lag and piling walls, gabions, rock fill, etc. when all work is contained within the right-of-way.
- E. In-kind repair, replacement, or minimal upgrade of culverts within rivers, streams or drainage ways, beneath existing roadways or within ditches. This allowance also includes any modest increase in capacity for mitigation purposes or to meet current codes and standards. This allowance also includes the installation of new metal, concrete or plastic culverts beneath roads or within drainage ditches, as well as to related concrete or synthetic features (such as headwalls and wing walls). ***
Guidance: Culverts that are more than 50 years old but not of a standard design or made from metal, concrete or plastic do not qualify under this allowance. An example would be a stone arch culvert built in 1920.
- F. Repair of traffic control devices such as traffic signs and signals, delineators, pavement markings, and traffic surveillance systems.
- G. In-kind repair of road lighting systems, such as period lighting.
- H. In-kind repair of road appurtenances such as curbs, berms, fences, and sidewalks.
*** *Guidance: Sidewalks that are clearly old and made from brick or cobblestone are not covered under this allowance.*
- I. In-kind repair of roadway safety elements such as barriers, guardrails, and impact attenuation devices. In the case of guardrails, the addition of safety end treatments is allowed.
- J. Re-establishment and/or armoring of existing ditches.
- K. In-kind repair of gravel paths

IV. REPAIRS TO BRIDGES

- A. In-kind repair or replacement of ineligible or Non-Select bridges, including decks, side rails, piers, fenders, abutments, and bridge head or wing walls on their original locations to pre-disaster conditions provided no new construction is proposed or where the footprint will not exceed the existing footprint. ****Guidance: This Allowance applies only to bridges that are less than 50 years old or have been determined to be ineligible for listing in the National Register of Historic Places or Non-Select through the Indiana Historic Bridge Inventory 2007-2011. Bridges determined to be Select or are more than 50 years old but not included in the Indiana Historic Bridge Inventory 2007-2011 are not covered under this allowance.*
- B. Repair or replacement of previously replaced decks.

V. REPAIRS TO UTILITY POLES

- A. In residential or urban settings, replacement or relocation of existing utility poles between the edge of a sidewalk and road.
- B. In rural settings, replacement of poles located in substantially disturbed road shoulders.
- C. In off-road alignments, relocations of poles in existing holes or within substantially disturbed areas within 5 ft of damaged poles. ****Guidance: Projects involving extensive replacement of utility poles or replacement of poles on new alignments do not qualify under this allowance.*
- D. Repair or replacement of damaged equipment, such as generators, switch boards, etc.

VI. REPAIRS TO AIRPORTS, provided that excavation or site work will not disturb more soil than substantially disturbed by the original construction.

- A. Repair of existing runways.
- B. In-kind repair of safety components, including beacons, on airport property, *as long as no new access is required.*
- C. In-kind replacement or repair of existing beacons not on airport property, *as long as no new access is required.*

VII. REPAIRS TO RAILROADS, provided that excavation or site work will not disturb more soil than substantially disturbed by the original construction.

- A. In-kind repair or replacement of railroad safety components.
- B. Repair of railroad crossings to pre-disaster condition.
- C. In-kind replacement of existing bolt-connected railroad tracks and wood ties.

VIII. ACQUISITIONS

- A. Funding the administrative action of acquiring properties, but specifically excluding demolition. **** Guidance: The following are the types of administrative actions funded under this category: studies, development of mitigation plans, engineering and design, hydrology and hydrologic analyses and certain operating costs. Such actions typically occur during the planning process related to project selection in the grants programs.*

IX. FEES, SERVICES, EQUIPMENT AND FURNISHINGS

- A. Miscellaneous labor and equipment costs, including reimbursement for wages and/or equipment used in implementing emergency protective measures.
- B. Repair, rental or purchase of vehicles or equipment.

- C. Builders fees.
- D. Fees for architectural, engineering or other design services, provided the services will not result in an adverse effect on a property listed in or eligible for the Register.
- E. Reimbursement of a sub-grantee's insurance deductible, not to exceed \$1,000.
- F. Reimbursement for the damaged contents of a building, including replacement of rugs, other floor coverings or furnishings.

X. HUMAN SERVICES

The following activities relating to implementation of Sections 408 (Federal Assistance to Individuals and Households), 411 (Individual and Family Grant Programs), 412 (Food Coupons and Distribution), 415 (Legal Services), and 416 (Crisis Counseling Assistance and Training) of the Stafford Act:

- A. The minimal repair program.
- B. Temporary housing for disaster victims whose homes are uninhabitable, with the exception of construction of new temporary housing or use of previously undeveloped mobile home sites.
- C. Legal services.
- D. Crisis counseling.
- E. Loans to individuals, businesses, and farmers for the repair, rehabilitation, or replacement of damaged real and personal property.
- F. The Cora Brown Fund, to assist victims of natural disasters for those disaster-related needs that are not met by government agencies or private organizations.

XI. VECTOR CONTROL

- A. Application of pesticides to reduce adverse public health effects, including aerial and truck mounted spraying.

XII. OTHER PROGRAM ACTIVITIES

The following program activities derived from 44 CFR § 1 0.8 that are not otherwise provided for:

- A. Administrative actions such as personnel actions, travel, procurement of supplies, etc., in support of normal day-to-day activities and disaster related activities;
- B. Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions;

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- C. Studies that involve no commitment of resources other than manpower and associated funding;
- D. Inspection and monitoring activities, granting of variances, and actions to enforce Federal, state, or local codes, standards or regulations;
- E. Training activities and both training and operational exercises utilizing existing facilities in accordance with established procedures and land use designations;
- F. Procurement of goods and services for support of day-to-day and emergency operational activities, and the temporary storage of goods other than hazardous materials, so long as storage occurs on substantially disturbed land or in existing facilities;
- G. Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements;
- H. Acquisition, installation, or operation of utility and communication systems that use existing distribution systems or facilities, or currently used infrastructure rights-of-way;
- I. Planting of indigenous vegetation;
- J. Granting of community-wide exceptions for flood proofed residential basements meeting the requirements of 44 CFR 60.6(c) under the National Flood Insurance Program;
- K. Actions conducted within enclosed facilities where all airborne emissions, waterborne effluent, external radiation levels, outdoor noise, and solid and bulk waste disposal practices comply with existing Federal, state, and local laws and regulations;
- L. The following planning and administrative activities in support of emergency and disaster response and recovery:
 - 1. Activation of the Emergency Support Team and convening of the Catastrophic Disaster Response Group at FEMA headquarters;
 - 2. Activation of the Regional Operations Center and deployment of the Emergency Response Team, in whole or in part;
 - 3. Deployment of Urban Search and Rescue teams;
 - 4. Situation Assessment including ground and aerial reconnaissance;
 - 5. Information and data gathering and reporting efforts in support of emergency and disaster response and recovery and hazard mitigation.
- M. The following emergency and disaster response, recovery and hazard mitigation activities authorized under the Stafford Act:
 - 1. Unemployment Assistance (Sec. 410);

2. Food Commodities (Sec. 413);
3. Community Disaster Loans (Sec. 417);
4. Emergency Communications (Sec. 418);
5. Emergency Public Transportation (Sec. 419); and
6. Federal Emergency Assistance (Sec. 502).

XIII. The IDHS Division of Emergency Response and Recovery, Mitigation and Recovery Branch works closely with FEMA Region V in addressing post-disaster mitigation and recovery activities. Many of these activities do not result in the disturbance of soils outside of an already existing disturbed area. Projects eligible for funding under the HMGP or other IDHS-managed grants program not covered under previous allowances may include the following.

- A. Purchase, elevation, demolition or retrofitting of any structure that is less than fifty years old and that is not located in or adjacent to a historic district or archaeologically sensitive area.
- B. Grading of the top 2-3 inches of soil in the immediate vicinity of a demolished structure to clean up debris and/or re-seeding of properties where demolition has occurred.
- C. Vegetation management, including installation of natural wind breaks, living snowfences, shoreline stabilization, natural dune restoration using native vegetation and sand-fencing, urban-forest practices and landslide stabilization.
- D. Phase I or II Design, Engineering, of Feasibility Study for complex mitigation projects.
- E. Five-percent Initiative Projects, including research and development of hazard warning systems, generators for non-critical facilities; hazard mitigation planning, development of Codes and Standards and education/public awareness programs with mitigation as central feature.
- F. Replacement of weather-warning sirens where the location does not change or the installation of sirens on structures or buildings that are less than 50 years old.
- G. Retrofitting of existing structures that are less than 50 years old for purposes of flood proofing, seismic retrofits, wind proofing, or to provide safe rooms.
- H. Retrofitting of equipment for damage prevention (lightning arrestors, etc.) within the exiting footprint.

APPENDIX B: SUBMITTALS FOR SECTION 106 REVIEWS

Guidance

Indiana's historic resources include homes, county courthouses, schools, bridges, commercial buildings, and numerous other types of structures and buildings that reflect facets of the state's historic and cultural heritage. Historic sites dating between roughly 1800 and 1955 can be tied to various themes, such as military history, early settlement, the development of agricultural, commerce, the evolution of domestic architecture, industry and manufacturing, transportation, and ethnic groups and migration among others. Archaeological sites throughout the state contain the only surviving evidence of some 11,000 years of Native American life and changing natural environments.

FEMA uses the eligibility criteria for nomination to the National Register of Historic Places as a measure of historic significance. The National Register is the U.S. Department of the Interior's official list of historic properties recognized as worthy of preservation for their local, state, or national significance, architecture, archaeology or culture. A number of characteristics of a property are considered when evaluating a property's historic significance.

- It is at least 50 years old.
- It retains its *integrity*. For buildings and structures, integrity is defined by the extent to which the character-defining features of a property remain unchanged. For archaeological sites, integrity is defined by the extent of past land disturbance. (Plowing of agricultural fields is generally not considered significant disturbance.)
- A site's *historic context* is based on patterns or trends in history: events, people and environmental forces that are related and that had a strong effect on a local community, region, state or nation. For example, knowing that a warehouse dates to the 1830s, is located adjacent to the Ohio and Erie Canal, and was owned by one of the construction contractor of the canal, who later became a prominent merchant and leader in the community, places the warehouse in a historic context.

The National Register establishes four eligibility criteria for listing of a property on the National Register. A property must meet at least one of these criteria.

- Direct association with important historic events or activities,
- Direct association with people who played important roles in history,
- Distinctive architectural style or type, craftsmanship or method of construction,
- May yield important information about the past (typically used for archaeological sites)

Documentation Requirements

The following is a list of documents that can facilitate the review of properties under consideration for FEMA funding. Such information will be used by FEMA to make determinations of effect and as submittals to the SHPO for project review. The level of

documentation should be commensurate with the scope and nature of the project. Items A-C should be provided in all cases; if a building is involved, date of construction is an essential piece of information. (Note: This information will also substantively improve the environmental review conducted under NEPA and other Federal and State environmental laws.)

A. Provide a **clear written description** of the entire scope of work. Information should include the current conditions, any alternatives that may be under consideration, and any additional work, not funded by FEMA that will be performed at substantially the same time. The description should be explicit about the size or extent of the area of potential effects (APE), including all associated construction or access areas (eg. staging or stockpile areas, temporary roads, bridges, walkways, work areas, etc.) that will be required to complete the project. For complex undertakings, include any studies, plans, drawings, sketches, or schematics, as may be available, to help understand the entire project, particularly the limits of proposed excavations or other ground-disturbing activities.

B. **Original photos** sufficient to show the proposed project area in the context of its surroundings and any details necessary to understand the entire scope of the project. Photos are also important for assessing a building's integrity.

- Photos should be keyed to accompanying text and/or maps.
- If the project is a building, show all sides of the building (at least the front and from opposite corners), and the context of the building in its setting, including the surrounding buildings.
- Where interior features of a building are of historic importance, quality photographs should be provided of any historic decorative wall or ceiling treatments or highly decorative architectural elements. Detail photographs are helpful.
- If the project is in a rural setting, show the project area in the foreground with the background of the surrounding area in all four directions. Photo coverage should be detailed enough to illustrate all elements included in the project design. Where the project is linear, photos should include all environments within the APE.
- For identification purposes, original color photographs or high-resolution digital images are preferred. For NR documentation, special conditions may apply.

C. The **exact geographic location** of a property must be established. GPS coordinates expressed in latitude and longitude have proven most useful. A map (e.g., USGS map and City map) should be provided to show the undertaking in the context of its surroundings. For projects in rural settings or for projects with ground disturbing activities, USGS maps are mandatory. When GPS coordinates are not available, project locations should be provided with explicit reference to street, number and municipality. If street address is not available, provide a verbal description of the project location. For identification purposes, maps may be computer-generated using GIS systems or with such map-generating programs found at www.terraserver-usa.

D. Documentation of the **date of construction** of the original building or structure (e.g., building permit records, tax records, newspaper accounts, etc.), or an approximate date provided by historic maps, local history, etc. When available, copies of any plans for the

existing facility as well as documentation of any changes made since its original construction.

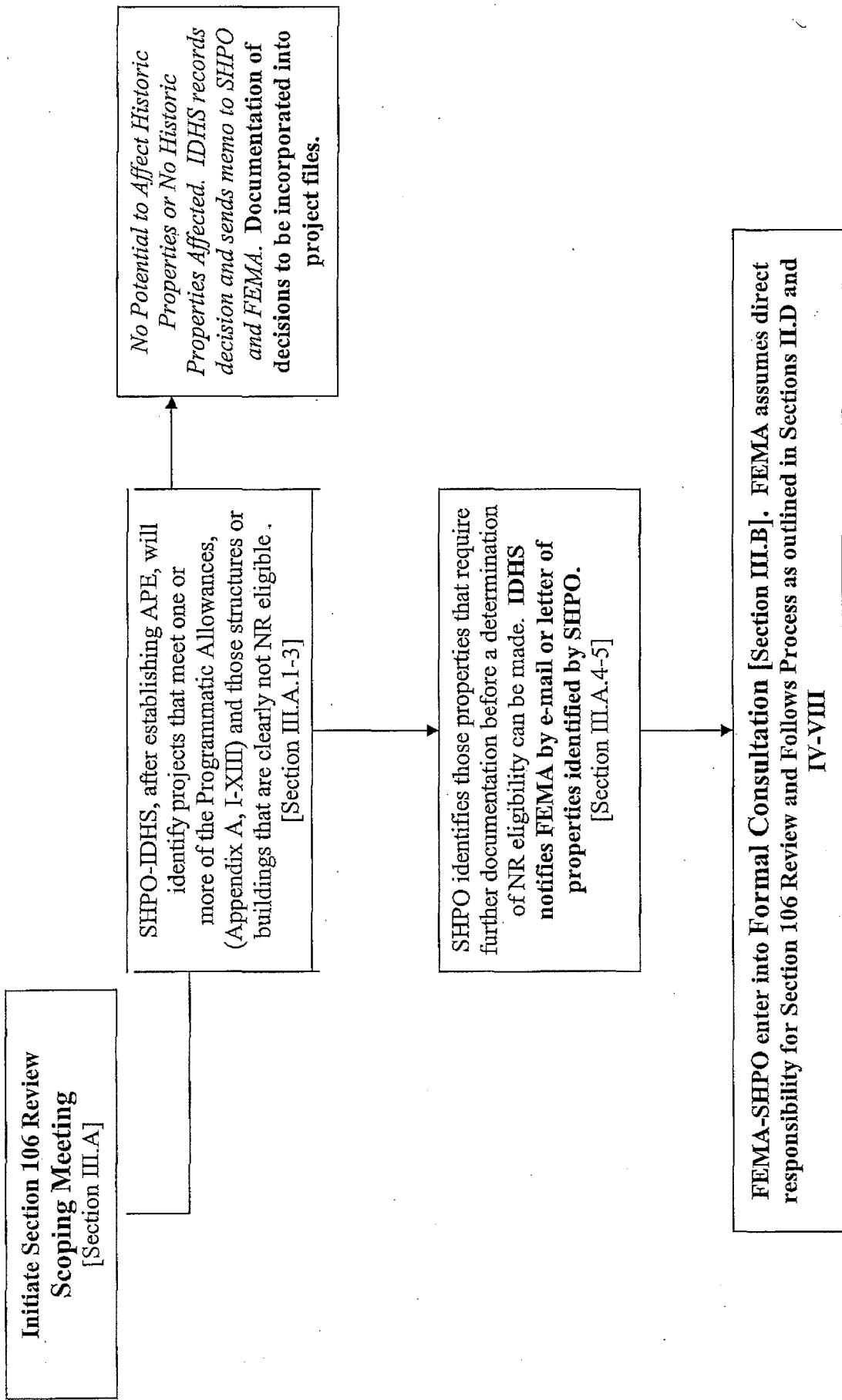
- E. Available **information about former owners** and their role in local, state or national history.
- F. **Information that might indicate the property's association with an important historic event** (ex. It was a station on the Underground Railroad).
- G. Any local information that a **Native American Indian (archaeological) site** might be located in or close to the project area. If an archaeological site might be present in the project area, provide a brief description, photographs and/or sketches of any obvious changes to the property that might affect the integrity of archaeological deposits, such as extensive filling, installation of driveways, stripping or grading, prior demolition of buildings, or installation of utilities, such as water or sewer lines, septic tanks, leach field, wells or cisterns.
- H. Determine if the property is located in a **historic district**.
- I. Any **existing cultural resource surveys or reports** describing the archaeological or historic properties (e.g., archaeological sites, historic buildings, historic landmarks, etc.) that exist within the project area or could be affected by the project.
- J. **Documentation of the presence of former properties at the same locations**, but where visible evidence is no longer immediately evident. Documentation should provide information about how and when changes came about. Examples include the sites of former residences, outbuildings, commercial or industrial building or facilities. Loss during prior floods may be particularly relevant for FEMA-related projects.
- K. Documentation of **any large-scale landscape changes** that may have occurred during the past 200 years, such as project areas being located in recently-developed floodplains, areas of prior flood scouring or erosion, landslides, etc.
- L. Documentation, in the form of a clearly marked map or site plan, of areas within the APE that are known to have been disturbed by construction, excavation, grading or filling and areas that are not known to be disturbed.
- M. In instances where archaeological surveys are required, a standard archaeological report will be submitted for review and comment. The report will conform to standards in 312 IAC 21, 312 IAC 22, and as presented in the current *Guidebook for Indiana Historic Sites and Structures Inventory—Archaeological Sites*.

APPENDIX C:

FLOW CHARTS ILLUSTRATING SECTION 106 REVIEW PROCESS

Section 106 Process for IDHS Grants Program *

[* Keyed to Sections of the Programmatic Agreement]



Initiate Section 106 Review
Scoping Meeting
[Section III.A]

SHPO-IDHS, after establishing APE, will identify projects that meet one or more of the Programmatic Allowances, (Appendix A, I-XIII) and those structures or buildings that are clearly not NR eligible. [Section III.A.1-3]

No Potential to Affect Historic Properties or No Historic Properties Affected. IDHS records decision and sends memo to SHPO and FEMA. Documentation of decisions to be incorporated into project files.

SHPO identifies those properties that require further documentation before a determination of NR eligibility can be made. IDHS notifies FEMA by e-mail or letter of properties identified by SHPO. [Section III.A.4-5]

FEMA-SHPO enter into Formal Consultation [Section III.B]. FEMA assumes direct responsibility for Section 106 Review and Follows Process as outlined in Sections II.D and IV-VIII

Section 106 Process for Response and Recovery Operations *

[* Keyed to Sections of the Programmatic Agreement]

