

1 **PROGRAMMATIC AGREEMENT AMONG**
2 **THE FEDERAL EMERGENCY MANAGEMENT AGENCY,**
3 **THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICER,**
4 **THE NEW JERSEY STATE OFFICE OF EMERGENCY MANAGEMENT,**
5 **THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,**
6 **THE ABSENTEE SHAWNEE TRIBE OF INDIANS OF OKLAHOMA**
7 **THE DELAWARE NATION,**
8 **THE DELAWARE TRIBE OF INDIANS,**
9 **THE SHAWNEE TRIBE OF OKLAHOMA,**
10 **AND THE STOCKBRIDGE MUNSEE BAND OF MOHICANS**
11 **AS A RESULT OF HURRICANE SANDY**

12
13 **WHEREAS**, the mission of the Federal Emergency Management Agency (FEMA) of the
14 Department of Homeland Security is to support our citizens and first responders to ensure that as
15 a nation we work together to build, sustain, and improve our capability to prepare for, protect
16 against, respond to, recover from, and mitigate all hazards; and

17 **WHEREAS**, as a result of Hurricane Sandy (DR-4086-NJ) (Disaster Declaration), FEMA
18 proposes to administer Federal disaster assistance programs set forth in Appendix A (Programs),
19 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-
20 288 (1974) (codified as amended at 42 U.S.C. § 5121 *et seq.*) (Stafford Act); the National Flood
21 Insurance Act of 1968, Pub. L. No. 90-448 (1968) (as amended); the Flood Disaster Protection
22 Act of 1973, Pub. L. No. 93-234 (1973) (as amended); the National Flood Insurance Reform Act
23 of 1994, Pub. L. No. 103-325 (1994) (as amended); and implementing regulations contained in
24 Title 44 of the Code of Federal Regulations (C.F.R.).

25 **WHEREAS**, FEMA has determined that implementation of its Programs may result in
26 Undertakings (as defined by 16 U.S.C. § 470w and 36 CFR § 800.16(y)) that may affect
27 properties listed in or eligible for listing in the National Register of Historic Places (National
28 Register) pursuant to 36 CFR Part 60 (historic properties), and FEMA has consulted with the New
29 Jersey State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation
30 (ACHP) pursuant to Section 106 of the National Historic Preservation Act (NHPA), Pub. L. No.
31 89-665 (1966) (codified as amended at 16 U.S.C. § 470f) and Section 110 of NHPA (codified as
32 amended at 16 U.S.C. §470h-2), and the Section 106 implementing regulations at 36 CFR Part
33 800; and

34
35 **WHEREAS**, FEMA, ACHP, and SHPO have determined that FEMA's Section 106 requirements
36 can be more effectively and efficiently implemented and delays to the delivery of FEMA
37 assistance minimized if a programmatic approach is used to stipulate roles and responsibilities,
38 exempt certain Undertakings from Section 106 review, establish protocols for consultation,
39 facilitate identification and evaluation of historic properties, and streamline the assessment and
40 resolution of adverse effects; and
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42 **WHEREAS**, in order to implement its Programs, FEMA will provide assistance to the State of
43 New Jersey that may provide monies and other assistance to eligible subgrantees, and as such, the
44 New Jersey Office of Emergency Management (OEM) that is typically responsible for
45 administering funds provided under these Programs, has participated in this consultation, and has
46 invited OEM to execute this Agreement as an signatory party; and

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48 **WHEREAS**, FEMA has determined that its Programs may result in Undertakings with the
49 potential to affect historic properties having religious and cultural significance to Indian Tribes,
50 including sites that may contain human remains and/or associated cultural items; and

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52 **WHEREAS**, FEMA recognizes that the Absentee Shawnee Tribe of Indians of Oklahoma, the
53 Delaware Nation, the Delaware Tribe of Indians, the Shawnee Tribe of Oklahoma, and the
54 Stockbridge-Munsee Band of the Mohicans (Tribes) may have sites of religious and cultural
55 significance and in meeting its Federal trust responsibility, FEMA has engaged in government-to-
56 government consultation with the Tribes, and pursuant to 36 CFR § 800.2 (c)(2)(ii)(E) has invited
57 the Tribes to enter into an agreement that specifies how FEMA and the Tribes will carry out
58 Section 106 responsibilities, including the confidentiality of information.

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60 **WHEREAS**, notwithstanding the aforementioned invitation to enter into an agreement, FEMA
61 has invited the Absentee Shawnee Tribe of Indians of Oklahoma, the Delaware Nation, the
62 Delaware Tribe of Indians, the Shawnee Tribe of Oklahoma, and the Stockbridge-Munsee Band
63 of the Mohicans to enter into this Agreement as a signatory party to fulfill the requirements of
64 Section 106; and

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66 **WHEREAS**, FEMA may invite additional Tribes that may have sites of religious and cultural
67 significance to enter into the terms of this Agreement; and

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69 **WHEREAS**, FEMA also may perform its own Undertakings in order to implement its Programs;
70 and

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72 **WHEREAS**, in anticipation or in the immediate aftermath of the Disaster Declaration, impacted
73 communities in the State of New Jersey and/or affected Tribes may conduct critical preparedness
74 and response and recovery activities to safeguard public health and safety and to restore vital
75 community services and functions. Some of these activities may become Undertakings requiring
76 Section 106 review subject to the terms of this Agreement, and FEMA shall coordinate the
77 appropriate review as warranted; and

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79 **NOW, THEREFORE**, FEMA, ACHP, SHPO, OEM and participating Tribes agree that the
80 Programs in the State of New Jersey shall be administered in accordance with the following
81 Stipulations to satisfy FEMA's Section 106 responsibilities for all resulting Undertakings and
82 effectively integrate historic preservation compliance considerations into the delivery of FEMA
83 assistance. FEMA will not authorize implementation of an individual Undertaking until Section
84 106 review of the project is completed pursuant to this Agreement.

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86 **STIPULATIONS**

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88 To the extent of its legal authority, and in coordination with the other signatories, FEMA will
89 require that the following measures be implemented:

90 **I. GENERAL**

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92 A. Applicability

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94 1. This Agreement terminates and fully supersedes the Agreement among FEMA and
95 SHPO, executed on June 18, 2010 upon its execution by all signatory parties.
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97 2. For FEMA undertakings that also are within the jurisdiction of the Federal
98 Communications Commission’s (FCC) and within the scope of its Section 106
99 Programmatic Agreements for communication facilities, FEMA defers Section 106
100 review in accordance with the ACHP Program Comment of October 23, 2009. The
101 approval of funding for the FEMA Undertaking will be conditioned on the compliance
102 of the subgrantee with FCC’s applicable Section 106 review, including any required
103 consultation with participating Tribes. FEMA will notify the SHPO when it applies
104 the ACHP Program Comment to an Undertaking.
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106 3. Other Federal agencies providing financial assistance for Program activities covered
107 under the terms of this Agreement may, with the concurrence of ACHP, FEMA and
108 SHPO, satisfy their Section 106 responsibilities by accepting and complying with the
109 terms of this Agreement.” Other Federal Agencies” may include municipalities
110 providing funds and acting as the Responsible Entity pursuant to 24 CFR Part 58. In
111 such situations, the Federal Agency shall notify FEMA, SHPO and ACHP in writing
112 of their intent to use this Agreement to achieve compliance with Section 106
113 requirements, and consult with those agencies regarding its section 106 compliance.
114 Resumes of staff who meet the Secretary’s Professional Qualification Standard and
115 will review Tier II projects will be included with the notification. The Federal agency
116 may utilize this Agreement to satisfying its Section 106 responsibilities by executing
117 the Addendum included in Appendix E. The Agreement will be effective for the
118 Federal agency on the date the Addendum is executed by SHPO, FEMA and ACHP.
119
120 4. This Agreement may apply to Undertakings involving multiple Federal agencies and
121 where some or all of the Federal agencies involved in the Undertaking may designate
122 FEMA as the lead Federal agency pursuant to 36 CFR § 800.2(a)(2) with appropriate
123 notification to the ACHP. FEMA will act on the collective behalf of the agencies to
124 fulfill all Section 106 responsibilities. When FEMA is not designated the lead Federal
125 agency, all Federal agencies, including FEMA, remain individually responsible for
126 their compliance with Section 106 and 36 CFR Part 800.
127
128 5. As a result of the Disaster Declaration, State, Tribal and local governments may lack
129 the capability to perform or to contract for emergency work, and instead request that
130 the work be accomplished by a Federal agency. Through a mission assignment (MA),
131 FEMA may direct appropriate Federal agencies to perform the work. This Agreement

132 will apply to such Federal assistance undertaken by or funded by FEMA pursuant to
133 Titles IV and V of the Stafford Act and 44 CFR Part 206.
134

- 135 6. If another Federal program or Federal agency has reviewed and approved an
136 Undertaking under Section 106 of the NHPA within the past ten (10) years, FEMA has
137 no further requirement for Section 106 review provided that it confirms that the scope
138 and effect [as defined by 36 CFR § 800.16(i)] of the Undertaking as reviewed by the
139 previous agency has not changed, and SHPO/Tribal consultation and concurrence are
140 documented. FEMA shall document these findings to the project files in order to
141 confirm that the requirements of Section 106 have been satisfied.
142
- 143 7. Should FEMA, in consultation with SHPO and participating Tribes, determine that the
144 previous Section 106 review was insufficient or involved interagency disagreements
145 on eligibility, effect, or mitigation, FEMA shall conduct additional Section 106 review
146 in accordance with the terms of this Agreement.
147
- 148 8. Pursuant to 44 CFR § 206.110(m), assistance to individuals and households provided
149 under 44 CFR Part 206, Subpart D and Section 408 of the Stafford Act, including
150 funding for owner occupied home repair and replacement, content replacement,
151 personal property, transportation and healthcare expenses, is exempt from the
152 provisions of Section 106. For ground disturbing activities, and construction related to
153 44 CFR §§ 206.117(b)(1)(ii) (temporary housing), 206.117(b)(3) (replacement
154 housing), 206.117(b)(4) (permanent housing construction), and 206.117(c)(1)(vi)
155 (privately owned access routes), FEMA will conduct Section 106 review under the
156 terms of this agreement
- 157 9. FEMA has determined that the types of activities listed below have limited or no
158 potential to affect historic properties and FEMA has no further Section 106
159 responsibilities, pursuant to 36 CFR § 800.3(a)(1). If the activities listed below appear
160 to have the potential to directly affect either archeological resources or standing
161 structures, FEMA will consult in accordance with stipulation II of this agreement.
162
- 163 a. Administrative actions such as personnel actions, travel, procurement of services,
164 supplies (including vehicles and equipment) for the support of day-to-day and
165 emergency operational activities, and the temporary storage of goods provided
166 storage occurs within existing facilities or on previously disturbed soils.
167
- 168 b. Preparation, revision, and adoption of regulations, directives, manuals, and other
169 guidance documents.
170
- 171 c. Granting of variances, and actions to enforce Federal, State, or local codes,
172 standards or regulations.
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- 174 d. Monitoring, data gathering, and reporting in support of emergency and disaster
175 planning, response and recovery, and hazard activities.
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- e. Research and development of hazard warning systems, hazard mitigation plans, codes and standards, and education/public awareness programs.
 - f. Assistance provided for planning, studies, design and engineering costs that involve no commitment of resources other than staffing and associated funding.
 - g. Assistance provided for training, management and administration, exercises, and mobile/portable equipment purchases; with the exception of potential ground-disturbing activities and modification of existing structures.
 - h. Community Disaster Loans for funding to perform governmental functions for any eligible jurisdiction in a designated disaster area that has suffered a substantial loss of tax and other revenue.
 - i. Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements.
 - j. Funding the administrative action of acquiring properties in buyout projects, including the real estate transaction and excluding demolition. The Grantee will ensure that applicants agree to secure their property from physical alteration, illegal entry, and damage until any applicable requirements of this Agreement are fulfilled. The applicant community will agree to these terms as a condition of its acquisition grant before FEMA will release any related funding.
 - k. Reimbursement of a subgrantee's insurance deductible, when the deductible is the total FEMA eligible cost for the project.
 - l. Labor, equipment and materials used to provide security in the Disaster Declaration area, including lease, rental, purchase or repair of equipment or vehicles and payment for staff and contract labor.
 - m. Application of pesticides to reduce adverse public health effects, including aerial and truck-mounted spraying.
 - n. Unemployment assistance.
 - o. Distribution of food coupons.
 - p. Legal services.
 - q. Crisis counseling.

219 10. Any FEMA Programs authorized by the United States Congress in the future may be
220 included in this Agreement in accordance with Stipulation IV.A, Amendments. Any
221 change in the FEMA name, Programs, or organizational structure will not affect this
222 Agreement.

223 B. Roles and Responsibilities of the Signatories

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1. FEMA:

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a. FEMA will use Federal, Tribal, State, subgrantee, or contractor staff whose qualifications meet the relevant Secretary's Professional Qualifications Standards (Professional Qualifications) set forth in the Federal Register at 48 Fed. Reg. 44716-01 (September 29, 1983), as amended (Qualified), in completing identification and evaluation of historic properties and in making determinations of effects. FEMA will review any National Register eligibility determination and make its own findings of effect resulting from the performance of these activities prior to submitting such determinations to the SHPO and participating Tribes.

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i. FEMA acknowledges that Tribes possess special expertise in assessing the National Register eligibility of properties with religious and/or cultural significance to them. Tribal leaders and, as appropriate, their representatives shall decide who meets qualifications/standards as defined by their Tribes for review of undertakings affecting properties with religious and/or cultural significance to Tribes.

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b. In accordance with 36 CFR § 800.2(c)(4), FEMA may authorize OEM, or a subgrantee through OEM, to initiate the Section 106 process with the SHPO and any other consulting parties, but remains responsible for determinations of National Register eligibility and findings of effect made by the authorized party. FEMA will follow the process set forth in Stipulation I.B.1.a, FEMA Roles and Responsibilities, above and will notify the SHPO in writing when OEM or a subgrantee has been authorized to initiate consultation on FEMA's behalf. FEMA shall conduct all project consultation with Tribes.

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c. Prior to authorizing the release of funds for individual undertakings requiring grant conditions pursuant to this Agreement, FEMA will inform OEM of all stipulations and conditions and ensure that they are understood so they can be adequately conveyed to subgrantees. FEMA will work in partnership with OEM to provide subgrantees with guidance on in-kind repair pursuant to *The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995 (Standards)*, 36 CFR Part 68, or the most updated version, and techniques to avoid or minimize adverse effects to historic properties

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d. FEMA shall provide the signatories with an annual report for the previous fiscal year by October 30 of each year that this Agreement is in effect. This annual report will summarize the actions taken to implement the terms of this Agreement,

264 statistics on Undertakings reviewed, and recommend any actions or revisions to be
265 considered, including updates to the appendices.

- 266
- 267 e. FEMA will confer annually and as necessary with signatories to this Agreement
268 within 30 days after issuance of the annual report, to review the report and/or
269 discuss issues and concerns in greater detail.
- 270
- 271 f. FEMA shall notify the SHPO and affected Tribes as soon as practicable following
272 the Disaster Declaration and provide specific points of contact and other pertinent
273 information about the Disaster Declaration.
- 274
- 275 g. FEMA shall convene an initial scoping meeting with the signatories as soon as
276 practicable after the Disaster Declaration to address Declaration-specific issues and
277 procedures.
- 278
- 279 h. FEMA shall ensure that all documentation resulting from Undertakings reviewed
280 pursuant to this Agreement shall be consistent with applicable SHPO guidelines
281 and the confidentiality provisions of 36 CFR § 800.11(c).

282 2. SHPO:

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- 284 a. SHPO shall review FEMA's determination of the Areas of Potential Effect (APE),
285 National Register eligibility determinations, and FEMA's effect findings and
286 provide comments within timeframes required by this Agreement.
- 287
- 288 b. Upon request, the SHPO will provide FEMA/and or its designee(s) with available
289 information about historic properties (such as access to online systems or site files,
290 GIS data, survey information, geographic areas of concern). Such data sharing
291 may be memorialized in an agreement. Only Qualified FEMA staff and/or its
292 designee(s) shall be afforded access to protected cultural resources information.
- 293
- 294 c. As requested, SHPO staff will be available as a resource and for consultation
295 through site visits, written requests, telephone conversations or electronic media.
296 In those instances where consultation with SHPO has occurred, a written notice
297 (via e-mail or regular mail) will be sent to SHPO to confirm any decisions that
298 were reached.
- 299
- 300 d. The SHPO may delegate some or all of its responsibilities under this Agreement to
301 Liaison(s). The Liaison(s) are not required to be members of SHPO staff. The
302 SHPO will confer with FEMA about the selection of the SHPO Liaison(s), the
303 scope of responsibilities delegated, and the implementing procedures related to the
304 actions and decisions delegated. FEMA and SHPO shall formally document their
305 agreement regarding the SHPO Liaison(s).
- 306
- 307 e. The SHPO shall participate in an initial scoping meeting for the Disaster
308 Declaration.

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310 f. The SHPO shall coordinate with FEMA, to identify consulting parties, including
311 any communities, organizations, or individuals that may have an interest in a
312 specific Undertaking and its effects on historic properties.
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314 g. SHPO shall participate in annual reviews convened by FEMA to review the
315 effectiveness of this Agreement.

316 3. OEM:

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318 a. OEM shall ensure that its subgrantees understand and acknowledge conditions and
319 potential requirements that may be placed upon Undertakings as a result of Section
320 106 consultation and the provisions of this Agreement.
321
322 b. OEM shall ensure that subgrantees understand that failure to comply with the
323 terms of this Agreement and any project-specific conditions could jeopardize
324 FEMA funding.
325
326 c. OEM will notify FEMA as soon as possible of any proposed change to the
327 approved scope of work and direct the subgrantee not to implement the changes to
328 the proposed scope of work until any additional review required by this Agreement
329 is complete.
330
331 d. OEM shall ensure that its subgrantees are made aware that in the event of an
332 unexpected discovery involving an Undertaking that has affected a previously
333 unidentified historic property, human remains, or affected a known historic
334 property in an unanticipated manner, the subgrantee will comply with Stipulation
335 III.B, Unexpected Discoveries.
336
337 e. OEM shall ensure that in its subgrant agreements, any scope of work involving
338 ground disturbance, and resultant contracts to execute said work, provide for the
339 protection of and notification protocols for unexpected discoveries of cultural
340 material and human remains.

341 C. Tribal Consultation

- 342
343 1. Where no Tribal-specific consultation agreements or protocols are in place, FEMA
344 shall consult with affected Tribes in accordance with 36 CFR Part 800 to determine if
345 these Tribes will become a part of this agreement though the development and
346 execution of a specific Appendix and thereby become Tribes. In determining who the
347 affected Tribes may be, FEMA may consult with the SHPO, Tribes, any State Tribal
348 Agency, and access the National Park Service (NPS) Native American Consultation
349 Database to identify Tribal geographic interests.
350
351 2. FEMA shall ensure that its consultations with other consulting parties shall not include
352 the dissemination of information, when advised of data sensitivity by the affected

353 Tribes, that might risk harm to an American Indian site or property of religious or
354 cultural significance or that might impede the use of such a site by the affected Tribes
355 in accordance with Section 304 of the NHPA and other applicable laws. Information
356 provided is exempt from public knowledge and disclosure under the Freedom of
357 Information Act (FOIA) by both Section 304 of the NHPA and Section 9 of the
358 Archaeological Resources Protection Act (ARPA) (16 U.S.C. §470aa – 470mm).
359

- 360 3. As requested, staff of participating Tribes will be available as a resource and for
361 consultation through site visits, written requests, telephone conversations or electronic
362 media. In those instances where consultation with Tribes has occurred, a written notice
363 (via e-mail or regular mail) will be sent to the Tribes to confirm any decisions that
364 were reached.

365 D. Public Participation

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- 367 1. FEMA recognizes that the views of the public are essential to informed decision
368 making throughout the Section 106 review process. FEMA will notify the public of
369 proposed Undertakings in a manner that reflects the nature, complexity, and effect(s)
370 of the Undertaking, the likely public interest given FEMA’s specific involvement, and
371 any confidentiality concerns of affected Tribes, and private individuals and businesses.
372
- 373 2. FEMA will consult with OEM, the subgrantee, SHPO, and participating Tribes, to
374 determine if there are individuals or organizations with a demonstrated interest in
375 historic properties that should be made aware of an Undertaking. If such parties are
376 identified or identify themselves to FEMA, FEMA will provide them with information
377 regarding the Undertaking and its effect on historic properties, consistent with the
378 confidentiality provisions of 36 CFR § 800.11(c).
379
- 380 3. In accordance with the outreach strategy developed for an Undertaking in consultation
381 with the SHPO and participating Tribes, for involving the public, FEMA will identify
382 the appropriate stages for seeking public input during the Section 106 process.
383
- 384 4. FEMA will consider all views provided by the public regarding an Undertaking and
385 will consider all written requests of individuals and organizations to participate as
386 consulting parties, and in consultation with the SHPO and participating Tribes,
387 determine which should be consulting parties. FEMA will invite any individual or
388 organization that will assume a specific role or responsibility outlined in a Section 106
389 agreement document to participate as a concurring party in that agreement document.
390
- 391 5. FEMA also may provide public notices and the opportunity for public comment or
392 participation in an Undertaking through the public participation process of the
393 National Environmental Policy Act (NEPA) and its implementing regulations set out
394 at 44 CFR Part 10, and/or Executive Orders 11988 and 11990 relating to floodplains
395 and wetlands as set out in 44 CFR Part 9, and Executive Order 12898, Environmental
396 Justice, provided such notices specifically reference Section 106 as a basis for public
397 involvement.

- 398 E. Timeframes: All time designations will be in calendar days unless otherwise stipulated. If
399 any signatory does not object to FEMA’s determination related to a proposed action within an
400 agreed upon timeframe, FEMA may proceed to the next step in the review process as
401 described in Stipulation II, Project Review. Due to the varied nature of Undertakings, the
402 individual response times to FEMA’s requests for comment/concurrence will vary. FEMA
403 and consulting party agreed that communication via e-mail is official correspondence.
404
- 405 1. Under emergency conditions, the SHPO and participating Tribes will respond to any
406 FEMA request for comments within three (3) business days after receipt, unless FEMA
407 determines the nature of the emergency action warrants a shorter time period.
408
 - 409 2. For Undertakings associated with the Individual Assistance (IA) and Public Assistance
410 (PA) programs, the review time shall be a maximum of fifteen calendar (15) days for
411 delineation of the Area of Potential Effect (APE), determinations of National Register
412 eligibility and findings of effect.
413
 - 414 3. For the Hazard Mitigation Grant Program (HMGP), the response time for each request for
415 concurrence shall be a maximum of thirty calendar (30) days.

416 **II. PROJECT REVIEW**

417 **A. Programmatic Allowances**

- 418 1. If FEMA determines an Undertaking conforms to one or more of the Tier I or Tier II
419 allowances in Appendix B of this Agreement, FEMA will complete the Section 106
420 review process by documenting this determination in the project file without SHPO
421 and Tribal review or notification. When both Tier I and Tier II allowances are used
422 together to review a project, review staff must meet relevant Secretary’s Professional
423 Standards for review for the Tier II allowances.
424
- 425 2. If the Undertaking involves a National Historic Landmark (NHL), FEMA shall notify
426 the SHPO and participating Tribes (per guidance from Appendices D.1-D.5) and the
427 NHL Program Manager in the NPS Northeast Regional Office that the activities meet
428 allowance criteria. FEMA will provide information about the proposed scope of work
429 for the Undertaking and the allowance(s) enabling FEMA’s determination. Unless the
430 SHPO, participating Tribes, or NPS object or request more information within 15 days
431 after their receipt of this documentation, FEMA will complete the Section 106 review.
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433
- 434 3. If an Undertaking is not composed entirely of an allowance listed in Appendix B,
435 FEMA will conduct Section 106 review for the entire Undertaking.
436
- 437 4. If the scope of work for a proposed undertaking includes activities that are not listed in
438 the Allowances, FEMA shall complete the Section 106 review process in accordance
439 with Stipulation II.C, Standard Project Review, as applicable.
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441 5. Allowances may be revised and new allowances may be added to this Agreement in
442 accordance with Stipulation IV.A.3, Amendments.

443 B. Expedited Review for Emergency Undertakings

444 1. As part of the Disaster Declaration process, FEMA will define the time interval during
445 which the disaster causing incident occurs (the incident period, as defined in 44 CFR §
446 206.32(f)). FEMA may approve Federal assistance and/or funding for emergency
447 work (as defined in 44 CFR § 206.201(b)) that occurs during the incident period,
448 including work already completed, in response to an immediate threat to human health
449 and safety or property. FEMA will conduct expedited review of emergency
450 Undertakings from October 27, 2012, the beginning of the incident period, until
451 January 27, 2012.

452 2. Should FEMA determine that it is necessary to extend the expedited review period
453 beyond December 27, 2012, FEMA will request in writing, prior to the expiration of
454 the expedited review period, an extension of the period of applicability in 30-day
455 increments in accordance with 36 CFR § 800.12(d). No action regarding the extension
456 is required on the part of the notified parties.

457 3. For all emergency Undertakings, FEMA will determine the following:

458 a. If the Undertaking is an immediate rescue and salvage operations conducted in
459 response to an event to preserve life and property, FEMA has no Section 106
460 review responsibilities in accordance with 36 CFR § 800.12(d); or

461 b. If the Undertaking is composed entirely of work included in the Allowances in
462 Appendix B of this Agreement, FEMA will complete the Section 106 review
463 process pursuant to Stipulation II.A.1, Programmatic Allowances.

464 d. If FEMA determines that the emergency Undertaking will adversely affect a
465 historic property during this expedited review period, to the extent practicable
466 FEMA may propose treatment measures that would address adverse effects during
467 implementation, and request the comments of the SHPO and/or the participating
468 Tribes within 3 business days of receipt of this information unless FEMA
469 determines the nature of the emergency warrants a shorter time period. FEMA may
470 elect to consult with the SHPO and/or the participating Tribes regarding the
471 emergency Undertaking at any point before or during the implementation of an
472 emergency Undertaking if FEMA determines circumstances are appropriate for
473 expedited consultation.

474 e. FEMA may provide this information through written requests, telephone
475 conversations, meetings, or electronic media. In all cases, FEMA will clarify that
476 an “expedited Undertaking review” is being requested. FEMA will document all
477 such reviews in writing.
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- 482 f. FEMA will take into account any timely comments provided by SHPO and/or
483 participating Tribes and notify the parties of how their comments were taken into
484 consideration by FEMA, OEM, and subgrantee.
485
- 486 g. Should the SHPO and/or participating Tribes not comment within 3 business days,
487 FEMA may fund the emergency Undertaking based on the available information.
488 This will complete the Section 106 review for the Undertaking.
489
- 490 C. Standard Project Review: For Undertakings not exempt from further Section 106 review,
491 FEMA will ensure that the following standard project review steps are implemented. In
492 the interest of streamlining, FEMA may combine some of these steps during consultation.
493
- 494 1. Consulting Parties: FEMA will consult as appropriate with the SHPO and affected
495 Tribes to identify any other parties that meet the criteria to be consulting parties and
496 invite them to participate in the Section 106 review process. FEMA may invite others
497 to participate as consulting parties as the Section 106 review proceeds.
498
- 499 2. Area of Potential Effects: For standing structures, qualified staff shall define the APE
500 as the individual structure when the proposed Undertaking is limited to the repair or
501 rehabilitation (as defined in 36 CFR § 68.3(b)(6) and 36 CFR § 68.2(b)) of a structure
502 located outside of a National Register listed or eligible historic district. For all other
503 undertakings, qualified staff will determine the APE in consultation with the SHPO
504 and participating Tribes. FEMA may also consider information provided by other
505 parties, such as local governments and the public, when establishing the APE.
506
- 507 3. Identification and Evaluation: Qualified staff shall determine, in consultation with the
508 SHPO and participating Tribes if the APE contains historic properties, including
509 archaeological sites or properties of religious or cultural significance, that are listed in
510 or potentially eligible for the National Register. This may include the review of
511 preliminary documentation collected by OEM or the subgrantee in coordination with
512 the SHPO.
513
- 514 a. Archaeological Properties, FEMA may consult with the SHPO to determine the
515 level of effort and methodology necessary to identify and define the limits of
516 archaeological properties. For historic properties of religious and cultural
517 significance to participating Tribes, FEMA shall consult with the Tribes to identify
518 geographic areas where properties may be affected by an Undertaking in order so
519 that FEMA may determine the necessary level of effort required to avoid or protect
520 any such properties.
521
- 522 b. National Historic Landmarks: When FEMA determines an Undertaking has the
523 potential to affect an NHL, FEMA shall notify the Secretary through the NHL
524 Program Manager in the NPS Northeast Regional Office in addition to the SHPO
525 and participating Tribes.
526

- 527 c. Determinations of Eligibility: FEMA shall review or determine National Register
528 eligibility based on identification and evaluation efforts, and consult with SHPO
529 and participating Tribes regarding these determinations. Should the SHPO or
530 participating Tribes disagree with the determination of eligibility, FEMA may elect
531 to either continue consultation, treat the property as eligible for the National
532 Register, or to obtain a determination of eligibility from the Keeper of the National
533 Register in accordance with 36 CFR § 63.2(d)-(e) and 36 CFR § 800.4(c)(2).
534
- 535 d. Findings of No Historic Properties Affected: FEMA shall make a finding of “no
536 historic properties affected” if no historic properties are present in the APE; the
537 Undertaking is designed to avoid historic properties, including archaeological sites
538 or properties of religious and cultural significance to participating Tribes; or the
539 Undertaking does not affect the character defining features of a historic property.
540
- 541 i. FEMA shall notify the SHPO, participating Tribes(s), and any other consulting
542 parties of this finding and provide supporting documentation in accordance
543 with 36 CFR § 800.11(d) and applicable documentation standards. Unless the
544 SHPO or participating Tribes object to the finding pursuant to the appropriate
545 timeframe outlined in Stipulation I.E.2 or I.E.3, Timeframes, FEMA shall
546 complete the Section 106 review.
547
- 548 ii. If the SHPO or participating Tribes object to a finding of “no historic
549 properties affected”, FEMA shall either (a) consult with the objecting party to
550 resolve the disagreement and if the objection is resolved, FEMA may proceed
551 with the action in accordance with the resolution or (b) reconsider effects on
552 the historic property by applying the criteria of adverse effect pursuant to
553 Stipulation II.D.4, Application of the Criteria of Adverse Effect. If FEMA is
554 unable to resolve the disagreement, it will forward the finding and supporting
555 documentation to the ACHP and request that the ACHP review FEMA’s
556 finding in accordance with 36 CFR § 800.4(d)(1)(iv)(A) through 36 CFR §
557 800.4(d)(1)(iv)(C). FEMA will consider the recommendations of the ACHP in
558 making its final determination.
559
- 560 4. Application of the Criteria of Adverse Effect: If FEMA finds an Undertaking may
561 affect identified historic properties in the APE, including properties of religious and
562 cultural significance to participating Tribes, or if a consulting party objects to the
563 finding of “no historic properties affected,” FEMA will apply the criteria of adverse
564 effect to historic properties within the APE(s), taking into account the views of the
565 consulting parties and public concerning effects in accordance with 36 CFR §
566 800.5(a).
567
- 568 a. If FEMA determines that an Undertaking does not meet the adverse effect criteria
569 or, for a standing structure, that the Undertaking meets the *Standards*, FEMA shall
570 propose a finding of “no adverse effect” in accordance with 36 CFR § 800.5(b).
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- b. FEMA shall notify the SHPO, participating Tribes in accordance with Appendices D.1-D.5, and all other consulting parties of its finding and provide supporting documentation pursuant to 36 CFR §800.11(e) and applicable documentation standards. Unless a consulting party objects within the appropriate timeframe, FEMA will proceed with its “no adverse effect” determination and complete the Section 106 review.
 - c. If FEMA finds the Undertaking may have an adverse effect, FEMA shall request through OEM that the subgrantee revise the scope of work to substantially conform to the *Standards* for standing structures, or avoid or minimize adverse effects for archaeological properties, in consultation with the SHPO, participating Tribes, and any other consulting parties. If the subgrantee modifies the scope of work to address the adverse effect, FEMA shall notify the consulting parties, and provide supporting documentation. Unless a consulting party makes a timely objection, FEMA shall proceed with its “no adverse effect” determination and complete the Section 106 review.
 - d. If a consulting party objects to a finding of “no adverse effect,” FEMA will elect to consult with the objecting party to resolve the disagreement. If the objection is resolved, FEMA will proceed with the undertaking in accordance with the resolution, or;
 - e. If the objection cannot be resolved, FEMA will forward its findings and supporting documentation to the ACHP and request that the ACHP review the findings in accordance with 36 CFR § 800.5(c)(3)(i-ii). FEMA will consider the ACHP’s comments in making its final determination, or;
 - f. If an Undertaking cannot be modified to avoid or minimize adverse effects FEMA will initiate consultation to resolve the adverse effect(s) in accordance with Stipulation II.D.5, Resolution of Adverse Effects.
5. Resolution of Adverse Effects: If FEMA determines that an Undertaking will adversely affect a historic property, it will notify the consulting parties of its decision and provide documentation as required by 36 CFR § 800.11(e) and subject to the confidentiality provisions of 36 CFR § 800.11(c), as well as provide the ACHP with an adverse effect notice in accordance with 36 CFR § 800.6(a)(1). FEMA, in consultation with the SHPO, OEM, participating Tribes, subgrantee, ACHP, if participating, and any other consulting parties, shall resolve the effects of the Undertaking by one of the following methods depending upon the nature and scale of the adverse effect as well as the determination of the historic property’s significance on a local, state or national level:
- a. **Abbreviated Consultation Process:** After taking into consideration the nature of the historic properties affected and the severity of the adverse effects, FEMA may propose in writing to the consulting parties to resolve the adverse effects of the Undertaking through the application of Treatment Measures outlined in Appendix C as negotiated with the SHPO, OEM, and participating Tribes. FEMA will not

619 propose to resolve adverse effects through the Abbreviated Consultation Process if
620 the Undertaking may affect an NHL. The use of these Treatment Measures will
621 not require the execution of a Memorandum of Agreement (MOA) or
622 Programmatic Agreement.

623
624 1. In consultation with the SHPO, OEM, participating Tribes, FEMA will put
625 forth a written proposal for the implementation of a specific Treatment
626 Measure, or combination of Treatment Measures with the intent of expediting
627 the resolution of adverse effects. Unless a consulting party objects within
628 fifteen (15) days of receipt of FEMA's proposal, FEMA will proceed with the
629 use of Treatment Measure(s) and will complete Section 106 review.

630
631 2. If any of the consulting parties objects within the 15 day review and comment
632 period to the resolution of adverse effects through the application of the
633 Abbreviated Consultation Process, FEMA shall resolve the adverse effect(s)
634 using procedures outlined below in Stipulation II.D.5.b, Memorandum of
635 Agreement.

636
637 3. Because funding and implementation details of Treatment Measure(s) for
638 specific Undertakings may vary by program, FEMA will provide written notice
639 to the consulting parties within sixty (60) days of the completion of the
640 Treatment Measure(s). This written notice will serve as confirmation that the
641 Treatment Measure(s) for a specific Undertaking have been implemented.
642 FEMA will also include information pertaining to the completion of Treatment
643 Measures in the annual report pursuant to Stipulation I.B.1., FEMA Roles and
644 Responsibilities.

645
646 b. Memorandum of Agreement (MOA): In consultation with the other consulting
647 parties, including the ACHP, if participating, FEMA will develop an MOA in
648 accordance with 36 CFR § 800.6(c) to stipulate treatment measures to avoid,
649 minimize, and/or mitigate adverse effects on historic properties where an
650 Abbreviated Consultation Process is infeasible or is objected to by SHPO, OEM
651 or the participating tribes. The MOA may also include feasible treatment measures
652 that serve an equal or greater public benefit in promoting the preservation of
653 historic properties in lieu of more traditional treatment measures. Should the
654 execution of an MOA not be appropriate given the nature and significance of
655 historic properties, scale of adverse effects, or include one or more complex
656 Undertakings, FEMA shall resolve the adverse effects using the procedures
657 outlined below in Stipulation II.D.5.c, Programmatic Agreement.
658

- 659 c. Programmatic Agreement: FEMA, the SHPO, OEM, participating Tribes, the
660 ACHP, as appropriate, and any other consulting party may consult to develop a
661 Programmatic Agreement in accordance with 36 CFR § 800.14(b) to identify
662 programmatic conditions or treatment measures to govern the resolution of
663 potential or anticipated adverse effects from certain complex project situations for
664 an Undertaking or for multiple but similar Undertakings by a single subgrantee.
665
- 666 d. Objections: Should any signatory, consulting party, or member of the public
667 object within the timeframes established by this Agreement to any plans,
668 specifications, or actions pursuant to resolving an adverse effect, FEMA shall
669 consult further with the objecting party to seek resolution. If FEMA determines
670 the objection cannot be resolved, FEMA shall address in accordance with
671 Stipulation IV.B, Dispute Resolution.
672
- 673 e. National Historic Landmarks: When FEMA determines an Undertaking will
674 adversely affect an NHL, FEMA also will notify and invite the Secretary and the
675 ACHP to participate in consultation, pursuant to 36 CFR § 800.10. When the
676 ACHP participates in consultation related to an NHL, the ACHP will report the
677 outcome of the consultation to the Secretary and the FEMA Administrator.
- 678 D. Emergency Demolition and Debris Removal of Privately-Owned Properties: FEMA may
679 need to fund debris removal activities involving the demolition and removal of buildings
680 and structures that are damaged beyond repair or that are completely collapsed and/or
681 disassembled by the actions of the storm and therefore must be removed for health and
682 safety reasons. Damage to historic properties by the effects of natural disasters to such a
683 degree that demolition is required for health and safety reasons is not an adverse effect as
684 defined under Section 106 of (NHPA). However, FEMA is required by the NHPA to
685 determine if its specific actions in response to disasters will cause adverse effects to any
686 historic properties. FEMA EHP will review these projects using the following emergency
687 process outlined below.
688
- 689 1. Areas in the surge zone where there is substantial and widespread damage to improved
690 property and where it is anticipated that FEMA funds will be used for the emergency
691 removal of private property will be targeted for surveys by a joint FEMA-SHPO team.
692 The purpose of the survey is to delineate areas of no above ground historic properties.
693 FEMA and SHPO survey team will jointly identify these areas through background
694 research and a windshield survey. The post-survey write-up will provide a description
695 of the survey boundary where the no historic above ground properties. It also includes
696 information about where there are properties that will require more information if an
697 undertaking takes place. The boundaries of the area where there are no historic above
698 ground properties are digitally mapped. The survey write-up, the maps and photos
699 taken during the survey comprise the consultation package which is formally
700 submitted to SHPO for review and approval. Undertakings occurring within these
701 areas have been formally determined to contain no above ground historic properties in
702 accordance 36 CFR§ 800.4(d)(1) and will have no effect on historic properties.

703 FEMA may approve undertakings to above ground resources in these areas without
704 further consultation with SHPO.

705
706 2. Properties outside these areas that are identified for demolition under the emergency
707 demolition program will be reviewed in accordance with Stipulation II. C. of this
708 Agreement.

709 **III. OTHER CONSIDERATIONS**

710 A. Changes to an Approved Scope of Work: OEM is required to notify FEMA and will
711 require its subgrantees to notify it immediately when there are proposed changes to an
712 approved scope of work for an Undertaking. When notified by OEM of any proposed
713 substantive change to the approved scope of work for an Undertaking, FEMA may
714 authorize the OEM or subgrantee to proceed with the change once the required review is
715 completed. FEMA will notify participating Tribes of changes to approved scopes of work
716 in accordance with the consultation circumstances described in the Appendices D.1-D.5.

717 B. Unexpected Discoveries: Upon notification by a subgrantee of an unexpected discovery in
718 accordance with Stipulation I.B.3.d, OEM Roles and Responsibilities, OEM will
719 immediately notify FEMA and require the subgrantee to:

- 720
- 721 1. Stop construction activities in the vicinity of the discovery; and,
 - 722
 - 723 2. Notify the local law enforcement office and coroner/medical examiner if human
724 remains are discovered, in accordance with applicable New Jersey State statute(s);
725
 - 726 3. Take all reasonable measures to avoid or minimize harm to the property until FEMA
727 has completed consultation with the SHPO, participating Tribes in accordance with
728 Appendices D.1-D.5, and any other consulting parties. Upon notification by OEM of a
729 discovery, FEMA will immediately notify the SHPO, participating Tribes, and any
730 other consulting parties that may have an interest in the discovery, and consult to
731 evaluate the discovery for National Register eligibility.
732
 - 733 3. FEMA will consult with the consulting parties in accordance with the review process
734 outlined in Stipulation II, Project Review, to develop a mutually agreeable action plan
735 with timeframes to identify the discovery, take into account the effects of the
736 Undertaking, resolve adverse affects if necessary, and ensure compliance with
737 applicable Federal and State statutes.
738
 - 739 4. In cases where discovered human remains are determined to be American Indian,
740 FEMA shall consult with the appropriate Tribal representatives and SHPO. In
741 addition, FEMA shall follow the guidelines outlined in the ACHP's *Policy Statement*
742 *Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects*
743 (2007).
744

745 5. FEMA will coordinate with OEM and the subgrantee regarding any needed
746 modification to the scope of work for the Undertaking necessary to implement
747 recommendations of the consultation and facilitate proceeding with the Undertaking.

748 C. Curation

- 749
- 750 1. FEMA and OEM shall ensure that all records and materials (collections) produced
751 during the course of an archaeological survey, testing, and any data recovery
752 operations for the implementation of its Undertakings are curated at a facility,
753 preferably in-state, that meets the standards of, and in accordance with the applicable
754 provisions of 36 CFR Part 79, “Curation of Federally Owned and Administered
755 Archaeological Collections,” and applicable State law and guidelines.
756
- 757 2. In cases where the survey, testing, or data recovery are conducted on private land, any
758 recovered collections remain the property of the land owner and FEMA will return the
759 collections to them with the assistance of the SHPO. In such instances, FEMA and
760 OEM, in coordination with the SHPO or participating Tribes, shall encourage land
761 owners to donate the collection(s) to an appropriate public or Tribal entity. In cases
762 where the property owner declines to accept responsibility for the collection(s) and
763 wishes to transfer ownership of the collection(s) to a public or Tribal entity, FEMA and
764 OEM will ensure curation of the collection(s) in accordance with Stipulation III.C.1
765 above.

766 D. Anticipatory Actions and After the Fact Review

- 767
- 768 1. FEMA shall specifically advise OEM and shall require that the OEM advise its
769 subgrantees in writing that they may not initiate the Undertaking for which they are
770 seeking Federal funding prior to compliance with this Agreement. OEM also shall
771 advise its subgrantees in writing that they may jeopardize Federal funding if activities
772 are initiated prior to compliance with this Agreement.
773
- 774 2. In accordance with Section 110(k) of the NHPA, FEMA shall not grant assistance to a
775 subgrantee who, with intent to avoid the requirements of this Agreement or Section
776 106 of the NHPA, has intentionally significantly and adversely affected a historic
777 property to which the assistance would relate, or having legal power to prevent it,
778 allowed an adverse effect to occur. However, if after consultation with the ACHP,
779 FEMA determines that extraordinary circumstances justify granting assistance despite
780 the adverse effect created or permitted by the subgrantee, FEMA shall complete
781 consultation for the Undertaking pursuant to the terms of this Agreement.
782
- 783 3. In circumstances where FEMA determines a subgrantee has initiated an Undertaking
784 without willful intent to avoid the requirements of this Agreement or Section 106 of
785 NHPA, FEMA will determine if the Undertaking would have required Section 106
786 review in accordance with Stipulation II.D, Standard Project Review.
787

- 788 4. If FEMA determines no Section 106 review or consultation with SHPO and
789 participating Tribes would have been required pursuant to Stipulation II.D, Standard
790 Project Review, FEMA will document this determination to the project files and
791 consider the undertaking Section 106 compliant.
792
- 793 5. If FEMA determines the Undertaking would have required Section 106 review, FEMA
794 will coordinate with SHPO and participating Tribes to determine if consultation is
795 feasible.
- 796 a. If after coordination with the SHPO and participating Tribes, FEMA determines
797 that consultation is feasible, the FEMA will review the Undertaking in accordance
798 with Stipulation II.D, Standard Project Review.
- 799 b. If after coordination with the SHPO and participating Tribes, FEMA determines
800 that review is infeasible, FEMA will document that the undertaking is
801 noncompliant with Section 106, and the FEMA program then will make a funding
802 eligibility decision and notify SHPO.
803
- 804 6. FEMA will ensure that all Undertakings considered for after the fact review in
805 accordance with this stipulation are included in the annual report.
806

807 **IV. IMPLEMENTATION OF AGREEMENT**

808

809 **A. Amendments**

810

- 811 1. If any signatory to the Agreement determines that the Agreement cannot be fulfilled,
812 or that an amendment to the terms of this agreement must be made, the signatories will
813 consult to seek a resolution. If no resolution is reached, then FEMA will forward all
814 relevant documentation to the ACHP including FEMA's recommendations for
815 resolution. Within 15 days, the ACHP
816
- 817 a. Concur in FEMA's proposed resolution, or
818
- 819 b. Provide FEMA with recommendations, which FEMA will take into account in
820 reaching a final decision.
821
- 822 2. An amendment to this agreement will be effective only when it has been signed by
823 FEMA, SHPO, ACHP and participating Tribes. This Stipulation does not apply to
824 amendments made to Appendices A, B, and C pursuant to Stipulation IV.A.3,
825 Amendments, below.
826
- 827 3. FEMA will implement the participating Tribes preferences for consultation per the
828 terms of this agreement according to Appendices D.1-D.5. Amendments will be made
829 between the Agency and Tribes on an as needed basis.
830
- 831 4. Appendix A (FEMA Programs), Appendix B (Programmatic Allowances) and
832 Appendix C (Treatment Measures) and Appendices D.1-D.5 (Stipulations Relative to

833 Consultation with Tribes) may be amended at the request of FEMA or another
834 signatory party in the following manner:

- 835
- 836 a. FEMA, on its own behalf or on behalf of another signatory, shall notify all
837 signatory parties to this Agreement of the intent to add to or modify the current
838 Appendix or Appendices and shall provide a draft of the updated Appendix or
839 Appendices to all signatory parties.
- 840
- 841 b. If no signatory party objects in writing within 15 days of receipt of FEMA's
842 proposed addition or modification, FEMA will date and sign the amended
843 Appendix and provide copies of the Amended Appendix or Appendices to all
844 signatory parties.
- 845
- 846 c. If a signatory to this agreement objects in writing to amending the Appendix, the
847 disagreement may be resolved through the Amendment process established in
848 IV.A of this Agreement.

849

850 B. Dispute Resolution

- 851
- 852 1. Should any signatory to this Agreement object in writing within 30 days to the terms
853 of this Agreement, FEMA will consult with the objecting party for not more than 30
854 days to resolve the objection.
- 855
- 856 2. If the objection is resolved within 30 days, FEMA shall proceed in accordance with
857 the resolution.
- 858
- 859 3. If FEMA determines within 30 days that the objection cannot be resolved, FEMA will
860 forward to ACHP all documentation relevant to the objection, including FEMA's
861 proposed resolution. Within 30 days of receipt, ACHP will:
- 862
- 863 a. Concur in FEMA's proposed resolution; or
- 864
- 865 b. Provide FEMA with recommendations, which FEMA will take into account in
866 reaching a final decision regarding the objection; or
- 867
- 868 c. Notify FEMA that the objection will be referred for comment in accordance with
869 36 CFR § 800.7(a)(4), and proceed to do so. FEMA will take the resulting
870 comment into account.
- 871
- 872 4. FEMA will take into account any ACHP recommendations or comments, and any
873 comments from the other signatories, in reaching a final decision regarding the
874 objection in accordance with 36 CFR § 800.7(c)(4). The signatories will continue to
875 implement all other terms of this Agreement that are not subject to objection.
- 876
- 877 5. Should ACHP not respond within 30 days, FEMA may assume ACHP has no
878 comment and proceed with its proposed resolution to the objection.

- 879
880 6. FEMA will provide the signatories with its final written decision regarding any
881 objection brought forth pursuant to this Stipulation.
882
883 7. FEMA may authorize any disputed action to proceed, after making its final decision.
884
885 8. At any time while this Agreement is in effect, should a member of the public object in
886 writing to implementation of its terms, FEMA will notify the other signatories in
887 writing and take the objection into consideration. FEMA will consult with the
888 objecting party and, if that party so requests, the other signatories, for not more than
889 21 days. In reaching its decision regarding the objection, FEMA will take into
890 consideration all comments from these parties. Within 15 days after closure of this
891 consultation period, FEMA will provide the other parties with its final decision in
892 writing.
893
894 9. Any dispute regarding National Register eligibility that is not resolved pursuant to this
895 Stipulation will be resolved in accordance with Stipulation II.D.3.c, Determinations of
896 Eligibility.
897

898 C. Severability and Termination
899

- 900 1. In the event any provision of this Agreement shall be deemed contrary to, or in
901 violation of, any applicable existing law or regulation of the United States of America,
902 only the conflicting provision(s) shall be deemed null and void, and the remaining
903 provisions of the Agreement shall remain in effect.
904
905 2. FEMA, the SHPO, OEM, or a participating Tribesman terminate this Agreement by
906 providing 30 days' written notice to the other signatory parties, provided that the
907 parties consult during this period to seek amendments or other actions that would
908 prevent termination. If this Agreement is terminated, FEMA will comply with 36 CFR
909 Part 800. Upon such determination, FEMA will provide all other signatories with
written notice of the termination of this Agreement.
910
911 3. A participating Tribe may notify the other signatories that it is fully withdrawing from
912 participation in the Agreement. Following such a withdrawal, FEMA will review
913 undertakings that may affect historic properties of religious and cultural significance to
914 the Tribe in accordance with 36 CFR §§ 800.3 through 800.7 or an applicable
915 alternative under 36 CFR § 800.14. Withdrawal from this Agreement by a
916 participating Tribe does not terminate the Agreement. A Tribe that has withdrawn
917 from the Agreement may at any time that this Agreement remains in effect notify
918 FEMA, OEM, and SHPO in writing that it has rescinded its notice withdrawing from
participation in the Agreement.
919
920 4. This Agreement may be terminated by the implementation of a subsequent Agreement
921 that explicitly terminates or supersedes this Agreement, or by FEMA's implementation
922 of Alternate Procedures, pursuant to 36 CFR § 800.14(a).

923 D. Duration and Extension

924 Unless terminated in accordance with Stipulation IV.C.2 or IV.C.4, Severability and
925 Termination, this Agreement shall remain in effect until Section 106 review for all
926 undertakings related to the Disaster Declaration have been completed.

927 E. Execution and Implementation

- 928
- 929 1. This Agreement may be implemented in counterparts, with a separate page for each
930 signatory, and will become effective on the date of signature by FEMA, SHPO, OEM,
931 and ACHP. FEMA will ensure that each signatory party is provided with a complete
932 copy.
- 933
- 934 2. Execution and implementation of this Agreement evidence that FEMA has afforded
935 ACHP a reasonable opportunity to comment on FEMA's administration of all
936 referenced Programs, and that FEMA has satisfied its Section 106 responsibilities for
937 all individual Undertakings of the Programs.
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942
943 **Appendix A**

944
945 **FEMA Program Summaries**

946 This Appendix may be amended in accordance with Stipulation IV.A, Amendments.
948

949 **Disaster Response and Recovery Programs**

950
951 The following programs are authorized under Titles IV and V of the Stafford Act.
952

953 *Public Assistance Program (PA)*

954 This program assists States, Tribal and local governments, and certain types of private nonprofit
955 organizations quickly respond to and recover from major disasters or emergencies declared by the
956 President. Grants are provided for debris removal (Public Assistance Category A), emergency
957 protective measures (Public Assistance Category B), and the repair, replacement, or restoration of
958 disaster-damaged, publicly owned and certain private non-profit facilities (Public Assistance
959 Categories C-G).
960

961 *Individual Assistance Programs (IA)*

962 These programs helps ensure that individuals and families that have been affected by disasters
963 have access to the full range of FEMA assistance including: crisis counseling (Section 416),
964 disaster legal services (Section 415), medical assistance (Section 403), transportation (Section
965 419), funeral services, minor home repairs (Section 408), and temporary housing assistance
966 (Section 408). It should be noted that other Federal agencies provide disaster assistance to
967 individuals as well, such as the US Small Business Administration, Department of Agriculture,
968 and Department of Labor and that this assistance is not subject to the terms of this agreement.
969

970 *Fire Management Assistance Grant Program (FMAG)*

971
972 The FMAG is available to State, Tribal, and local governments for the mitigation, management,
973 and control of fires on publicly or privately owned lands. Eligible costs may include expenses for
974 field camps, equipment use, repair and replacement, materials and supplies, and mobilization and
975 demobilization activities.
976

977 *Hazard Mitigation Grant Program (HMGP)*

978 The HMGP provides grants to States, Territories, Tribes, and local governments to implement
979 long-term hazard mitigation measures after a Disaster Declaration. Activities may include
980 buyouts, retrofits, relocations, elevations, and minor flood control projects.
981
982

Appendix B

Programmatic Allowances

This list of Allowances enumerates FEMA funded activities that based on the consulting parties to this agreement experience have no effect or limited effect on historic properties if implemented as specified in this Appendix and will not require review by the SHPO and participating Tribes pursuant to Stipulation II.A.1, Programmatic Allowances.

The allowances consist of two tiers – Tier I and Tier II. The Tier I allowances will have no effect on historic properties. FEMA staff may apply Tier I allowances without meeting any professional historic preservation qualification standards. Tier II allowance will have limited effect on historic properties. Only FEMA staff meeting the applicable Secretary Professional Qualifications in accordance with Stipulation I.B.1.a of this Agreement may apply Tier II allowances to ensure that the work is in conformance with the Secretary for the Treatment of Historic Properties.

When referenced in the allowances, “in-kind” shall mean that it is either the same or a similar material, and the result shall match all physical and visual aspects, including form, color, and workmanship. Where severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. The in-kind repair provided for in both Tier I and Tier II allowances in Appendix B should be limited to pre-existing architectural features and physical components of buildings and structures and in general should not be utilized when a building or structure has been substantially altered.

When referenced in the allowances, “previously disturbed soils” will refer to soils that are not likely to possess intact and distinct soil horizons and have the reduced likelihood of possessing archaeological artifacts, features, and phenomena within their original depositional contexts.

Previously disturbed soils are those soils altered by human activity after the twentieth century that has changed the soil’s original configuration. Soil disturbance can be demonstrated through previous cultural resource surveys, site inspection, or construction drawings that clearly depict the depth of prior ground disturbance.

Examples of activities that would have created disturbed soil horizons include: the installation of culverts, foundations, and below-ground utilities; the excavation of basements or footings; and the construction of dams, bridge abutments, and other structures. Disturbed soils are also assumed to occur within two feet of a foundation, abutment or other improvement and to the depth of the previous construction.

Soil disturbance under a parking lot or road is limited to the depth of prior construction. Soils beneath the depth of prior construction may be undisturbed. Undisturbed soils may exist under areas where additional material (eg. soil or gravel) has been placed in order to raise land surface (eg. road beds, railroad alignments, and building pads). The addition of soil may not constitute significant disturbed ground beyond the added soil layer. Activities such as plowing or cultivation do not constitute ground disturbance.

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Tier I Allowances

I. GROUND DISTURBING ACTIVITIES AND SITE WORK, when proposed activities described below substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

A. Debris and Snow Removal

1. Debris removal and collection, including removal of snow, uprooted trees, limbs and branches from public rights of way, public area and the transport and disposal of such waste to existing licensed waste facilities or landfills. This includes the temporary establishment and expansion of non-hazardous debris staging, reduction, and disposal areas at licensed transfer stations, or existing hard-topped or graveled surfaces (e.g. parking lots, roads, athletic courts) but not the creation of new or temporary access roads.
2. Removal of debris from private property provided that buildings are not affected, ground disturbance is minimal and in-ground elements, such as driveways, walkways or swimming pools are left in place.
3. Chipping and disposal of woody debris by broadcasting within existing rights-of-way.
4. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, in order to restore the facility to its pre-disaster condition. The sediment may be used to repair eroded banks or disposed of at an existing licensed or permitted spoil site.
5. Dewatering flooded developed areas by pumping.

B. Temporary Structures and Housing

1. Installation of temporary structures for uses such as school classrooms, offices, or shelters for essential public service agencies, such as police, fire, rescue and medical care, as well as temporary housing for disaster personnel and victims, at the following types of locations:
 - a. Single units on private residential sites when all utilities are installed above ground or tie into pre-existing utility lines.
 - b. Existing multi-family units.
 - c. Existing RV/Mobile Home Parks and campgrounds with pre-existing utility hookups.

- 1071 d. Paved areas, such as parking lots and paved areas at such facilities as conference
1072 centers, shopping malls, airports, business parks, military bases when all utilities
1073 are installed above ground or tie into pre-existing utility lines.
1074
1075 e. Sites that have been previously cleared and prepared for planned construction, such
1076 as land being developed for public housing, office buildings, city parks, ball fields,
1077 military bases, schools, etc. when all utilities are installed above-ground or tie into
1078 pre-existing utility lines.
1079
1080 f. Areas previously filled to depths of at least six feet so that subsurface utilities can
1081 be installed.
1082

1083 **C. Recreation and Landscaping**
1084

- 1085 1. Installation of temporary removable barriers.
1086
1087 2. In-kind repairs or replacement, and minor upgrades/mitigation of bollards and
1088 associated protective barriers when in previously disturbed areas.
1089

1090 **D. Minor Ground Disturbances**
1091

- 1092 1. Borrow material if from a commercial source, or a stock tank berm, dug-outs, or
1093 reclaimed ditch provided the original surface of the ground is not impacted by the
1094 removal method.
1095

1096 **II. BUILDINGS**
1097

- 1098 **A.** Repair or retrofit of buildings less than 48 years old when the disaster was declared.
1099
1100 **B.** Removal of water by physical or mechanical means.
1101
1102 **C.** Installation of grab bars and other such minor interior modifications required for
1103 compliance with the Americans with Disabilities Act (ADA).
1104
1105 **D.** Installation of security bars over windows on non primary facades and below-grade
1106 windows.
1107
1108 **E.** Dry vacuuming of remediated areas, pertaining to mold remediation.
1109

1110 **III. TRANSPORTATION FACILITIES**, when proposed activities conform to the original
1111 footprint and/or performed in previously disturbed soils, including any staging areas.
1112

1113 **A. Roads and Roadways**
1114

- 1115 1. Repair of roads to pre-disaster geometric design standards and conditions using in-
1116 kind materials, shoulders medians, clearances, curbs, and side slopes. This allowance
1117 does not include improvement to existing roadways and appurtenances.

- 1118
1119 2. Construction of temporary emergency access roads in previously disturbed soils to
1120 allow for passage of emergency vehicles.
1121
1122 3. Repairs to road slips and landslides that do not require grading of undisturbed soils on
1123 the up-hill side of the slip.
1124
1125 4. Re-establishment of existing roadway ditches.
1126
1127 5. In-kind repair or replacement of traffic control devices such as traffic signs and
1128 signals, delineators, pavement markings, traffic surveillance systems.
1129
1130 6. Installation and removal of temporary traffic control devices, including pre-formed
1131 concrete barriers and fencings.
1132
1133 7. In-kind repair or replacement of roadway safety elements such as barriers, guardrails,
1134 and impact-attenuation devices. Additional guardrails and safety end treatments are
1135 allowed when the undertaking is not located within a historic district that is eligible or
listed on the National Register.

1136 **B. Airports**
1137

- 1138 1. In-kind repair or replacement of existing runway surfaces and features (e.g. asphalt,
1139 concrete, gravel, and dirt) and associated air transportation safety components and
1140 systems (e.g. lighting bars, beacons, signage and weather sensors).
1141

1142 **C. Rail Systems**
1143

- 1144 1. In-kind repair or replacement of safety components.
1145
1146 2. In-kind repair or replacement of existing track system and passenger loading areas.
1147

1148 **Tier II Allowances**
1149

1150 **I. BARRIER ISLANDS ONLY - GROUND DISTURBING ACTIVITIES AND SITE**
1151 **WORK:** Any projects located on a barrier island will be exempt from archaeological review by
1152 the New Jersey State Historic Preservation Office except when any of the following conditions
1153 applies:
1154

- 1155 A. There is a known shipwreck site on or adjacent to the project site; or
1156
1157 B. There is a known archaeological site on or adjacent to the project site;
1158
1159 C. Local officials or members of the public identify to the federal agency archaeological
1160 resources, or strong potential, within the project site; or
1161
1162 D. Footprint of ground disturbance exceeds 5 acres; or

1163
1164 E. FEMA personnel meeting or exceeding the Secretary’s Professional Standards for
1165 archaeology assesses the project site as possessing a high potential for the presence of
1166 significant archaeological deposits, as guided by archaeological site sensitivity models
1167 developed for the region.
1168

1169 **II. GROUND DISTURBING ACTIVITIES AND SITE WORK**, when proposed activities
1170 described below substantially conform to the original footprint and/or are performed in previously
1171 disturbed soils, including the area where the activity is staged.
1172

1173 **A. Footings, Foundations, Retaining Walls, Slopes, and Slope Stabilization Systems**
1174

- 1175 1. In-kind repair, replacement, and reinforcement of footings, foundations, retaining
1176 walls, slopes, and slope stabilization systems (e.g., gabion baskets, crib walls, soldier
1177 pile and lag walls) if related ground disturbing activities are within the boundary of
1178 previously disturbed soils.
1179
- 1180 2. Installation of perimeter drainage (e.g. French drains) when performed in previously
1181 disturbed soils.
1182
- 1183 3. Excavation work in areas of soils where the work is confined to natural slopes of 15%
1184 or greater and there are no known archeological sites and no probability for prehistoric
1185 sites such as rock shelters or historic buildings/structural remains.
1186

1187 **B. Recreation and Landscaping**
1188

- 1189 1. In-kind repair, in-kind replacement, and minor upgrades to recreational facilities and
1190 features (e.g. playgrounds, campgrounds, fire pits, dump stations and utility hook-ups,
1191 swimming pools, athletic fields and signage, batting cages, basketball courts, swing
1192 sets, pathways, simple wooden/wire stream crossings). The reviewer should note that
1193 there are many parks in New Jersey that are listed on the National Register and minor
1194 changes to character defining features within these parks required consultation with
1195 SHPO.
1196
- 1197 2. In-kind repair or in-kind replacement or repair or minor upgrades to landscaping
1198 elements (e.g., fencing, free standing walls, paving, planters, irrigation systems,
1199 lighting elements, signs, flag poles, ramps, steps). The reviewer should note that there
1200 are many parks with significant landscapes in New Jersey that are listed on the
1201 National Register and minor changes to character defining features within these parks
1202 required consultation with SHPO.
1203

1204 **C. Piers, Docks, Boardwalks, Boat Ramps, and Dune Crossovers**
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- 1206 1. In-kind repair and replacement and minor upgrades to existing piers, docks,
1207 boardwalks, boat ramps and dune crossovers in areas of previously disturbed soils.
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C. Cemeteries

1. Removal of woody debris, such as branches, limbs and uprooted trees, from a defined cemetery and a 100 foot area around the cemetery boundary, provided no heavy equipment and other machinery is operated or staged in these areas. Small light vehicles (such as gators and skid steers) may be used.
2. In-kind repair of historic gravestones, monuments, fences, and other historic components.

III. BUILDINGS

A. Interior Work: Floors, Walls, Stairs, Ceilings and Trim

1. In-kind repair and replacement of floors, walls, stairs, ceilings, and/or trim. The allowance does not apply to decorative finishes, including murals, glazed paint, gold leaf, or ornamental plaster.
2. Replacement of damaged vinyl floor tile (including floor tile containing asbestos) with contemporary floor tile of the same dimension and thickness, and similar texture or pattern.
3. Painting and surface preparation provided color/finish is matched to pre-existing finish and the coating and preparation is limited to material repaired or replaced or immediately adjacent thereto.
4. Interior cleaning of surfaces using a weak solution of household bleach and water, mold remediation, or mold removal. The allowance applies to interior finishes, including plaster and wallboard, provided the cleaning is restricted to damaged areas and does not affect adjacent materials.
5. Use of portable de-humidification systems provided no changes are made to character-defining features (specifically for mold remediation).
6. Non-destructive or concealed testing for hazardous materials (e.g., lead paint, asbestos) or for assessment of hidden damages.

B. Utilities and Mechanical, Electrical, and Security Systems

1. In-kind repair or in-kind replacement, or limited upgrading of interior utility systems, including mechanical (e.g., heating, ventilation, air conditioning), electrical, and plumbing systems. This allowance does not provide for the installation of new exposed ductwork.
2. Elevation of heating, ventilation, and air conditioning system (HVAC) and mechanical equipment as long as it is placed or located where it is not highly visible from the street and located within an interior space of secondary architectural/historic character.

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3. Replacement or installation of interior fire detection, fire suppression, or security alarm systems. The allowance does not apply to surface mounted wiring, conduits, piping, etc., unless previously existing, provided that installation of the system hardware does not damage or cause the removal of character-defining architectural features and can be easily removed in the future.
 4. Installation of building communication and surveillance security systems, such as cameras, closed-circuit television, alarm systems, and public address systems, provided that installation of the system hardware does not damage or cause the removal of character defining architectural features, can be easily removed in the future and is installed so that it has minimal impact on historic character.
 5. Installation of building access security devices, such as card readers, enhanced locks, and security scanners (e.g., metal detectors), provided the device does not damage or cause the removal of character-defining architectural features and can be removed in the future without impacts to significant architectural features.

C. Windows and Doors

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1. In-kind repair of damaged or severely deteriorated windows and window frames,, shutters, storm shutters, doors and door frames, and associated hardware, where profiles, elevations, details and materials match those of the originals.
 2. In-kind replacement of window panes. Clear plate, double, laminated or triple insulating glazing can be used, provided it does not result in altering the existing window material, tint, form, muntin profiles, or number of divided lights. This allowance does not apply to the replacement of existing intact archaic or decorative glass.
 3. Replacement of exterior, utilitarian, non-character-defining metal doors and frames leading into non character-defining spaces with metal blast resistant doors and frames.

D. Exterior Walls, Cornices, Porches, and Foundations

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1. In-kind 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, and where necessary, in-kind replacement of walls, porches, foundations, columns, cornices, siding, balustrades, stairs, dormers, brackets, trim, and their ancillary components or in-kind replacement of severely deteriorated or missing or lost features, as long as the replacement pieces match the original in detail and material. Any ground disturbance will be limited to previously disturbed soils.
 3. In-kind repair and where necessary in-kind replacement of signs or awnings.

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4. Installation of temporary stabilization bracing or shoring, provided such work does not result in additional damage.
 5. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view.
 6. In-kind repair of concrete and masonry walls, columns, parapets, chimneys, or cornices or limited in-kind replacement of damaged components including comparable brick, and mortar that matches the color, strength, content, rake, and joint width.
 7. Bracing and reinforcing of walls, chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or reversible in the future.
 8. Strengthening of foundations and the addition of foundation bolts, provided that visible new work is in-kind, including mortar that matches the color, content, strength, rake, and joint width where occurring.
 9. Repairs to and in-kind replacement of elements of curtain wall assemblies or exterior cladding that is hung on the building structure, usually from floor to floor, and when the color, size reflectivity, materials, and visual patterns are unaltered.

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- E. Roofing**
1. Installation of scaffolding, polyethylene sheeting, or tarps, provided such work will not result in additional damage or irreversible alterations to character defining features.
 2. In-kind repair, and where necessary, in-kind replacement, or strengthening of roofing, rafters, fascia, soffits, gutters, verge boards, leader boxes, downspouts, or other damaged roof system components.
 3. Repairs to a flat roof cladding, including changes in roofing materials, where the repairs are not highly visible from the ground level.
 4. In-kind repair and where necessary in-kind replacement of lightning rods.

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- F. Weatherproofing and Insulation**
1. Caulking and weather-stripping to complement the color of adjacent surfaces or sealant materials.
 2. In-kind repair or replacement of insulation systems, provided that existing interior plaster, woodwork, exterior siding, or exterior architectural detail is not altered.

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- G. Structural Retrofits**

- 1342 1. The installation of the following retrofits/upgrades, provided that such upgrades are
1343 not visible on the exterior: attic bracing, cross bracing on pier and post foundations;
1344 fasteners; collar ties; gussets; tie downs; strapping and anchoring of mechanical,
1345 electrical, and plumbing equipment; concealed anchoring of furniture; installation of
1346 plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on
1347 roofs; and automatic gas shut off valves.
1348
1349 2. Replacement, repair or installation of lightning rods.
1350

1351 **IV. TRANSPORTATION FACILITIES**, when proposed activities substantially conform to the
1352 original footprint and/or performed in previously disturbed soils, including the area where the
1353 activity is staged.
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1355 **A. Roads and Roadways**
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- 1357 1. Repair of roads to pre-disaster geometric design standards and conditions using in-
1358 kind materials, shoulders, medians, clearances, curbs, and side slopes. This allowance
1359 permits minor improvement to meet current code and standards or hazard mitigation
1360 measures, such as those designed to harden exposed surfaces, including the application
1361 of gravel armoring to side slopes and ditches except where in close proximity to
1362 known archeological sites or within the view shed of historic districts that are listed or
1363 eligible for listing on the National Register.
1364
1365 2. In kind repair to historic paving materials for roads and walkways.
1366
1367 3. In-kind repair or when necessary in-kind replacement, or minor upgrade of culvert
1368 systems and arches beneath roads or within associated drainage systems, including
1369 provision of headwalls, riprap and any modest increase in capacity for the purposes of
1370 hazard mitigation or to meet current codes and standards, provided that the work
1371 substantially conforms to the existing footprint. For stone or brick culverts or arches
1372 beneath roadways, this allowance only applies to in-kind repair.
1373
1374 4. In-kind repair or, where necessary, in-kind replacement of road lighting systems,
1375 including period lighting fixture styles.
1376
1377 5. In-kind repair or, where necessary, in-kind replacement of road appurtenances such as
1378 curbs, berms, fences, and sidewalks.
1379
1380 6. Installation of speed bumps and/or enhanced curbs. This allowance does not apply to
1381 any work in historic districts listed or eligible for listing in the National Register.
1382
1383 7. Stabilization of hazardous slopes within transportation rights-of-way. Stabilization
1384 methods include the installation of retaining walls and systems such as gabion baskets,
1385 crib walls, and soldier pile and lag walls. Work will not exceed the limits of the
1386 previously disturbed rights-of-way and will not take place within the APE of any
1387 historic property listed or eligible for listing in the National Register. This allowance

1388 does not apply to any work in historic districts listed or eligible for listing in the
1389 National Register.

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1391 **B. Bridges**

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1393 1. Installation of a temporary (Bailey-type) bridge over an existing structure or at a
1394 previously disturbed location, such as a former bridge location, to allow passage of
1395 emergency vehicles.

1396

1397 2. In-kind repair, and where necessary, in-kind replacement of bridge components (e.g.
1398 abutments, wing walls, piers, decks, and fenders) in previously disturbed soils.

1399

1400 **V. UTILITIES, COMMUNICATIONS SYSTEMS AND TOWERS**, when proposed activities
1401 substantially conform to the original footprint and/or performed in previously disturbed soils,
1402 including the area where the activity is staged.

1403

1404 **A. General**

1405

1406 1. In-kind repair or replacement, or minor upgrading, small scale realignment, and
1407 elevation of utilities and associated features and structures within previously disturbed
1408 soils of rights-of-way or utility corridors.

1409

1410 2. Installation of new utilities and associated features within existing rights-of-way
1411 except when in close proximity to known archeological sites or within view sheds of
1412 historic districts eligible or listed on the National Register.

1413

1414 3. Directional boring of new/replacement service line and related appurtenances
1415 involving boring or silt trenches within previously disturbed soils of rights-of-way or
1416 utility corridors.

1417

1418 4. In-kind repair or replacement, or minor upgrade of water towers provided activities
1419 take place within previously disturbed soils. Ground-level facilities may be added or
1420 expanded in previously disturbed areas. This allowance does not apply to masonry
1421 water towers.

1422

1423 5. Temporary storage of supplies and equipment (poles, cable spools, pedestals, etc.)
1424 where no ground disturbance will occur; this does not include construction of
1425 temporary access routes.

1426

1427 6. Repair in kind of metal utilitarian structures to house or protect utilities, such as pump
1428 houses and electrical transformer houses, as well as related elements, such as oil tanks
1429 and exposed pipelines, except when located within a historic district.

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1431 **B. Generators and Utilities**

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1. In-kind repair or replacement, or minor upgrades elevation, and/or installation of generators, HVAC systems, and similar equipment provided activities occur within previously disturbed soils and any roof mounted equipment is not visible from the ground level.
 2. Underground cable replacements of any length when the replacement cable is placed within three feet of the same trench as an existing or failed cable except when in close proximity to known archeological site.
 3. Substantially in kind repair or replacement of antenna towers.
 4. Replacement of power poles in pre-existing locations is allowed including increase in the pole diameter. Relocation or construction of new poles are allowed in (1) urban or suburban settings between the edge of roadway and the sidewalk, (2) rural settings along roadway shoulders, and (3) in off-road alignment settings in the existing utility corridor except when in close proximity to a known archaeological site or within the view shed of historic districts listed or eligible for listing on the National Register.
 5. New construction of a single pole overhead line is permissible when the auguring, pole placement, and line placement is conducted from within the previously disturbed public or private right-of-ways, or when the lines will not pass within or through any areas known or suspected to contain human remains, archeological resources, or any other historic properties except when in close proximity to a known archaeological site or within the view shed of historic districts listed or eligible for listing on the National Register.
 6. Replacement, relocation or installation of solar panels on the roofs of building less than 5 years of age.
 7. Directional boring for replacement/new service lines and related appurtenances, where ground disturbance would involve no greater than 10 square foot excavation units for directional boring equipment to be placed. These units would be placed in areas for directional drill to begin and end or where needed to complete boring.

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C. Communication Equipment/Systems and Towers

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1. Acquisition, installation, or operation of communication and security equipment/systems that use existing distribution systems, facilities, or existing infrastructure right-of-way.
 2. The collocation of communication and security equipment on existing towers and buildings/structures less than 45 year in age, provided that the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils.

- 1478 3. Enhancement, repair or replacement of existing communication towers and antenna
1479 structures provided the work does not increase existing tower height or footprint by
1480 more than 10% and occurs within previously disturbed soils.
1481
- 1482 4. Installation of new temporary (not to exceed 12 months) communications towers and
1483 antenna structures provided that the work occurs does not require modification of
1484 buildings/structures older than 45 years and occurs within previously disturbed soils.
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- 1486 5. Construction of new communication towers, less than 200 feet tall, in previously
1487 developed urban complexes when the work does not require modification of
1488 buildings/structures older than 45 years, occurs within previously disturbed soils and is
1489 not within 500 ft of the boundaries of a historic property.
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1491 **VI. WATER RESOURCE MANAGEMENT AND CONTROLS**, when proposed activities
1492 substantially conform to the original footprint and/or performed in previously disturbed soils,
1493 including the area where the activity is staged.
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1495 **A. Canal Systems**
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- 1497 1. In-kind repairs, when necessary, or in-kind replacement to canal systems and
1498 associated elements with the understanding that when the undertaking includes the
1499 D&R and Morris Canals, the applicant complies with the New Jersey Register of
1500 Historic Places Act N.J.A.C.7.4, effective September 2, 2008 which requires
1501 consultation with the appropriate agencies.
1502

1503 **B. Breakwaters, Seawalls, Revetments, and Berms**
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- 1505 1. In-kind repair or replacement of breakwaters, seawalls, and revetments, provided the
1506 work occurs in previously disturbed soils and there are no known shipwrecks within
1507 the project's area of potential effect.
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1509 **C. Dams, Levees, and Floodwalls**
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- 1511 1. In-kind repair of dams, levees, floodwalls and related features, including spillways,
1512 tide gates, and fuse plugs, provided the work occurs in previously disturbed soils.
1513

1514 **D. Fish Hatcheries**
1515

- 1516 1. In-kind repair or replacement of fish hatcheries and fish ladders.
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1518 **E. Waste-Water Treatment Lagoon Systems**
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- 1520 1. In-kind repair or replacement, or minor upgrades of waste-water treatment lagoon
1521 systems.
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1524 **VII. OTHER PROGRAM ACTIVITIES**

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1526 **A. Elevation, Demolition, and Reconstruction**

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1528 Activities related to the elevation, demolition and/or reconstruction of buildings or structures less
1529 than 45 years of age the so long as the proposed activities substantially conform to the original
1530 footprint and/or are performed in previously disturbed soils including any staging area, and the
1531 buildings or structures are not located within or adjacent to a historic district. *Undertakings may*
1532 *take place using Federal funds to resources located within the areas surveyed by the joint FEMA-*
1533 *SHPO team that have formally been determined to contain no above-ground historic properties*
1534 *without further consultation with NJ SHPO.*

- 1535
1536 1. Activities related the elevation, demolition or reconstruction of buildings or structures
1537 less than 48 years of age provided the proposed activates substantially conform to the
1538 original footprint and/or are performed in previously disturbed soils including any
1539 staging areas, and the buildings or structures are not located within or adjacent to
1540 historic districts.
1541
1542 2. Undertaking occurring within areas previously surveyed by the joint FEMA-SHPO
1543 survey team that have been formally determined to contain no above ground historic
1544 properties in accordance with Section 106 will have no effect on historic properties.
1545 FEMA may approve undertakings to above ground resources in these areas without
1546 further consultation with SHPO.

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1548 **B. Safe Rooms**

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1550 1. Installation of individual safe rooms within the property limits of a residence where
1551 the installation will occur within an existing structure or building or previously
1552 disturbed soils.

1553
1554 **C. Temporary Actions**

- 1555
1556 1. Installation of temporary stabilization, bracing or shoring, provided each work does not
1557 result in additional damage, significant loss of historic fabric, or irreversible alterations,
1558 and does not affect known archaeological sites or features or is located in an area with
1559 high potential for significant archeological sites.
1560
1561 2. Installation of scaffolding, polyethylene sheeting, tarps or temporary barriers (e.g. chain
1562 link fences), provided such work will not result in additional damage, irreversible
1563 alterations, or significant loss of historic fabric.

1564
1565 **D. Lower Impact Debris Removal Stipulations** For Private Property Debris Removal
1566 (PPDR) and demolition of condemned private property (as debris) under the Public
1567 Assistance Program.

- 1568
1569 1. **General Approach to Minimize Impact to Soil:**

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1571 a. When using heavy equipment, work from hard or firm surfaces to the fullest
1572 extent possible, to avoid sinking into soft soils.
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1574 b. The Applicant will, to the fullest extent possible, ensure that its contractors
1575 minimize soil disturbance when operating heavy equipment on wet soils (6
1576 inches or less).
1577
1578 c. Excavation and burial of debris on site is not permitted.
1579

1580 **2. Activity Specific Guidelines:**

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1582 a. *Woody Debris Removal (including Rootballs):*
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- The Applicant will ensure to the fullest extent possible that all prior PA guidance regarding woody debris is followed.

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1587 b. *Filling Voids*

- Any voids which require filling because they are a "health and safety issue" will be filled with suitable fill from an approved source.

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1590 c. *Surface Grading and Site Clean-Up:*

- The Applicant will ensure to the fullest extent possible that its contractors will limit site grading to within the first six (6) inches of the existing surface elevation (e.g., side walk level, driveway level, slab level, etc.).

1591
1592 d. *If the building or structure has been destroyed by the event and there are*
1593 *remaining Structural Features or Utilities that Require Removal, then:*

- Utility lines will be disconnected and capped. In cases where there are no shut-off valves, limited excavation within the utility rights-of-way will be required to cap these service lines.
- Shearing off of at the ground-surface is strongly encouraged so that further soil disturbance is minimized.

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1605 **3. Treatment of Unanticipated Discoveries:**

1606 a. *Archaeological Materials/Human Remains*

- If debris removal activities disturb archaeological artifacts (e.g. old bricks, ceramic pieces, historic bottle glass or cans, coins, beads, stones in the form of tools [arrow heads], pieces of crude clay pottery, etc.), archaeological features (e.g. grave markers, house foundations, cisterns, etc.) or human remains the Applicant will ensure to the fullest extent possible that the Contractor immediately stops work in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the finds. In such cases, the Applicant will immediately inform the New Jersey State Historic Preservation Office
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SHPO and FEMA (also the local law enforcement, county coroner/medical examiner and county OEM representative for human remains, in accordance with applicable New Jersey SHPO and state guidelines) of the discovery for further guidance. The Applicant will ensure that the Contractor does not proceed with work in the areas of concern until FEMA staff has completed consultation with the (SHPO) and other interested parties, as necessary.

- To ensure that all applicable State and local laws are adhered to, and permission from all appropriate parties is obtained to remove remains, the Applicant must also determine appropriate legal measures under New Jersey Cemetery law (N.J.S.A. 45:27-23.c).
4. FEMA reserves the right to conduct unannounced field inspections and observe debris removal activities to verify compliance with LIDRS. Failure to comply with these stipulations may jeopardize the Applicant's receipt of federal funding.
 5. FEMA and the State Historic Preservation Office (SHPO) have agreed that the Applicant is responsible for ensuring that their demolition contractor adheres to these work restrictions known as Lower Impact Debris Removal Stipulations (LIDRS) for FEMA Public Assistance Category A eligible activities.

Appendix C

Treatment Measures

The following Treatment Measures are suggested for the resolution of Adverse Effects:

If Undertakings result or will result in adverse effects, FEMA, the SHPO, OEM, and participating Tribes(s), may develop a treatment measure plan that includes one or more of the following Treatment Measures, depending on the nature of historic properties affected and the severity of adverse effects. This Appendix may be amended in accordance with Stipulation IV.A.3 of this Agreement, Amendments.

A. Recordation Package

1. Digital Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a Digital Photography Package prepared by staff or contractors that meet the Secretary's Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate. The Digital Photography Package will meet the standards cited in the National Park Service's *National Register of Historic Places Photographic Policy March 2010* or subsequent revisions (<http://www.nps.gov/nr/publications/bulletins/photopolicy/index.htm>).

- a. The Digital Photography Package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.

- b. The Digital Photography Package shall include printed color copies of the digital photographs (on appropriate paper, per *NPS Photographic Policy*), a CD/DVD of the digital photographs, a completed state architectural inventory form, and a written site history of the historic property.

- c. The designated responsible party shall submit the Digital Photography Package to the SHPO and participating Tribes for review and approval. Once approved by the SHPO and participating Tribes, the designated responsible party shall submit full copies of the approved Digital Photography Package to _____ for permanent retention.

2. 35 mm Black and White Film Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a 35 mm Black and

- 1683 White Film Photography Package prepared by staff or contractors that meet the
1684 Secretary's Professional Qualifications for Architectural History, History, Architecture, or
1685 Historic Architecture, as appropriate.
1686
- 1687 a. The 35 mm Black and White Film Photography Package shall include a
1688 comprehensive collection of photographs of both interior and exterior views showing
1689 representative spaces and details of significant architectural features and typical
1690 building materials. Exterior photographs shall include full oblique and contextual
1691 images of each elevation. Exterior views shall be keyed to a site plan while interior
1692 views shall be keyed to a floor plan of the building/structure. The photographs shall
1693 be indexed according to the date photographed, site number, site name, site address,
1694 direction, frame number, subject matter and photographer's name recorded on the
1695 reverse side in pencil.
1696
- 1697 b. The 35 mm Black and White Film Photography Package shall include one (1) full set
1698 of 35mm film black and white photographs printed on acid free paper, the
1699 corresponding 35mm film negatives in acid free sleeves, a completed state
1700 architectural inventory form, and a written site history of the historic property.
1701
- 1702 c. The designated responsible party shall submit the 35 mm Black and White Film
1703 Photography Package to the SHPO and participating Tribes for review and approval.
1704 Once approved by the SHPO and participating Tribes, the designated responsible party
1705 shall submit full copies of the approved 35 mm Black and White Film Photography
1706 Package to _____ for permanent retention.
1707
- 1708 3. Large Format Film Photography Package: Prior to project implementation, the designated
1709 responsible party shall oversee the successful delivery of a Large Format Film
1710 Photography Package prepared by staff or contractors that meet the Secretary's
1711 Professional Qualifications for Architectural History, History, Architecture, or Historic
1712 Architecture, as appropriate.
1713
- 1714 a. The Large Format Film Photography Package shall include a comprehensive
1715 collection of photographs of both interior and exterior views showing representative
1716 spaces and details of significant architectural features and typical building materials.
1717 Exterior photographs shall include full oblique and contextual images of each
1718 elevation. Exterior views shall be keyed to a site plan while interior views shall be
1719 keyed to a floor plan of the building/structure. The photographs shall be indexed
1720 according to the date photographed, site number, site name, site address, direction,
1721 frame number, subject matter and photographer's name recorded on the reverse side in
1722 pencil.
1723
- 1724 b. The Large Format Film Photography Package shall include one (1) full set of 4 x 5 or
1725 5 x 7-inch photographs printed on acid free paper, the corresponding 4 x 5 or 5 x 7-

1726 inch negatives in acid free sleeves, a completed state architectural inventory form, and
1727 a written site history of the historic property.
1728

1729 c. The designated responsible party shall submit the Large Format Film Photography
1730 Package to the SHPO and participating Tribes for review and approval. Once approved
1731 by the SHPO and affected Tribes, the designated responsible party shall submit full
1732 copies of the approved Large Format Film Photography Package to _____
1733 for permanent retention.
1734

1735 B. Design Review by SHPO and participating Tribes
1736

1737 Prior to project implementation, FEMA, the Grantee, and subgrantee shall work with the
1738 SHPO and participating Tribes to develop a historically compatible design. Plans and
1739 specifications will, to the greatest extent feasible, preserve the basic character of a
1740 building. Primary emphasis shall be given to the major street elevations that are visible.
1741 Significant contributing features (e.g. trim, windows, doors, porches) will be repaired or
1742 replaced with either in-kind materials or materials that come as close as possible to the
1743 original materials in basic appearance. Aesthetic camouflaging treatments such as use of
1744 veneers, paints, texture compounds and other surface treatments and/or use of sympathetic
1745 infill panels and landscaping features will be employed to the greatest extent feasible.
1746 Final construction drawings used in the bidding process will be submitted to the SHPO
1747 and participating Tribes for review and comment prior to the award of a construction
1748 contract and the initiation of construction activities. No photography of Native American
1749 human remains or funerary objects will be allowed
1750

1751 C. Tribal Treatment Plan
1752

1753 FEMA shall work with the participating Tribes to develop a plan for the protection and
1754 treatment of, including but not limited to, Native American remains, funerary objects,
1755 cultural and religious landscapes, ceremonial items, traditional gathering areas and
1756 cultural items, for known sites and in the event that any are discovered in conjunction
1757 with the Undertaking, including archaeological studies, excavation, geotechnical
1758 investigations, grading, and all ground-disturbing activity. The plan will also formalize
1759 procedures for Tribal monitoring during archaeological studies, grading, and ground
1760 disturbing activities for the Undertaking.
1761

1762 D. Public Interpretation
1763

1764 Prior to project implementation, FEMA, OEM, and the subgrantee will work with the
1765 SHPO and participating Tribes to design an educational interpretive plan. The plan may
1766 include signs, displays, educational pamphlets, websites, workshops and other similar
1767 mechanisms to educate the public on historic properties within the local community, state,
1768 or region. Once an interpretive plan has been agreed to by the parties, SHPO, participating
1769 Tribes, and the designated responsible party will continue to consult throughout
1770 implementation of the plan until all agreed upon actions have been completed by the
1771 designated responsible party.

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E. Historical Context Statements and Narratives

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO and participating Tribes to determine the topic and framework of a historic context statement or narrative the designated responsible party shall be responsible for completing. The statement or narrative may focus on an individual property, a historic district, a set of related properties, or relevant themes as identified in the statewide preservation plan. Once the topic of the historic context statement or narrative has been agreed to, the designated responsible party shall continue to coordinate with the SHPO and participating Tribes through the drafting of the document and delivery of a final product. The SHPO and participating Tribes shall have final approval over the end product. The designated responsible party will use staff or contractors that meet the Secretary’s Professional Qualifications for the appropriate discipline.

F. Oral History Documentation

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO and participating Tribes to identify oral history documentation needs and agree upon a topic and list of interview candidates. Once the parameters of the oral history project have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and participating Tribes through the data collection, drafting of the document, and delivery of a final product. The SHPO and participating Tribes shall have final approval over the end product. The designated responsible party will use staff or contractors that meet the Secretary’s Professional Qualifications for the appropriate discipline.

G. Historic Property Inventory

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO and participating Tribes to establish the appropriate level of effort to accomplish a historic property inventory or synthesis of archeological data. Efforts may be directed toward the resurvey of previously designated historic properties and/or districts which have undergone change or lack sufficient documentation, or the survey of new historic properties and/or districts that lack formal designation. Once the boundaries of the survey area have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and participating Tribes through the data collection process. The designated responsible party will use SHPO and participating Tribes standards for the survey of historic properties and SHPO and participating Tribes forms as appropriate. The designated responsible party will prepare a draft inventory report, according to SHPO and participating Tribes templates and guidelines, and work with the SHPO and participating Tribes until a final property inventory is approved. The designated responsible party will use staff or contractors that meet the Secretary’s Professional Qualifications for the appropriate discipline.

H. National Register and National Historic Landmark Nominations

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Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO, and participating Tribes to identify the individual properties that would benefit from a completed National Register or National Historic Landmark nomination form. Once the parties have agreed to a property, the designated responsible party shall continue to coordinate with the SHPO and participating Tribes through the drafting of the nomination form. The SHPO and participating Tribes will provide adequate guidance to the designated responsible party during the preparation of the nomination form and shall formally submit the final nomination to the Keeper for inclusion in the National Register. The designated responsible party will use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

I. Geo-References of Historic Maps and Aerial Photographs

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO and participating Tribes to identify the historic maps and/or aerial photographs for scanning and geo-referencing. Once a list of maps and/or aerial photographs have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and participating Tribes through the scanning and geo-referencing process and shall submit drafts of paper maps and electronic files to them for review. The SHPO and participating Tribes shall have final approval on the quality of the documentation provided by the designated responsible party. The final deliverable shall include a paper copy of each scanned image, a geo-referenced copy of each scanned image, and the metadata relating to both the original creation of the paper maps and the digitization process.

1863 **APPENDIX D.1**

1864
1865 **STIPULATIONS RELATIVE TO CONSULTATION WITH THE**
1866 **ABSENTEE SHAWNEE TRIBE OF INDIANS OF OKLAHOMA**

1867
1868 **WHEREAS**, FEMA has determined that implementation of its Programs will result in
1869 Undertakings that may have an effect on properties of traditional religious and cultural
1870 significance to the Absentee Shawnee Tribe of Indians of Oklahoma (Tribe) that are listed in or
1871 eligible for the National Register of Historic Places (historic properties), and has consulted with
1872 the Tribe pursuant to 36 C.F.R. § 800.14(b)(3) (“Developing programmatic agreements”) and 36
1873 C.F.R. § 800.3(f)(2) (“Involving Indian Tribes”) of the regulations implementing Section 106 of
1874 the NHPA; and

1875
1876 **WHEREAS**, the Tribe has identified an area of geographic concern with respect to historic
1877 properties of religious and cultural significance as being within Burlington, Camden,
1878 Cumberland, Gloucester, Hunterdon, Mercer, Salem, Sussex, and Warren Counties in New
1879 Jersey; and

1880
1881 **WHEREAS**, the Tribe has established a THPO (or not), pursuant to Section 101(d)(2) of the
1882 NHPA; and

1883
1884 **WHEREAS**, the Tribe has identified those types of FEMA-funded projects to which it wishes to
1885 become a consulting party;

1886
1887 **NOW, THEREFORE**, FEMA will consult with the Tribe under the following circumstances:

- 1888
- 1889 1. FEMA will initially notify the Tribe whenever the State of NJ receives a disaster declaration
1890 for the identified area of geographic concern as listed above. Protocols for further
1891 consultation, if needed, will be established between FEMA and the Tribe at that time.
1892
 - 1893 2. FEMA will inform the Tribe of any Alternate or Improved Project involving extensive land
1894 disturbance in Burlington, Camden, Cumberland, Gloucester, Hunterdon, Mercer, Salem,
1895 Sussex, and Warren Counties.
1896
 - 1897 3. FEMA will request Tribal consultation whenever a FEMA-funded Undertaking has the
1898 potential to affect any ~~a large~~, pre-Contact, Native American archaeological habitation site
1899 listed in or eligible for listing in the National Register of Historic Places in Burlington,
1900 Camden, Cumberland, Gloucester, Hunterdon, Mercer, Salem, Sussex, and Warren Counties.
1901
 - 1902 4. FEMA will request that the Tribe become a Consulting Party in determining the treatment and
1903 disposition of any Native American grave or human remains that are inadvertently discovered
1904 as a result of a FEMA-funded Undertaking in All Counties in New Jersey.
1905

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1908 **APPENDIX D.2**

1909

1910 **STIPULATIONS RELATIVE TO CONSULTATION WITH THE**

1911 **DELAWARE NATION**

1912

1913 **WHEREAS**, FEMA has determined that implementation of its Programs will result in
1914 Undertakings that may have an effect on properties of traditional religious and cultural
1915 significance to the Delaware Nation (Tribe) that are listed in or eligible for the National Register
1916 of Historic Places (historic properties), and has consulted with the Tribe pursuant to 36 C.F.R. §
1917 800.14(b)(3) (“Developing programmatic agreements”) and 36 C.F.R. § 800.3(f)(2) (“Involving
1918 Indian Tribes”) of the regulations implementing Section 106 of the NHPA; and

1919

1920 **WHEREAS**, the Tribe has identified an area of geographic concern with respect to historic
1921 properties of religious and cultural significance as being all counties within the entire State of
1922 New Jersey; and

1923

1924 **WHEREAS**, the Tribe has established a THPO (or not), pursuant to Section 101(d)(2) of the
1925 NHPA; and

1926

1927 **WHEREAS**, the Tribe has identified those types of FEMA-funded projects to which it wishes to
1928 become a consulting party;

1929

1930 **NOW, THEREFORE**, FEMA will consult with the Tribe under the following circumstances:

- 1931
- 1932 5. FEMA will initially notify the Tribe whenever the State of NJ receives a disaster declaration
1933 for the identified area of geographic concern as listed above. Protocols for further
1934 consultation, if needed, will be established between FEMA and the Tribe at that time.
- 1935
- 1936 6. FEMA will inform the Tribe of any Alternate or Improved Project involving extensive land
1937 disturbance in all counties within the State of New Jersey.
- 1938
- 1939 7. FEMA will request Tribal consultation whenever a FEMA-funded Undertaking has the
1940 potential to affect a large, pre-Contact, Native American archaeological habitation site in all
1941 counties within the State of New Jersey.
- 1942
- 1943 8. FEMA will request that the Tribe become a Consulting Party in determining the treatment and
1944 disposition of any Native American grave or human remains that are inadvertently discovered
1945 as a result of a FEMA-funded Undertaking in all counties within the State of New Jersey.
- 1946

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1949
1950 **APPENDIX D.3**
1951

1952 **STIPULATIONS RELATIVE TO CONSULTATION WITH THE**
1953 **DELAWARE TRIBE OF INDIANS**
1954

1955 **WHEREAS**, FEMA has determined that implementation of its Programs will result in
1956 Undertakings that may have an effect on properties of traditional religious and cultural
1957 significance to the Delaware Tribe of Indians (Tribe) that are listed in or eligible for the National
1958 Register of Historic Places (historic properties), and has consulted with the Tribe pursuant to 36
1959 C.F.R. § 800.14(b)(3) (“Developing programmatic agreements“) and 36 C.F.R. § 800.3(f)(2)
1960 (“Involving Indian Tribes”) of the regulations implementing Section 106 of the NHPA; and
1961

1962 **WHEREAS**, the Tribe has identified an area of geographic concern with respect to historic
1963 properties of religious and cultural significance as being all counties within the entire State of
1964 New Jersey; and
1965

1966 **WHEREAS**, the Tribe has established a THPO (or not), pursuant to Section 101(d)(2) of the
1967 NHPA; and
1968

1969 **WHEREAS**, the Tribe has identified those types of FEMA-funded projects to which it wishes to
1970 become a consulting party;
1971

1972 **NOW, THEREFORE**, FEMA will consult with the Tribe under the following circumstances:
1973

- 1974 9. FEMA will initially notify the Tribe whenever the State of NJ receives a disaster declaration
1975 for the identified area of geographic concern as listed above. Protocols for further
1976 consultation, if needed, will be established between FEMA and the Tribe at that time.
1977
- 1978 10. FEMA will inform the Tribe of any Alternate or Improved Project involving extensive land
1979 disturbance in all counties within the State of New Jersey.
1980
- 1981 11. FEMA will request Tribal consultation whenever a FEMA-funded Undertaking has the
1982 potential to affect a large, pre-Contact, Native American archaeological habitation site in all
1983 counties within the State of New Jersey.
1984
- 1985 12. FEMA will request that the Tribe become a Consulting Party in determining the treatment and
1986 disposition of any Native American grave or human remains that are inadvertently discovered
1987 as a result of a FEMA-funded Undertaking in all counties within the State of New Jersey.
1988

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APPENDIX D.4

**STIPULATIONS RELATIVE TO CONSULTATION WITH THE
SHAWNEE TRIBE OF OKLAHOMA**

1996 **WHEREAS**, FEMA has determined that implementation of its Programs will result in
1997 Undertakings that may have an effect on properties of traditional religious and cultural
1998 significance to the Shawnee Tribe of Oklahoma (Tribe) that are listed in or eligible for the
1999 National Register of Historic Places (historic properties), and has consulted with the Tribe
2000 pursuant to 36 C.F.R. § 800.14(b)(3) (“Developing programmatic agreements”) and 36 C.F.R. §
2001 800.3(f)(2) (“Involving Indian Tribes”) of the regulations implementing Section 106 of the
2002 NHPA; and

2003
2004 **WHEREAS**, the Tribe has identified an area of geographic concern with respect to historic
2005 properties of religious and cultural significance as being all counties within the entire State of
2006 New Jersey; and

2007
2008 **WHEREAS**, the Tribe has established a THPO (or not), pursuant to Section 101(d)(2) of the
2009 NHPA; and

2010
2011 **WHEREAS**, the Tribe has identified those types of FEMA-funded projects to which it wishes to
2012 become a consulting party;

2013
2014 **NOW, THEREFORE**, FEMA will consult with the Tribe under the following circumstances:

- 2015
2016 13. FEMA will initially notify the Tribe whenever the State of NJ receives a disaster declaration
2017 for the identified area of geographic concern as listed above. Protocols for further
2018 consultation, if needed, will be established between FEMA and the Tribe at that time.
2019
2020 14. FEMA will inform the Tribe of any Alternate or Improved Project involving extensive land
2021 disturbance in all counties within the State of New Jersey.
2022
2023 15. FEMA will request Tribal consultation whenever a FEMA-funded Undertaking has the
2024 potential to affect a large, pre-Contact, Native American archaeological habitation site in all
2025 counties within the State of New Jersey.
2026
2027 16. FEMA will request that the Tribe become a Consulting Party in determining the treatment and
2028 disposition of any Native American grave or human remains that are inadvertently discovered
2029 as a result of a FEMA-funded Undertaking in all counties within the State of New Jersey.
2030

2031 *****
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2034 **APPENDIX D.5**

2035

2036 **STIPULATIONS RELATIVE TO CONSULTATION WITH THE**

2037 **STOCKBRIDGE-MUNSEE BAND OF MOHICANS**

2038

2039 **WHEREAS**, FEMA has determined that implementation of its Programs will result in

2040 Undertakings that may have an effect on properties of traditional religious and cultural

2041 significance to the Stockbridge-Munsee Band of Mohicans (Tribe) that are listed in or eligible for

2042 the National Register of Historic Places (historic properties), and has consulted with the Tribe

2043 pursuant to 36 C.F.R. § 800.14(b)(3) (“Developing programmatic agreements”) and 36 C.F.R. §

2044 800.3(f)(2) (“Involving Indian Tribes”) of the regulations implementing Section 106 of the

2045 NHPA; and

2046

2047 **WHEREAS**, the Tribe has identified an area of geographic concern with respect to historic

2048 properties of religious and cultural significance as being within Burlington, Sussex, and Warren

2049 Counties in New Jersey; and

2050

2051 **WHEREAS**, the Tribe has established a THPO (or not), pursuant to Section 101(d)(2) of the

2052 NHPA; and

2053

2054 **WHEREAS**, the Tribe has identified those types of FEMA-funded projects to which it wishes to

2055 become a consulting party;

2056

2057 **NOW, THEREFORE**, FEMA will consult with the Tribe under the following circumstances:

2058

- 2059 17. FEMA will initially notify the Tribe whenever the State of NJ receives a disaster declaration
- 2060 for the identified area of geographic concern as listed above. Protocols for further
- 2061 consultation, if needed, will be established between FEMA and the Tribe at that time.
- 2062
- 2063 18. FEMA will inform the Tribe of any Alternate or Improved Project involving extensive land
- 2064 disturbance in Burlington, Sussex, and Warren Counties.
- 2065
- 2066 19. FEMA will request Tribal consultation whenever a FEMA-funded Undertaking has the
- 2067 potential to affect a large, pre-Contact, Native American archaeological habitation site in
- 2068 Burlington, Sussex, and Warren Counties.
- 2069
- 2070 20. FEMA will request that the Tribe become a Consulting Party in determining the treatment and
- 2071 disposition of any Native American grave or human remains that are inadvertently discovered
- 2072 as a result of a FEMA-funded Undertaking in Burlington, Sussex, and Warren Counties.
- 2073

2074 *****

2075

2076 **APPENDIX E**

2077
2078 **TO THE PROGRAMMATIC AGREEMENT AMONG**
2079 **THE FEDERAL EMERGENCY MANAGEMENT AGENCY,**
2080 **THE NEW JERSEY STATE OFFICE OF EMERGENCY MANAGEMENT,**
2081 **THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICER, AND**
2082 **THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**
2083
2084

2085 **WHEREAS, as a result of Hurricane Sandy (DR-4086-NJ) (Disaster**
2086 **Declaration),** the Federal Emergency Management Agency (FEMA) of the
2087 Department of Homeland Security, pursuant to the Robert T. Stafford Disaster
2088 Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as
2089 amended at 42 U.S.C. § 5121 *et seq.*) (Stafford Act); the National Flood Insurance
2090 Act of 1968, Pub. L. No. 90-448 (1968) (as amended); the Flood Disaster Protection
2091 Act of 1973, Pub. L. No. 93-234 (1973) (as amended); the National Flood Insurance
2092 Reform Act of 1994, Pub. L. No. 103-325 (1994) (as amended); and implementing
2093 regulations contained in Title 44 of the Code of Federal Regulations (C.F.R.),
2094 proposes to provide assistance through the New Jersey State Office of Emergency
2095 Management (OEM); and
2096

2097 **WHEREAS,** FEMA consulted with OEM, the New Jersey State Historic
2098 Preservation Officer (SHPO), the Advisory Council on Historic Preservation
2099 (ACHP) and [insert others here] to develop and execute a Programmatic Agreement
2100 (PA) for its disaster recovery activities in [insert date of PA execution]; and
2101

2102 **WHEREAS,** [federal agency will fill in name, statutory authority, and
2103 undertaking]; and
2104

2105 **WHEREAS,** Stipulation [insert number here] of this PA allows other Federal
2106 agencies to fulfill their Section 106 responsibilities for their undertakings that
2107 projects addressed in this PA by fully accepting all the terms of the PA and
2108 executing this Addendum;
2109

2110 **NOW, THEREFORE,** [federal agency] has determined to accept the terms and
2111 conditions of the PA and thereby take into account the effects of its undertakings
2112 and satisfy its Section 106 responsibilities.
2113

2114 **EXECUTION AND IMPLEMENTATION** of this Addendum to the PA
2115 evidences that [federal agency] has taken into account the effects of its undertaking

2116 on historic properties, and that through the execution of this Addendum and
2117 implementation of the PA, the [federal agency] will satisfy its responsibilities under
2118 Section 106 of the National Historic Preservation Act and its implementing
2119 regulations for the referenced [program or undertaking].
2120

2121 **SIGNATORY PARTIES:**

2122
2123 **FEDERAL EMERGENCY MANAGEMENT AGENCY**

2124
2125
2126
2127 _____ Date: _____
2128 [name]
2129 [title]

2130
2131 **NEW JERSEY STATE HISTORIC PRESERVATION OFFICER**

2132
2133
2134
2135 _____ Date: _____
2136 [name]
2137 [title]

2138
2139 **ADVISORY COUNCIL ON HISTORIC PRESERVATION**

2140
2141
2142
2143 _____ Date: _____
2144 John M. Fowler
2145 Executive Director

2146
2147 **[OTHER FEDERAL AGENCY]**

2148
2149
2150
2151 _____ Date: _____
2152 [name]
2153 [title]

2154
2155