

# **FEMA**

## **Tribal Mitigation Plan Review Guide: Key Concepts**

### **Draft for Tribal Outreach & Consultation**

*Information contained in this draft document is intended for comment by Indian tribal governments and will be used to update future policy documents.*

*The final policy will be posted in the FEMA Library, when available.*

(Draft Version dated 4/19/16)

## Table of Contents

- **Background**
- **Purpose**
- **Concepts and Questions**

### List of Acronyms and Abbreviations

- [44 CFR Part 201](#) – Title 44, Chapter 1, Part 201 of the Code of Federal Regulations
- [FEMA](#) – Federal Emergency Management Agency
- [HMGP](#) – Hazard Mitigation Grant Program
- [Stafford Act](#) – Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288)

## Background

Hazard mitigation is the effort to reduce loss of life and property by lessening the impact of disasters. Mitigation activities are most effective when implemented consistent with risk reduction priorities developed under a comprehensive, long-term mitigation plan. State, Indian tribal, and local governments engage in hazard mitigation planning to identify risks and vulnerabilities associated with natural disasters, and to develop long-term strategies for protecting people and property from future hazard events. A FEMA-approved mitigation plan is a condition for receiving certain types of non-emergency disaster assistance, including funding for mitigation projects. The [Robert T. Stafford Disaster Relief and Emergency Assistance Act](#) (Stafford Act; Public Law 93-288), as amended by the Disaster Mitigation Act of 2000, provides the legal basis for this requirement. Title 44, Chapter 1, Part 201 of the Code of Federal Regulations ([44 CFR Part 201](#)) establishes the responsibilities of FEMA and state, Indian tribal, and local governments in mitigation planning, as well as specific requirements applicable to each type of government. FEMA’s [Tribal Multi-Hazard Mitigation Planning Guidance](#) (Tribal Guidance) issued in 2010 interprets the regulatory requirements to inform Indian tribal governments<sup>1</sup> in developing mitigation plans, as well as assist FEMA officials in their review and approval of the plans. The [Local Mitigation Plan Review Guide](#) (2011) and [State Mitigation Plan Review Guide](#) (2015) similarly address local and state hazard mitigation planning.

FEMA is currently updating the Tribal Guidance to simplify the document, address key policy questions, and better align with similar FEMA policies on state and local hazard mitigation planning. The title of the updated policy will be the “Tribal Mitigation Plan Review Guide.” The underlying tribal mitigation planning requirements in 44 CFR Part 201 have not changed, though the updated policy may revise FEMA’s interpretation of some regulatory provisions. The result of the update will be a document that is easier to use, with fewer redundancies, more clarity regarding FEMA plan reviewers’ expectations, and a simplified plan review tool. FEMA expects the updated policy to facilitate Indian tribal governments’ development and adoption of mitigation plans.

---

<sup>1</sup> According to 44 CFR 201.2, *Indian tribal government* means any Federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Consistent with FEMA's [Tribal Consultation Policy](#) (2014), the Agency is committed to a thorough, meaningful outreach and consultation process with Indian tribal governments and tribal associations in the spring of 2016 to inform the updated Tribal Mitigation Plan Review Guide. Following this tribal consultation period, FEMA will release a more detailed draft document for public comment via the Federal Register, and anticipates release of the policy in 2017. A one-year transition period will follow, allowing Indian tribal governments to become familiar with the new policy before it goes into effect. For more information on FEMA's tribal outreach efforts around the Tribal Mitigation Plan Review Guide, please visit: <http://www.fema.gov/fema-tribal-affairs>. Note that this effort builds on an earlier process to update the policy in 2013 and 2014 that FEMA put on hold amid significant changes in the Agency's authorities and policies related to Indian tribal governments.<sup>2</sup> In that first phase, FEMA received regular input from a focus group of tribal officials, particularly in drafting Guiding Principles and reducing redundancies among different mitigation plan requirements. In resuming the policy update now, FEMA is building directly on the earlier focus group's input and seeking wider comment from Indian tribal governments through outreach and consultation.

## Purpose

This draft document highlights concepts and questions that FEMA intends to address in the updated Tribal Mitigation Plan Review Guide. FEMA will use this document during outreach and consultation to seek discussion and input from Indian tribal governments and tribal associations on these points. The Agency will collect and analyze the feedback received to inform the policy update. This draft *Tribal Mitigation Plan Review Guide: Key Concepts* document does not supplant the 2010 Tribal Guidance, which will remain FEMA's official interpretation of the tribal mitigation planning requirements in 44 CFR Part 201 until the Agency adopts the updated policy and that policy becomes effective.

Key concepts and questions under consideration include:

- Focusing the policy on how FEMA plan reviewers should interpret the existing regulatory requirements
- Introducing a set of Guiding Principles to inform review of tribal mitigation plans
- Clarifying the existing requirement to address "the probability of future hazard events"
- Interpreting requirements for approval of enhanced tribal mitigation plans

## Concepts and Questions

### **Focusing the policy on how FEMA plan reviewers should interpret the existing regulatory requirements**

The current Tribal Guidance contains both policy provisions interpreting 44 CFR Part 201 and other guidance, best practices, and examples. In recent years, when updating similar guidance for

---

<sup>2</sup> The [Sandy Recovery Improvement Act of 2013](#) amended the Stafford Act to provide Federally-recognized Indian tribal governments the option to make their own request for a Presidential emergency or major disaster declaration independently of a state or to seek assistance under a declaration for a state. Additionally, FEMA issued the [FEMA Tribal Policy](#) in 2013, and the [FEMA Tribal Consultation Policy](#) in 2014.

local and state mitigation planning, FEMA separated policy provisions from other guidance and best practices. For example, the [Local Mitigation Plan Review Guide](#) is a policy guiding the review and adoption of local mitigation plans. The [Local Mitigation Planning Handbook](#) is a complementary resource for local officials engaged in mitigation planning, offering practical approaches, tools, worksheets, and examples while referencing policy provisions in the Local Mitigation Plan Review Guide. Likewise, FEMA intends to make the Tribal Mitigation Plan Review Guide a simplified policy interpreting the regulatory requirements for review and approval of tribal mitigation plans. The Agency will develop accompanying materials on how to develop tribal mitigation plans to comply with the updated policy, tailoring them in content and format to tribal officials’ needs. These resources will be available from FEMA’s [Hazard Mitigation Planning](#) webpage.

Current <a href="#">Tribal Guidance</a> (2010)	Tribal Mitigation Plan Review Guide
<ul style="list-style-type: none"> <li>• A detailed policy interpreting the regulatory requirements in 44 CFR Part 201 and providing additional guidance</li> <li>• Guides FEMA officials in their review and approval of tribal mitigation plans</li> <li>• Alongside requirements, offers other guidance, best practices, and examples to tribal officials developing plans</li> </ul>	<ul style="list-style-type: none"> <li>• A simplified policy interpreting the regulatory requirements in 44 CFR Part 201</li> <li>• Guide FEMA officials in their review and approval of tribal mitigation plans</li> <li>• (Offer additional guidance, best practices, and examples through supporting materials better tailored to tribal officials’ needs)</li> </ul>

Key Question for Tribal Officials
<ul style="list-style-type: none"> <li>➤ Any comments or concerns regarding FEMA’s intent to simplify the Tribal Mitigation Plan Review Guide?</li> </ul>

**Introducing a set of Guiding Principles to inform review of tribal mitigation plans**

FEMA’s Local Mitigation Plan Review Guide released in 2011 contains a set of Guiding Principles that underscore essential aspects of the hazard mitigation planning process, including how FEMA relates to local governments. FEMA proposes to include a set of Guiding Principles in the updated Tribal Mitigation Plan Review Guide as well. These principles reinforce the key aspects of plan development that FEMA encourages, and how FEMA and the Federal government relate to Indian tribal governments in this and other matters. When FEMA engaged a focus group of tribal officials around mitigation planning policy questions back in 2013 and 2014, they provided input to shape the following list of Guiding Principles:

- **Nation to nation, government to government.** In compliance with the [FEMA Tribal Policy](#) and in the spirit of community, FEMA commits itself to building a strong and lasting partnership with Indian tribal governments to assist them in preparing for the hazards they face, reducing their disaster vulnerabilities, responding quickly and effectively when disasters strike, and recovering in their aftermath.
- **Focus on mitigation strategy.** Plan reviews will emphasize actions and implementation of the hazard mitigation strategy.

- **Review for intent, as well as compliance.** Plan reviews will focus on whether the mitigation plan meets the intent of the law and regulation.
- **Emphasis on the planning process.** FEMA will accept the planning process as defined by the Indian tribal government.
- **This is the Indian tribal government’s plan.** Plan reviews will recognize the effort and interest of each Indian tribal government that develops a mitigation plan.
- **Foster cooperative relationships.** FEMA is committed to communicating plan reviews in a constructive and positive manner.

Current <a href="#">Tribal Guidance</a> (2010)	Tribal Mitigation Plan Review Guide
<ul style="list-style-type: none"> <li>• On <b>page 2 of the Introduction</b>, recognizes FEMA’s government-to-government relationship with Indian tribal governments</li> <li>• On <b>page 4 of the Introduction</b>, highlights two critical elements of a successful mitigation plan (comprehensive risk and capability assessments and participation by a wide range of tribal members)</li> </ul>	<ul style="list-style-type: none"> <li>• Call out prominently in the opening of the policy a set of Guiding Principles that underscore how FEMA relates to Indian tribal governments as well as key aspects of plan development</li> <li>• Mirror the format of the State Mitigation Plan Review Guide (2015) and Local Mitigation Plan Review Guide (2011)</li> </ul>

Key Question for Tribal Officials
<ul style="list-style-type: none"> <li>➤ What suggestions do you have for improving the draft Guiding Principles above, whether by adding to, clarifying, or reframing them?</li> </ul>

**Clarifying the existing requirement to address “the probability of future hazard events”**

A risk assessment is a key component of every hazard mitigation plan, informing understanding of vulnerabilities, development of the mitigation strategy, and identification and prioritization of appropriate mitigation actions. According to 44 CFR 201.7(c)(2)(i), “the risk assessment shall include ... a description of the type, location, and extent of all natural hazards that can affect the tribal planning area. The plan shall include information on previous occurrences of hazard events and on *the probability of future hazard events*.” Past occurrences are important to a factual basis of hazard risk; however, the challenges posed by climate change, such as more intense storms, frequent heavy precipitation, heat waves, drought, wildland fire, extreme flooding, and higher sea levels, could significantly alter the types and magnitudes of hazards impacting tribes in the future. Therefore changes in the probability of future hazard events may include changes in location, increases or decreases to the impacts, and/or extent of known natural hazards, such as floods or droughts. In some cases, such changes may also include novel hazards such as thawing permafrost, subsidence, or rapid coastal erosion.

The [FEMA Climate Change Adaptation Policy Statement \(2011-OPPA-01\)](#) directs the Agency to integrate climate change adaptation considerations into programs and policies. Consistent with

that policy, FEMA is considering clarifying in the Tribal Mitigation Plan Review Guide that in order to adequately address the probability of future hazard events, risk assessments must consider changing future conditions, including the effects of long-term changes in weather patterns and climate on the identified hazards.

Current <a href="#">Tribal Guidance</a> (2010)	Tribal Mitigation Plan Review Guide
<ul style="list-style-type: none"> <li>• On <b>page 24 of the Risk Assessment section</b>, references the regulatory requirement under 44 CFR 201.7(c)(2)(i) that “the risk assessment shall include ... information on previous occurrences of hazard events and on <i>the probability of future hazard events.</i>”</li> <li>• On <b>page 24</b> includes a policy provision stating that “The description of each hazard shall include a narrative (and an optional map and/or table) of the following information: ... the location ... the extent ... [and] the probability of the potential occurrence of a hazard event.”</li> </ul>	<ul style="list-style-type: none"> <li>• Reference the regulatory requirement under 44 CFR 201.7(c)(2)(i) that “the risk assessment shall include ... information on previous occurrences of hazard events and on <i>the probability of future hazard events.</i>”</li> <li>• Add a policy provision clarifying that in order to adequately address the probability of future hazard events, risk assessments must consider changing future conditions, including the effects of long-term changes in weather patterns and climate on the identified hazards.</li> </ul>

Key Questions for Tribal Officials
<ul style="list-style-type: none"> <li>➤ In what ways do Indian tribal governments already consider long-term changes in weather patterns, climate, and the natural environment in their hazard mitigation planning and other decision making contexts?</li> <li>➤ Are there unique aspects of Indian tribal governments’ exposure or vulnerability to natural hazards or capacity for mitigation planning that FEMA should consider in interpreting the “probability of future hazard events” requirement?</li> <li>➤ Should FEMA proceed with clarifying that Indian tribal governments’ risk assessments must consider changing future conditions in order to adequately address the requirement to assess “the probability of future hazard events”?</li> </ul>

### Interpreting requirements for approval of enhanced tribal mitigation plans

As noted in the current Tribal Guidance, the provisions of 44 CFR 201.5 “Enhanced State Mitigation Plans” are available to Indian tribal governments as well. Specifically, Indian tribal governments intending to apply directly to FEMA for assistance as applicants<sup>3</sup> may elect to develop enhanced mitigation plans which meet all of the requirements of a tribal mitigation plan outlined in 44 CFR 201.7, plus the requirements for an enhanced plan outlined in 44 CFR 201.5.

<sup>3</sup> Indian Tribal governments also have the option of applying for FEMA assistance through a state as a sub-applicant, provided they coordinate development and review of their tribal mitigation plan with the state.

When an Indian tribal government with a FEMA-approved enhanced tribal mitigation plan receives a Presidential major disaster declaration, it is eligible to receive Hazard Mitigation Grant Program (HMGP) funds based on 20 percent of the estimated aggregate amount of disaster assistance, as opposed to the 15 percent maximum possible with a standard tribal mitigation plan. An Indian tribal government with an approved standard tribal mitigation plan under 44 CFR 201.7 could receive approval of an enhanced plan under 44 CFR 201.5 by demonstrating:

- integration with other tribal planning initiatives;
- eligibility and ranking criteria for hazard mitigation measures and a system for determining cost-effectiveness;
- grant program management and environmental review capabilities based on past performance;
- a system for evaluating completed mitigation actions and tracking cost avoidance data; and
- a commitment for a comprehensive program.

FEMA is considering including more detailed policy provisions in the updated Tribal Mitigation Plan Review Guide to interpret how the enhanced mitigation plan requirements in 44 CFR 201.5 apply to Indian tribal governments. Such provisions would closely parallel those applicable to states in the “Enhanced State Plan Requirements” section of the [State Mitigation Plan Review Guide](#) (2015).

Current <a href="#">Tribal Guidance</a> (2010)	Tribal Mitigation Plan Review Guide
<ul style="list-style-type: none"> <li>• On <b>page 4 of the Introduction</b>, includes a call-out box on “Meeting Requirements for an Enhanced Tribal Plan”</li> <li>• The call-out box briefly describes the enhanced mitigation plan option for Indian tribal governments</li> <li>• Bullets outline the types of capabilities an Indian tribal government would need to demonstrate to receive FEMA approval of an enhanced plan</li> </ul>	<ul style="list-style-type: none"> <li>• A new “Enhanced Tribal Plan Requirements” section of the policy would guide how FEMA officials interpret the requirements of 44 CFR Part 201 in their review of enhanced tribal mitigation plans</li> <li>• The section would include several new policy elements detailing the capabilities an Indian tribal government would need to demonstrate to receive FEMA approval of an enhanced plan</li> <li>• Such policy provisions would closely mirror those applicable to states</li> </ul>

Key Questions for Tribal Officials
<ul style="list-style-type: none"> <li>➤ What are the potential challenges for Indian tribal governments in preparing enhanced mitigation plans? What are the potential benefits?</li> <li>➤ Would your Indian tribal government consider preparing an enhanced mitigation plan? Why or why not?</li> <li>➤ In updating the policy, should FEMA keep the discussion of enhanced tribal mitigation plans high level, or instead include detailed requirements in the document?</li> </ul>