

APPENDIX G

PROGRAMMATIC AGREEMENTS FOR SECTION 106

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Appendix G-1
Programmatic Agreement
Among the Federal Emergency Management Agency,
the California State Historic Preservation Officer,
and the California Governor's Office of Emergency Services
(October 2014)

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**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
AND
THE CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES**

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

WHEREAS, FEMA makes assistance available to States, communities, Federally recognized Indian Tribes (Tribes) and other eligible entities through programs (Programs) set forth in Appendix A, pursuant to the Homeland Security Act of 2002, Pub. L. No. 107-296 (2002) (codified as amended at 6 U.S.C. § 101 *et seq.*); the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. § 5121 *et seq.*) (Stafford Act); the National Flood Insurance Act of 1968, Pub. L. No. 90-448 (1968) (as amended); the National Flood Insurance Reform Act of 1994, Pub. L. No. 103-325 (1994) (as amended); the Post-Katrina Emergency Management Reform Act of 2006, Pub. L. No. 109-295 (2006) (as amended); implementing regulations contained in Title 44 of the Code of Federal Regulations (CFR), Executive Order 13407 (2006), and such other acts, executive orders, implementing regulations, or Congressionally authorized programs as are enacted from time to time; and

WHEREAS, FEMA has determined that implementing its Programs may result in Undertakings [as defined by 16 U.S.C. § 470w and 36 CFR § 800.16(y)] that may affect properties listed in or eligible for listing in the National Register of Historic Places (National Register) pursuant to 36 CFR Part 60 (historic properties), and FEMA has consulted with the California State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act (NHPA), Pub. L. No. 89-665 (1966) (codified as amended at 16 U.S.C. § 470f), and the regulations implementing Section 106 of the NHPA (Section 106) at 36 CFR Part 800; and

WHEREAS, FEMA, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) have determined that FEMA's Section 106 requirements can be more effectively and efficiently implemented and delays to the delivery of FEMA assistance minimized if a programmatic approach is used to stipulate roles and responsibilities, exempt certain Undertakings from Section 106 review, establish protocols for consultation, facilitate identification and evaluation of historic properties, and streamline the assessment and resolution of adverse effects; and

WHEREAS, FEMA has developed a Prototype Programmatic Agreement (FEMA Prototype Agreement) pursuant to 36 CFR § 800.14(b)(4) in consultation with the ACHP and NCSHPO to

serve as a basis for negotiation of a State-specific Programmatic Agreement (Agreement) with the SHPO, State Emergency Management Agency, and/or participating Tribe(s); and

WHEREAS, this Agreement conforms to the FEMA Prototype Agreement as designated by the ACHP on December 17, 2013, and therefore does not require the participation or signature of the ACHP; and

WHEREAS, in order to implement its Programs, FEMA will provide assistance to State of California or Tribes [Grantee(s)] that may provide monies and other assistance to eligible subgrantees, and as such, the California Governor's Office of Emergency Services (Cal OES) that is typically responsible for administering funds provided under these Programs, has participated in this consultation, and FEMA has invited Cal OES to execute this Agreement as an Invited Signatory; and

WHEREAS, FEMA also may directly perform its own Undertakings pursuant to this Agreement; and

WHEREAS, in anticipation or in the immediate aftermath of an event, impacted communities and the State California, and/or affected Tribes, may conduct critical preparedness, response and recovery activities to safeguard public health and safety and/or to restore vital community services and functions before, during, and or following an event. Some of these activities may become Undertakings requiring Section 106 review subject to the terms of this Agreement, and FEMA shall coordinate the appropriate review as warranted; and

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

WHEREAS, FEMA recognizes that Tribes may have sites of religious and cultural significance on or off Tribal lands [as defined in 36 CFR § 800.16(x)], and in meeting its Federal trust responsibility, FEMA has engaged in government-to-government consultation with all Tribes in California, and all Tribes in neighboring states that have sites of religious and cultural significance within California, and pursuant to 36 CFR § 800.2(c)(2)(ii)(E) has invited participating Tribes to enter into an agreement that specifies how FEMA and Tribes will carry out Section 106 responsibilities, including the confidentiality of information; and

WHEREAS, none of these Tribes have indicated an interest in entering into a State-specific Agreement; and

WHEREAS, certain Tribes have assumed the responsibilities of the SHPO in their Tribal lands through appointment of a Tribal Historic Preservation Officer (THPO) in accordance with Section 101 of the NHPA, and FEMA shall consult with the THPO in lieu of the SHPO for Undertakings occurring on or affecting their Tribal lands; and

WHEREAS, FEMA may invite Tribes that have sites of religious and cultural significance to enter into the terms of this Agreement as invited signatories or concurring parties in accordance

with 36 CFR § 800.14(f), and nothing in this Agreement prevents a Tribe from entering into a separate Programmatic Agreement or other agreement with FEMA for administration of FEMA Programs; and

WHEREAS, the terms of this Agreement shall not apply to Undertakings on or affecting Tribal lands without prior execution of the Agreement by the affected Tribe(s); and

WHEREAS, for the review of specific Undertakings under this Agreement, FEMA may invite other agencies, organizations, and individuals to participate as consulting parties; and

NOW, THEREFORE, FEMA, Cal OES, and the SHPO (Signatories) agree that FEMA Programs in the State of California shall be administered in accordance with the following Stipulations to satisfy FEMA's Section 106 and Section 110(k) responsibilities for all resulting Undertakings, and effectively integrate historic preservation compliance considerations into the delivery of FEMA assistance. FEMA will not authorize implementation of an individual Undertaking until Section 106 review is completed pursuant to this Agreement.

STIPULATIONS

To the extent of its legal authority, and in coordination with other Signatories, FEMA shall ensure that the following measures are implemented:

I. GENERAL

A. Applicability

1. For FEMA Undertakings that also are within the jurisdiction of the Federal Communications Commission (FCC) and within the scope of its Section 106 Programmatic Agreements for communication facilities, FEMA defers Section 106 review in accordance with the ACHP Program Comment of October 23, 2009. The approval of funding for the FEMA Undertaking shall be conditioned upon the compliance of the subgrantee with FCC's applicable Section 106 review, including any required consultation with Tribes. FEMA shall notify the SHPO/THPO when it applies the ACHP Program Comment to an Undertaking. FEMA remains responsible for any FEMA Undertakings it determines are outside the jurisdiction of FCC.
2. In the event of a Stafford Act major disaster or emergency declaration (Declaration), State, Tribal and local governments may lack the capability to perform or to contract for emergency work, and instead request that the work be accomplished by a Federal agency. Through a mission assignment (MA), FEMA may direct appropriate Federal agencies to perform the work. This Agreement shall apply to such Federal assistance undertaken by or funded by FEMA pursuant to Titles IV and V of the Stafford Act and 44 CFR Part 206.
3. FEMA may utilize this Agreement to fulfill its Section 106 responsibilities and those of other Federal agencies that designate FEMA as the lead Federal agency pursuant to

36 CFR § 800.2(a)(2) with appropriate notification to the other Signatories and the ACHP regarding Undertakings that fall within the scope of this Agreement. When FEMA is not designated as the lead Federal agency, all Federal agencies, including FEMA, remain individually responsible for their compliance with Section 106.

4. If another Federal program or Federal agency has concluded Section 106 consultation review and approved an Undertaking within the past 2 years, FEMA has no further requirement for Section 106 review regarding that Undertaking provided that FEMA:
 - a. adopts the findings and determinations of the previous agency;
 - b. confirms that the scope and effect [as defined by 36 CFR § 800.16(i)] of its Undertaking are the same as that of the Undertaking reviewed by the previous agency, and;
 - c. determines that the previous agency complied with Section 106 appropriately.

FEMA shall document these findings in its project file in order to confirm that the requirements of Section 106 have been satisfied. Should FEMA, in consultation with SHPO and participating Tribe(s), determine that the previous Section 106 review was insufficient or involved interagency disagreements about eligibility, effect, and/or treatment measures, FEMA shall conduct additional Section 106 consultation in accordance with the terms of this Agreement.

5. With the written concurrence of the Signatories, other Federal agencies providing financial assistance for the same type of activities covered under the terms of this Agreement as outlined in Appendix A may satisfy their Section 106 responsibilities for such activities by accepting and complying in writing with the terms of this Agreement.
 - a. Other Federal Agencies may include States and units of local government who have assumed environmental responsibilities of the U.S. Department of Housing and Urban Development and, acting as the Responsible Entity pursuant to 24 CFR Part 58, are responsible for environmental review, decision-making and action.
 - b. In such situations, the other Federal Agency shall notify the Signatories in writing of its intent to use this Agreement to achieve compliance with its Section 106 requirements, and consult with the Signatories regarding its Section 106 compliance responsibilities. Resumes of staff who meet the Secretary of the Interior's Professional Qualification Standard(s) and will review Second Tier projects in accordance with Appendix B of this Agreement shall be provided to FEMA and the SHPO/THPO.
6. FEMA has determined that the following types of activities have limited or no potential to affect historic properties and FEMA has no further Section 106 responsibilities with regards to them, pursuant to 36 CFR § 800.3(a)(1):

- a. Pursuant to 44 CFR § 206.110(m), assistance to individuals and households provided under 44 CFR Part 206, Subpart D and Section 408 of the Stafford Act, including funding for owner-occupied home repair and replacement, content replacement, personal property, transportation and healthcare expenses, is exempt from the provisions of Section 106. For ground disturbing activities, and construction related to 44 CFR §§ 206.117(b)(1)(ii) (temporary housing), 206.117(b)(3) (replacement housing), 206.117(b)(4) (permanent housing construction), 206.117(c)(1)(vi) (repair or replacement of privately-owned access routes), and repair of multi-family housing units, FEMA shall conduct Section 106 review.
- b. Administrative actions such as personnel actions, travel, procurement of services, supplies (including vehicles and equipment) for the support of day-to-day and emergency operational activities, and the temporary storage of goods provided storage occurs within existing facilities or on previously disturbed soils.
- c. Granting of variances, and actions to enforce Federal, State, or local codes, standards or regulations.
- d. Monitoring, data gathering, and reporting in support of emergency and disaster planning, response and recovery, and hazard activities.
- 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. Funding the administrative action of 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 acquisition projects, including the real estate transaction.
- k. Labor, equipment and materials used to provide security in the Declaration area, including lease, rental, purchase or repair of equipment or vehicles and payment for staff and contract labor.

- l. Application of pesticides to reduce adverse public health effects, including aerial and truck-mounted spraying.
 - m. Unemployment assistance.
 - n. Distribution of food coupons.
 - o. Legal services.
 - p. Crisis counseling.
7. Any FEMA Programs authorized by the United States Congress in the future may be included in this Agreement in accordance with Stipulation IV.A., Amendments. Any change in the FEMA name, Programs, or organizational structure shall not affect this Agreement.

B. Roles and Responsibilities of the Signatories

1. FEMA:

- a. FEMA shall use Federal, Tribal, State, subgrantee, or contractor staff whose qualifications meet the Secretary of the Interior's (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 shall 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 Tribe(s).
- i. FEMA acknowledges that Tribes possess special expertise in assessing the National Register eligibility of properties with religious and 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 cultural significance to them.
- b. FEMA alone shall conduct all Section 106 consultation with Tribe(s). In accordance with 36 CFR § 800.2(c)(4), FEMA may authorize the Grantee(s), or a subgrantee through the Grantee(s), to initiate the Section 106 process with the SHPO and other consulting parties, assist in identifying other consulting parties with a demonstrated interest in the Undertaking, and prepare any necessary analyses and documentation, but FEMA shall remain responsible for determinations of National Register eligibility and findings of effect recommended by the authorized party. FEMA shall follow the process set forth in

Stipulation I.B.1.a., FEMA Roles and Responsibilities, and notify the SHPO in writing when a Grantee or subgrantee has been authorized to initiate consultation on FEMA's behalf.

- c. Prior to authorizing the release of funds for individual Undertakings requiring grant conditions pursuant to this Agreement, FEMA shall inform the Grantee(s) of all stipulations and conditions and ensure that they are understood so they can be adequately conveyed to the subgrantee. FEMA shall work in partnership with the Grantee(s) 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.
- d. FEMA shall provide the other Signatories and the ACHP with an annual report for the previous calendar year by March 1 of each year that this Agreement is in effect. This annual report will summarize the actions taken to implement the terms of this Agreement, statistics on Undertakings reviewed, and recommend any actions or revisions to be considered, including updates to the appendices.
- e. FEMA shall confer annually and as necessary with the other Signatories within 60 days after issuance of the annual report, to review the report and/or discuss issues and concerns in greater detail. This review shall occur in person or by telephone as determined by FEMA.
- f. FEMA shall notify the SHPO and affected Tribe(s), as soon as practicable, following a Declaration to provide specific points of contact and other pertinent information about the Declaration.
- g. FEMA may convene an initial scoping meeting with the Signatories and other interested parties as soon as practicable after each Declaration to address Declaration-specific issues and procedures.
- h. FEMA shall ensure that all documentation resulting from Undertakings reviewed pursuant to this Agreement is consistent with applicable SHPO and Tribal guidelines and the confidentiality provisions of 16 U.S.C. § 470w-3 and 36 CFR § 800.11(c).

2. SHPO:

- a. The SHPO shall review FEMA's determination of the Areas of Potential Effects (APE), National Register eligibility determinations, and FEMA's effect findings, and respond within timeframes required by this Agreement.
- b. The SHPO maintains and administers the California Historical Resources Information System (CHRIS), which is an inventory of known historical resources in the State of California. This inventory is archived and made

available through regional Information Centers (IC's) located throughout the state.

- i. Upon request, the appropriate IC(s) shall provide FEMA with all requested inventory records, unless otherwise precluded by confidentiality restrictions, such as tribal objections. In the case of an Emergency Undertaking (Stipulation II.B.), records shall be provided on an expedited basis at no charge. For all other Undertakings, the records shall be provided to FEMA or Cal OES (on behalf of FEMA) in accordance with normal CHRIS operating procedures. Alternatively, FEMA or Cal OES may enter into access agreements with specific IC's that specify terms of records provision.
 - ii. If, as a result of a disaster, an IC(s) is closed or rendered inoperable, FEMA or Cal OES may request records for the affected area(s) directly from the SHPO. The SHPO will make every effort to provide all available records on a timely basis, although the records may be less extensive and complete than those retained by the IC(s).
- c. The SHPO shall identify staff or consultants to assist FEMA staff with their Section 106 responsibilities, and identify, in coordination with FEMA, those activities within the Section 106 review process that the SHPO may perform for specific Undertakings as agreed in writing with FEMA.
 - d. As requested, SHPO staff shall be reasonably available as a resource and for consultation through site visits, written requests, telephone conversations or electronic media. In those instances where consultation with the SHPO has occurred, FEMA shall provide a written summary via e-mail or regular mail to the SHPO, including any decisions that were reached.
 - e. The SHPO may delegate some or all of its responsibilities under this Agreement to one or more Liaisons to serve as a dedicated point of contact for consultation with FEMA. The SHPO shall confer with FEMA about the selection of any Liaisons, the scope of responsibilities delegated and related implementing procedures. The SHPO shall formally document these decisions for concurrence by FEMA. Liaisons are not required to be members of the SHPO staff.
 - f. The SHPO shall participate in an initial scoping meeting for a Declaration.
 - g. The SHPO may assist local jurisdictions and/or the Grantee(s) in the State of California with advance planning efforts to consider historic properties in the context of homeland security considerations, including disaster preparedness, response, recovery, and mitigation programs for which FEMA funding may be requested.

- h. The SHPO shall coordinate with FEMA, to identify consulting parties, including any communities, organizations, or individuals that may have an interest in a specific Undertaking and its effects on historic properties.
 - i. The SHPO shall participate in annual reviews convened by FEMA to review the effectiveness of this Agreement in accordance with Stipulation I.B.1.e.
3. Grantee(s):
- a. The Grantee(s) shall ensure that their subgrantees understand and acknowledge conditions and potential requirements that may be placed upon Undertakings as a result of Section 106 consultation and the provisions of this Agreement.
 - b. The Grantee(s) shall participate in an initial scoping meeting for a Declaration.
 - c. The Grantee(s) shall ensure that their subgrantees understand that failure to comply with any project-specific conditions that have been placed on their grants could jeopardize FEMA funding.
 - d. The Grantee(s) shall notify FEMA as soon as possible of any proposed change to the approved scope of work. The Grantee(s) shall direct their subgrantee not to implement the changes to the proposed scope of work until any additional review required by this Agreement is complete.
 - e. The Grantee(s) shall ensure that its subgrantees are made aware that in the event of an unexpected discovery involving an Undertaking that has affected a previously unidentified historic property or human remains, or affected a known historic property in an unanticipated manner, the subgrantee will comply with Stipulation III.B., Unexpected Discoveries, Previously Unidentified Properties, or Unexpected Effects.
 - f. The Grantee(s) shall ensure that in its subgrant agreements, any scope of work involving ground disturbance, and resultant contracts to execute said work, provide for the protection of and notification protocols for unexpected discoveries or unexpected effects to historic properties and human remains.
 - g. If a Signatory Tribe assumes the role of Grantee for projects on Tribal lands, the Tribe shall assume the same responsibilities as outlined in Stipulation I.B.3. of this Agreement, Roles and Responsibilities of the Signatories.

C. Tribal Consultation

- 1. For FEMA Undertakings on Tribal lands or affecting properties of religious and cultural significance, and where no tribe-specific consultation agreements or protocols are in place, FEMA shall consult with affected Tribe(s) in accordance with 36 CFR Part 800. In determining who the affected Tribe(s) may be, FEMA will first

establish that it is a type of Undertaking with potential to affect historic properties with religious and cultural significance and may consult with the SHPO, Tribe(s), or any State Tribal Agency, and access the National Park Service (NPS) Native American Consultation Database or other tools to identify geographic tribal interests.

2. To the extent permitted by Section 304 of the NHPA, Section 9(a) of the Archeological Resources Protection Act (ARPA) (16 U.S.C. § 470aa – 470mm), and any other applicable laws, FEMA shall ensure it withholds information protected by such laws from public disclosure.
3. FEMA shall invite affected Tribe(s) to participate in the initial scoping meeting within their geographic area of interest for each Declaration.

D. Public Participation

1. FEMA recognizes that the views of the public are essential to informed decision making throughout the Section 106 consultation process. FEMA shall notify the public of proposed Undertakings in a manner that reflects the nature, complexity, significance of historic properties likely affected by the Undertaking, the likely public interest given FEMA's specific involvement, and any confidentiality concerns of Tribe(s), private individuals and businesses.
2. FEMA may consult with the Grantee(s), subgrantee, SHPO, participating Tribe(s), and other consulting parties to determine if there are individuals or organizations with a demonstrated interest in historic properties that should be included as a consulting party for the Undertaking in accordance with 36 CFR § 800.2(c)(5). If such parties are identified or identify themselves to FEMA, FEMA shall provide them with information regarding the Undertaking and its effects on historic properties, consistent with the confidentiality provisions of 36 CFR § 800.11(c).
3. In accordance with the outreach strategy developed for an Undertaking in consultation with the SHPO and participating Tribe(s), for involving the public, FEMA shall identify the appropriate stages for seeking public input during the Section 106 consultation process. FEMA shall consider all views provided by the public regarding an Undertaking.
4. FEMA may also provide public notices and the opportunity for public comment or participation in an Undertaking through the public participation process of the National Environmental Policy Act (NEPA) and its implementing regulations set out at 44 CFR Part 10, and/or Executive Orders 11988 and 11990 relating to floodplains and wetlands as set out in 44 CFR Part 9, and Executive Order 12898, Environmental Justice, provided such notices specifically reference Section 106 as a basis for public involvement.
5. Should a member of the public object in writing to implementation of the Agreement's terms, FEMA will notify the other Signatories in writing and take the

objection into consideration. FEMA shall consult with the objecting party and, if that party so requests, the other Signatories, for not more than 30 days. In reaching its decision regarding the objection, FEMA shall take into consideration all comments from these parties. Within 15 days after closure of this consultation period, FEMA shall provide the other parties with its final decision in writing.

E. Timeframes and Communications

1. All time designations shall be in calendar days unless otherwise stipulated. If any Signatory does not object to FEMA's finding or determination related to an Undertaking within an agreed-upon timeframe, FEMA may proceed to the next step in the consultation process as described in Stipulation II., Project Review.
2. Due to the varied nature of Undertakings, the individual response times to FEMA's requests for comment/concurrence will vary. These response times are contingent upon FEMA ensuring that its findings and determinations are made by Qualified staff and supported by documentation as required by 36 CFR § 800.11(d) and 36 CFR § 800.11(e), and consistent with FEMA guidance.
 - a. For Emergency Undertakings as outlined in Stipulation II.B., Expedited Review of Emergency Undertakings, the SHPO shall respond to any FEMA request for comments within three (3) days after receipt, unless FEMA determines the nature of the emergency action warrants a shorter time period.
 - b. For Undertakings associated with the Individual Assistance (IA) and Public Assistance (PA) programs, the response time for each request for concurrence shall be a maximum of fifteen (15) days, or in accordance with temporary timelines established by FEMA on a Declaration-by-Declaration basis.
 - c. For the Hazard Mitigation Grant Program (HMGP) and all non-disaster programs, the response time for each request for concurrence shall be a maximum of thirty (30) days.
3. The consulting parties may send and accept official notices, comments, requests for further information and documentation, and other communications required by this Agreement by e-mail. As appropriate, if it will facilitate completion of reviews, hard copies may be requested.

II. PROJECT REVIEW

A. Programmatic Allowances

1. If FEMA determines an Undertaking conforms to one or more of the Programmatic Allowances (Allowances) in Appendix B of this Agreement, FEMA shall complete the Section 106 review process by documenting this determination in the project file, without SHPO review or notification.

2. If the Undertaking involves a National Historic Landmark (NHL), FEMA shall notify the SHPO, participating Tribe(s), and the NPS NHL Program Manager of the appropriate NPS Regional Office that the Undertaking conforms to one or more Allowances. FEMA shall provide information about the proposed scope of work for the Undertaking and the Allowance(s) enabling FEMA's determination.
3. If FEMA determines any portion of an Undertaking's scope of work does not conform to one or more Allowances listed in Appendix B, FEMA shall conduct expedited or standard Section 106 review, as appropriate, for the entire Undertaking in accordance with Stipulation II.B., Expedited Review for Emergency Undertakings, or Stipulation II.C., Standard Project Review.
4. Allowances may be revised and new Allowances may be added to this Agreement in accordance with Stipulation IV.A.3., Amendments.

B. Expedited Review for Emergency Undertakings

1. Determine Expedited Review

- a. As part of the Declaration process, FEMA shall define the time interval during which the disaster-causing incident occurs [the incident period, as defined in 44 CFR § 206.32(f)]. FEMA may approve direct Federal assistance and/or funding for emergency work [as defined in 44 CFR § 206.201(b)] that occurs during the incident period, including work already completed, in response to an immediate threat to human health and safety or property. Pursuant to 36 CFR § 800.12(d), FEMA may conduct expedited review of emergency Undertakings for 30 days from the beginning of the incident period.
- b. Should FEMA determine that it is necessary to extend the expedited review period for emergency Undertakings beyond the initial 30 days, FEMA shall, in 30-day increments, as needed, notify in writing the ACHP, SHPO, Cal OES, and participating Tribe(s).

2. Conduct Expedited Reviews

- a. If the emergency Undertaking is an immediate rescue and salvage operation conducted in response to an event to preserve life and property, FEMA has no Section 106 consultation responsibilities in accordance with 36 CFR § 800.12(d);
or
- b. If the emergency Undertaking meets one or more of the Allowances in Appendix B of this Agreement, FEMA shall complete the Section 106 review process pursuant to Stipulation II.A.1., Programmatic Allowances.
- c. If FEMA determines that the emergency Undertaking would adversely affect a historic property during this expedited review period:

- i. To the extent practicable, FEMA will propose treatment measures (avoidance, minimization, and mitigation) that would resolve adverse effects during implementation, and request the comments of the SHPO, subgrantee, and participating Tribe(s) within 3 days of receipt of this information unless FEMA determines the nature of the emergency warrants a shorter time period.
- ii. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. In all cases, FEMA shall clarify that an “expedited review” is being requested for the Undertaking.
- iii. FEMA shall take into account any timely comments provided by the SHPO, subgrantee, and/or participating Tribe(s) in making a decision on how to proceed.
- iv. Should the SHPO, subgrantee, and/or participating Tribe(s) not comment within 3 days, FEMA shall complete Section 106 consultation for the Undertaking based on the available information.
- v. FEMA shall notify the SHPO, subgrantee, and participating Tribe(s) of the final decision, indicating how any comments received were considered in reaching that decision.

C. Standard Project Review: For Undertakings not exempt from further Section 106 review, FEMA shall ensure that the following standard project review steps are implemented. In the interest of streamlining, FEMA may combine some or all of these steps during consultation in accordance with 36 CFR § 800.3(g).

1. Consulting Parties: FEMA shall consider all written requests of individuals and organizations to participate as consulting parties, and consult with the SHPO and participating Tribe(s) to identify any other parties that meet the criteria to be consulting parties and invite them to participate in the Section 106 process. FEMA may invite others to participate as consulting parties as the Section 106 consultation proceeds. FEMA shall invite any individual or organization that will assume a specific role or responsibility outlined in a Memorandum of Agreement or Programmatic Agreement to participate as an invited signatory to the Agreement.
2. Area of Potential Effects:
 - a. For standing structures not adjacent to or located within the boundaries of a National Register listed or eligible district, Qualified staff may define the APE, as defined at 36 CFR § 800.16(d), as the individual structure when the proposed Undertaking is limited to its repair or rehabilitation [as defined in 36 CFR § 68.2(b)].
 - b. For all other Undertakings, Qualified staff shall determine the APE in consultation with the SHPO and participating Tribe(s). FEMA may consider

information provided by other parties, such as local governments and the public, when establishing the APE.

3. Identification and Evaluation: Qualified staff shall determine, in consultation with the SHPO and participating Tribe(s) if the APE contains historic properties, including properties of religious and cultural significance. This may include the review of documentation provided by the Grantee(s) or subgrantee in coordination with the SHPO.
 - a. Level of Effort: FEMA shall make a reasonable and good faith effort to identify historic properties in accordance with 36 CFR § 800.4(b)(1). FEMA may consult with the SHPO to determine the level of effort and methodology necessary to identify and evaluate a variety of historic property types. For properties of religious and cultural significance to affected Tribe(s), FEMA shall consult with the affected Tribe(s) to determine geographical areas containing them that may be affected by an Undertaking and determine the necessary level of effort to identify and evaluate or avoid any such historic properties.
 - b. National Historic Landmarks: When FEMA identifies an Undertaking with the potential to affect an NHL, FEMA shall contact the NPS NHL Program Manager of the appropriate NPS Regional Office (Pacific West Region, 333 Bush Street, Suite 500, San Francisco, CA 94104-2828) in addition to the SHPO, participating Tribe(s), and other consulting parties. The purpose of this notification is to ensure early coordination for the Undertaking, which FEMA later may determine adversely affects the NHL as outlined in Stipulation II.C.6.
 - c. Determinations of Eligibility: FEMA shall review or determine National Register eligibility based on identification and evaluation efforts, and consult with the SHPO, participating Tribe(s), and other consulting parties regarding these determinations. Should the SHPO, participating Tribe(s), or another consulting party disagree with the determination of eligibility, FEMA shall:
 - i. Elect to consult further with the objecting party until the objection is resolved;
 - ii. Treat the property as eligible for the National Register; or
 - iii. Obtain a determination of eligibility from the Keeper of the National Register (Keeper) in accordance with 36 CFR § 63.2(d)-(e) and 36 CFR § 800.4(c)(2).
4. Findings of No Historic Properties Affected: FEMA shall make a finding of “no historic properties affected” under the following circumstances:
 - a. If no historic properties are present in the APE;

- b. The Undertaking is designed to avoid effects to historic properties, including National Register listed or eligible properties of religious and cultural significance to participating Tribe(s); or
 - c. The Undertaking does not affect the character-defining features of a historic property.
 - d. FEMA shall notify the SHPO, participating Tribes(s), and any other consulting parties of this finding and provide supporting documentation in accordance with 36 CFR § 800.11(d). Unless the SHPO or participating Tribe(s) objects to the finding within the applicable timeframe outlined in Stipulation I.E., Timeframes and Communications, the Section 106 review of the Undertaking will have concluded.
 - e. If the SHPO or participating Tribe(s) objects to a finding of “no historic properties affected,” FEMA shall consult with the objecting party to resolve the disagreement.
 - i. If the objection is resolved, FEMA either may proceed with the Undertaking in accordance with the resolution or reconsider effects on the historic property by applying the criteria of adverse effect pursuant to Stipulation II.C.5., Application of the Criteria of Adverse Effect, below.
 - ii. If FEMA is unable to resolve the disagreement, it will forward the finding and supporting documentation to the ACHP and request that the ACHP review FEMA’s finding in accordance with 36 CFR § 800.4(d)(1)(iv)(A) through 36 CFR § 800.4(d)(1)(iv)(C). FEMA shall consider the ACHP’s recommendation in making its final determination. If FEMA’s final determination is to reaffirm its “no historic properties affected” finding, the Section 106 review of the Undertaking will have concluded. Otherwise, FEMA will proceed to Stipulation II.C.5., below.
5. Application of the Criteria of Adverse Effect: If FEMA finds an Undertaking may affect historic properties in the APE, including those of religious and cultural significance to affected Tribe(s), FEMA shall apply the criteria of adverse effect to historic properties within the APE(s), taking into account the views of the consulting parties and the public concerning effects in accordance with 36 CFR § 800.5(a).
- a. If FEMA determines that an Undertaking does not meet the adverse effect criteria, FEMA shall propose a finding of “no adverse effect” in accordance with 36 CFR § 800.5(b).
 - i. FEMA shall notify the SHPO, participating Tribe(s), and all other consulting parties of its finding and provide supporting documentation pursuant to 36 CFR §800.11(e).

- ii. Unless a consulting party objects within the applicable timeframe outlined in Stipulation I.E., Timeframes and Communications, FEMA will proceed with its “no adverse effect” determination and conclude the Section 106 review.
 - iii. If a consulting party objects to a finding of “no adverse effect,” FEMA will consult with the objecting party to resolve the disagreement.
 - 1) If the objection is resolved, FEMA shall proceed with the Undertaking in accordance with the resolution, or;
 - 2) If the objection cannot be resolved, FEMA shall request that the ACHP review the findings in accordance with 36 CFR § 800.5(c)(3)(i)-(ii), and submit the required supporting documentation. FEMA shall consider the ACHP’s comments in making its final determination.
- b. If FEMA finds the Undertaking may adversely affect historic properties, FEMA shall request through the Grantee(s) that the subgrantee revise the scope of work to substantially conform to the *Standards* for standing structures, or avoid or minimize adverse effects for National Register listed or eligible archaeological properties.
- i. If the subgrantee modifies the scope of work to avoid the adverse effect, FEMA shall notify the SHPO, participating Tribe(s), and all other consulting parties, and provide supporting documentation, including the necessary conditions. Unless a consulting party makes a timely objection in accordance with the applicable timeframe outlined in Stipulation I.E., Timeframes and Communications, FEMA shall proceed with its “no adverse effect” determination, including any conditions, and conclude the Section 106 review.
 - ii. If an Undertaking is not modified to avoid the adverse effect(s), FEMA shall initiate consultation to resolve the adverse effect(s) in accordance with Stipulation II.C.6., Resolution of Adverse Effects.
6. Resolution of Adverse Effects: If FEMA determines that an Undertaking may adversely affect a historic property, it shall resolve the effects of the Undertaking in consultation with the SHPO, Grantee(s), subgrantee, participating Tribe(s), the ACHP, if participating, and other consulting parties, by one of the following methods depending upon the severity of the adverse effect(s) as well as the determination of the historic property’s significance on a local, state or national level. When FEMA determines an Undertaking will adversely affect an NHL, FEMA shall notify and invite the Secretary and the ACHP to participate in consultation in accordance with 36 CFR § 800.10. When the ACHP participates in consultation related to an NHL, the ACHP shall report the outcome of the consultation to the Secretary and the FEMA Administrator.

- a. **Abbreviated Consultation Process:** FEMA will propose in writing to the consulting parties to resolve the adverse effects of the Undertaking through the application of one or more Treatment Measures outlined in Appendix C as negotiated with the SHPO, participating Tribes, and other consulting parties. The use of these Treatment Measures shall not require the execution of a Memorandum of Agreement (MOA) or Programmatic Agreement.
- i. In consultation with the SHPO, participating Tribe(s), and other consulting parties, FEMA shall propose in writing the implementation of a specific Treatment Measure, or combination of Treatment Measures, with the intent of expediting the resolution of adverse effects, and provide documentation as required by 36 CFR § 800.11(e), subject to the confidentiality provisions of 36 CFR § 800.11(c). Unless a consulting party or the ACHP objects within 15 days of receipt of FEMA's proposal, FEMA shall proceed with the implementation of the Treatment Measure(s) and will conclude the Section 106 review.
 - ii. If any of the consulting parties or the ACHP objects within the 15-day review-and-comment period to the resolution of adverse effects through the application of the Abbreviated Consultation Process, FEMA shall resolve the adverse effect(s) using procedures outlined below in Stipulation II.C.6.b., MOA, or Stipulation II.C.6.c., Programmatic Agreement.
 - iii. Because funding and implementation details of Treatment Measures for specific Undertakings may vary by program, FEMA shall provide written notice to the consulting parties within sixty (60) days of the completion of the Treatment Measure(s). This written notice will serve as confirmation that the Treatment Measure(s) for a specific Undertaking have been implemented. FEMA also shall include information pertaining to the completion of Treatment Measures in the annual report pursuant to Stipulation I.B.1.d., FEMA Roles and Responsibilities.
- b. **Memorandum of Agreement:** FEMA shall provide the ACHP with an adverse effect notice in accordance with 36 CFR § 800.6(a)(1) if it has not already provided such under the Abbreviated Consultation Process of this Agreement, if a consulting party or the ACHP objects in accordance with Stipulation II.C.6.a.ii., or if FEMA in consultation with the SHPO, participating Tribe(s), and other consulting parties has determined that an MOA would be more appropriate to resolve the adverse effect(s). In consultation with the SHPO, participating Tribe(s), and other consulting parties, including the ACHP (if participating), FEMA shall develop an MOA in accordance with 36 CFR § 800.6(c) to agree upon treatment measures to avoid, minimize, and/or mitigate adverse effects on historic properties. The MOA may also include treatment measures that serve an equal or greater public benefit in promoting the preservation of historic properties in lieu of more traditional treatment measures.

- c. Programmatic Agreement: Should the execution of an MOA be inappropriate given the similar nature of effects on historic properties, the inability to determine effects prior to approval of an Undertaking, or where other circumstances warrant, FEMA shall consult with the SHPO, participating Tribe(s), the ACHP, if participating, and any other consulting parties to develop a Programmatic Agreement in accordance with 36 CFR § 800.14(b), and identify programmatic conditions or treatment measures to govern the resolution of potential or anticipated adverse effects from certain complex project situations for an Undertaking or for multiple but similar Undertakings by a single subgrantee.
7. Objections: Should any Signatory or consulting party object within the timeframes established by this Agreement to any plans, specifications, or actions taken pursuant to resolving an adverse effect, FEMA shall consult further with the objecting party to seek resolution. If FEMA determines the objection cannot be resolved, FEMA shall address the objection in accordance with Stipulation IV.B., Dispute Resolution.

III. OTHER CONSIDERATIONS

- A. Changes to an Approved Scope of Work: The Grantee(s) shall notify FEMA and shall require a subgrantee to notify it immediately when a subgrantee proposes changes to an approved scope of work for an Undertaking.
 1. If FEMA determines the change meets a Programmatic Allowance or has no effect on the property, FEMA shall approve the change.
 2. If the change can be modified to meet an Allowance, or conform to any applicable Secretary's *Standards*, FEMA shall conclude its Section 106 review responsibilities.
 3. If FEMA determines that the change does not meet an Allowance, FEMA shall initiate consultation pursuant to Stipulation II.C., Standard Project Review.
- B. Unexpected Discoveries, Previously Unidentified Properties, or Unexpected Effects:
 1. Upon notification by a subgrantee of an unexpected discovery, or if it appears that an Undertaking has affected a previously unidentified property or affected a known historic property in an unanticipated manner, in accordance with Stipulation I.B.3.e., Grantee(s) Roles and Responsibilities, the Grantee(s) shall immediately notify FEMA and require the subgrantee to:
 - a. Stop construction activities in the vicinity of the discovery.
 - b. Take all reasonable measures to avoid or minimize harm to the property until FEMA has completed consultation with the SHPO, participating Tribe(s), and any other consulting parties. Upon notification by the Grantee of a discovery, FEMA shall immediately notify the SHPO, participating Tribe(s), and other consulting parties that may have an interest in the discovery, previously unidentified property

or unexpected effects, and consult to evaluate the discovery for National Register eligibility and/or the effects of the Undertaking on historic properties.

- c. If human remains are discovered, ensure that there shall be no further excavation of disturbance of any nearby area that may also contain human remains, and notify the county coroner/medical examiner immediately in accordance with Section 7050.5 of the California Health and Safety Code. Discoveries of human remains on Federal or Tribal lands shall be subject to the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001-3013, 18 U.S.C. § 1170) and the Archeological Resources Protection Act (ARPA) (16 U.S.C. 470aa-470mm; Public Law 96-95 as amended), as applicable.
- d. Assist FEMA in completing the following actions, as required:
 - i. FEMA shall consult with the SHPO, participating Tribe(s), and other consulting parties in accordance with the consultation process outlined in Stipulation II., Project Review, to develop a mutually-agreeable action plan with timeframes to identify the discovery or previously unidentified property, take into account the effects of the Undertaking, resolve adverse effects if necessary, and ensure compliance with applicable Federal, State, and local statutes.
 - ii. FEMA shall coordinate with the Grantee(s) and the subgrantee regarding any needed modification to the scope of work for the Undertaking necessary to implement recommendations of the consultation and facilitate proceeding with the Undertaking.
 - iii. In cases where discovered human remains are determined to be American Indian, FEMA shall consult with the appropriate Tribal representatives and the SHPO. In addition, FEMA shall follow the guidelines outlined in the ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (2007)* and any State-specific policies that may be in force.

C. Curation

1. In cases where archaeological survey and testing are conducted on private land, any recovered collections remain the property of the land owner. In such instances, FEMA and the Grantee(s), in coordination with the SHPO and affected Tribe(s), shall encourage land owners to donate the collection(s) to an appropriate public or Tribal entity. In cases where the property owner wishes to transfer ownership of the collection(s) to a public or Tribal entity, and in the case of artifacts recovered from public lands, FEMA and the Grantee(s) shall ensure that recovered artifacts and related documentation are curated in a suitable repository as agreed to by FEMA, the SHPO, and affected Tribe(s), following applicable State or Tribal guidelines.

2. When an Undertaking will adversely affect an archaeological resource listed in or eligible for the National Register only under Criterion D, FEMA may treat the adverse effect by providing for the recovery of significant information through archaeological data recovery. FEMA shall consult with the SHPO, participating Tribe(s), and other consulting parties to prepare a research design (data recovery plan), including a specific plan for curation. This plan will incorporate any relevant curation provisions contained in the *California Guidelines for the Curation of Archeological Collections* (May 7, 1993), ACHP's *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* published in the Federal Register [64 Federal Register 27085-27087 (May 18, 1999)], or other provisions agreed to by the consulting parties. No excavation should be initiated before FEMA acceptance and approval of the curation plan.
 - a. As stipulated in the curation plan, artifacts, as well as field and laboratory records sufficient to document the collection, shall be curated at a facility, preferably in-state, that meets the standards of, and in accordance with the provisions of 36 CFR Part 79, *Curation of Federally Owned and Administered Archaeological Collections*, and applicable State or Tribal requirements.

D. Review of Undertakings Initiated Before Initiation or Completion of Section 106 Review

1. In accordance with Section 110(k) of the NHPA, FEMA shall not grant assistance to a subgrantee who, with intent to avoid the requirements of this Agreement or Section 106 of the NHPA, has intentionally significantly and adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed an adverse effect to occur. However, if after consultation with the SHPO, Grantee, appropriate Tribes(s), and ACHP, FEMA determines that extraordinary circumstances justify granting assistance despite the adverse effect created or permitted by the subgrantee, FEMA shall complete consultation for the Undertaking pursuant to the terms of this Agreement.
2. FEMA shall specifically advise the Grantee(s) and shall require that the Grantee(s) advise its subgrantees in writing that they may jeopardize Federal funding if work is performed without all required local, State, and Federal licenses, permits, and/or approvals, including the completion of the Section 106 process. FEMA also shall document this requirement in its Record of Environmental Consideration, as applicable, as well as all project approval documents specifying the project scope and limits, and containing all conditions and caveats.
3. In circumstances where FEMA determines a subgrantee has initiated an Undertaking without willful intent to avoid the requirements of this Agreement or Section 106 of NHPA, FEMA shall proceed as follows:
 - a. Determine if the Undertaking is of a type for which FEMA has no further Section 106 responsibilities, namely:
 - i. An Undertaking listed in Stipulation I.A.8.; or

- ii. An immediate rescue and salvage operation in accordance with 36 CFR § 800.12(d); or
 - iii. A Programmatic Allowance as described under Stipulation II.A.
- b. In any such cases listed in Stipulation III.D.3.a., above, FEMA shall document this determination in the project files, and consider the Undertaking Section 106 compliant.
- c. If FEMA determines the Undertaking would have required Section 106 review, FEMA shall coordinate with the SHPO and appropriate Tribe(s) to determine if consultation is feasible.
 - i. If after coordination with the SHPO and appropriate Tribes, FEMA determines that consultation is feasible, FEMA shall review the Undertaking in accordance with Stipulation II.C., Standard Project Review.
 - ii. If after coordination with the SHPO and appropriate Tribe(s), FEMA determines that review is infeasible, FEMA shall document the outcome of the Section 106 review process, and the applicable FEMA Program shall take the outcome into account before making a decision whether to fund the Undertaking. FEMA shall provide written notification of its funding decision to the SHPO, the Grantee, appropriate Tribe(s), and the ACHP.
- 4. FEMA shall ensure that all Undertakings considered for after-the-fact review in accordance with this Stipulation are included in the annual report.

IV. IMPLEMENTATION OF AGREEMENT

A. Amendments

- 1. If any Signatory determines that an amendment to the terms of this Agreement must be made, the Signatories shall consult for no more than 30 days to seek amendment of the Agreement.
- 2. An amendment to this Agreement, exclusive of the Appendices, shall be effective only when it has been signed by all the Signatories. An amendment shall be effective for Undertakings occurring on or affecting historic properties on Tribal lands only when the Tribe has signed the Agreement and its amendment.
- 3. Appendix A (FEMA Programs), Appendix B (Programmatic Allowances), and Appendix C (Treatment Measures) may be amended at the request of FEMA or another Signatory in the following manner:

- a. FEMA, on its own behalf or on behalf of another Signatory, shall notify the Signatories of the intent to modify the current Appendix or Appendices and shall provide a draft of the updated Appendix or Appendices to all Signatory parties.
- b. If no other Signatory objects in writing within 30 days of receipt of FEMA's proposed modification, FEMA shall date and sign the amended Appendix and provide a copy of the amended Appendix to the other Signatories. Such an amendment shall go into effect on the date FEMA transmits the amendment to the other Signatories.

B. Dispute Resolution

1. Should any Signatory object in writing to the terms of this Agreement, FEMA shall consult with the objecting party for not more than 30 days to resolve the objection.
2. If the objection is resolved within 30 days, FEMA shall proceed in accordance with the resolution.
3. If FEMA determines within 30 days that the objection cannot be resolved, FEMA shall forward to the ACHP all documentation relevant to the objection, including FEMA's proposed resolution. Within 30 days of receipt, the ACHP will:
 - a. Concur in FEMA's proposed resolution; or
 - b. Provide FEMA with recommendations, which FEMA shall take into account in reaching a final decision regarding the objection; or
 - c. Notify FEMA that the objection will be referred for comment in accordance with 36 CFR § 800.7(a)(4), and proceed to do so.
4. FEMA shall take into account any ACHP recommendations or comments, and any comments from the other Signatories, in reaching a final decision regarding the objection. FEMA shall provide in writing to the ACHP and Signatories a summary of its final decision before authorizing any disputed action to proceed. The Signatories shall continue to implement all other terms of this Agreement that are not subject to objection.
5. Should the ACHP not respond within 30 days, FEMA may assume the ACHP has no comment and proceed with its proposed resolution to the objection after providing the ACHP and Signatories a written summary of its final decision.

C. Severability and Termination

1. In the event any provision of this Agreement is deemed by a Federal court to be contrary to, or in violation of, any applicable existing law or regulation of the United

States of America, only the conflicting provision(s) shall be deemed null and void, and the remaining provisions of the Agreement shall remain in effect.

2. FEMA, the SHPO, Cal OES, or the ACHP may terminate this Agreement by providing 30 days written notice to the other Signatories, provided that the Signatories consult during this period to seek amendments or other actions that would prevent termination. If this Agreement is terminated, FEMA shall comply with Section 106 through other applicable means pursuant to 36 CFR Part 800. Upon such determination, FEMA shall provide all other Signatories and the ACHP with written notice of the termination of this Agreement.
3. A participating Tribe may notify the other Signatories that it is fully withdrawing from participation in the Agreement. Following such a withdrawal, FEMA shall review Undertakings that may affect historic properties of religious and cultural significance to the Tribe, and Undertakings that occur on the Tribal lands of the relevant Tribe, in accordance with 36 CFR §§ 800.3 through 800.7, 36 CFR § 800.8(c), or an applicable alternative under 36 CFR § 800.14. Withdrawal from this Agreement by a Tribe does not terminate the Agreement. At any time that this Agreement remains in effect, a Tribe that has withdrawn from the Agreement may notify FEMA, the Grantee(s), and the SHPO in writing that it has rescinded its notice withdrawing from participation in the Agreement.
4. This Agreement may be terminated by the implementation of a subsequent Agreement, pursuant to 36 CFR § 800.14(b), that explicitly terminates or supersedes this Agreement, or by FEMA's implementation of Alternate Procedures, pursuant to 36 CFR § 800.14(a).

D. Duration and Extension

1. This Agreement shall remain in effect from the date of execution for a period not to exceed 5 years unless otherwise extended pursuant to Stipulation IV.D.2. below, or terminated pursuant to Stipulation IV.C.2. or IV.C.4., Severability and Termination. The Agreement shall remain in effect for Declarations made prior to expiration of the Agreement in order to minimize delays in delivery of FEMA assistance.
2. The Signatories may collectively agree to extend this Agreement to cover additional calendar years, or portions thereof, through an amendment per Stipulation IV.A., provided that the original Agreement has not expired.

E. Execution and Implementation

1. This Agreement may be executed in counterparts, with a separate page for each Signatory, and shall become effective on the date of the final signature of FEMA and the SHPO.
2. The Agreement shall go into effect regarding Undertakings occurring, or affecting historic properties, on Tribal lands when the relevant Tribe has signed the Agreement.

3. FEMA shall ensure that each Signatory is provided with a complete copy of the Agreement, including an original set of signatures.
4. Execution and implementation of this Agreement evidence that FEMA has afforded the ACHP a reasonable opportunity to comment on FEMA's administration of all referenced Programs, and that FEMA has satisfied its Section 106 responsibilities for all individual Undertakings of its referenced Programs.

SIGNATORY PARTIES

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: Karen Armes
Karen Armes, Acting Regional Administrator, Region IX

Date: 10/30/2014

By: Alessandro Amaglio
Alessandro Amaglio, Environmental Officer, Region IX

Date: 10/30/14

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: Carol Roland-Nawi
Carol Roland-Nawi, State Historic Preservation Officer

Date: 10-30-14

CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES

By: Mark Ghilarducci
Mark Ghilarducci, Director

Date: 10/28/14

Appendix A

FEMA Program Summaries

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

Disaster Response and Recovery Programs

The following Programs are authorized under Titles IV and V of the Stafford Act.

Public Assistance Program (PA)

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

Individual Assistance Programs (IA)

These programs help to ensure that individuals and families that have been affected by disasters have access to the full range of FEMA assistance including: crisis counseling (Section 416), disaster legal services (Section 415), essential assistance (Section 403), emergency sheltering assistance (Section 403), transportation (Section 419), funeral services, minor home repairs (Section 408), and temporary housing assistance (Section 408). It should be noted that other Federal agencies provide disaster assistance programs, services, and activities to individuals as well, including the U.S. Small Business Administration, U.S. Department of Agriculture, and U.S. Department of Labor, but these other assistance programs are not subject to the terms of this Agreement.

Fire Management Assistance Grant Program (FMAG)

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

Hazard Mitigation Grant Program (HMGP)

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

Non-Disaster Programs

Pre-Disaster Mitigation Program (PDM)

The PDM program provides competitive grants to States, Territories, Tribes, and local governments for hazard mitigation planning and the implementation of mitigation projects prior

to a disaster event. Activities may include planning, buyouts, retrofits, relocations, elevations, minor flood control projects, and vegetative fuels reduction.

Flood Mitigation Assistance Program (FMA)

The FMA program provides grants to States, Territories, Tribal entities, and communities to assist in their efforts to reduce or eliminate the risk of repetitive flood damage to buildings and structures insurable under the National Flood Insurance Program (NFIP).

Assistance to Firefighters Grant Program

The AFG program provides funding for purchase of equipment and retrofit or construction of fire stations to improve first responder capabilities.

Homeland Security Grant Program (HSGP)

The HSGP plays an important role in the implementation of the National Preparedness System by supporting the building, sustainment, and delivery of core capabilities essential to achieving the National Preparedness Goal (NPG) of a secure and resilient Nation. HSGP is comprised of three interconnected grant programs: (1) the State Homeland Security Program (SHSP), (2) the Urban Areas Security Initiative (UASI), and (3) the Operation Stonegarden (OPSG). Together, these grant programs and other future projects that may be included under the HSGP fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, management, and administration.

State Homeland Security Program (SHSP)

This core assistance program provides funds to build capabilities at the state and local levels and to implement the goals and objectives included in state homeland security strategies and initiatives in the State Preparedness Report.

Urban Areas Security Initiative (UASI) Program

The Urban Areas Security Initiative program focuses on enhancing regional preparedness in major metropolitan areas. The UASI program directly supports the National Priority on expanding regional collaboration in the National Preparedness Guidelines and is intended to assist participating jurisdictions in developing integrated regional systems for prevention, protection, response and recovery.

Metropolitan Medical Response System (MMRS) Program

The MMRS program supports the integration of emergency management, health, and medical systems into a coordinated response to mass casualty incidents caused by any hazard. Successful MMRS grantees reduce the consequences of a mass casualty incident during the initial period of a response by having augmented existing local operational response systems before the incident occurs.

Citizen Corps Program (CCP)

The Citizen Corps mission is to bring community and government leaders together to coordinate community involvement in emergency preparedness, planning, mitigation, response and recovery.

State Homeland Security Program Tribal (SHSP Tribal)

To provide supplemental funding to directly eligible Tribes to help strengthen the nation against risks associated with potential terrorist attacks. Pursuant to the 9/11 Act, “a directly eligible tribe applying for a grant under section 2004 [SHSP] shall designate an individual to serve as a tribal liaison with [DHS] and other Federal, state, local, and regional government officials concerning preventing, preparing for, protecting against and responding to acts of terrorism.”

Nonprofit Security Grant Program (NSGP)

NSGP provides funding support for target-hardening activities to nonprofit organizations that are at high risk of a terrorist attack and are located within one of the specific UASI-eligible urban areas.

Operation Stonegarden (OPSG)

The intent of OPSG is to enhance cooperation and coordination among local, State and Federal law enforcement agencies in a joint mission to secure the United States borders along routes of ingress from international borders to include travel corridors in States bordering Mexico and Canada, as well as States and territories with international water borders.

Transit Security Grant Program (TSGP)

The TSGP provides grant funding to the nation’s key high-threat urban areas to enhance security measures for their critical transit infrastructure including bus, ferry and rail systems.

Freight Rail Security Grant Program (FRSGP)

The FRSGP funds security training for frontline employees, the completion of vulnerability assessments, the development of security plans within the freight rail industry, and GPS tracking systems for railroad cars transporting toxic inhalation materials.

Intercity Passenger Rail (Amtrak)

The purpose of the Intercity Passenger Rail (IPR) is to create a sustainable, risk-based effort to protect critical surface transportation infrastructure and the traveling public from acts of terrorism, major disasters and other emergencies within the Amtrak rail system.

Port Security Grant Program (PSGP)

The PSGP provides grant funding to port areas for the protection of critical port infrastructure from terrorism. PSGP funds are primarily intended to assist ports in enhancing maritime domain awareness, enhancing risk management capabilities to prevent, detect, respond to and recover from attacks involving improvised explosive devices (IEDs), weapons of mass destruction (WMDs) and other non-conventional weapons, as well as training, exercises and Transportation Worker Identification Credential (TWIC) implementation.

Intercity Bus Security Grant Program (IBSGP)

The IBSGP provides funding to create a sustainable program for the protection of intercity bus systems and the traveling public from terrorism. The program seeks to assist operators of fixed-route intercity and charter bus services in obtaining the resources required to support security measures such as enhanced planning, facility security upgrades, and vehicle and driver protection.

Trucking Security Program (TSP)

TSP funding will be awarded to eligible applicants to implement security improvement measures and policies deemed valuable by DHS as indicated in the *Security Action Items* publication of June 26, 2008. These items are primarily focused on the purchase and installation or enhancement of equipment and systems related to tractor and trailer tracking systems. Additionally, the TSP will provide funding to develop a system for DHS to monitor, collect and analyze tracking information; and develop plans to improve the effectiveness of transportation and distribution of supplies and commodities during catastrophic events.

Buffer Zone Protection Program (BZPP)

The BZPP provides funding to increase the preparedness capabilities of jurisdictions responsible for the safety and security of communities surrounding high-priority pre-designated Tier 1 and Tier 2 critical infrastructure and key resource (CIKR) assets, including chemical facilities, financial institutions, nuclear and electric power plants, dams, stadiums and other high-risk/high-consequence facilities, through allowable planning and equipment acquisition.

Emergency Management Performance Grants (EMPG)

The purpose of the EMPG program is to assist State and local governments in enhancing and sustaining all-hazards emergency management capabilities.

Interoperable Emergency Communications Grant Program (IECGP)

IECGP provides governance, planning, training and exercise and equipment funding to States, territories, and local and Tribal governments to carry out initiatives to improve interoperable emergency communications, including communications in collective response to natural disasters, acts of terrorism and other man-made disasters. According to the legislation that created IECGP, all proposed activities must be integral to interoperable emergency communications and must be aligned with the goals, objectives, and initiatives identified in the grantee's approved statewide Communication Interoperability Plans (SCIP). IECGP will also advance DHS near-term priorities that are deemed critical to improving interoperable emergency communications and are consistent with goals and objectives of the National Emergency Communications Plan.

Emergency Operations Center (EOC) Grant Program

The EOC grant program is intended to improve emergency management and preparedness capabilities by supporting flexible, sustainable, secure, and interoperable Emergency Operations Centers (EOCs) with a focus on addressing identified deficiencies and needs. This program provides funding for construction or renovation of a State, local, or tribal governments' principal EOC. Fully capable emergency operations facilities at the State and local levels are an essential element of a comprehensive national emergency management system and are necessary to ensure continuity of operations and continuity of government in major disasters caused by any hazard.

Driver's License Security Grant Program

The purpose of the Driver's License Security Grant Program is to prevent terrorism, reduce fraud, and improve the reliability and accuracy of personal identification documents that States and territories issue.

Integrated Public Alert and Warning System (IPAWS)

The Integrated Public Alert and Warning System (IPAWS) was established by Executive Order 13407 in 2006. In the event of a national emergency, the President may use IPAWS to send a message to the American people quickly and simultaneously through multiple communications pathways. FEMA has identified several radio transmission sites across the nation with significantly powerful signals for this purpose, and FEMA is responsible for upgrading, maintaining, and managing the agency installed and owned auxiliary fuel systems at each of these radio transmission sites.

Appendix B

Programmatic Allowances

This list of Programmatic Allowances enumerates FEMA funded activities that based on FEMA experience have no or minimal effect on historic properties if implemented as specified in this Appendix, and will not require review by the SHPO and participating Tribe(s).

The Programmatic Allowances consist of two tiers – First Tier and Second Tier. Staff may apply First Tier Allowances whether or not they meet professional historic preservation qualification standards, while only staff meeting the applicable Secretary of Interior’s Professional Qualifications Standards in accordance with Stipulation I.B.1.a. of this Agreement may apply Second Tier Allowances.

First Tier Allowances are those that will have no or minimal effect on historic properties, while Second Tier Allowances require the use of professionally qualified staff to ensure that the proposed scope of work will result in no adverse effect on identified historic properties within the project’s Area of Potential Effect.

When referenced in the Programmatic Allowances, “in-kind” shall mean that the result of the work shall match all physical and visual aspects of existing materials, including design, form, color, finish, texture, workmanship, and to the greatest extent possible, the materials. “In-kind” mortar will also match the strength and joint tooling of existing mortar, as appropriate. The “in-kind” repair provided for in both First and Second Tier Allowances in Appendix B should be limited to pre-existing architectural features and physical components of buildings and structures.

When referenced in the Allowances, “previously disturbed soils” shall refer to soils that are not likely to possess intact and distinct soil horizons, and have the reduced likelihood of possessing historic properties within their original depositional contexts in the area and to the depth to be excavated.

I. First Tier Allowances

A. GROUND DISTURBING ACTIVITIES AND SITE MODIFICATION, 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.

1. Debris and Snow Removal

- a. Debris removal and collection, including removal of snow, uprooted trees, limbs and branches from public rights-of-way and public areas, as well as 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.

- b. 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.
- c. Chipping and disposal of woody debris by broadcasting within existing rights-of-way.
- d. 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.
- e. Dewatering flooded developed areas by pumping.

2. Temporary Structures and Housing

- a. Installation and removal of temporary structures for use as school classrooms, offices, or temporary shelters for essential public service agencies, such as police, fire, rescue and medical care, as well as temporary housing for disaster personnel and survivors at the following types of locations:
 - i. Single units on private residential sites when all utilities are installed above ground or tie into pre-existing utility lines.
 - ii. Existing RV/Mobile Home Parks and campgrounds with pre-existing utility hookups.
 - iii. Paved areas, such as parking lots and paved areas at such facilities as conference centers, shopping malls, airports, industrial port facilities, business parks, and military bases when all utilities are installed above ground or tie into pre-existing utility lines.
 - iv. Sites that have been previously prepared for planned construction, such as land being developed for public housing, office buildings, city parks, ball fields, schools, etc. when all utilities are installed above-ground or tie into pre-existing utility lines.
 - v. Areas previously filled to depths of at least six feet so that subsurface utilities can be installed.

3. Recreation and Landscaping

- a. Installation of temporary removable barriers.
- b. In-kind repairs, installation, or replacement, and minor upgrades/mitigation of bollards and associated protective barriers when in previously disturbed areas.

B. BUILDINGS AND STRUCTURES

- 1. Repair or retrofit of buildings less than 45 years old.
- 2. Removal of water by physical or mechanical means.
- 3. Installation of exterior security features and early warning devices on existing light poles or other permanent utilities.

C. TRANSPORTATION FACILITIES, when proposed activities substantially conform to the original footprint and/or are performed in previously disturbed soils, including any staging areas.

1. Roads and Roadways

- a. Paving and repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders medians, clearances, curbs, and side slopes. This Allowance does not include improvement to existing roadways and appurtenances.
- b. Construction of temporary emergency access roads in previously disturbed soils to allow for passage of emergency vehicles.
- c. Repairs to road slips and landslides that do not require grading of undisturbed soils on the up-hill side of the slip.
- d. Re-establishment, armoring and/or upgrading of existing roadway ditches.
- e. In-kind repair or replacement of traffic control devices such as traffic signs and signals, delineators, pavement markings, or traffic surveillance systems.
- f. Installation and removal of temporary traffic control devices, including pre-formed concrete barriers and fencings.
- g. In-kind repair or replacement of roadway safety elements such as barriers, guardrails, and impact-attenuation devices. In the case of guardrails, the addition of safety end treatments is permitted.

2. Airports

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

3. Rail Systems

- a. In-kind repair or replacement of safety components.
- b. In-kind repair or replacement of existing track system and passenger loading areas.

D. FEES AND SERVICES

1. Reimbursement of a subgrantee's insurance deductible, not to exceed \$2,500.

II. Second Tier Allowances

A. 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.

1. Footings, Foundations, Retaining Walls, Slopes, and Slope Stabilization Systems

- a. In-kind repair, replacement, and reinforcement of footings, foundations, retaining walls, slopes, and slope stabilization systems (e.g., gabion baskets, crib walls, soldier pile and lag walls) if related ground disturbing activities are within the boundary of previously disturbed soils.
- b. Installation of perimeter drainage (e.g., French drains) when performed in previously disturbed soils.

2. Recreation and Landscaping

- a. In-kind repairs or replacement, and minor upgrades to recreational facilities and features (e.g., playgrounds, campgrounds, fire pits, dump stations and utility hook-ups, swimming pools, athletic fields and signage, batting cages, basketball courts, swing sets, pathways, simple wooden/wire stream crossings).
- b. In-kind repair, replacement, and minor upgrades to landscaping elements (e.g., fencing, free standing walls, paving, planters, irrigation systems, lighting elements, signs, flag poles, ramps, steps).

3. Piers, Docks, Boardwalks, Boat Ramps, and Dune Crossovers

- a. In-kind repair and replacement and minor upgrades to existing piers, docks, boardwalks, boat ramps and dune crossovers in areas of previously disturbed soils.

4. Cemeteries

- a. Removal of woody debris such as branches and limbs, from cemeteries, provided that heavy equipment and other machinery are not operated or staged on areas potentially containing human remains.

B. BUILDINGS AND STRUCTURES

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

- a. 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.
- b. 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.
- c. Non-destructive or concealed testing for hazardous materials (e.g., lead paint, asbestos) or for assessment of hidden damages.

2. Building Contents

- a. Repair or replacement of building contents including furniture, movable partitions, computers, cabinetry, supplies, and equipment, and any other moveable items which are not character-defining features of a historic property.

3. Utilities and Mechanical, Electrical, and Security Systems

- a. In-kind repair or 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.
- b. Elevation of heating, ventilation, and air conditioning system (HVAC) and mechanical equipment as long as it is placed or located where it is not visible from the street.
- c. Installation or replacement 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.

- d. Installation of 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 and can be easily removed in the future.
- e. 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.

4. Windows and Doors

- a. 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.
- b. 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 intact decorative glass.
- c. 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. Installation of security bars over windows on rear elevations.

5. Exterior Walls, Cornices, Porches, and Foundations

- a. In-kind repainting of surfaces, provided that destructive surface preparation treatments are not used, such as water blasting, sandblasting, power sanding and chemical cleaning.
- b. In-kind repair 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.
- c. In-kind repair or replacement of signs or awnings.
- d. Installation of temporary stabilization bracing or shoring, provided such work does not result in additional damage.

- e. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view.
- f. 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.
- g. Bracing and reinforcing of walls, chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or reversible in the future.
- h. 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.
- i. 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.

6. Roofing

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

7. Weatherproofing and Insulation

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

8. Structural Retrofits

- a. The installation of the following retrofits/upgrades, provided that such upgrades are not visible on the exterior: attic bracing, cross bracing on pier-and-post foundations; fasteners; collar ties; gussets; tie downs; strapping and anchoring of

mechanical, electrical, and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs; and automatic gas shut-off valves.

b. Replacement, repair or installation of lightning rods.

9. Americans with Disabilities Act (ADA) Compliance

a. Installation of grab bars and other such minor interior modifications.

10. Safe Rooms

a. Installation of individual safe rooms within the property limits of a residence where the installation would occur within the existing building or structure or in previously disturbed soils.

11. Elevation, Demolition, and Reconstruction

a. Activities related to the elevation, demolition and/or reconstruction of buildings or structures less than 45 years of age so long as the proposed activities substantially conform to the original footprint and/or are performed in previously disturbed soils including any staging area, and the buildings or structures are not located within or adjacent to a National Register listed or eligible historic district.

C. TRANSPORTATION FACILITIES, when proposed activities substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

1. Roads and Roadways

a. Repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders, medians, clearances, curbs, and side slopes. This Allowance permits minor improvement to meet current code and standards or hazard mitigation measures, such as those designed to harden exposed surfaces, including the application of gravel armoring to side slopes and ditches.

b. In kind repair to historic paving materials for roads and walkways.

c. In-kind repair or replacement, or minor upgrade of culvert systems and arches beneath roads or within associated drainage systems, including provision of headwalls, riprap and any modest increase in capacity for the purposes of hazard mitigation or to meet current codes and standards, provided that the work substantially conforms to the existing footprint. For stone or brick culverts or arches beneath roadways, this allowance only applies to in-kind repair.

- d. In-kind repair or replacement of road lighting systems, including period lighting fixture styles.
- e. In-kind repair or replacement of road appurtenances such as curbs, berms, fences, and sidewalks.

2. Bridges

- a. Installation of a temporary (Bailey-type) bridge over an existing structure or at a previously disturbed location, such as a former bridge location, to allow passage of emergency vehicles.
- b. In-kind repair or replacement of bridges and bridge components (e.g. abutments, wing walls, piers, decks, and fenders) in previously disturbed soils.

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

1. General

- a. In-kind repair or replacement, or minor upgrading, small scale realignment, and elevation of utilities and associated features and structures within previously disturbed soils of rights-of-way or utility corridors.
- b. Installation of new utilities and associated features within existing rights-of-way.
- c. Directional boring of new/replacement service line and related appurtenances involving boring or silt trenches within previously disturbed soils of rights-of-way or utility corridors.
- d. In-kind repair or replacement, or minor upgrade of water towers provided activities take place within previously disturbed soils. Ground-level facilities may be added or expanded in previously disturbed areas. This Allowance does not apply to masonry water towers.

2. Generators and Utilities

- a. 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.

3. Communication Equipment/Systems and Towers

- a. Acquisition, installation, or operation of communication and security equipment/systems that use existing distribution systems, facilities, or existing infrastructure right-of-way.
- b. 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.
- c. Enhancement, repair or replacement of existing communication towers and antenna structures provided the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils.
- d. Installation of new temporary (not to exceed 12 months) communications towers and antenna structures provided that the work does not require modification of buildings/structures 45 years or older and occurs within previously disturbed soils.
- e. Installation of new communication towers, less than 200 feet tall, in previously developed urban complexes when the work does not require modification of buildings/structures 45 years or older, occurs within previously disturbed soil, and is not within 1,000 feet of the boundaries of a historic property.

E. WATER RESOURCE MANAGEMENT AND CONTROLS, when proposed activities substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

1. Canal Systems

- a. In-kind repairs or replacement to canal systems and associated elements.

2. Breakwaters, Seawalls, Revetments, and Berms

- a. In-kind repair or replacement of breakwaters, seawalls, and revetments, provided the work occurs in previously disturbed soils.

3. Dams, Levees, and Floodwalls

- a. In-kind repair of dams, levees, floodwalls and related features, including spillways, tide gates, and fuse plugs, provided the work occurs in previously disturbed soils.

4. Fish Hatcheries

- a. In-kind repair or replacement of fish hatcheries and fish ladders.

5. Waste-Water Treatment Lagoon Systems

- a. In-kind repair or replacement, or minor upgrades of waste-water treatment lagoon systems.

Appendix C

Treatment Measures

When avoidance or minimization of adverse effects is not appropriate, the following Treatment Measures are suggested for the resolution of adverse effects:

If Undertakings may or will result in adverse effects, FEMA, the Grantee(s), subgrantee, SHPO, 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

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 meeting 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 NPS'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 the 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 Tribe(s) for review and approval. Once approved by the SHPO and participating Tribe(s), the designated responsible party shall submit a copy of the approved documentation to a state or local historical society, archive, and/or library for permanent retention.

2. 35mm Black and White Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a 35 mm black and white film photography package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.
 - a. The 35 mm black and white film 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 35 mm black and white film photography package shall include one (1) full set of 35mm black and white film photographs printed on acid free paper, the corresponding 35mm film negatives in acid free sleeves, a completed state architectural inventory form, and a written site history of the historic property.
 - c. The designated responsible party shall submit the 35 mm black and white film photography package to the SHPO and/or participating Tribe(s) for review and approval. Once approved by the SHPO and/or participating Tribe(s), the designated responsible party shall submit a copy of the approved documentation to a state or local historical society, archive, and/or library for permanent retention.
3. Large Format Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a large format photography package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.
 - a. The large format 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 large format film photography package shall include one (1) full set of 4 x 5 or 5 x 7-inch photographs printed on acid free paper, the corresponding 4 x 5 or 5

x 7-inch negatives in acid free sleeves, a completed state architectural inventory form, and a written site history of the historic property.

- c. The designated responsible party shall submit the large format film photography package to the SHPO and/or participating Tribe(s) for review and approval. Once approved by the SHPO and/or participating Tribe(s), the designated responsible party shall submit copies of the approved documentation to a state or local historical society, archive, and/or library for permanent retention.

B. Public Interpretation

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or participating Tribe(s) to design an educational interpretive plan. The plan may include signs, displays, educational pamphlets, websites, workshops and other similar mechanisms to educate the public on historic properties within the local community, state, or region. Once an interpretive plan has been agreed to by the parties, the SHPO and/or participating Tribes, the designated responsible party shall continue to consult throughout implementation of the plan until all agreed-upon actions have been completed by the designated responsible party.

C. Historical Context Statements and Narratives

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and participating Tribe(s) to determine the topic and framework of a historic context statement or narrative that 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 Tribe(s) through the drafting of the document and delivery of a final product. The designated responsible party shall use staff or contractors that meet the Professional Qualifications for the appropriate discipline.

D. Oral History Documentation

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or participating Tribe(s) 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/or participating Tribe(s) through the data collection, drafting of the document, and delivery of a final product. The designated responsible party shall use staff or contractors that meet the Professional Qualifications for the appropriate discipline.

E. Historic Property Inventory

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or participating Tribe(s) to establish the appropriate level of effort to accomplish a historic property inventory. 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/or participating Tribe(s) through the data collection process. The designated responsible party shall use SHPO and/or participating Tribe(s) standards for the survey of historic properties and SHPO and/or participating Tribe(s) forms as appropriate. The designated responsible party shall prepare a draft inventory report, according to SHPO and/or participating Tribe(s) templates and guidelines, and work with the SHPO and/or participating Tribes until a final property inventory is approved. The designated responsible party shall use staff or contractors that meet the Professional Qualifications for the appropriate discipline.

F. National Register and National Historic Landmark Nominations

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or 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/or participating Tribes through the drafting of the nomination form. The SHPO and/or participating Tribe(s) shall 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 shall use staff or contractors that meet the Professional Qualifications for the appropriate discipline.

G. Geo-References of Historic Maps and Aerial Photographs

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or participating Tribe(s) 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/or participating Tribes through the scanning and geo-referencing process and shall submit drafts of paper maps and electronic files to the SHPO and/or participating Tribe(s) for review. The final deliverable produced by the designated responsible party 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.

H. Archaeological Sites: Archaeological Treatment Plan

1. In accordance with Stipulation II.C.6.a. of this Agreement, potential adverse effects to an archaeological property may be resolved through alternative mitigation measures to avoid or minimize adverse effects, or data recovery to recover important information that would have been otherwise lost as a result of an undertaking. FEMA staff or contractors that meet the Professional Qualifications for the appropriate discipline shall determine applicability of an archaeological treatment plan (ATP), and as applicable, the appropriate level of documentation.
 - a. The ATP will provide detailed descriptions of protection measures for archaeological resources and resources of importance to Tribes or Tribal organizations because of cultural affinity. The ATP could include, but is not limited to the establishment of environmentally sensitive areas (ESAs), use of preconstruction archaeological excavation, preservation-in-place, avoidance, minimization, monitoring during construction where appropriate, procedures to be followed when unanticipated discoveries are encountered [see Stipulation III.B.], processes for revaluation and data recovery of discoveries, responsibilities and coordination with Tribes and Tribal organizations, NAGPRA compliance [Stipulation III.B.1.c.], and curation of recovered materials [Stipulation III.C.].
 - b. The ATP will address historic properties adversely affected and set forth means to avoid, protect, or develop treatment measures to minimize the Undertaking's effects where FEMA, the SHPO, participating Tribe(s), and other consulting parties determine that adverse effects cannot be avoided. The ATP will conform to the principles of the ACHP's *Treatment of Archaeological Properties: A Handbook Parts I and II*, the *Secretary of the Interior's Guidelines for Archeology and Historic Preservation* (Federal Register, Vol. 48, September 29, 1983, pp. 44716-44742) and appropriate SHPO Guidelines. FEMA will take into consideration the concerns of the consulting parties in determining the measures to be implemented.
 - c. Each ATP will include, but not be limited to:
 - i. FEMA's intent to recover a reasonable sample of the intact archaeological deposits from National Register eligible archaeological sites that the agency determines, through the process set out in Stipulation III.B.1.c. of this Agreement, may be adversely affected by the implementation of the Undertaking;
 - ii. Specify the research issues/questions to be addressed through the recovery of data and explain how data from the historic property will address those research issues/questions;
 - iii. Specify methods to be used in fieldwork and analysis, and explain how these methods are relevant to the research issues/questions;

- iv. Indicate how recovered materials and records will be curated, taking into account the expressed wishes of the participating Tribes;
- v. Include a schedule for providing the participating Tribes with periodic updates on implementation of the data recovery plan;
- vi. If applicable, include the curation agreement in accordance with applicable laws and regulations;
- vii. Specify the manner in which human remains and grave-associated artifacts recovered during data recovery will be treated according to applicable laws and regulations, taking into account the expressed wishes of participating Tribes; and
- viii. Clarify the public benefit that will be achieved from the ATP.

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Appendix G-2
Nationwide Programmatic Agreement
for the Collocation of Wireless Antennas
Executed by the Federal Communications Commission,
the National Conference of State Historic Preservation Officers,
and the Advisory Council on Historic Preservation
(March 2001)

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**NATIONWIDE PROGRAMMATIC AGREEMENT
for the
COLLOCATION OF WIRELESS ANTENNAS**

Executed by

**The FEDERAL COMMUNICATIONS COMMISSION,
The NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS
and
The ADVISORY COUNCIL ON HISTORIC PRESERVATION**

WHEREAS, the Federal Communications Commission (FCC) establishes rules and procedures for the licensing of wireless communications facilities in the United States and its Possessions and Territories; and,

WHEREAS, the FCC has largely deregulated the review of applications for the construction of individual wireless communications facilities and, under this framework, applicants are required to prepare an Environmental Assessment (EA) in cases where the applicant determines that the proposed facility falls within one of certain environmental categories described in the FCC's rules (47 C.F.R. § 1.1307), including situations which may affect historical sites listed or eligible for listing in the National Register of Historic Places ("National Register"); and,

WHEREAS, Section 106 of the National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*) ("the Act") requires federal agencies to take into account the effects of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment; and,

WHEREAS, Section 800.14(b) of the Council's regulations, "Protection of Historic Properties" (36 CFR § 800.14(b)), allows for programmatic agreements to streamline and tailor the Section 106 review process to particular federal programs; and,

WHEREAS, in August 2000, the Council established a Telecommunications Working Group to provide a forum for the FCC, Industry representatives, State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs), and the Council to discuss improved coordination of Section 106 compliance regarding wireless communications projects affecting historic properties; and,

WHEREAS, the FCC, the Council and the Working Group have developed this Collocation Programmatic Agreement in accordance with 36 CFR Section 800.14(b) to address the Section 106 review process as it applies to the collocation of antennas (collocation being defined in Stipulation I.A below); and,

WHEREAS, the FCC encourages collocation of antennas where technically and economically feasible, in order to reduce the need for new tower construction; and,

WHEREAS, the parties hereto agree that the effects on historic properties of collocations of antennas on towers, buildings and structures are likely to be minimal and not adverse, and that in the cases where an adverse effect might occur, the procedures provided and referred to herein are proper and sufficient, consistent with Section 106, to assure that the FCC will take such effects into account; and

WHEREAS, the execution of this Nationwide Collocation Programmatic Agreement will streamline the Section 106 review of collocation proposals and thereby reduce the need for the construction of new towers, thereby reducing potential effects on historic properties that would otherwise result from the construction of those unnecessary new towers; and.

WHEREAS, the FCC and the Council have agreed that these measures should be incorporated into a Nationwide Programmatic Agreement to better manage the Section 106 consultation process and streamline reviews for collocation of antennas; and,

WHEREAS, since collocations reduce both the need for new tower construction and the potential for adverse effects on historic properties, the parties hereto agree that the terms of this Agreement should be interpreted and implemented wherever possible in ways that encourage collocation; and

WHEREAS, the parties hereto agree that the procedures described in this Agreement are, with regard to collocations as defined herein, a proper substitute for the FCC's compliance with the Council's rules, in accordance and consistent with Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR Part 800; and

WHEREAS, the FCC has consulted with the National Conference of State Historic Preservation Officers (NCSHPO) and requested the President of NCSHPO to sign this Nationwide Collocation Programmatic Agreement in accordance with 36 CFR Section 800.14(b)(2)(iii); and,

WHEREAS, the FCC sought comment from Indian tribes and Native Hawaiian Organization regarding the terms of this Nationwide Programmatic Agreement by letters of January 11, 2001 and February 8, 2001; and,

WHEREAS, the terms of this Programmatic Agreement do not apply on "tribal lands" as defined under Section 800.16(x) of the Council's regulations, 36 CFR § 800.16(x) ("Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities."); and,

WHEREAS, the terms of this Programmatic Agreement do not preclude Indian tribes or Native Hawaiian Organizations from consulting directly with the FCC or its licensees, tower companies and applicants for antenna licenses when collocation activities off tribal lands may affect historic properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations; and,

WHEREAS, the execution and implementation of this Nationwide Collocation Programmatic Agreement will not preclude members of the public from filing complaints with the FCC or the Council regarding adverse effects on historic properties from any existing tower or any activity covered under the terms of this Programmatic Agreement.

NOW THEREFORE, the FCC, the Council, and NCSHPO agree that the FCC will meet its Section 106 compliance responsibilities for the collocation of antennas as follows.

STIPULATIONS

The FCC, in coordination with licensees, tower companies and applicants for antenna licenses, will ensure that the following measures are carried out.

I. DEFINITIONS

For purposes of this Nationwide Programmatic Agreement, the following definitions apply.

- A. "Collocation" means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

B. "Tower" is any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.

C. "Substantial increase in the size of the tower" means:

- 1) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
- 2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- 3) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
- 4) The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

II. APPLICABILITY

A. This Nationwide Collocation Programmatic Agreement applies only to the collocation of antennas as defined in Stipulation I.A, above.

B. This Nationwide Collocation Programmatic Agreement does not cover any Section 106 responsibilities that federal agencies other than the FCC may have with regard to the collocation of antennas.

III. COLLOCATION OF ANTENNAS ON TOWERS CONSTRUCTED ON OR BEFORE MARCH 16, 2001

A. An antenna may be mounted on an existing tower constructed on or before March 16, 2001 without such collocation being reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless:

1. The mounting of the antenna will result in a substantial increase in the size of the tower as defined in Stipulation I.C, above; or
2. The tower has been determined by the FCC to have an effect on one or more historic properties, unless such effect has been found to be not adverse through a no adverse effect finding, or if found to be adverse or potentially adverse, has been resolved, such as through a conditional no adverse effect determination, a Memorandum of Agreement, a

programmatic agreement, or otherwise in compliance with Section 106 and Subpart B of 36 CFR Part 800; or

3. The tower is the subject of a pending environmental review or related proceeding before the FCC involving compliance with Section 106 of the National Historic Preservation Act; or

4. The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

IV. COLLOCATION OF ANTENNAS ON TOWERS CONSTRUCTED AFTER MARCH 16, 2001

A. An antenna may be mounted on an existing tower constructed after March 16, 2001 without such collocation being reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless:

1. The Section 106 review process for the tower set forth in 36 CFR Part 800 and any associated environmental reviews required by the FCC have not been completed; or

2. The mounting of the new antenna will result in a substantial increase in the size of the tower as defined in Stipulation I.C, above; or

3. The tower as built or proposed has been determined by the FCC to have an effect on one or more historic properties, unless such effect has been found to be not adverse through a no adverse effect finding, or if found to be adverse or potentially adverse, has been resolved, such as through a conditional no adverse effect determination, a Memorandum of Agreement, a programmatic agreement, or otherwise in compliance with Section 106 and Subpart B of 36 CFR Part 800; or

4. The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

V. COLLOCATION OF ANTENNAS ON BUILDINGS AND NON-TOWER STRUCTURES OUTSIDE OF HISTORIC DISTRICTS

A. An antenna may be mounted on a building or non-tower structure without such collocation being reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless:

. The building or structure is over 45 years old;¹ or

¹ Suitable methods for determining the age of a building include, but are not limited to: (1) obtaining the opinion of a consultant who meets the Secretary of Interior's Professional Qualifications Standards (36 CFR Part 61) or (2)

2. The building or structure is inside the boundary of a historic district, or if the antenna is visible from the ground level of the historic district, the building or structure is within 250 feet of the boundary of the historic district; or

3. The building or non-tower structure is a designated National Historic Landmark, or listed in or eligible for listing in the National Register of Historic Places based upon the review of the licensee, tower company or applicant for an antenna license; or

4. The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

B. Subsequent to the collocation of an antenna, should the SHPO/THPO or Council determine that the collocation of the antenna or its associated equipment installed under the terms of Stipulation V has resulted in an adverse effect on historic properties, the SHPO/THPO or Council may notify the FCC accordingly. The FCC shall comply with the requirements of Section 106 and 36 CFR Part 800 for this particular collocation.

VI. RESERVATION OF RIGHTS

Neither execution of this Agreement, nor implementation of or compliance with any term herein shall operate in any way as a waiver by any party hereto, or by any person or entity complying herewith or affected hereby, of a right to assert in any court of law any claim, argument or defense regarding the validity or interpretation of any provision of the National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*) or its implementing regulations contained in 36 CFR Part 800.

VII. MONITORING

A. FCC licensees shall retain records of the placement of all licensed antennas, including collocations subject to this Nationwide Programmatic Agreement, consistent with FCC rules and procedures.

B. The Council will forward to the FCC and the relevant SHPO any written objections it receives from members of the public regarding a collocation activity or general compliance with the provisions of this Nationwide Programmatic Agreement within thirty (30) days following receipt of the written objection. The FCC will forward a copy of the written objection to the appropriate licensee or tower owner.

VIII. AMENDMENTS

If any signatory to this Nationwide Collocation Programmatic Agreement believes that this Agreement should be amended, that signatory may at any time propose amendments, whereupon the signatories will consult to consider the amendments. This agreement may be amended only upon the written concurrence of the signatories.

consulting public records.

IX. TERMINATION

A. If the FCC determines that it cannot implement the terms of this Nationwide Collocation Programmatic Agreement, or if the FCC, NCSHPO or the Council determines that the Programmatic Agreement is not being properly implemented by the parties to this Programmatic Agreement, the FCC, NCSHPO or the Council may propose to the other signatories that the Programmatic Agreement be terminated.

B. The party proposing to terminate the Programmatic Agreement shall notify the other signatories in writing, explaining the reasons for the proposed termination and the particulars of the asserted improper implementation. Such party also shall afford the other signatories a reasonable period of time of no less than thirty (30) days to consult and remedy the problems resulting in improper implementation. Upon receipt of such notice, the parties shall consult with each other and notify and consult with other entities that are either involved in such implementation or that would be substantially affected by termination of this Agreement, and seek alternatives to termination. Should the consultation fail to produce within the original remedy period or any extension, a reasonable alternative to termination, a resolution of the stated problems, or convincing evidence of substantial implementation of this Agreement in accordance with its terms, this Programmatic Agreement shall be terminated thirty days after notice of termination is served on all parties and published in the Federal Register.

C. In the event that the Programmatic Agreement is terminated, the FCC shall advise its licensees and tower construction companies of the termination and of the need to comply with any applicable Section 106 requirements on a case-by-case basis for collocation activities.

X ANNUAL MEETING OF THE SIGNATORIES

The signatories to this Nationwide Collocation Programmatic Agreement will meet on or about September 10, 2001, and on or about September 10 in each subsequent year, to discuss the effectiveness of this Agreement, including any issues related to improper implementation, and to discuss any potential amendments that would improve the effectiveness of this Agreement.

XI. DURATION OF THE PROGRAMMATIC AGREEMENT

This Programmatic Agreement for collocation shall remain in force unless the Programmatic Agreement is terminated or superseded by a comprehensive Programmatic Agreement for wireless communications antennas.

Execution of this Nationwide Programmatic Agreement by the FCC, NCSHPO and the Council, and implementation of its terms, evidence that the FCC has afforded the Council an opportunity to comment on the collocation as described herein of antennas covered under the FCC's rules, and that the FCC has taken into account the effects of these collocations on historic properties in accordance with Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR Part 800.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Sugrue Date: 3/15/01

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Catherine B. Latta Date: 3-16-01

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

Justine E. Bittner Date: 3-16-01

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Appendix G-3
Nationwide Programmatic Agreement
for Review of Effects on Historic Properties
for Certain Undertakings
Approved by the Federal Communications Commission
(September 2004)

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**NATIONWIDE PROGRAMMATIC AGREEMENT FOR REVIEW OF
EFFECTS ON HISTORIC PROPERTIES FOR
CERTAIN UNDERTAKINGS APPROVED BY THE FEDERAL
COMMUNICATIONS COMMISSION**

September 2004

INTRODUCTION

WHEREAS, Section 106 of the National Historic Preservation Act of 1966, as amended (“NHPA”) (codified at 16 U.S.C. § 470f), requires federal agencies to take into account the effects of certain of their Undertakings on Historic Properties (see Section II, below), included in or eligible for inclusion in the National Register of Historic Places (“National Register”), and to afford the Advisory Council on Historic Preservation (“Council”) a reasonable opportunity to comment with regard to such Undertakings; and

WHEREAS, under the authority granted by Congress in the Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*), the Federal Communications Commission (“Commission”) establishes rules and procedures for the licensing of non-federal government communications services, and the registration of certain antenna structures in the United States and its Possessions and Territories; and

WHEREAS, Congress and the Commission have deregulated or streamlined the application process regarding the construction of individual Facilities in many of the Commission’s licensed services; and

WHEREAS, under the framework established in the Commission’s environmental rules, 47 C.F.R. §§ 1.1301-1.1319, Commission licensees and applicants for authorizations and antenna structure registrations are required to prepare, and the Commission is required to independently review and approve, a pre-construction Environmental Assessment (“EA”) in cases where a proposed tower or antenna may significantly affect the environment, including situations where a proposed tower or antenna may affect Historic Properties that are either listed in or eligible for listing in the National Register, including properties of religious and cultural importance to an Indian tribe or Native Hawaiian organization (“NHO”) that meet the National Register criteria; and

WHEREAS, the Council has adopted rules implementing Section 106 of the NHPA (codified at 36 C.F.R. Part 800) and setting forth the process, called the “Section 106 process,” for complying with the NHPA; and

WHEREAS, pursuant to the Commission’s rules and the terms of this Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission (“Nationwide

Agreement”), Applicants (*see* Section II.A.2) have been authorized, consistent with the terms of the memorandum from the Council to the Commission, titled “Delegation of Authority for the Section 106 Review of Telecommunications Projects,” dated September 21, 2000, to initiate, coordinate, and assist the Commission with compliance with many aspects of the Section 106 review process for their Facilities; and

WHEREAS, in August 2000, the Council established a Telecommunications Working Group (the “Working Group”) to provide a forum for the Commission, the Council, the National Conference of State Historic Preservation Officers (“Conference”), individual State Historic Preservation Officers (“SHPOs”), Tribal Historic Preservation Officers (“THPOs”), other tribal representatives, communications industry representatives, and other interested members of the public to discuss improved Section 106 compliance and to develop methods of streamlining the Section 106 review process; and

WHEREAS, Section 214 of the NHPA (16 U.S.C. § 470v) authorizes the Council to promulgate regulations implementing exclusions from Section 106 review, and Section 800.14(b) of the Council’s regulations (36 C.F.R § 800.14(b)) allows for programmatic agreements to streamline and tailor the Section 106 review process to particular federal programs, if they are consistent with the Council’s regulations; and

WHEREAS, the Commission, the Council, and the Conference executed on March 16, 2001, the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (the “Collocation Agreement”), in order to streamline review for the collocation of antennas on existing towers and other structures and thereby reduce the need for the construction of new towers (Attachment 1 to this Nationwide Agreement); and

WHEREAS, the Council, the Conference, and the Commission now agree it is desirable to further streamline and tailor the Section 106 review process for Facilities that are not excluded from Section 106 review under the Collocation Agreement while protecting Historic Properties that are either listed in or eligible for listing in the National Register; and

WHEREAS, the Working Group agrees that a nationwide programmatic agreement is a desirable and effective way to further streamline and tailor the Section 106 review process as it applies to Facilities; and

WHEREAS, this Nationwide Agreement will, upon its execution by the Council, the Conference, and the Commission, constitute a substitute for the Council’s rules with respect to certain Commission Undertakings; and

WHEREAS, the Commission sought public comment on a draft of this Nationwide Agreement through a *Notice of Proposed Rulemaking* released on June 9, 2003;

WHEREAS, the Commission has actively sought and received participation and comment from Indian tribes and NHOs regarding this Nationwide Agreement; and

WHEREAS, the Commission has consulted with federally recognized Indian tribes regarding this Nationwide Agreement (*see Report and Order*, FCC 04-222, at para. 31); and

WHEREAS, this Nationwide Agreement provides for appropriate public notification and participation in connection with the Section 106 process; and

WHEREAS, Section 101(d)(6) of the NHPA provides that federal agencies “shall consult with any Indian tribe or Native Hawaiian organization” that attaches religious and cultural significance to properties of traditional religious and cultural importance that may be determined to be eligible for inclusion in the National Register and that might be affected by a federal undertaking (16 U.S.C. § 470a(d)(6)); and

WHEREAS, the Commission has adopted a “Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes” dated June 23, 2000, pursuant to which the Commission: recognizes the unique legal relationship that exists between the federal government and Indian tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions; affirms the federal trust relationship with Indian tribes, and recognizes that this historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian tribes; commits to working with Indian tribes on a government-to-government basis consistent with the principles of tribal self-governance; commits, in accordance with the federal government’s trust responsibility, and to the extent practicable, to consult with tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect tribal governments, their land and resources; strives to develop working relationships with tribal governments, and will endeavor to identify innovative mechanisms to facilitate tribal consultations in the Commission’s regulatory processes; and endeavors to streamline its administrative process and procedures to remove undue burdens that its decisions and actions place on Indian tribes; and

WHEREAS, the Commission does not delegate under this Programmatic Agreement any portion of its responsibilities to Indian tribes and NHOs, including its obligation to consult under Section 101(d)(6) of the NHPA; and

WHEREAS, the terms of this Nationwide Agreement are consistent with and do not attempt to abrogate the rights of Indian tribes or NHOs to consult directly with the Commission regarding the construction of Facilities; and

WHEREAS, the execution and implementation of this Nationwide Agreement will not preclude Indian tribes or NHOs, SHPO/THPOs, local governments, or members of the public from filing complaints with the Commission or the Council regarding effects on Historic Properties from any Facility or any activity covered under the terms of the Nationwide Agreement; and

WHEREAS, Indian tribes and NHOs may request Council involvement in Section 106 cases that present issues of concern to Indian tribes or NHOs (see 36 C.F.R. Part 800, Appendix A, Section (c)(4)); and

WHEREAS, the Commission, after consulting with federally recognized Indian tribes, has developed an electronic Tower Construction Notification System through which Indian tribes and NHOs may voluntarily identify the geographic areas in which Historic Properties to which they attach religious and cultural significance may be located, Applicants may ascertain which participating Indian tribes and NHOs have identified such an interest in the geographic area in which they propose to construct Facilities, and Applicants may voluntarily provide electronic notification of proposed Facilities construction for the Commission to forward to participating Indian tribes, NHOs, and SHPOs/THPOs; and

WHEREAS, the Council, the Conference and the Commission recognize that Applicants' use of qualified professionals experienced with the NHPA and Section 106 can streamline the review process and minimize potential delays; and

WHEREAS, the Commission has created a position and hired a cultural resources professional to assist with the Section 106 process; and

WHEREAS, upon execution of this Nationwide Agreement, the Council may still provide advisory comments to the Commission regarding the coordination of Section 106 reviews; notify the Commission of concerns raised by consulting parties and the public regarding an Undertaking; and participate in the resolution of adverse effects for complex, controversial, or other non-routine projects;

NOW THEREFORE, in consideration of the above provisions and of the covenants and agreements contained herein, the Council, the Conference and the Commission (the "Parties") agree as follows:

I. APPLICABILITY AND SCOPE OF THIS NATIONWIDE AGREEMENT

- A. This Nationwide Agreement (1) excludes from Section 106 review certain Undertakings involving the construction and modification of Facilities, and (2) streamlines and tailors the Section 106 review process for other Undertakings involving the construction and modification of Facilities. An illustrative list of Commission activities in relation to which Undertakings covered by this Agreement may occur is provided as Attachment 2 to this Agreement.
- B. This Nationwide Agreement applies only to federal Undertakings as determined by the Commission ("Undertakings"). The Commission has sole authority to determine what activities undertaken by the Commission or its Applicants constitute Undertakings within the meaning of the NHPA. Nothing in this Agreement shall preclude the Commission from revisiting or affect the existing ability of any person to challenge any prior determination of what does or does not constitute an Undertaking. Maintenance and servicing of Towers, Antennas, and associated equipment are not deemed to be Undertakings subject to Section 106 review.

- C. This Agreement does not apply to Antenna Collocations that are exempt from Section 106 review under the Collocation Agreement (see Attachment 1). Pursuant to the terms of the Collocation Agreement, such Collocations shall not be subject to the Section 106 review process and shall not be submitted to the SHPO/THPO for review. This Agreement does apply to collocations that are not exempt from Section 106 review under the Collocation Agreement.
- D. This Agreement does not apply on “tribal lands” as defined under Section 800.16(x) of the Council’s regulations, 36 C.F.R. § 800.16(x) (“Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.”). This Nationwide Agreement, however, will apply on tribal lands should a tribe, pursuant to appropriate tribal procedures and upon reasonable notice to the Council, Commission, and appropriate SHPO/THPO, elect to adopt the provisions of this Nationwide Agreement. Where a tribe that has assumed SHPO functions pursuant to Section 101(d)(2) of the NHPA (16 U.S.C. § 470(d)(2)) has agreed to application of this Nationwide Agreement on tribal lands, the term SHPO/THPO denotes the Tribal Historic Preservation Officer with respect to review of proposed Undertakings on those tribal lands. Where a tribe that has not assumed SHPO functions has agreed to application of this Nationwide Agreement on tribal lands, the tribe may notify the Commission of the tribe’s intention to perform the duties of a SHPO/THPO, as defined in this Nationwide Agreement, for proposed Undertakings on its tribal lands, and in such instances the term SHPO/THPO denotes both the State Historic Preservation Officer and the tribe’s authorized representative. In all other instances, the term SHPO/THPO denotes the State Historic Preservation Officer.
- E. This Nationwide Agreement governs only review of Undertakings under Section 106 of the NHPA. Applicants completing the Section 106 review process under the terms of this Nationwide Agreement may not initiate construction without completing any environmental review that is otherwise required for effects other than historic preservation under the Commission’s rules (See 47 C.F.R. §§ 1.1301-1.1319). Completion of the Section 106 review process under this Nationwide Agreement satisfies an Applicant’s obligations under the Commission’s rules with respect to Historic Properties, except for Undertakings that have been determined to have an adverse effect on Historic Properties and that therefore require preparation and filing of an Environmental Assessment (See 47 C.F.R. § 1.1307(a)(4)).
- F. This Nationwide Agreement does not govern any Section 106 responsibilities that agencies other than the Commission may have with respect to those agencies’ federal Undertakings.

II. DEFINITIONS

A. The following terms are used in this Nationwide Agreement as defined below:

1. **Antenna.** An apparatus designed for the purpose of emitting radio frequency (“RF”) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a Tower, structure, or building as part of the original installation of the antenna. For most services, an Antenna will be mounted on or in, and is distinct from, a supporting structure such as a Tower, structure or building. However, in the case of AM broadcast stations, the entire Tower or group of Towers constitutes the Antenna for that station. For purposes of this Nationwide Agreement, the term Antenna does not include unintentional radiators, mobile stations, or devices authorized under Part 15 of the Commission’s rules.
2. **Applicant.** A Commission licensee, permittee, or registration holder, or an applicant or prospective applicant for a wireless or broadcast license, authorization or antenna structure registration, and the duly authorized agents, employees, and contractors of any such person or entity.
3. **Area of Potential Effects (“APE”).** The geographic area or areas within which an Undertaking may directly or indirectly cause alterations in the character or use of Historic Properties, if any such properties exist.
4. **Collocation.** The mounting or installation of an Antenna on an existing Tower, building, or structure for the purpose of transmitting radio frequency signals for telecommunications or broadcast purposes.
5. **Effect.** An alteration to the characteristics of a Historic Property qualifying it for inclusion in or eligibility for the National Register.
6. **Experimental Authorization.** An authorization issued to conduct experimentation utilizing radio waves for gathering scientific or technical operation data directed toward the improvement or extension of an established service and not intended for reception and use by the general public. “Experimental Authorization” does not include an “Experimental Broadcast Station” authorized under Part 74 of the Commission’s rules.
7. **Facility.** A Tower or an Antenna. The term Facility may also refer to a Tower and its associated Antenna(s).

8. **Field Survey.** A research strategy that utilizes one or more visits to the area where construction is proposed as a means of identifying Historic Properties.
 9. **Historic Property.** Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or NHO that meet the National Register criteria.
 10. **National Register.** The National Register of Historic Places, maintained by the Secretary of the Interior's office of the Keeper of the National Register.
SHPO/THPO Inventory. A set of records of previously gathered information, authorized by state or tribal law, on the absence, presence and significance of historic and archeological resources within the state or tribal land.
 12. **Special Temporary Authorization.** Authorization granted to a permittee or licensee to allow the operation of a station for a limited period at a specified variance from the terms of the station's permanent authorization or requirements of the Commission's rules applicable to the particular class or type of station.
 13. **Submission Packet.** The document to be submitted initially to the SHPO/THPO to facilitate review of the Applicant's findings and any determinations with regard to the potential impact of the proposed Undertaking on Historic Properties in the APE. There are two Submission Packets: (a) The New Tower Submission Packet (FCC Form 620) (See Attachment 3) and (b) The Collocation Submission Packet (FCC Form 621) (See Attachment 4). Any documents required to be submitted along with a Form are part of the Submission Packet.
 14. **Tower.** Any structure built for the sole or primary purpose of supporting Commission-licensed or authorized Antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that Tower but not installed as part of an Antenna as defined herein.
- B. All other terms not defined above or elsewhere in this Nationwide Agreement shall have the same meaning as set forth in the Council's rules section on Definitions (36 C.F.R. § 800.16) or the Commission's rules (47 C.F.R. Chapter I).

- C. For the calculation of time periods under this Agreement, “days” mean “calendar days.” Any time period specified in the Agreement that ends on a weekend or a Federal or State holiday is extended until the close of the following business day.
- D. Written communications include communications by e-mail or facsimile.

III. UNDERTAKINGS EXCLUDED FROM SECTION 106 REVIEW

Undertakings that fall within the provisions listed in the following sections III.A. through III.F. are excluded from Section 106 review by the SHPO/THPO, the Commission, and the Council, and, accordingly, shall not be submitted to the SHPO/THPO for review. The determination that an exclusion applies to an Undertaking should be made by an authorized individual within the Applicant’s organization, and Applicants should retain documentation of their determination that an exclusion applies. Concerns regarding the application of these exclusions from Section 106 review may be presented to and considered by the Commission pursuant to Section XI.

- A. Enhancement of a tower and any associated excavation that does not involve a collocation and does not substantially increase the size of the existing tower, as defined in the Collocation Agreement. For towers constructed after March 16, 2001, this exclusion applies only if the tower has completed the Section 106 review process and any associated environmental reviews required by the Commission.
- B. Construction of a replacement for an existing communications tower and any associated excavation that does not substantially increase the size of the existing tower under elements 1-3 of the definition as defined in the Collocation Agreement (see Attachment 1 to this Agreement, Stipulation 1.c.1-3) and that does not expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet in any direction or involve excavation outside these expanded boundaries or outside any existing access or utility easement related to the site. For towers constructed after March 16, 2001, this exclusion applies only if the tower has completed the Section 106 review process and any associated environmental reviews required by the Commission’s rules.
- C. Construction of any temporary communications Tower, Antenna structure, or related Facility that involves no excavation or where all areas to be excavated will be located in areas described in Section VI.D.2.c.i below, including but not limited to the following:
 - 1. A Tower or Antenna authorized by the Commission for a temporary period, such as any Facility authorized by a Commission grant of Special Temporary Authority (“STA”) or emergency authorization;

2. A cell on wheels (COW) transmission Facility;
3. A broadcast auxiliary services truck, TV pickup station, remote pickup broadcast station (e.g., electronic newsgathering vehicle) authorized under Part 74 or temporary fixed or transportable earth station in the fixed satellite service (e.g., satellite newsgathering vehicle) authorized under Part 25;
4. A temporary ballast mount Tower;
5. Any Facility authorized by a Commission grant of an experimental authorization.

For purposes of this Section III.C, the term “temporary” means “for no more than twenty-four months duration except in the case of those Facilities associated with national security.”

- D. Construction of a Facility less than 200 feet in overall height above ground level in an existing industrial park,¹ commercial strip mall,² or shopping center³ that occupies a total land area of 100,000 square feet or more, provided that the industrial park, strip mall, or shopping center is not located within the boundaries of or within 500 feet of a Historic Property, as identified by the Applicant after a preliminary search of relevant records. Proposed Facilities within this exclusion must complete the process of participation of Indian tribes and NHOs pursuant to Section IV of this Agreement. If as a result of this process the Applicant or the Commission identifies a Historic Property that may be affected, the Applicant must complete the Section 106 review process pursuant to this Agreement notwithstanding the exclusion.
- E. Construction of a Facility in or within 50 feet of the outer boundary of a right-of-way designated by a Federal, State, local, or Tribal government for the location of communications Towers or above-ground utility transmission or

¹ A tract of land that is planned, developed, and operated as an integrated facility for a number of individual industrial uses, with consideration to transportation facilities, circulation, parking, utility needs, aesthetics and compatibility.

² A structure or grouping of structures, housing retail business, set back far enough from the street to permit parking spaces to be placed between the building entrances and the public right of way.

³ A group of commercial establishments planned, constructed, and managed as a total entity, with customer and employee parking provided on-site, provision for goods delivery separated from customer access, aesthetic considerations and protection from the elements, and landscaping and signage in accordance with an approved plan.

distribution lines and associated structures and equipment and in active use for such purposes, provided:

1. The proposed Facility would not constitute a substantial increase in size, under elements 1-3 of the definition in the Collocation Agreement, over existing structures located in the right-of-way within the vicinity of the proposed Facility, and;
2. The proposed Facility would not be located within the boundaries of a Historic Property, as identified by the Applicant after a preliminary search of relevant records.

Proposed Facilities within this exclusion must complete the process of participation of Indian tribes and NHOs pursuant to Section IV of this Agreement. If as a result of this process the Applicant or the Commission identifies a Historic Property that may be affected, the Applicant must complete the Section 106 review process pursuant to this Agreement notwithstanding the exclusion.

- F. Construction of a Facility in any area previously designated by the SHPO/THPO at its discretion, following consultation with appropriate Indian tribes and NHOs, as having limited potential to affect Historic Properties. Such designation shall be documented by the SHPO/THPO and made available for public review.

IV. PARTICIPATION OF INDIAN TRIBES AND NATIVE HAWAIIAN ORGANIZATIONS IN UNDERTAKINGS OFF TRIBAL LANDS

- A. The Commission recognizes its responsibility to carry out consultation with any Indian tribe or NHO that attaches religious and cultural significance to a Historic Property if the property may be affected by a Commission undertaking. This responsibility is founded in Sections 101(d)(6)(a-b) and 106 of the NHPA (16 U.S.C. §§ 470a(d)(6)(a-b) and 470f), the regulations of the Council (36 C.F.R. Part 800), the Commission's environmental regulations (47 C.F.R. §§ 1.1301-1.1319), and the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions. This historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian Tribes. (*Commission Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*).
- B. As an initial step to enable the Commission to fulfill its duty of consultation, Applicants shall use reasonable and good faith efforts to identify any Indian tribe or NHO that may attach religious and cultural significance to Historic

Properties that may be affected by an Undertaking. Applicants should be aware that frequently, Historic Properties of religious and cultural significance to Indian tribes and NHOs are located on ancestral, aboriginal, or ceded lands of such tribes and organizations and Applicants should take this into account when complying with their responsibilities. Where an Indian tribe or NHO has voluntarily provided information to the Commission's Tower Construction Notification System regarding the geographic areas in which Historic Properties of religious and cultural significance to that Indian tribe or NHO may be located, reference to the Tower Construction Notification System shall constitute a reasonable and good faith effort at identification with respect to that Indian tribe or NHO. In addition, such reasonable and good faith efforts may include, but are not limited to, seeking relevant information from the relevant SHPO/THPO, Indian tribes, state agencies, the U.S. Bureau of Indian Affairs ("BIA"), or, where applicable, any federal agency with land holdings within the state (e.g., the U.S. Bureau of Land Management). Although these agencies can provide useful information in identifying potentially affected Indian tribes, contacting BIA, the SHPO or other federal and state agencies is not a substitute for seeking information directly from Indian tribes that may attach religious and cultural significance to a potentially affected Historic Property, as described below.

- C. After the Applicant has identified Indian tribes and NHOs that may attach religious and cultural significance to potentially affected Historic Properties, the Commission has the responsibility, and the Commission imposes on the Applicant the obligation, to ensure that contact is made at an early stage in the planning process with such Indian tribes and NHOs in order to begin the process of ascertaining whether such Historic Properties may be affected. This initial contact shall be made by the Commission or the Applicant, in accordance with the wishes of the Indian tribe or NHO. This contact shall constitute only an initial effort to contact the Indian tribe or NHO, and does not in itself fully satisfy the Applicant's obligations or substitute for government-to-government consultation unless the Indian tribe or NHO affirmatively disclaims further interest or the Indian tribe or NHO has otherwise agreed that such contact is sufficient. Depending on the preference of the Indian tribe or NHO, the means of initial contact may include, without limitation:

1. Electronic notification through the Commission's Tower Construction Notification System;
2. Written communication from the Commission at the request of the Applicant;
3. Written, e-mail, or telephonic notification directly from the Applicant to the Indian tribe or NHO;

4. Any other means that the Indian Tribe or NHO has informed the Commission are acceptable, including through the adoption of best practices pursuant to Section IV.J, below; or
 5. Any other means to which an Indian tribe or NHO and an Applicant have agreed pursuant to Section IV.K, below.
- D. The Commission will use its best efforts to ascertain the preferences of each Indian tribe and NHO for initial contact, and to make these preferences available to Applicants in a readily accessible format. In addition, the Commission will use its best efforts to ascertain, and to make available to Applicants, any locations or types of construction projects, within the broad geographic areas in which Historic Properties of religious and cultural significance to an Indian tribe or NHO may be located, for which the Indian tribe or NHO does not expect notification. To the extent they are comfortable doing so, the Commission encourages Indian tribes and NHOs to accept the Tower Construction Notification System as an efficient and thorough means of making initial contact.
- E. In the absence of any contrary indication of an Indian tribe's or NHO's preference, where an Applicant does not have a pre-existing relationship with an Indian tribe or NHO, initial contact with the Indian tribe or NHO shall be made through the Commission. Unless the Indian tribe or NHO has indicated otherwise, the Commission may make this initial contact through the Tower Construction Notification System. An Applicant that has a pre-existing relationship with an Indian tribe or NHO shall make initial contact in the manner that is customary to that relationship or in such other manner as may be accepted by the Indian tribe or NHO. An Applicant shall copy the Commission on any initial written or electronic direct contact with an Indian tribe or NHO, unless the Indian tribe or NHO has agreed through a best practices agreement or otherwise that such copying is not necessary.
- F. Applicants' direct contacts with Indian tribes and NHOs, where accepted by the Indian tribe or NHO, shall be made in a sensitive manner that is consistent with the reasonable wishes of the Indian tribe or NHO, where such wishes are known or can be reasonably ascertained. In general, unless an Indian tribe or NHO has provided guidance to the contrary, Applicants shall follow the following guidelines:
- All communications with Indian tribes shall be respectful of tribal sovereignty;
 2. Communications shall be directed to the appropriate representative designated or identified by the tribal government or other governing body;

3. Applicants shall provide all information reasonably necessary for the Indian tribe or NHO to evaluate whether Historic Properties of religious and cultural significance may be affected. The parties recognize that it may be neither feasible nor desirable to provide complete information about the project at the time of initial contact, particularly when initial contact is made early in the process. Unless the Indian tribe or NHO affirmatively disclaims interest, however, it shall be provided with complete information within the earliest reasonable time frame;
 4. The Applicant must ensure that Indian tribes and NHOs have a reasonable opportunity to respond to all communications. Ordinarily, 30 days from the time the relevant tribal or NHO representative may reasonably be expected to have received an inquiry shall be considered a reasonable time. Should a tribe or NHO request additional time to respond, the Applicant shall afford additional time as reasonable under the circumstances. However, where initial contact is made automatically through the Tower Construction Notification System, and where an Indian tribe or NHO has stated that it is not interested in reviewing proposed construction of certain types or in certain locations, the Applicant need not await a response to contact regarding proposed construction meeting that description;
 5. Applicants should not assume that failure to respond to a single communication establishes that an Indian tribe or NHO is not interested in participating, but should make a reasonable effort to follow up.
- G. The purposes of communications between the Applicant and Indian tribes or NHOs are: (1) to ascertain whether Historic Properties of religious and cultural significance to the Indian tribe or NHO may be affected by the undertaking and consultation is therefore necessary, and (2) where possible, with the concurrence of the Indian tribe or NHO, to reach an agreement on the presence or absence of effects that may obviate the need for consultation. Accordingly, the Applicant shall promptly refer to the Commission any request from a federally recognized Indian tribe for government-to-government consultation. The Commission will then carry out government-to-government consultation with the Indian tribe. Applicants shall also seek guidance from the Commission in the event of any substantive or procedural disagreement with an Indian tribe or NHO, or if the Indian tribe or NHO does not respond to the Applicant's inquiries. Applicants are strongly advised to seek guidance from the Commission in cases of doubt.
- H. If an Indian tribe or NHO indicates that a Historic Property of religious and cultural significance to it may be affected, the Applicant shall invite the

commenting tribe or organization to become a consulting party. If the Indian tribe or NHO agrees to become a consulting party, it shall be afforded that status and shall be provided with all of the information, copies of submissions, and other prerogatives of a consulting party as provided for in 36 C.F.R. § 800.2.

- I. Information regarding Historic Properties to which Indian tribes or NHOs attach religious and cultural significance may be highly confidential, private, and sensitive. If an Indian tribe or NHO requests confidentiality from the Applicant, the Applicant shall honor this request and shall, in turn, request confidential treatment of such materials or information in accordance with the Commission's rules and Section 304 of the NHPA (16 U.S.C. § 470w-3(a)) in the event they are submitted to the Commission. The Commission shall provide such confidential treatment consistent with its rules and applicable federal laws. Although the Commission will strive to protect the privacy interests of all parties, the Commission cannot guarantee its own ability or the ability of Applicants to protect confidential, private, and sensitive information from disclosure under all circumstances.
- J. In order to promote efficiency, minimize misunderstandings, and ensure that communications among the parties are made in accordance with each Indian tribe or NHO's reasonable preferences, the Commission will use its best efforts to arrive at agreements regarding best practices with Indian tribes and NHOs and their representatives. Such best practices may include means of making initial contacts with Indian tribes and NHOs as well as guidelines for subsequent discussions between Applicants and Indian tribes or NHOs in fulfillment of the requirements of the Section 106 process. To the extent possible, the Commission will strive to achieve consistency among best practice agreements with Indian tribes and NHOs. Where best practices exist, the Commission encourages Applicants to follow those best practices.
- K. Nothing in this Section shall be construed to prohibit or limit Applicants and Indian tribes or NHOs from entering into or continuing pre-existing arrangements or agreements governing their contacts, provided such arrangements or agreements are otherwise consistent with federal law and no modification is made in the roles of other parties to the process under this Nationwide Agreement without their consent. Documentation of such alternative arrangements or agreements should be filed with the Commission.

V. PUBLIC PARTICIPATION AND CONSULTING PARTIES

- A. On or before the date an Applicant submits the appropriate Submission Packet to the SHPO/THPO, as prescribed by Section VII, below, the Applicant shall provide the local government that has primary land use jurisdiction over the

site of the planned Undertaking with written notification of the planned Undertaking.

- B. On or before the date an Applicant submits the appropriate Submission Packet to the SHPO/THPO, as prescribed by Section VII, below, the Applicant shall provide written notice to the public of the planned Undertaking. Such notice may be accomplished (1) through the public notification provisions of the relevant local zoning or local historic preservation process for the proposed Facility; or (2) by publication in a local newspaper of general circulation. In the alternative, an Applicant may use other appropriate means of providing public notice, including seeking the assistance of the local government.
- C. The written notice to the local government and to the public shall include: (1) the location of the proposed Facility including its street address; (2) a description of the proposed Facility including its height and type of structure; (3) instruction on how to submit comments regarding potential effects on Historic Properties; and (4) the name, address, and telephone number of a contact person.
- D. A SHPO/THPO may make available lists of other groups, including Indian tribes, NHOs and organizations of Indian tribes or NHOs, which should be provided notice for Undertakings to be located in particular areas.
- E. If the Applicant receives a comment regarding potentially affected Historic Properties, the Applicant shall consider the comment and either include it in the initial submission to the SHPO/THPO, or, if the initial submission has already been made, immediately forward the comment to the SHPO/THPO for review. An Applicant need not submit to the SHPO/THPO any comment that does not substantially relate to potentially affected Historic Properties.
- F. The relevant SHPO/THPO, Indian tribes and NHOs that attach religious and cultural significance to Historic Properties that may be affected, and the local government are entitled to be consulting parties in the Section 106 review of an Undertaking. The Council may enter the Section 106 process for a given Undertaking, on Commission invitation or on its own decision, in accordance with 36 C.F.R. Part 800, Appendix A. An Applicant shall consider all written requests of other individuals and organizations to participate as consulting parties and determine which should be consulting parties. An Applicant is encouraged to grant such status to individuals or organizations with a demonstrated legal or economic interest in the Undertaking, or demonstrated expertise or standing as a representative of local or public interest in historic or cultural resources preservation. Any such individual or organization denied consulting party status may petition the Commission for review of such denial. Applicants may seek assistance from the Commission in identifying

and involving consulting parties. All entities granted consulting party status shall be identified to the SHPO/THPO as part of the Submission Packet.

- G. Consulting parties are entitled to: (1) receive notices, copies of submission packets, correspondence and other documents provided to the SHPO/THPO in a Section 106 review; and (2) be provided an opportunity to have their views expressed and taken into account by the Applicant, the SHPO/THPO and, where appropriate, by the Commission.

VI. IDENTIFICATION, EVALUATION, AND ASSESSMENT OF EFFECTS

- A. In preparing the Submission Packet for the SHPO/THPO and consulting parties pursuant to Section VII of this Nationwide Agreement and Attachments 3 and 4, the Applicant shall: (1) define the area of potential effects (APE); (2) identify Historic Properties within the APE; (3) evaluate the historic significance of identified properties as appropriate; and (4) assess the effects of the Undertaking on Historic Properties. The standards and procedures described below shall be applied by the Applicant in preparing the Submission Packet, by the SHPO/THPO in reviewing the Submission Packet, and where appropriate, by the Commission in making findings.

- B. Exclusion of Specific Geographic Areas from Review.

The SHPO/THPO, consistent with relevant State or tribal procedures, may specify geographic areas in which no review is required for direct effects on archeological resources or no review is required for visual effects.

- C. Area of Potential Effects.

The term “Area of Potential Effects” is defined in Section II.A.3 of this Nationwide Agreement. For purposes of this Nationwide Agreement, the APE for direct effects and the APE for visual effects are further defined and are to be established as described below.

- 2. The APE for direct effects is limited to the area of potential ground disturbance and any property, or any portion thereof, that will be physically altered or destroyed by the Undertaking.
- 3. The APE for visual effects is the geographic area in which the Undertaking has the potential to introduce visual elements that diminish or alter the setting, including the landscape, where the setting is a character-defining feature of a Historic Property that makes it eligible for listing on the National Register.

4. Unless otherwise established through consultation with the SHPO/THPO, the presumed APE for visual effects for construction of new Facilities is the area from which the Tower will be visible:
 - a. Within a half mile from the tower site if the proposed Tower is 200 feet or less in overall height;
 - b. Within $\frac{3}{4}$ of a mile from the tower site if the proposed Tower is more than 200 but no more than 400 feet in overall height; or
 - c. Within $1\frac{1}{2}$ miles from the proposed tower site if the proposed Tower is more than 400 feet in overall height.
5. In the event the Applicant determines, or the SHPO/THPO recommends, that an alternative APE for visual effects is necessary, the Applicant and the SHPO/THPO may mutually agree to an alternative APE.
6. If the Applicant and the SHPO/THPO, after using good faith efforts, cannot reach an agreement on the use of an alternative APE, either the Applicant or the SHPO/THPO may submit the issue to the Commission for resolution. The Commission shall make its determination concerning an alternative APE within a reasonable time.

D. Identification and Evaluation of Historic Properties.

- 1 Identification and Evaluation of Historic Properties Within the APE for Visual Effects.
 - a. Except to identify Historic Properties of religious and cultural significance to Indian tribes and NHOs, Applicants shall identify Historic Properties within the APE for visual effects by reviewing the following records. Applicants are required to review such records only to the extent they are available at the offices of the SHPO/THPO or can be found in publicly available sources identified by the SHPO/THPO. With respect to these properties, Applicants are not required to undertake a Field Survey or other measures other than reviewing these records in order to identify Historic Properties:
 - Properties listed in the National Register;
 - ii Properties formally determined eligible for listing by the Keeper of the National Register;

- iii. Properties that the SHPO/THPO certifies are in the process of being nominated to the National Register;
 - iv. Properties previously determined eligible as part of a consensus determination of eligibility between the SHPO/THPO and a Federal Agency or local government representing the Department of Housing and Urban Development (HUD); and
 - v. Properties listed in the SHPO/THPO Inventory that the SHPO/THPO has previously evaluated and found to meet the National Register criteria, and that are identified accordingly in the SHPO/THPO Inventory.
- b. At an early stage in the planning process and in accordance with Section IV of this Nationwide Agreement, the Commission or the Applicant, as appropriate, shall gather information from Indian tribes or NHOs identified pursuant to Section IV.B to assist in identifying Historic Properties of religious and cultural significance to them within the APE for visual effects. Such information gathering may include a Field Survey where appropriate.
- c. Based on the sources listed above and public comment received pursuant to Section V of this Nationwide Agreement, the Applicant shall include in its Submission Packet a list of properties it has identified as apparent Historic Properties within the APE for visual effects.
- During the review period described in Section VII.A, the SHPO/THPO may identify additional properties included in the SHPO/THPO Inventory and located within the APE that the SHPO/THPO considers eligible for listing on the National Register, and notify the Applicant pursuant to Section VII.A.4.
- ii. The SHPO/THPO may also advise the Applicant that previously identified properties on the list no longer qualify for inclusion in the National Register.
- d. Applicants are encouraged at their discretion to use the services of professionals who meet the Secretary of the Interior's Professional Qualification Standards when identifying Historic Properties within the APE for visual effects.

- e. Applicants are not required to evaluate the historic significance of properties identified pursuant to Section VI.D.1.a., but may rely on the previous evaluation of these properties. Applicants may, at their discretion, evaluate whether such properties are no longer eligible for inclusion in the National Register and recommend to the SHPO/THPO their removal from consideration. Any such evaluation shall be performed by a professional who meets the Secretary of the Interior's Professional Qualification Standards.
2. Identification and Evaluation of Historic Properties Within the APE for Direct Effects.
- a. In addition to the properties identified pursuant to Section VI.D.1, Applicants shall make a reasonable good faith effort to identify other above ground and archeological Historic Properties, including buildings, structures, and historic districts, that lie within the APE for direct effects. Such reasonable and good faith efforts may include a Field Survey where appropriate.
 - b. Identification and evaluation of Historic Properties within the APE for direct effects, including any finding that an archeological Field Survey is not required, shall be undertaken by a professional who meets the Secretary of the Interior's Professional Qualification Standards. Identification and evaluation relating to archeological resources shall be performed by a professional who meets the Secretary of the Interior's Professional Qualification Standards in archeology.

Except as provided below, the Applicant need not undertake a Field Survey for archeological resources where:

- the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least 2 feet as documented in the Applicant's siting analysis; or
 - ii. geomorphological evidence indicates that cultural resource-bearing soils do not occur within the project area or may occur but at depths that exceed 2 feet below the proposed construction depth.
- d. At an early stage in the planning process and in accordance with Section IV of this Nationwide Agreement, the

Commission or the Applicant, as appropriate, shall gather information from Indian tribes or NHOs identified pursuant to Section IV.B to assist in identifying archeological Historic Properties of religious and cultural significance to them within the APE for direct effects. If an Indian tribe or NHO provides evidence that supports a high probability of the presence of intact archeological Historic Properties within the APE for direct effects, the Applicant shall conduct an archeological Field Survey notwithstanding Section VI.D.2.c.

- e. Where the Applicant pursuant to Sections VI.D.2.c and VI.D.2.d finds that no archeological Field Survey is necessary, it shall include in its Submission Packet a report substantiating this finding. During the review period described in Section VII.A, the SHPO/THPO may, based on evidence that supports a high probability of the presence of intact archeological Historic Properties within the APE for direct effects, notify the Applicant that the Submission Packet is inadequate without an archeological Field Survey pursuant to Section VII.A.4.
- f. The Applicant shall conduct an archeological Field Survey within the APE for direct effects if neither of the conditions in Section VI.D.2.c applies, or if required pursuant to Section VI.D.2.d or e. The Field Survey shall be conducted in consultation with the SHPO/THPO and consulting Indian tribes or NHOs.
- g. The Applicant, in consultation with the SHPO/THPO and appropriate Indian tribes or NHOs, shall apply the National Register criteria (36 C.F.R. Part 63) to properties identified within the APE for direct effects that have not previously been evaluated for National Register eligibility, with the exception of those identified pursuant to Section VI.D.1.a.

3. Dispute Resolution

Where there is a disagreement regarding the identification or eligibility of a property, and after attempting in good faith to resolve the issue the Applicant and the SHPO/THPO continue to disagree, the Applicant or the SHPO/THPO may submit the issue to the Commission. The Commission shall handle such submissions in accordance with 36 C.F.R. § 800.4(c)(2).

E. Assessment of Effects

1. Applicants shall assess effects of the Undertaking on Historic Properties using the Criteria of Adverse Effect (36 C.F.R. § 800.5(a)(1)).
2. In determining whether Historic Properties in the APE may be adversely affected by the Undertaking, the Applicant should consider factors such as the topography, vegetation, known presence of Historic Properties, and existing land use.
3. An Undertaking will have a visual adverse effect on a Historic Property if the visual effect from the Facility will noticeably diminish the integrity of one or more of the characteristics qualifying the property for inclusion in or eligibility for the National Register. Construction of a Facility will not cause a visual adverse effect except where visual setting or visual elements are character-defining features of eligibility of a Historic Property located within the APE.
4. For collocations not excluded from review by the Collocation Agreement or this Agreement, the assessment of effects will consider only effects from the newly added or modified Facilities and not effects from the existing Tower or Antenna.
5. Assessment pursuant to this Agreement shall be performed by professionals who meet the Secretary of the Interior's Professional Qualification Standards.

VII. PROCEDURES

A. Use of the Submission Packet.

1. For each Undertaking within the scope of this Nationwide Agreement, the Applicant shall initially determine whether there are no Historic Properties affected, no adverse effect on Historic Properties, or an adverse effect on Historic Properties. The Applicant shall prepare a Submission Packet and submit it to the SHPO/THPO and to all consulting parties, including any Indian tribe or NHO that is participating as a consulting party.
2. The SHPO/THPO shall have 30 days from receipt of the requisite documentation to review the Submission Packet.
3. If the SHPO/THPO receives a comment or objection, in accordance with Section V.E, more than 25 but less than 31 days following its receipt of the initial submission, the SHPO/THPO shall have five calendar days to consider such comment or objection before the Section 106 process is complete or the matter may be submitted to the Commission.

4. If the SHPO/THPO determines the Applicant's Submission Packet is inadequate, or if the SHPO/THPO identifies additional Historic Properties within the APE, the SHPO/THPO will immediately notify the Applicant and describe any deficiencies. The SHPO/THPO may close its file without prejudice if the Applicant does not resubmit an amended Submission Packet within 60 days following the Applicant's receipt of the returned Submission Packet. Resubmission of the Submission Packet to the SHPO/THPO commences a new 30 day period for review.

B. Determinations of No Historic Properties Affected.

1. If the SHPO/THPO concurs in writing with the Applicant's determination of no Historic Properties affected, it is deemed that no Historic Properties exist within the APE or the Undertaking will have no effect on any Historic Properties located within the APE. The Section 106 process is then complete, and the Applicant may proceed with the project, unless further processing for reasons other than Section 106 is required.
2. If the SHPO/THPO does not provide written notice to the Applicant that it agrees or disagrees with the Applicant's determination of no Historic Properties affected within 30 days following receipt of a complete Submission Packet, it is deemed that no Historic Properties exist within the APE or the Undertaking will have no effect on Historic Properties. The Section 106 process is then complete and the Applicant may proceed with the project, unless further processing for reasons other than Section 106 is required.
3. If the SHPO/THPO provides written notice within 30 days following receipt of the Submission Packet that it disagrees with the Applicant's determination of no Historic Properties affected, it should provide a short and concise explanation of exactly how the criteria of eligibility and/or criteria of Adverse Effect would apply. The Applicant and the SHPO/THPO should engage in further discussions and make a reasonable and good faith effort to resolve their disagreement.
4. If the SHPO/THPO and Applicant do not resolve their disagreement, the Applicant may at any time choose to submit the matter, together with all relevant documents, to the Commission, advising the SHPO/THPO accordingly.

C. Determinations of No Adverse Effect.

1. If the SHPO/THPO concurs in writing with the Applicant's determination of no adverse effect, the Facility is deemed to have no adverse effect on Historic Properties. The Section 106 process is then

complete and the Applicant may proceed with the project, unless further processing for reasons other than Section 106 is required.

2. If the SHPO/THPO does not provide written notice to the Applicant that it agrees or disagrees with the Applicant's determination of no adverse effect within thirty days following its receipt of a complete Submission Packet, the SHPO/THPO is presumed to have concurred with the Applicant's determination. The Applicant shall, pursuant to procedures to be promulgated by the Commission, forward a copy of its Submission Packet to the Commission, together with all correspondence with the SHPO/THPO and any comments or objections received from the public, and advise the SHPO/THPO accordingly. The Section 106 process shall then be complete unless the Commission notifies the Applicant otherwise within 15 days after the Commission receives the Submission Packet and accompanying material electronically or 25 days after the Commission receives this material by other means.
3. If the SHPO/THPO provides written notice within 30 days following receipt of the Submission Packet that it disagrees with the Applicant's determination of no adverse effect, it should provide a short and concise explanation of the Historic Properties it believes to be affected and exactly how the criteria of Adverse Effect would apply. The Applicant and the SHPO/THPO should engage in further discussions and make a reasonable and good faith effort to resolve their disagreement.
4. If the SHPO/THPO and Applicant do not resolve their dispute, the Applicant may at any time choose to submit the matter, together with all relevant documents, to the Commission, advising the SHPO/THPO accordingly.
5. Whenever the Applicant or the Commission concludes, or a SHPO/THPO advises, that a proposed project will have an adverse effect on a Historic Property, after applying the criteria of Adverse Effect, the Applicant and the SHPO/THPO are encouraged to investigate measures that would avoid the adverse effect and permit a conditional "No Adverse Effect" determination.
6. If the Applicant and SHPO/THPO mutually agree upon conditions that will result in no adverse effect, the Applicant shall advise the SHPO/THPO in writing that it will comply with the conditions. The Applicant can then make a determination of no adverse effect subject to its implementation of the conditions. The Undertaking is then deemed conditionally to have no adverse effect on Historic Properties, and the Applicant may proceed with the project subject to compliance with those conditions. Where the Commission has previously been

involved in the matter, the Applicant shall notify the Commission of this resolution.

D. Determinations of Adverse Effect.

1. If the Applicant determines at any stage in the process that an Undertaking would have an adverse effect on Historic Properties within the APE(s), or if the Commission so finds, the Applicant shall submit to the SHPO/THPO a plan designed to avoid, minimize, or mitigate the adverse effect.
2. The Applicant shall forward a copy of its submission with its mitigation plan and the entire record to the Council and the Commission. Within fifteen days following receipt of the Applicant's submission, the Council shall indicate whether it intends to participate in the negotiation of a Memorandum of Agreement by notifying both the Applicant and the Commission.
3. Where the Undertaking would have an adverse effect on a National Historic Landmark, the Commission shall request the Council to participate in consultation and shall invite participation by the Secretary of the Interior.
4. The Applicant, SHPO/THPO, and consulting parties shall negotiate a Memorandum of Agreement that shall be sent to the Commission for review and execution.
5. If the parties are unable to agree upon mitigation measures, they shall submit the matter to the Commission, which shall coordinate additional actions in accordance with the Council's rules, including 36 C.F.R. §§ 800.6(b)(1)(v) and 800.7.

E. Retention of Information.

The SHPO/THPO shall, subject to applicable state or tribal laws and regulations, and in accordance with its rules and procedures governing historic property records, retain the information in the Submission Packet pertaining to the location and National Register eligibility of Historic Properties and make such information available to Federal agencies and Applicants in other Section 106 reviews, where disclosure is not prevented by the confidentiality standards in 36 C.F.R. § 800.11(c).

F. Removal of Obsolete Towers.

Applicants that construct new Towers under the terms of this Nationwide Agreement adjacent to or within the boundaries of a Historic Property are encouraged to disassemble such Towers should they become obsolete or remain vacant for a year or more.

VIII. EMERGENCY SITUATIONS

Unless the Commission deems it necessary to issue an emergency authorization in accordance with its rules, or the Undertaking is otherwise excluded from Section 106 review pursuant to the Collocation Agreement or Section III of this Agreement, the procedures in this Agreement shall apply.

IX. INADVERTENT OR POST-REVIEW DISCOVERIES

- A. In the event that an Applicant discovers a previously unidentified site within the APE that may be a Historic Property that would be affected by an Undertaking, the Applicant shall promptly notify the Commission, the SHPO/THPO and any potentially affected Indian tribe or NHO, and within a reasonable time shall submit to the Commission, the SHPO/THPO and any potentially affected Indian tribe or NHO, a written report evaluating the property's eligibility for inclusion in the National Register. The Applicant shall seek the input of any potentially affected Indian tribe or NHO in preparing this report. If found during construction, construction must cease until evaluation has been completed.
- B. If the Applicant and SHPO/THPO concur that the discovered resource is eligible for listing in the National Register, the Applicant will consult with the SHPO/THPO, and Indian tribes or NHOs as appropriate, to evaluate measures that will avoid, minimize, or mitigate adverse effects. Upon agreement regarding such measures, the Applicant shall implement them and notify the Commission of its action.
- C. If the Applicant and SHPO/THPO cannot reach agreement regarding the eligibility of a property, the matter will be referred to the Commission for review in accordance with Section VI.D.3. If the Applicant and the SHPO/THPO cannot reach agreement on measures to avoid, minimize, or mitigate adverse effects, the matter shall be referred to the Commission for appropriate action.
- D. If the Applicant discovers any human or burial remains during implementation of an Undertaking, the Applicant shall cease work immediately, notify the SHPO/THPO and Commission, and adhere to applicable State and Federal laws regarding the treatment of human or burial remains.

X. CONSTRUCTION PRIOR TO COMPLIANCE WITH SECTION 106

- A. The terms of Section 110(k) of the National Historic Preservation Act (16 U.S.C. § 470h-2(k)) ("Section 110(k)") apply to Undertakings covered by this Agreement. Any SHPO/THPO, potentially affected Indian tribe or NHO, the Council, or a member of the public may submit a complaint to the Commission alleging that a facility has been constructed or partially

constructed after the effective date of this Agreement in violation of Section 110(k). Any such complaint must be in writing and supported by substantial evidence specifically describing how Section 110(k) has been violated. Upon receipt of such complaint the Commission will assume responsibility for investigating the applicability of Section 110(k) in accordance with the provisions herein.

- B. If upon its initial review, the Commission concludes that a complaint on its face demonstrates a probable violation of Section 110(k), the Commission will immediately notify and provide the relevant Applicant with copies of the Complaint and order that all construction of a new tower or installation of any new collocations immediately cease and remain suspended pending the Commission's resolution of the complaint.
- C. Within 15 days of receipt, the Commission will review the complaint and take appropriate action, which the Commission may determine, and which may include the following:
 - 1. Dismiss the complaint without further action if the complaint does not establish a probable violation of Section 110(k) even if the allegations are taken as true;
 - 2. Provide the Applicant with a copy of the complaint and request a written response within a reasonable time;
 - 3. Request from the Applicant a background report which documents the history and chronology of the planning and construction of the Facility;
 - 4. Request from the Applicant a summary of the steps taken to comply with the requirements of Section 106 as set forth in this Nationwide Agreement, particularly the application of the Criteria of Adverse Effect;
 - 5. Request from the Applicant copies of any documents regarding the planning or construction of the Facility, including correspondence, memoranda, and agreements;
 - 6. If the Facility was constructed prior to full compliance with the requirements of Section 106, request from the Applicant an explanation for such failure, and possible measures that can be taken to mitigate any resulting adverse effects on Historic Properties.
- D. If the Commission concludes that there is a probable violation of Section 110(k) (i.e., that "with intent to avoid the requirements of Section 106, [an Applicant] has intentionally significantly adversely affected a Historic Property"), the Commission shall notify the Applicant and forward a copy of the documentation set forth in Section X.C. to the Council and, as appropriate,

the SHPO/THPO and other consulting parties, along with the Commission's opinion regarding the probable violation of Section 110(k). The Commission will consider the views of the consulting parties in determining a resolution, which may include negotiating a Memorandum of Agreement (MOA) that will resolve any adverse effects. The Commission, SHPO/THPO, Council, and Applicant shall sign the MOA to evidence acceptance of the mitigation plan and conclusion of the Section 106 review process.

- E. Nothing in Section X or any other provision of this Agreement shall preclude the Commission from continuing or instituting enforcement proceedings under the Communications Act and its rules against an Applicant that has constructed a Facility prior to completing required review under this Agreement. Sanctions for violations of the Commission's rules may include any sanctions allowed under the Communications Act and the Commission's rules.
- F. The Commission shall provide copies of all concluding reports or orders for all Section 110(k) investigations conducted by the Commission to the original complainant, the Applicant, the relevant local government, and other consulting parties.
- G. Facilities that are excluded from Section 106 review pursuant to the Collocation Agreement or Section III of this Agreement are not subject to review under this provision. Any parties who allege that such Facilities have violated Section 110(k) should notify the Commission in accordance with the provisions of Section XI, Public Comments and Objections.

XI. PUBLIC COMMENTS AND OBJECTIONS

Any member of the public may notify the Commission of concerns it has regarding the application of this Nationwide Agreement within a State or with regard to the review of individual Undertakings covered or excluded under the terms of this Agreement. Comments related to telecommunications activities shall be directed to the Wireless Telecommunications Bureau and those related to broadcast facilities to the Media Bureau. The Commission will consider public comments and following consultation with the SHPO/THPO, potentially affected Indian tribes and NHOs, or Council, where appropriate, take appropriate actions. The Commission shall notify the objector of the outcome of its actions.

XII. AMENDMENTS

The signatories may propose modifications or other amendments to this Nationwide Agreement. Any amendment to this Agreement shall be subject to appropriate public notice and comment and shall be signed by the Commission, the Council, and the Conference.

TERMINATION

- A Any signatory to this Nationwide Agreement may request termination by written notice to the other parties. Within sixty (60) days following receipt of a written request for termination from a signatory, all other signatories shall discuss the basis for the termination request and seek agreement on amendments or other actions that would avoid termination.
- B. In the event that this Agreement is terminated, the Commission and all Applicants shall comply with the requirements of 36 C.F.R. Part 800.

ANNUAL REVIEW

The signatories to this Nationwide Agreement will meet annually on or about the anniversary of the effective date of the Agreement to discuss the effectiveness of this Agreement, including any issues related to improper implementation, and to discuss any potential amendments that would improve the effectiveness of this Agreement.

RESERVATION OF RIGHTS

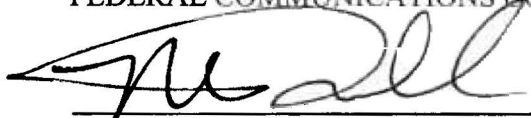
Neither execution of this Agreement, nor implementation of or compliance with any term herein, shall operate in any way as a waiver by any party hereto, or by any person or entity complying herewith or affected hereby, of a right to assert in any court of law any claim, argument or defense regarding the validity or interpretation of any provision of the NHPA or its implementing regulations contained in 36 C.F.R. Part 800.

XVI. SEVERABILITY

If any section, subsection, paragraph, sentence, clause or phrase in this Agreement is, for any reason, held to be unconstitutional or invalid or ineffective, such decision shall not affect the validity or effectiveness of the remaining portions of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officers as of the day and year first written above.

FEDERAL COMMUNICATIONS COMMISSION



Chairman

Date 10-04-04


ADVISORY COUNCIL ON HISTORIC PRESERVATION



Chairman

Date 9-30-04

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS



President

Date 9/28/2004

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Appendix G-4
Program Comment for the Rural Utilities Service,
the National Telecommunications and Information Administration,
and the Federal Emergency Management Agency
to Avoid Duplicative Section 106 Reviews
for Wireless Communication Facilities Construction and Modification
(Federal Register 2009, amended 2015)

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replication and dissemination of effective prevention strategies.

Total Estimates of Annualized Hour Burden

The following table displays estimates of the annualized hour burden for data collection using the Youth and Adult Questionnaires and the Individual and Group Dosage Forms. The expected

numbers of participants by service duration and the numbers of completed dosage forms were estimated based on analysis of the data submitted by Cohort 7–10 grantees. The numbers are adjusted for expected response rates, also estimated based on data analysis. Program staff will complete an Individual Dosage Form for each one-on-one service encounter with every

participant, spending an estimated three minutes per form. A typical grantee is expected to complete 1,316 Individual Dosage Forms per year. A group Dosage Form will be completed for each group session held by the funded programs, and will take approximately eight minutes to complete. A typical grantee is expected to offer approximately 26 group sessions per year.

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN

Type of respondent activity	Number of respondents	Responses per respondent *	Total responses	Hours per response	Total burden hours
Youth Questionnaire/Single-day service duration	64	1	64	0.2167	14
Youth Questionnaire/2–29-day service duration	240	2	480	0.4333	208
Youth Questionnaire/30-or-more-day service duration	1,136	2	2,158	0.6167	1,401
Adult Questionnaire/Single-day service duration	1,040	1	1,040	0.2167	225
Adult Questionnaire/2–29-day service duration	4,314	2	8,628	0.3833	3,307
Adult Questionnaire/30-or-more-day service duration	19,150	2	38,300	0.5333	20,425
Individual Dosage Form	138	1,316	181,608	0.0500	9,080
Group Dosage Form	138	26	3,588	0.1333	478
Total	26,220	235,980	35,139

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 or email her a copy at summer.king@samhsa.hhs.gov. Written comments should be received by November 30, 2015.

Summer King,
Statistician.

[FR Doc. 2015–24811 Filed 9–29–15; 8:45 am]

BILLING CODE 4162–20–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Amendment to Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities Construction and Modification

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Program Comment amendment.

SUMMARY: The Advisory Council on Historic Preservation has amended the referenced Program Comment which avoids duplicate reviews under Section 106 of the National Historic Preservation Act regarding telecommunications projects that undergo Section 106 review by the Federal Communications Commission under existing Nationwide Programmatic Agreements. The amendments extend the duration of the Program Comment, add agencies that

can use the Program Comment, and provide for a monitoring system.

DATES: The amendments were adopted by the ACHP on September 24, 2015.

ADDRESSES: Address all questions concerning the Program Comment amendments to Charlene Vaughn, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 401 F Street NW., Washington, DC 20001–2637. You may submit electronic questions to: cvaughn@achp.gov.

FOR FURTHER INFORMATION CONTACT: Charlene Vaughn, (202) 517–0207, cvaughn@achp.gov.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108 (Section 106), requires federal agencies to consider the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under Section 800.14(e) of those regulations, agencies can request the ACHP to provide a “Program Comment” on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.3 through 800.7. An agency can meet its Section 106 responsibilities with regard to the effects of particular

aspects of those undertakings by taking into account ACHP’s Program Comment and following the steps set forth in that comment.

I. Background

On October 23, 2009, the ACHP issued the referenced Program Comment to the U.S. Department of Agriculture Rural Utilities Service (RUS), the U.S. Department of Commerce National Telecommunications and Information Administration (NTIA), and the Federal Emergency Management Agency (FEMA) to relieve them from conducting duplicate reviews under Section 106 when those agencies assist a telecommunications project subject to Section 106 review by the Federal Communications Commission (FCC). The FCC complies with its Section 106 responsibilities through its Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the FCC and the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (FCC NPAs).

For background on that original Program Comment, and its text before these amendments, please refer to 74 FR 60280–60281 (November 20, 2009).

On August 21, 2015, the ACHP received a request from RUS, NTIA, and the Federal Emergency Management Agency (FEMA) to amend the referenced Program Comment.

The issuance of the original Program Comment was intended to assist agencies to expeditiously allocate American Recovery and Reinvestment

Act (ARRA) funds, which was done successfully. While the ARRA funds have been expended, new funding has been provided to agencies to expedite the deployment of broadband. Also, unless amended, the Program Comment would have expired on September 30, 2015.

The extension of the duration of the Program Comment is therefore necessary to continue streamlining the Section 106 review. In addition, several new agencies are now involved in these undertakings and need to be accommodated by the Program Comment to avoid delays in project approval. One of those agencies, FirstNet may or may not provide financial assistance for such towers and collocations in the future, but is the entity responsible for ensuring the building, deployment, and operation of the nationwide public safety broadband network, which will likely include the construction of communications towers and the collocation of equipment on existing facilities.

Accordingly, the ACHP membership voted in favor of amending the Program Comment via an unassembled vote on September 24, 2015. The Program Comment has been amended to:

1. Allow all components of the Department of Homeland Security (DHS), the Federal Railroad Administration (FRA), the Federal Transit Authority (FTA), and the First Responder Network Authority (FirstNet) to use the Program Comment, and specify how to add new agencies to the Program Comment in the future;
2. Insert three new paragraphs explaining the purpose and need of the amendments listed above;
3. Extend the duration of the Program Comment to September 30, 2025;
4. Add a system to monitor the use of the Program Comment;
5. Cite Presidential Memoranda consistent with the streamlining intent of the Program Comment; and
6. Add technical edits to reflect the effective date of these amendments and changes to the statutory citation to Section 106 of the National Historic Preservation Act.

RUS sought input from stakeholders on the proposed amendments to the Program Comment. Thereafter, the ACHP became more directly involved in the consultation by holding meetings, requesting and considering comments by stakeholders, holding conference calls with them, and making changes to the draft amendments accordingly. Overall, the majority of State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), and Indian tribes that commented

endorsed the amendment of the Program Comment.

Comments from several stakeholders raised issues beyond the amendments outlined above. Since addressing those issues in the text of the Program Comment itself would unnecessarily clutter it, those issues are addressed in this **Federal Register** preamble instead. These issues are:

1. How the scope of the Federal Communications Commission (FCC) Nationwide Programmatic Agreements does not include federal or tribal lands, and therefore the scope of the Program Comment is similarly limited. The FCC NPAs, by their own terms, do not apply on tribal lands. Since this Program Comment relies on compliance carried out by the FCC through the FCC NPAs, the Program Comment would similarly not cover these undertakings on tribal lands.

Regarding the applicability of the Program Comment on federal lands, it must be noted that of the roughly 635–640 million acres of federal lands, 628 million acres are managed by the Forest Service, the National Park Service, the Bureau of Land Management, the Fish and Wildlife Service, and the Department of Defense. “Federal Land Ownership: Overview and Data,” Congressional Research Service, February 8, 2012. The Program Comment does not apply to any of these agencies or other agencies typically known as land managing agencies. When these land managing agencies issue special use permits, or other approvals, for the construction or location of telecommunications facilities on the lands they manage, they have to comply with Section 106 through means other than the FCC NPAs or this Program Comment.

2. How the Program Comment relies on FCC compliance with Section 106 for the same projects through their Nationwide Programmatic Agreements, and their e-106 and Tower Construction Notification Systems. The Program Comment exempts the named agencies from having to separately comply with Section 106 regarding certain telecommunications facilities and collocations when the FCC has or will comply with Section 106 for those same facilities and collocations through its NPAs. The FCC conducts such Section 106 compliance following the processes and exemptions of those NPAs, and using its related e-106 system and Tower Construction Notification System (TCNS) which are known to most practitioners. Some SHPO stakeholders wanted us to note that some of them do not use the FCC’s e-106 system.

3. How the Program Comment, as originally issued and as amended, has always required subject agencies to inform the SHPOs and THPOs or Indian Tribes when their undertakings are covered by this Program Comment. As stated in Section IV of the original Program Comment: “Whenever RUS, NTIA, or FEMA uses this Program Comment for such undertakings, RUS, NTIA or FEMA will apprise the relevant State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) of the use of this Program Comment for the relevant communications facilities construction or modification component.” The amended Program Comment retains this language, with changes to simply note the new agencies that are now being added to the Program Comment.

On a somewhat related note, some SHPOs raised concerns about the need to address the effects of the non-tower components of undertakings. As specified in the second paragraph of Section IV of the Program Comment, the RUS, NTIA, DHS, FRA, FTA, FirstNet are responsible for the Section 106 review of those non-tower components of their undertakings.

4. The purpose, and success, of the original Program Comment in the context of the American Recovery and Reinvestment Act (ARRA). In 2009, the American Recovery and Reinvestment Act (ARRA) provided NTIA and RUS with \$7.2 billion to expand access to broadband services in the United States. The purpose of the original Program Comment was to expedite broadband expansion by relieving these agencies from conducting duplicate Section 106 reviews when those agencies have Section 106 responsibilities for a telecommunications project subject to Section 106 review by the FCC.

Since it went into effect, the Program Comment has met this purpose. The Program Comment helped RUS, NTIA, and FEMA to spend their ARRA funding for broadband deployment without unnecessary delays. The success of the Program Comment is also reflected in the agencies’ request to expand its duration and add new agencies to it.

Finally, the ACHP has not received complaints about the implementation of the Program Comment. The amendments nevertheless, provide for a monitoring system to better ensure the Program Comment is working as intended.

5. How the FCC handles discovery situations under its Nationwide Programmatic Agreement. Since the Program Comment relies on FCC compliance with its NPAs, the discovery provisions of those NPAs are

the ones that will be followed for the relevant projects. The discovery provision of the FCC Nationwide Programmatic Agreement is found on its Section IX. A copy of that agreement can be found at: http://www.achp.gov/docs/PA_FCC_0804.pdf.

II. Final Text of the amended Program Comment

The text of the amended Program Comment is included below:

Program Comment for Streamlining Section 106 Review for Wireless Communications Facilities Construction and Modification Subject to Review Under the FCC Nationwide Programmatic Agreement and/or the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (as amended on September 24, 2015).

I. Background

Due to their role in providing financial assistance and/or carrying out other responsibilities for undertakings that involve the construction of communications towers and collocation of communications equipment on existing facilities, the Rural Utilities Service (RUS), the National Telecommunications and Information Administration (NTIA), the Department of Homeland Security (DHS), the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA), and the First Responder Network Authority (FirstNet) are required to comply with Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108, and its implementing regulations at 36 CFR part 800 (Section 106 review) for such undertakings. Some of those communications towers and antennas are also federal undertakings of the Federal Communications Commission (FCC), and therefore undergo, or are exempted from, Section 106 review under the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the FCC (FCC Nationwide PA) and the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (FCC Collocation PA). The FCC Nationwide PA was executed by the FCC, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) on October 4, 2004. The FCC Collocation PA was executed by the FCC, ACHP, and NCSHPO on March 16, 2001. The undertakings addressed by the FCC Nationwide PA primarily include the construction and modification of communications towers. The undertakings addressed by the FCC

Collocation PA include the collocation of communications equipment on existing structures and towers.

This Program Comment is intended to streamline Section 106 review of the construction and modification of communications towers and antennas for which FCC and RUS, NTIA, DHS, FRA, FTA, or FirstNet share Section 106 responsibility. Such streamlining is consistent with the broad purpose of the Presidential Memorandum: Unleashing the Wireless Broadband Revolution dated June 28, 2010, Executive Order 13616: Accelerating Broadband Infrastructure Deployment, dated June 14, 2012, and the Presidential Memorandum: Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training, dated March 23, 2015.

The term "DHS," as used in this Program Comment, refers to all of that agency's operational and support components. For a list of such components, you may refer to: <http://www.dhs.gov/components-directorates-and-offices>.

Nothing in this Program Comment alters or modifies the FCC Nationwide PA or the FCC Collocation PA (collectively, the FCC NPAs), or imposes Section 106 responsibilities on the FCC for elements of a RUS, NTIA, DHS, FRA, FTA, or FirstNet undertaking that are unrelated to a communications facility within the FCC's jurisdiction or are beyond the scope of the FCC NPAs.

The Program Comment, as originally issued in October 23, 2009, only covered RUS, NTIA, and the Federal Emergency Management Agency (FEMA). Because of the successful implementation of this Program Comment, as originally issued, the DHS sought to expand its participation beyond FEMA to all of its components which provide federal assistance for the construction and modification of communications towers, and the collocation of communications equipment on existing structures and towers. Three additional agencies, the FRA, which supports railroading with funding that may be used to improve safety and rail infrastructure, the FTA, which provides financial assistance to eligible applicants to support public transportation, and FirstNet, an independent authority within the NTIA that was created by Congress in 2012, also wished to become part of Program Comment in order to benefit from the efficiencies in the timely delivery of their respective programs.

DHS, FRA and FTA provide financial assistance to applicants for various undertakings, including the

construction of communications towers and collocation of communications equipment on existing facilities. Conversely, FirstNet is the entity responsible for ensuring the building, deployment, and operation of the nationwide public safety broadband network, which will likely include the construction of communications towers and the collocation of equipment on existing facilities. DHS, FRA, FTA and FirstNet must therefore comply with Section 106 for these undertakings. Some of the communications towers and collocated communications equipment assisted by DHS components, FRA, FTA and FirstNet are also the FCC's undertakings, and therefore undergo Section 106 review governed by the FCC NPAs.

Accordingly, the ACHP amended this Program Comment on September 24, 2015, to add all DHS components, FRA, FTA and FirstNet to the list of agencies subject to the terms of the Program Comment along with RUS, NTIA, and FEMA, and to extend its period of applicability, which originally would have ended on September 30, 2015.

II. Establishment and Authority

This Program Comment was originally issued by the ACHP on October 23, 2009 pursuant to 36 CFR 800.14(e), and was subsequently amended, effective on September 24, 2015 pursuant to its Stipulation VI.

III. Date of Effect

This Program Comment, as originally issued, went into effect on October 23, 2009. It was subsequently amended to its current version on September 24, 2015, effective on that date.

IV. Use of This Program Comment To Comply With Section 106 for the Effects of Facilities Construction or Modification Reviewed Under the FCC Nationwide PA and/or the FCC Collocation PA

RUS, NTIA, DHS, FRA, FTA, and FirstNet will not need to comply with Section 106 with regard to the effects of communications facilities construction or modification that has either undergone or will undergo Section 106 review, or is exempt from Section 106 review, by the FCC under the FCC Nationwide PA and/or the FCC Collocation PA. For purposes of this program comment, review under the FCC Nationwide PA means the historic preservation review that is necessary to complete the FCC's Section 106 responsibility for an undertaking that is subject to the FCC Nationwide PA.

When an RUS, NTIA, DHS, FRA, FTA, or FirstNet undertaking includes

both communications facilities construction or modification components that are covered by the FCC Nationwide PA or Collocation PA and components other than such communications facilities construction or modification, RUS, NTIA, DHS, FRA, FTA, or FirstNet, as applicable, will comply with Section 106 in accordance with the process set forth at 36 CFR 800.3 through 800.7, or 36 CFR 800.8(c), or another applicable alternate procedure under 36 CFR 800.14, for the components other than communications facilities construction or modification. However, RUS, NTIA, DHS, FRA, FTA, or FirstNet will not have to consider the effects of the communications facilities construction or modification component of the undertaking on historic properties.

Whenever RUS, NTIA, DHS, FRA, FTA, or FirstNet uses this Program Comment for such undertakings, RUS, NTIA, DHS, FRA, FTA, or FirstNet will apprise the relevant State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) of the use of this Program Comment for the relevant communications facilities construction or modification component.

V. Reporting

No later than March 1, 2016, the FCC, RUS, NTIA, DHS, FRA, FTA, and FirstNet will inform the ACHP as to the reporting system that they will utilize to collectively provide annual reports to the ACHP. The intent of the annual reports will be to enable the monitoring of the use of the Program Comment.

VI. Amendment

The ACHP may amend this Program Comment after consulting with FCC, RUS, NTIA, DHS, FRA, FTA, FirstNet, and other parties, as appropriate and publishing notice in the **Federal Register** to that effect.

If any other Federal agency wishes to take advantage of this Program Comment, it may notify the ACHP to that effect. An amendment, as set forth above, is needed in order to add such an agency to this Program Comment.

VII. Sunset Clause

This Program Comment will terminate on September 30, 2025, unless it is amended to extend the period in which it is in effect.

The ACHP may extend the Program Comment for an additional five years beyond 2025 through an amendment per Stipulation VI of this Program Comment.

VIII. Termination

The ACHP may terminate this Program Comment, pursuant to 36 CFR 800.14(e)(6), by publication of a notice in the **Federal Register** thirty (30) days before the termination takes effect.

Authority: 36 CFR 800.14(e).

Dated: September 24, 2015.

Javier E. Marques,

Associate General Counsel.

[FR Doc. 2015-24713 Filed 9-29-15; 8:45 am]

BILLING CODE 4310-K6-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Camin Cargo Control, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc., has been approved to gauge and accredited to test

petroleum and certain petroleum products for customs purposes for the next three years as of August 27, 2014.

DATES: Effective Dates: The accreditation and approval of Camin Cargo Control, Inc., as commercial gauger and laboratory became effective on August 27, 2014. The next triennial inspection date will be scheduled for August 2017.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo Control, Inc., 230 Marion Ave., Linden, NJ 07036, has been approved to gauge and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Camin Cargo Control, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Maritime Measurements.

Camin Cargo Control, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-01	ASTM D-287	Standard Test Method for API Gravity of Crude Petroleum Products and Petroleum Products (Hydrometer Method).
27-03	ASTM D-4006	Standard Test Method for Water in Crude Oil by Distillation.
27-04	ASTM D-95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-06	ASTM D-473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08	ASTM D-86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-13	ASTM D-4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry.
27-48	ASTM D-4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-58	ASTM D-5191	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
N/A	ASTM D1319	Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.
N/A	ASTM D-3606	Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography.

Appendix G-5
Programmatic Agreement
Among the USDA Forest Service, Pacific Southwest Region (Region 5),
California State Historic Preservation Officer,
Nevada State Historic Preservation Officer,
and the Advisory Council on Historic Preservation
Regarding the
Processes for Compliance with Section 106
of the National Historic Preservation Act
for Management of Historic Properties by the
National Forests of the Pacific Southwest Region

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PROGRAMMATIC AGREEMENT

AMONG THE

**U.S.D.A. FOREST SERVICE, PACIFIC SOUTHWEST REGION (REGION 5),
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
NEVADA STATE HISTORIC PRESERVATION OFFICER, AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION**

REGARDING THE

**PROCESSES FOR COMPLIANCE WITH SECTION 106 OF
THE NATIONAL HISTORIC PRESERVATION ACT
FOR MANAGEMENT OF HISTORIC PROPERTIES BY THE
NATIONAL FORESTS OF THE PACIFIC SOUTHWEST REGION**

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PROGRAMMATIC AGREEMENT

AMONG THE

**U.S.D.A. FOREST SERVICE, PACIFIC SOUTHWEST REGION (REGION 5)
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
NEVADA STATE HISTORIC PRESERVATION OFFICER, AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION**

REGARDING THE

**PROCESSES FOR COMPLIANCE WITH SECTION 106 OF
THE NATIONAL HISTORIC PRESERVATION ACT
FOR MANAGEMENT OF HISTORIC PROPERTIES BY THE
NATIONAL FORESTS OF THE PACIFIC SOUTHWEST REGION**

PREAMBLE

WHEREAS, this Regional Programmatic Agreement (Region 5 PA) fully supersedes all provisions of the *First Amended Regional Programmatic Agreement among the USDA Forest Service, Pacific Southwest Region, California State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Process for Compliance with Section 106 of the National Historic Preservation Act for Undertakings on the National Forests of the Pacific Southwest Region*, executed on August 24, 2001 (RPA); and the *Programmatic Agreement among the U.S.D.A. Forest Service, Pacific Southwest Region, California State Historic Preservation Officer, and Advisory Council on Historic Preservation Regarding the Identification, Evaluation and Treatment of Historic Properties Managed by the National Forests of the Sierra Nevada, California*, executed on December 10, 1996 (SPA);; and

WHEREAS, the U.S.D.A. Forest Service, Pacific Southwest Region (**Region 5**) has a multiple-use mission to manage its public lands in California and Nevada for a variety of resources, values, products, and uses which may affect historic properties; and

WHEREAS, Region 5's National Forests (**Forests**) include the Angeles, Cleveland, Eldorado, Klamath, Lassen, Los Padres, Mendocino, Modoc, Plumas, San Bernardino, Sequoia, Shasta – Trinity, Sierra, Six Rivers, Stanislaus and Tahoe in California, and the Inyo and Lake Tahoe Basin Management Unit in California and Nevada; and

WHEREAS, Region 5 as public land steward is mandated to comply with Section 106 of the National Historic Preservation Act of 1966, as amended (**NHPA**) (16 USC 470), and its implementing regulations, entitled *Protection of Historic Properties* (36 CFR part 800); and

WHEREAS, the Forests have professional staffing and an extensive history of compliance with the provisions of 36 CFR part 800 that demonstrates many undertakings can be implemented using procedures, as set forth in this Programmatic Agreement (**PA**), that have proven effective in managing and preserving historic properties in a less burdensome and more cost-effective, expeditious, and flexible manner than the undertaking-specific process outlined in 36 CFR part 800;

and

WHEREAS, Region 5 works to identify, evaluate, treat, protect, preserve, notify and consult about historic properties, as authorized and required by the: Antiquities Act of 1906 (34 Stat. 225; 16 USC 431-433), Historic Sites Act of 1935 (49 Stat. 666; 16 USC 461-467), National Environmental Policy Act of 1969 (**NEPA**), as amended (83 Stat. 852 et seq.; 42 USC 4321-4347), Archaeological and Historical Data Preservation Act of 1974 (88 Stat. 174; 16 USC 469), American Indian Religious Freedom Act of 1978 (92 Stat. 469; 42 USC 1996), Archaeological Resources Protection Act of 1979, as amended (**ARPA**) (93 Stat. 721 et seq.; 16 USC 470 et seq.); and the Native American Graves Protection and Repatriation Act of 1990 (**NAGPRA**)(104 Stat. 3048-3058; 25 USC 3001-3013); and as mandated under Executive Order 13007, entitled *Indian Sacred Sites*, Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments*; and Executive Order 13287, entitled *Preserve America*; and

WHEREAS, Region 5 has determined that *undertakings* (as defined in Appendix A) under its jurisdiction have the potential to affect historic properties either included in or eligible for inclusion in the National Register of Historic Places (**NRHP**), and that these undertakings are subject to consideration under Sections 106 and 110 of the NHPA; and

WHEREAS, Region 5 has consulted with the California State Historic Preservation Officer (**CASHPO**), the Nevada State Historic Preservation Officer (**NVSHPO**) [collectively or individually **SHPO**] and the Advisory Council on Historic Preservation (**ACHP**) [collectively, **Signatories**] pursuant to 36 CFR part 800.14(b); and

WHEREAS, the Signatories have reviewed the kinds of undertakings on these Forests to consider prudent and feasible management measures that not only take into account the effects of these undertakings on historic properties which are included in, or eligible for inclusion in, the NRHP, but also protect unevaluated properties which might be eligible for the NRHP under criteria at 36 CFR 60.4; and

WHEREAS, 36 CFR 800.14 allows federal agencies to develop alternative procedures, such as this PA, to implement Section 106 if they are consistent with the ACHP's regulations pursuant to Section 110(a)(2)(E) of the NHPA, and the Signatories share a common desire and purpose to exercise their option to develop alternative procedures that would satisfactorily take into account the effects of these undertakings where proper precautions are followed; reduce redundant documentation associated with recurring types of undertakings within areas having adequate prior identification, review, and consultation; and facilitate Forest progress towards meeting Section 110 responsibilities; and

WHEREAS, Forests initiated consultation with Indian tribes that may attach religious and cultural significance to historic properties in Region 5 in January 2008 and requested comments on a preliminary draft agreement; Forests continued consultations with Indian tribes, and Region 5 initiated consultation with associated Tribal Historic Preservation Officers, during a public comment period from April 1, 2009 to May 15, 2009, and continued to consult and receive comments from Indian tribes until September 30, 2009; and continued to consult in 2011 with Indian tribes that provided comments by responding to their comments and considering subsequent comments; and

WHEREAS, Region 5 and Forests will continue to consult with Indian tribes that attach religious and cultural significance to historic properties; and

WHEREAS, Indian tribes have been invited to be Concurring Parties under this agreement; and

WHEREAS, in carrying out its responsibilities, the USDA Forest Service and Region 5 have developed policies and procedures through its directives system (Forest Service Manual (**FSM**) - 2360) (Appendix B) to guide planning, decision making, and activities. Region 5 has professional historic preservation staff in its Heritage Program to advise its Line Officers and to implement historic preservation policies. It is the intent of this agreement to provide a process for continuing, diligent, uniform, and consistent compliance with Sections 106 and 110 of NHPA by Region 5; and

WHEREAS, administration of this PA by Region 5's Regional Heritage Program Leader ensures appropriate oversight and application of PA stipulations and meets PA delegation, dispute resolution, review, amendment, and reporting requirements on behalf of the Regional Forester of Region 5; and

WHEREAS, execution of this PA by the Regional Forester of Region 5 obligates that each participating Forest comply with the stipulations contained herein, and the Forest Supervisors of these participating Forests have concurred with this requirement;

NOW, THEREFORE, the Signatories agree that all undertakings by the Forests shall be implemented in accordance with the following stipulations in order to take into account the effects of their undertakings on historic properties.

STIPULATIONS

REGION 5 shall ensure that the following measures are carried out:

1.0 PURPOSE AND APPLICABILITY

1.1. Definitions of Terms Used in this PA

The terms used in this PA are defined within the body of the PA itself, in appended documents, or Appendix A. Definitions may also be found in FSM 2360 and in 36 CFR 800.16 (a-z) (Appendix C).

1.2 Purpose of this PA

This PA prescribes the manner in which Region 5 and the SHPO shall cooperatively implement this PA in California and portions of Nevada. It is intended to ensure that Region 5 organizes its programs to operate efficiently and effectively in accordance with the intent and requirements of the NHPA and that Region 5 integrates its historic preservation planning and management decisions with other policy and program requirements. The PA streamlines the NHPA Section 106 (**Section 106**) process by eliminating case-by-case consultation with the SHPO on undertakings for which there is no or little potential to affect historic properties and for undertakings that either culminate in no historic properties affected or no historic properties adversely affected with approved Standard Protection Measures (36 CFR 800.4(d)(1) and 800.5(d)(1)).

The PA also requires the effective management of Forest Heritage Programs consistent with the requirements of Section 110 of the NHPA and implementation of the Heritage Program by each Forest in partial exchange for relief from the case-by-case procedural requirements of 36 CFR part 800. Region 5 will develop a Historic Preservation Plan in consultation with the SHPO to help Forests effectively manage their Heritage Programs and address broader historic preservation objectives.

Supplemental procedures attached to this PA by approved amendments provide procedures that are specific to individual programs or functions (refer to Stipulation 12.3).

1.3 Applicability of this PA

(a) This PA, subject to threshold limitations specified in Stipulation 8.0, applies to all programs, funding initiatives, permits, assistance, actions or decisions under the statutory or regulatory authority of Region 5 that, regardless of land ownership, constitutes an undertaking that may affect historic properties. However, this PA shall not apply to tribal lands. Any proposed Region 5 undertaking on tribal lands will require consultation that is outside the scope of this PA and will follow 36 CFR part 800.

(b) If more than one federal agency is involved in an undertaking the Forest/Region 5 shall consult with the SHPO on how it will fulfill its 36 CFR 800 compliance requirements. Forest undertakings shall be considered federal actions subject to the requirements outlined in this PA when they involve non-federal lands, or when Region 5 has provided funding and retains jurisdiction on the expenditure of this funding on specific undertakings.

(c) Region 5 has other programmatic agreements for specific classes of undertakings, projects, or programs. Forests can also use any of the following agreements in lieu of this PA to meet their Section 106 compliance needs (refer to Stipulation 3.0).

- (1) Programmatic Agreement Among the USDA Forest Service, the Advisory Council on Historic Preservation, and the California State Historic Preservation Officer Regarding the Management of Forest Service Administrative Buildings in California (1990)
- (2) Programmatic Agreement Among the USDA Forest Service, the Advisory Council on Historic Preservation, and the California State Historic Preservation Officer Regarding the Management of Historic Fire Lookout Facilities in California (1990)
- (3) Programmatic Agreement Between the Department of Agriculture, Forest Service, and the Advisory Council on Historic Preservation Regarding Rangeland Management Activities on National Forest System Lands (1995) (National PA with Region 5 MOU tiered)
 - Memorandum of Understanding Among the USDA Forest Service, Pacific Southwest Region, California State Historic Preservation Officer and the Nevada State Historic Preservation Officer Regarding Rangeland Management Activities (1996) (extended in 2011)
- (4) Programmatic Agreement Among the U.S.D.A. Forest Service, Pacific Southwestern Region, California State Historic Preservation Officer, and Advisory Council on Historic Preservation Regarding Management of Historic Recreation Residence Tracts (2002)
- (5) Programmatic Agreement Among the United States Department of Agriculture, Forest Service, Pacific Southwest Region, United States Department of Interior, Bureau of Land Management, California State Office, United States Department of Interior, Fish and Wildlife Service, California Department of Forestry and Fire Protection, California State Historic Preservation Officer, and Advisory Council on Historic Preservation Regarding Compliance with Section 106 of the National Historic Preservation Act for Federally

Funded Programs Administered by the California Department of Forestry and Fire Protection on NonFederal Lands in California (2004)

- (6) Programmatic Agreement Among the U.S.D.A Forest Service, Pacific Southwest Region, U.S.D.A. Forest Service, Inter-Mountain Region's Humboldt-Toiyabe National Forest, California State Historic Preservation Officer, and Advisory Council on Historic Preservation Regarding the Process for Compliance with Section 106 of the National Historic Preservation Act for Designating Motor Vehicle Routes and Managing Motorized Recreation on the National Forests in California (2006) (extended in 2009)
- (7) Programmatic Agreement Among the Pacific Southwest Region, USDA Forest Service, California State Historic Preservation Officer, Nevada State Historic Preservation Officer, & the Advisory Council on Historic Preservation Regarding the Identification, Evaluation, & Treatment of Historic Properties within the Area of Potential Effect of Pack Station Operations & One Outfitter Guide Operation on the Inyo and Sierra National Forests, California & Nevada (2006)
- (8) Programmatic Agreement among the United States Forest Service, Pacific Southwest Region, the United States Army Corps of Engineers Sacramento District, the California Department of Transportation, the California State Historic Preservation Officer, and Advisory Council on Historic Preservation Regarding Undertakings Affecting the Rubicon Trail, El Dorado County, California (2011)

1.4 Effect of this PA

This PA establishes the procedures that govern the interaction between Region 5 and the SHPO. The California and Nevada SHPOs each have respective consultation roles under this PA when an undertaking occurs within their state or an undertaking may affect historic properties within their jurisdiction. The goals of this PA are to enhance planning for protection and management of historic properties under Region 5's jurisdiction or control, and to ensure appropriate consideration of historic properties beyond Region 5's jurisdiction, but which may be affected by its actions.

2.0 ROLES AND RESPONSIBILITIES OF AGENCY PERSONNEL

2.1 Regional Forester:

The Forest Service Line Officer who has the delegated authority to make and execute decisions on a regional level and is the lead Agency Official for this PA; Forest Supervisors report to the Regional Forester. The Regional Forester meets annually with the State Historic Preservation Officer and may meet more frequently upon request of either Region 5 or the SHPO; consults with the SHPO or ACHP regarding implementation of the PA; ensures Forests meet the requirements of, and implement their programs according to, the PA; and enters into region-wide Programmatic Agreements with the SHPO, the ACHP, and other Agencies for implementing Section 106 in specific circumstances not covered by this PA.

2.2 Forest Supervisor:

The Forest Service Line Officer with the delegated authority to make and execute decisions on a National Forest. The Forest Supervisor is the "Agency Official" (36 CFR 800.2(a)) responsible for implementing the PA on a Forest. Under this PA the Forest Supervisor can concur in determinations

made by professional Heritage Program staff, including but not limited to, Area of Potential Effect (APE), NRHP eligibility, no adverse effect, and no historic properties affected; consult with SHPO as appropriate or when there is unresolved disagreement with Heritage Program staff determinations; ensure necessary training for cultural staff; ensure availability of Heritage Program funding for preservation projects and implementation of the Historic Preservation Program; ensure government-to-government Indian tribe consultation for Section 106 projects consistent with FSM direction and 36 CFR part 800; execute Memoranda of Agreement for adverse effects and Programmatic Agreements which are limited to specific Forests.

2.3 District Ranger:

A Forest Service Line Officer who has the delegated authority to make and execute decisions on a Ranger District. Under this PA the District Ranger can concur in determinations made by professional Heritage Program staff, including but not limited to, APE, NRHP eligibility, no adverse effect, and no historic properties affected; ensure necessary training for cultural staff; ensure availability of cultural resources funding for preservation projects and implementation of the Historic Preservation Program; assists with Indian tribe consultation for Section 106 projects consistent with FSM direction and 36 CFR part 800. Responsibilities for Heritage Program Management are identified in the FSM 2360

2.4 Regional Heritage Program Leader:

The Regional Heritage Program Leader oversees implementation of the PA for the Regional Forester and provides regional PA guidance and advice; identifies needed training; conducts reviews; recommends certification, provisional certification, decertification and recertification of Forests; reviews or develops Programmatic Agreements and Memoranda of Agreement; may lead consultation with the SHPO in specific cases and consults with the SHPO and ACHP on behalf of Regional Forester; and submits reports and information to the SHPO and ACHP concerning implementation of the PA.

2.5 Heritage Program Manager (HPM):

The designated forest-wide coordinator and heritage program lead on a Forest for heritage program activities implemented under this PA. The HPM coordinates consultation with the SHPO, ACHP and other parties on behalf of the Forest Supervisor and other Line Officers. The HPM, without formal SHPO consultation, determines Areas of Potential Effect (APE), certifies determinations of NRHP eligibility as provided by this PA, and determines no adverse effect or no historic properties affected by an undertaking. The HPM also seeks the informal opinion of SHPO staff when appropriate; maintains heritage program records and transmits reports and inventory records to Information Centers; maintains professional knowledge and ability; develops and implements Section 110 programs and projects; and certifies that findings, determinations, and recommendations regarding the identification and management of historic properties meet the professional standards and requirements of this PA. The HPM may delegate some of these responsibilities under this PA to other qualified Heritage Program staff (e.g., Archaeologist GS 193 series; Anthropologist GS 190; Archaeological Technician GS 102; Historian GS 170) as appropriate provided professional oversight is maintained.

2.6 Heritage Program Staff:

Forest or Ranger District staff that are trained in historic preservation specialties, such as historic

or prehistoric archaeology, history, anthropology, ethnography, or architectural history, who may conduct literature searches and cultural resource inventories, record and monitor sites, excavate, process and analyze cultural resource data, maintain heritage databases, maintain heritage records and collections, write reports, stabilize sites, or assist Heritage Program Managers with other historic preservation tasks; and who has the experience and skills pertinent to his or her job duties and responsibilities under this PA. Heritage Program staff generally serve in District or Zone Archaeologist, Assistant Forest Archaeologists, or other assistant positions on Forests.

3.0 RELATIONSHIP OF PA TO OTHER AGREEMENTS

Future development of programmatic agreement documents pertaining to specific types of undertakings is not precluded by this PA. Undertaking-specific programmatic agreements in force at the time of the execution of this PA shall continue according to their terms. Previously approved Region 5 cultural resource modules or other cultural resource management programs approved under existing programmatic agreements may be appended to this PA without revision as the Signatories may agree, and attached in the Amendment section (Appendix I). Any project already approved under RPA or SPA stipulations does not require further review under this PA provided the project has not changed in a way that may affect historic properties and it is implemented in accordance with any approved measures to protect historic properties.

4.0 PROCEDURES

The following procedures shall be implemented by Region 5 under this PA:

4.1 Meetings

The State Historic Preservation Officers and the Regional Forester, with their respective staffs, shall meet annually to review Region 5's implementation of the PA, annual reports of activities, and other pertinent issues. At the annual meeting, the SHPOs and Region 5 shall exchange information relevant to achieving the goals and objectives set forth in this PA. At any time a SHPO or the Regional Forester may convene a meeting to discuss critical issues. This PA encourages its parties, including staff and cultural resource specialists, to meet and consult frequently in order to maintain appropriate communication, to seek informal opinion and advice, and share information and knowledge.

4.2 Communicating by Reporting

Region 5 shall inform the SHPO of activities carried out under this PA by developing and submitting reports annually to the SHPO as specified below. The content and format of these reports will be determined by Region 5 and the SHPO.

(a) *Forests*. At a minimum include:

(1) Information by Forest detailing use of the PA, including Screened Undertakings (Stipulation 7.2), for Section 106 actions submitted no later than December 1 following the prior fiscal year, or by an alternative date negotiated with SHPO by the Regional Heritage Program Leader.

(2) Information by Forest detailing Historic Preservation Program (Section 110) accomplishments for each Forest submitted no later than December 1 following the prior fiscal year, or by an alternative date negotiated with SHPO by the Regional Heritage Program Leader.

- (b) Regional Office.

The Regional Heritage Program Leader shall review the reports on Section 106 actions and Section 110 activities submitted by the Forests. Based on that review and other information provided by Forests, the Regional Heritage Program Leader shall develop a summary report for submission to SHPO and ACHP by the Regional Forester, and submit this report by March 1. This report shall also include a list of unanticipated effects reported by Forests. An alternate date may be negotiated between the Regional Heritage Program Leader and the SHPO. The report may identify a need for further review of specific Forest programs if necessary.

4.3 Professional Determinations and Recommendations

This PA authorizes Region 5's professional Heritage Program Managers on each Forest to act on the SHPO's behalf under limited circumstances, including those limits specified in Stipulation 7.0 of this PA. Within those limits, Region 5's Heritage Program Managers may define APEs, conduct inventory, make determinations of eligibility, determine no adverse effects, determine that no historic properties are affected, certify documentation for Screened undertakings, identify appropriate protection measures, and apply exemptions (Appendix D) without involvement of the SHPO. The Line Officer may elect to accept the recommendations and determinations prepared by the Heritage Program Manager or delegated Heritage Program staff (HPM/DHPS) (Stipulation 2.5). When professional determinations and recommendations made pursuant to the limitations in Stipulation 7.0, are accepted by the Line Officer, no SHPO consultation is required. Where disagreements or disputes concerning professional findings exist between Heritage Program staff and Line Officers, the Forest shall request the Regional Heritage Program Leader's review and consider any subsequent recommendations for resolving identified issues. However, when professional determinations or recommendations including, but not limited to, APE, scope of inventory, determinations of National Register eligibility, findings of no historic properties affected or no adverse effect with approved Standard Protection Measures, or application of exemptions or Screened Undertakings are not accepted by the Line Officer and remain unresolved after review by the Regional Heritage Program Leader, the Forest Supervisor shall in each such case initiate consultation with the SHPO, Indian tribes, and consulting parties under 36 CFR part 800 (Appendix C).

4.4 SHPO Involvement in the Region 5 Heritage Program

In keeping with the PA's stated goal of encouraging participation by SHPO in Region 5's Heritage Program, Region 5 or the SHPO may identify opportunities to further this goal. To encourage broad participation by the SHPOs in Region 5's Heritage Program, the following involvement opportunities may be offered:

- (a) *Land Management Planning Efforts.* At the earliest stage of the planning process, each Forest responsible for preparing a land use plan or significant amendments or revisions at the regional or local level shall invite the SHPO to participate in the planning effort (FSM 2360). The SHPO may elect to not participate in specific planning efforts. The approach and scope of planned compliance activities shall be identified through these consultation efforts or under 36 CFR part 800. An agreement document specific to the planning effort may be requested by either party. All draft land use plans and related cultural resource plans shall be submitted to the SHPO for review and comment. Completion of the consultation process for planning will be indicated by a Forest's written response to the SHPO's comments, if commenting, on the draft land use or cultural resource project plans.

(b) *Field Tours.* Forests may invite the SHPO/SHPO staff to participate in field tours relating to land use planning efforts or specific undertakings whenever cultural resources may be affected. The SHPO's views will be requested with regard to management of the cultural resources.

(c) *Contact.* Formal consultation outside the scope of this PA will be conducted between the SHPO and the Forest Supervisor. Region 5 Line Officers, in coordination with the Heritage Program Manager or other Heritage Program staff, may also contact SHPO staff informally regarding specific undertakings. The professional staffs at the SHPO and in Region 5 are encouraged to communicate at their discretion on general concerns or issues related to specific undertakings. Informal consultation shall be documented by both SHPO and Region 5 Forest staff; Region 5 documentation shall be retained in appropriate files under the control of the Forest Heritage Program staff.

(d) *Internal Region 5 Program Review.* Region 5 shall invite SHPO participation in internal Forest program reviews pertaining to this PA as appropriate and shall provide reports of reviews, exclusive of findings and recommendations specific to personnel matters. The scope of review opportunities is detailed in Stipulation 5.5 of this PA.

5.0 PROGRAM DEVELOPMENT AND ACTIVITIES

5.1 Preservation Program.

Region 5 commits to fulfill its responsibilities enumerated in Section 110 of NHPA. The Regional Forester shall implement a region-wide Historic Preservation Program (HPP). The HPP will be an amendment to this PA and shall guide Region 5 in achieving measurable progress toward compliance with Section 110 of NHPA.

(a) The *Framework for Archaeological Research and Management for Forests of the North-Central Sierra Nevada* (FARM) may be implemented as the prehistoric archaeological element of any forest HPP for the Eldorado, Inyo, Sequoia, Stanislaus, and Tahoe National Forests, and the Lake Tahoe Basin Management Unit. Additional elements and revisions to the FARM shall be reviewed and incorporated into HPPs where approved by the SHPO.

5.2 Curation.

Region 5 will ensure to the greatest extent possible that curation and disposition of all archaeological materials and data from Federal lands are consistent with FSM 2360 and NAGPRA (Stipulation 7.9) as appropriate. Management of non-Federal archaeological materials and data will be consistent with applicable law and professional curation requirements as negotiated with non-Federal landowners or managers. Non-museum collections may be maintained at Forests, but only under appropriate curatorial conditions and with appropriate documentation.

5.3 Data Sharing and Information Management.

(a) *Documentation of Findings.* All cultural resources investigations associated with implementing this PA regardless of findings shall be documented and reasonably conform to the standards in FSM 2360 and written guidance of the SHPO. Region 5's current cultural resource site records, and survey, screened undertaking, and previous coverage reports meet these standards.

(1) In California, Region 5 shall submit to the appropriate Information Center of the California Historical Resources Information System (CHRIS) inventory reports and Archaeological

Site Records (Department of Parks and Recreation form 523 or equivalent; or R5 Cultural Resource Record (CRRs)) completed to the standards of the Office of Historic Preservation. In Nevada, Region 5 Forests shall submit cultural resource inventory reports and Intermountain Antiquities Computer System (IMACS) forms for archaeological and historic sites and Architectural Resource Assessment forms (ARA) for architectural resources to the NVSHPO along with GIS shapefiles of inventories and resource locations for incorporation into the Nevada Cultural Resources Information System (NVCRIS). The records for previously recorded resources in an APE shall be reviewed to determine if documentation meets current standards. If existing documentation does not meet current standards, or new information should be recorded (e.g., changes in integrity or condition), these records shall be updated.

(2) Region 5 Heritage Program staff shall document all determinations, findings, and recommendations made under this PA and all such actions and related documentation shall be considered by Line Officers prior to making decisions that may affect historic properties. Such actions include, but are not limited to, delineating areas of potential effect, National Register eligibility determinations, applying exemptions, no historic properties affected and/or no adverse effect findings, and other findings and determinations. Prior to making NEPA decisions, the potential effects of undertakings on historic properties must be documented and supported by completed reports, and report approvals dated and signed by HPMs or qualified Heritage Program staff delegated by HPMs, in accordance with the stipulations in this PA. Documented determinations, findings, and recommendations shall be retained as described in Stipulation 5.3(c) of this PA.

(b) *Exchange of Data with SHPO.* Region 5 has developed and maintains corporate databases that include information about cultural resources and cultural resource investigations (INFRA Heritage Module) and geospatial data in a Geographic Information System (GIS) in accordance with Section 112(2) of the NHPA and FSM 2360. The INFRA Heritage Module and GIS database will be updated with newly recorded and re-recorded cultural resource and survey data. Region 5 and SHPO may jointly work to develop or consider ways that facilitate the electronic submission of records for tracking agency actions provided any such information sharing is in accordance with confidentiality requirements in Section 304 of the NHPA, Section 9 of the ARPA, and the Food, Conservation and Energy Act of 2008 (25 USC 3056).

(c) *Records Management.*

(1) Region 5 shall maintain complete, current, and permanent records for cultural resources activities, including but not limited to survey areas, findings, determinations, reports, historic property records, archaeological site records, and correspondence, to fully document fulfillment of its responsibilities under this PA, and other laws, regulations, and policies. Records management shall be consistent with the standards and policies in FSM 2360 and standards and procedures in FSH 2309.12 and developed subsequent to execution of this PA. Records pertaining to undertakings shall be retained in files, under the control of Forest professional Heritage Program staff, which document survey and identification efforts, research designs, peer reviews, and assessment of effects and impacts. Records shall include, but shall not be limited to, cultural resource site records, monitoring and condition reports, determinations of eligibility, images, use allocations, and cross references to other files or documents which contain information pertaining to the individual property.

(2) Information about the location and character of historic properties under the control of Region 5, regardless of ownership of the resource, shall not be disclosed to the general public (FSM 2360) and such information shall not be stored in documents open to the general public if doing so may risk harm to those resources. The Forest Supervisor or Regional Forester as appropriate may

determine, under the authority of Section 304 of NHPA and/or Section 9 of ARPA, that public disclosure of the location and character of historic properties or other cultural resources may risk harm to those resources, which may then qualify such information as exempt from FOIA disclosure. This determination notwithstanding, Region 5 or Forests may characterize historic properties and cultural resources in writing sufficiently for the purposes of required analyses under NEPA and cultural resource information may be disclosed when such disclosure is deemed to advance management purposes or the public interest.

(3) Section 8106 of the Food, Conservation, and Energy Act of 2008 (25 USC 3056) (FCEA) also exempts from FOIA disclosure information relating to reburials, sites, or resources of traditional or cultural importance to Indian tribes, including human remains and information obtained from tribes during consultation relating to traditional and cultural resources and practices provided in the course of research activities.

5.4 Professional Development and Training

Training and development are key elements in maintaining the effectiveness of the PA. Heritage Program Managers, with assistance from the State Historic Preservation Officer as necessary, will provide timely advice and guidance to forest Line Officers on the requirements and application of the PA. Where Line Officer training in the use and implementation of the PA is needed, the SHPO shall be offered the opportunity to assist Region 5 in such training.

Heritage Program staff, Line Officers, planning staff, and other forest staff, as appropriate, shall receive training in the use and implementation of the PA, including the procedural requirements of 36 CFR part 800 which are to be implemented in instances where the PA does not apply. The Regional Heritage Program Leader shall identify the need for specialized cultural resource management training. Region 5's Heritage Program staff shall meet yearly, usually in conjunction with the Society for California Archaeology meetings, to participate in workshops, training, exchange information, and to discuss issues concerning the Heritage Program. The SHPO shall be offered the opportunity to participate in this annual meeting and assist Region 5 in on-going training of Line Officers and Heritage Program staff in the implementation of the PA. SHPO will also be offered the opportunity to comment on scope and content of training.

Forests, in consultation with the Regional Heritage Program Leader as necessary, shall prepare professional development plans for their Heritage Program staff to ensure that current professional standards in the discipline can be met and maintained, and to identify training needs. Recommended training resulting from any review under Stipulation 5.5 shall be considered when preparing development plans. Training received will be reported as a component of annual reporting (Stipulation 4.2).

Region 5 recognizes that staying current in relevant professional practices and participation of Heritage Program staff in professional societies and annual meetings (e.g., Society for California Archaeology, Society for American Archaeology, Society for Historical Archaeology, California Council for the Promotion of History, Society of Architectural Historians) is integral to: staying abreast of developments and advances in the respective disciplines; acquiring current information useful in making professional recommendations and determinations provided for in this agreement; enhancing professional knowledge and skills; and providing opportunities for leadership and service to the profession.

5.5 Reviews of Forest Performance under this PA

Professional review of Forest program operations is an essential and mandatory component of Region 5's Heritage Program and this PA, especially as it pertains to certification (Stipulation 11.0). Ensuring that such review takes place is a primary responsibility of the Regional Heritage Program Leader under this agreement. Reviews may involve any aspect of a program's function including, but not limited to, documentation, findings and recommendations, resource protection, recordkeeping and curation, security, and professional contributions. It is the intent of such reviews to improve operations at individual Forests and to improve the Heritage Program region-wide.

Three levels of internal review are available to the Regional Heritage Program Leader: Annual Review; Technical Review; and Program Review. Findings of reviews shall be relevant for purposes of assessing certification status of Forests.

(a) *Annual Review.* The Regional Heritage Program Leader shall assess annually each Forest's ability to implement the provisions of the PA. The Annual Review will be based primarily on information and data submitted by each forest for the Annual Report required in Stipulation 4.2 of this PA; however, other data may be considered. The Regional Heritage Program Leader shall document the findings of the annual review and the Regional Forester shall submit that report to the SHPO and ACHP. The ACHP shall be consulted where identified deficiencies involve and/or include recommendations to resolve adverse effects to historic properties. When recommendations to remedy deficiencies receive SHPO concurrence, and ACHP concurrence if participating in resolution of adverse effects, and are accepted by the Regional Forester, the Forest Supervisor shall initiate remedial actions within sixty (60) days from the date the recommendations are accepted by the Regional Forester, unless the Regional Forester sets an alternative schedule in consultation with the SHPO. Depending on the nature of the identified deficiencies, the Regional Forester may elect to place a Forest or Ranger District in provisional status according to the procedures described in Stipulation 11.2 of this PA, or suspend and decertify a Forest or Ranger District under Stipulation 11.3.

(b) *Technical Review.* The Regional Heritage Program Leader shall determine whether Forests are maintaining an appropriate level of technical capability and performance in particular program elements. Such elements may include, but are not limited to, record-keeping, documentation of PA actions, Section 110 actions, curation, inventory documentation, determinations, budget issues, and findings from Annual Reviews. The Regional Heritage Program Leader shall document the findings of the Technical Review and the Regional Forester shall submit that report to the SHPO. When recommendations to remedy any deficiencies receive SHPO concurrence and are accepted by the Regional Forester, the Forest Supervisor shall initiate any remedial actions within sixty (60) days from the date the recommendations are accepted by the Regional Forester, unless the Regional Forester sets an alternative schedule in consultation with the SHPO. Failure to initiate remedial actions within the specified time or failure to address the identified deficiencies shall require the Regional Forester to consider actions under Stipulations 11.2 or 11.3 of this PA.

(c) *Program Review.* The Regional Heritage Program Leader shall determine whether Forest Heritage Programs are fully functional in their ability to implement this PA. Program reviews are broad-based reviews of the Heritage Program at a Forest, although such a review may focus on particular areas of interest. The Regional Heritage Program Leader shall invite the participation of the SHPO, document the findings of the Program Review and the Regional Forester shall submit that report to the SHPO. Should deficiencies be identified, the Regional Heritage Program Leader shall develop recommendations to remedy or address those deficiencies. When such recommendations receive SHPO concurrence if participating and are accepted by the Regional Forester, the Forest Supervisor shall initiate any remedial actions within sixty (60) days from the date the

recommendations are accepted by the Regional Forester, or within the time period set by the Regional Forester in consultation with the SHPO. Failure to initiate remedial actions within the specified time or failure to address the identified deficiencies shall require the Regional Forester to consider actions under Stipulations 11.2 or 11.3 of this PA.

(d) *SHPO Review.* From time to time, in order to ensure that actions of Region 5 professional staff retain a high level of professionalism, the SHPO may request that particular documents be subjected to external professional peer review. This can be done through the review/inspection process or through the normal Section 106 procedures. Region 5 may prepare peer review guidelines in consultation with the SHPO or may elect to accept existing peer review guidelines proffered by the SHPO. The SHPO and Region 5 agree that peer review shall not delay the implementation of undertakings.

6.0 PARTICIPATION OF INDIAN TRIBES

Region 5 recognizes the importance of the continuing government-to-government relationship with Indian tribes and the importance of meaningful consultation on specific undertakings. Region 5/Forests shall follow 36 CFR 800.2(c)(2) (Appendix C) and the procedures and guidelines established in FSM 2360 and FSH 2309.12 when conducting consultation with affected Indian tribes for undertakings under this PA, unless other consultation protocols have been mutually agreed to. Region 5 supports and encourages the sharing of project-specific cultural resource information with Indian tribes when they are consulting parties for an undertaking. Policy and guidance for government-to-government consultation between Line Officers and Tribal Governments are included in the American Indian and Alaska Native Relations sections of the Forest Service Manual (FSM 1563) and Forest Service Handbook (FSH 1509.13).

6.1 Consultation Protocols

Some Forests have consultation protocols or government-to-government consultation agreements that allow for more effective Section 106 consultation. Forests without such protocols or agreements shall complete consultation with Indian tribes within one year of execution of this agreement (if possible) to determine if there is a desire to enter into a separate consultation protocol agreement to support more effective Section 106 consultation and the objectives of this PA. These agreements can establish protocols for carrying out tribal consultation, including how the Forest will address tribal concerns about confidentiality of sensitive information. Such agreements also can determine the types of undertakings and the potential geographic project areas on which a tribe wants to be consulted, and how that consultation will take place, which can lead to tremendous efficiencies for both the Forest and the Indian tribe. It is recommended that Forests enter into such protocols or government-to-government consultation agreements (e.g., Memorandum of Understanding) where there is mutual agreement to do so. The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act (FR vol. 63, No. 79: 20498, 20504, April 24, 1998) include standards and guidelines for consultation that shall be considered when developing such protocols.

6.2 Tribal Historic Preservation Officers

In accordance with Section 101(d)(6) of the National Historic Preservation Act, some Indian tribes with Tribal Historic Preservation Officers (THPO) may choose to designate the THPO as their tribal representative to assist Forests in identifying tribally significant cultural resources or historic properties potentially affected by a proposed Federal undertaking on non-tribal lands. For

undertakings on Forests, Forest Service Line Officers shall consult with a THPO in lieu of an Indian tribe only when they have been designated by the Indian tribe as the tribal representative for purposes of Section 106 to assist in identifying and evaluating properties of religious and cultural importance to the tribe. THPO consultation does not substitute for consultation with SHPO.

6.3 Non-Federally Recognized Tribes

Non-Federally recognized Indian tribes or communities, or individual members thereof, may be invited to participate as additional consulting parties and shall be encouraged to raise issues, express concerns, provide information and identify resources and places they would like Forests to consider in decision-making. Forests shall initially solicit such input of non-Federally recognized Indian tribes through the public participation opportunities afforded by Region 5's environmental project planning process (NEPA), and any consultation protocols. Forests shall take into account any confidentiality concerns raised by these groups during the identification process realizing that some or all information provided may not be exempt from disclosure under FOIA.

7.0 IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

The type of undertaking, Area of Potential Effects (APE) (36 CFR 800.16[d]), and existing information help determine identification needs for undertakings considered under this PA. Undertakings are processed to determine whether: (1) they fall into one of the streamlined procedure categories (i.e., Exemptions or Screened Undertakings); (2) existing information is sufficient for identification needs; or (3) a field survey or other information is needed to identify historic properties that may be affected. If an undertaking is Exempt (see below) under the provisions of this PA, it can proceed without further consideration under this PA or 36 CFR 800. If it is a Screened Undertaking, the HPM/DHPS /determines whether the streamlined procedures should be applied based on known information or whether it should be treated as a regular undertaking. All other undertakings require more comprehensive identification efforts to determine whether historic properties are present and could be affected. With the exception of Exemptions, all categories of undertakings are documented as specified in this PA.

7.1 Exemptions

Under this PA, some projects (Appendix D) are generally exempt from further review or consultation because they have no potential to cause effects to historic properties. However, the following exceptions apply:

(a) Any Forest may elect to review a normally exempted project under the terms of this PA or 36 CFR part 800.

(b) The SHPO or ACHP may request that an otherwise exempt project or groups thereof, instead be considered undertakings under this PA or 36 CFR 800.

(c) The SHPO or ACHP may request that a Forest consult with it about a particular exempt project or screened undertaking or groups thereof, prior to continued consideration under this PA.

(d) Should an objection by the public arise to an exempt project prior to implementation, except any project being reviewed under the agency's appeal regulations (Stipulation 12.1), the Forest shall consult with the objecting party and the SHPO for not more than 30 calendar days following receipt to resolve the objection. If the objection is resolved within this time frame, the

parties shall proceed in accordance with the terms of that resolution. If the objection cannot be resolved within this time frame, and the Forest and the SHPO have not agreed to extend the consultation period, the Forest shall submit the disputed exemption for review either under this PA or under 36 CFR part 800 (Appendix C).

(e) Any party to this PA may propose that Appendix D be modified by removal or revision. Such proposals for modification of Appendix D shall be considered pursuant to the provisions for revisions and amendment of this PA at Stipulations 12.2 and 12.3. Appendix D may be revised as a component of PA revision or may be revised at any time upon written agreement of the Signatories to this PA.

7.2 Screened Undertakings

The HPM/DHPS may determine that a specific undertaking subsumed under the list of Screened Undertakings found in Appendix D qualifies for certification as such under the streamlined procedures in this PA. Documentation regarding a Screened Undertaking's certification and exemption from additional review under this PA shall be retained in a Forest's cultural resources or project files, and entered into the Forest Service's INFRA database.

(a) Any Forest may elect to review a normally Screened Undertaking under the non-exempted terms of this PA or 36 CFR part 800.

(b) The SHPO or ACHP may request that a Screened Undertaking, or groups thereof, instead be considered undertakings subject to the identification and other stipulations under this PA or 36 CFR 800.

(c) The SHPO or ACHP may request that a Forest consult with it about a particular Screened Undertaking or groups thereof, prior to continued consideration under this PA.

(d) Should disputes or objections arise to Screened Undertakings or to classes of Screened Undertakings, except any undertaking being reviewed under the agency's appeal regulations or procedures, see Stipulation 12.1.

(e) Should an objection by the public arise to a Screened Undertaking prior to implementation, the Forest shall consult with the objecting party and the SHPO for not more than 30 calendar days following receipt to resolve the objection. If the objection is resolved within this timeframe, the parties shall proceed in accordance with the terms of that resolution. If the objection cannot be resolved within this time frame, and the Forest and the SHPO have not agreed to extend the consultation period, the Forest shall submit the disputed undertaking for review either under this PA or under 36 CFR part 800 (Appendix C).

(f) Any Signatory to this PA may propose that Appendix D be modified by removal or revision of Screened Undertakings or by addition of a previously non-screened class of undertakings. Such proposals for modification of Appendix D shall be considered pursuant to the provisions for revisions or amendment of this PA at Stipulations 12.2 – 12.3. Appendix D may be revised as a component of PA revision or may be revised at any time upon written agreement of the Signatories to this PA.

7.3 Area of Potential Effect

HPM/DHPS shall apply the definition of Area of Potential Effect (**APE**) (36 CFR 800.16[d]) to each undertaking and shall include a description of the APE in the undertaking's Section 106 report. In defining the APE, Region 5 shall consider potential direct, indirect, and cumulative effects to historic properties and their associated settings as applicable, regardless of land ownership. HPM/DHPS are not required to determine the APE in consultation with the SHPO. However, in cases where the APE is subject to question, or multiple federal jurisdictions are involved, or a Traditional Cultural Property has been identified, the Forest shall seek the opinion of the SHPO (Stipulation 8.1(c)).

7.4 Identification and Inventory Needs

Forests shall make a good faith effort to identify all historic properties that may be affected in an undertaking's APE. Where existing information is inadequate, additional identification efforts are likely needed (e.g., field surveys). Consultation with THPOs, Indian tribes, and Native American Traditional Practitioners may also be necessary to identify cultural resources of traditional religious or cultural significance to Tribes (Stipulation 7.5).

The HPM/DHPS staff will design an inventory strategy with prescribed coverage methods based on a Forest's/ District's cultural resource sensitivity model (e.g., a model employing environmental and geomorphic variables such as slope, aspect, elevation, hydrology, flora, landforms, or other landscape attributes and natural features). Such inventory strategy may include a variety of coverage methods to identify historic properties throughout the APE. Inventory strategies employing survey traverses spaced no more than 30 meters apart shall be considered intensive for the purposes of this agreement. A Forest may choose to develop a Forest-wide inventory strategy (FSM 2360) in consultation with the SHPO, and affected THPOs and Indian tribes. Once a Forest-wide inventory strategy has been approved by the SHPO of the affected state(s), the Forest may apply that strategy to applicable undertakings without prior consultation with the SHPO.

Unless otherwise agreed to in consultation with the SHPO, Region 5 shall ensure that project-specific surveys and other efforts to identify historic properties are consistent with the appropriate professional standards in FSM 2360 (Appendix B), and to the extent prudent and feasible with respective guidelines of the California Office of Historic Preservation or Nevada SHPO, and the Secretary of Interior's Standards and Guidelines.

(a) Region 5 will identify historic properties on Region 5-administered lands or other lands where a Region 5 undertaking will occur.

(b) No additional identification efforts are required prior to making decisions about the implementation of undertakings if the APE is entirely within areas that have been previously inventoried; and HPMs determine that the previous identification efforts meet standards under this PA and document these findings for those undertakings. When assessing and certifying the adequacy of previous inventory work (i.e., reports and documentation), HPMs should consider the following measures: when the work was done; who did the work and whether there are any previously identified problems with similar work; what parties were consulted and how; methods that were used; whether survey methodology accounted for both prehistoric, Indian cultural and historic resources; changes in environmental conditions; and adequacy of documentation.

(c) In all cases where Region 5's Heritage Program staff determines that non-intensive inventory is appropriate for an undertaking (e.g., reconnaissance or sample survey), a written justification or strategy shall be prepared and retained in appropriate files. When Reconnaissance or Sampling survey strategies (FSM 2360) are deemed appropriate for an undertaking, the HPM shall seek informally the views of the SHPO staff concerning the justification and strategy for the reduced level of inventory. The SHPO may concur with the proposed approach or request that the Forest initiate formal consultation (Stipulation 8.1(e)).

(1) Region 5's Protocol for Non-Intensive Inventory Strategies for Hazardous Fuels and vegetation Reduction Projects is attached (Appendix H).

7.5 Consultation with Indian Tribes and Native American Traditional Practitioners

Consultation with Indian tribes and Native American Traditional Practitioners is an important component of identification and evaluation activities conducted under this PA. The Forest Supervisor shall ensure that consultation with Indian tribes and Native American Traditional Practitioners begins at the earliest stages of planning for an undertaking and continues throughout the process as appropriate. The Forests recognize the unique role Indian tribes play in determining which historic properties the tribes assign traditional religious or cultural importance. The Forest Supervisor shall ensure that consultation provides an Indian tribe a reasonable opportunity to identify its concerns about historic properties; advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance to them; identify Native American Traditional Practitioners who should be consulted; provide its views on the undertaking's effects on such properties; and participate in the resolution of adverse effects. The Forest Supervisor shall be prepared to continue consultation throughout the planning and implementation stages of an undertaking. Policy and guidance for consultation is provided in FSM 2360. Any Indian tribe that requests in writing to be a consulting party for a specific undertaking shall be afforded that status.

7.6 Public Involvement and Consulting Parties

Region 5 shall provide adequate opportunity for Indian tribes, consulting parties, and the public to express their views by seeking and considering those views when carrying out actions under this PA. Region 5 shall coordinate this public participation requirement with the agency's project or land management planning processes. Forests shall use the public notification and environmental project planning scoping process in its National Environmental Policy Act (NEPA) compliance regulations (36 CFR Part 220) to: notify Indian tribes and the public about proposed undertakings; initiate Section 106 consultation; and identify interested or potential consulting parties. Forests may tailor their consultation efforts to the nature of the undertaking and its potential effects on historic properties. Anticipated public concerns about a project's effect on historic properties will be considered when determining consultation needs. The project planning process under NEPA also offers an opportunity for the public, consulting and interested parties, Indian tribes, non-federally recognized tribes and others to participate in the project planning process. Interested parties shall be invited to consult early in the review process if they have expressed an interest in a Forest's undertaking. Interested parties may include, but are not limited to, local governments; applicants, grantees, permittees, or affected landowners; Indian tribes, organizations, and individuals; and those seeking to participate as consulting parties in a particular undertaking. Forests will also make an effort to identify and invite potential consulting parties and will not rely solely on the requests by those parties. Forests shall make an effort to consult with the SHPO and other recognized consulting parties on the decision to honor requests for consulting party status from additional parties.

The participation of Indian tribes shall be guided by the provisions of Stipulations 6.0 and 7.5 of this PA, by FSM 2360 (Appendix B), and by 36 CFR 800.2(c) (2) (Appendix C).

7.7 Evaluation and Determination of NRHP Eligibility

(a) Unless otherwise agreed to in consultation with SHPO, Forests shall ensure that historic properties that may be affected and cannot be avoided, or protected by the application of standard protection measures (see Appendix E), are evaluated for their significance and a determination be made regarding their eligibility for listing on the NRHP in accordance with the National Register criteria (36 CFR 60.4) and Region 5's Supplemental Guidelines for Determinations of Eligibility (Appendix F). When determining whether a cultural resource site is eligible for the NRHP, Forests will consult with and consider the views of: any Indian tribe that attaches traditional religious and cultural significance to the identified property; and any other consulting party. Forests will consult with and seek the concurrence of the SHPO on NRHP eligibility findings.

(b) HPMs and other Heritage Program staff (e.g., archaeologists, historians or architectural historians) may make NRHP determinations of eligibility under this agreement once Heritage Program staff has been certified by the Regional Heritage Program Leader or delegated HPM staff. HPM certification shall be based on an individual's qualifications based on education, training and experience appropriate for determining whether a specific type of cultural resource (e.g., prehistoric site, historic structure) meets the NRHP Criteria. HPMs shall certify that all formal Determinations of Eligibility completed under this agreement meet appropriate evaluation standards and guidelines and are properly documented.

(c) For expedited ineligibility determinations made by HPMs or certified professional staff using procedures outlined in Appendix F, such determinations shall meet the consensus determination requirements of 36 CFR 800.4(c)(2) for specific undertakings. Ineligible determinations made under this stipulation shall be certified by the HPM and will be submitted to the SHPO on a bi-annual or other agreed on basis.

(d) Except for expedited ineligible determinations made under Stipulation 7.7(c), all Forest findings regarding determinations of eligibility will be submitted to the SHPO for consensus determinations pursuant to 36 CFR 800.4(c)(2). If there is any unresolved disagreement between the Forest and the SHPO regarding a Forest's determination, the Forest will forward the determination to the Keeper of the NRHP who will make a final determination. Until such time as a consensus determination from the SHPO or a final determination by the Keeper of the NRHP is made, the Forest shall avoid or protect the historic property using Standard Protection Measures.

(e) Forests shall document all determinations of eligibility findings, including applicable National Register criteria, and summarize and report those determinations in Region 5's heritage database, annual reports, and other reporting processes agreed to between Region 5 and the SHPO. SHPO may elect to review any evaluation as an element of its oversight role in this PA. The SHPO will provide written concurrence/non-concurrence of Region 5's evaluations within 30 days of receipt of adequate documentation. The SHPO may have an additional 30 days to reply when needed, provided it notifies the forest. The SHPO will provide written consensus/non-consensus determinations for expedited ineligibility determinations on a bi-annual or annual basis provided sufficient documentation supporting forest determinations has been provided.

(f) Forests shall consult with the SHPO under 36 CFR part 800, and as needed the Keeper of the NRHP under 36 CFR 63, when evaluating historic properties that may be eligible for the NRHP

because of their religious and cultural significance to Indian tribes. Any unresolved disagreement resulting from such consultation shall be submitted to the Keeper of the National Register in accordance with 36 CFR 63.3(d).

(g) Forests may assume that a historic property, cultural resource, or groups of resources are eligible for inclusion in the National Register of Historic Places, without consultation with the SHPO or Indian tribes, where avoidance or other protection measures identified in Appendix E, or in PA revisions or amendments, will be implemented as the management strategy for managing an undertaking's effects. Assuming eligibility for a particular property neither precludes nor prejudices formal evaluation in the future.

(h) The HPM shall review and approve all research designs for NRHP eligibility evaluations. The HPM may approve without consulting with SHPO a research design including 4 cubic meters or less volume of archaeological test excavation provided no more than 5 percent of the overall site area is affected. For test excavations involving more than 4 cubic meters or affecting more than 5 percent of the overall site area, the Forest shall informally consult with SHPO to determine whether review and consultation is required.

7.8 Determination of Effects to Historic Properties

If an undertaking may diminish a historic property's NRHP values, the Forest shall follow the provisions of 36 CFR part 800 regarding determination of effects, except as provided below.

(a) Undertakings with No Historic Properties

When no historic properties are identified following approved inventory, documentation, and certification by HPM/DHPS, no consultation with the SHPO or ACHP is required prior to making decisions about implementation of an undertaking.

(b) Undertakings with Historic Properties

(1) When historic properties are identified, following approved inventory, documentation, and certification by HPM/DHPS, but will not be affected, and the undertaking can be implemented without the adoption of management measures to protect historic properties, then decisions about implementation of these undertakings may be made without further review or consultation with the SHPO and/or ACHP.

(2) When historic properties are identified, following approved inventory, documentation, and certification by HPM/DHPS, and management or protection measures are needed to avoid or minimize potential adverse effects, the following procedures will be followed as needed:

(a) If HPM/DHPS determine that the nature and scope of a proposed undertaking is such that its effects can be reasonably predicted, and Standard Protection Measures (Appendix E) can be used to protect historic properties, then these Standard Protection Measures will be used to manage and maintain historic properties in manners which ensure that the undertaking will not adversely affect historic properties (i.e., no adverse effect).

(b) When the HPM/DHPS recommend that Standard Protection Measures would protect historic properties (Appendix E) and these conditions are accepted by the Line Officer as part

of the approval of an undertaking, no review or consultation with the SHPO or ACHP is required prior to approving and implementing the undertaking.

(1) Forests may choose to consult with the SHPO, Indian tribes or consulting parties pursuant to 36 CFR part 800, on any undertakings covered by this PA where the use of Standard Protection Measures is proposed.

(2) At its discretion and with the cooperation of the Forests, the SHPO may participate in review or consultation on specific undertakings, or classes of undertakings, where Standard Protection Measures are being used.

(c) Undertakings Requiring Assessment of Adverse Effects and Resolution of Adverse Effects

The Forest Supervisor shall comply with the ACHP's regulations at 36 CFR part 800.5 - 800.6 for undertakings that do not meet the conditions of Stipulation 7.8(a) – 7.8(b)), above. That is, Forests shall comply with 36 CFR 800.5 - 800.6 for undertakings that may adversely affect historic properties and for which it is not possible, or the Forest has elected not to apply standard protection measures prior to the assessment of effects. For cases of inadvertent effects or unanticipated discoveries in projects implemented under the provisions of this agreement, refer to Stipulation 7.10.

7.9 Human Remains

(a) Should inadvertent effects to or unanticipated discoveries of human remains be made on Region 5's lands, the County Coroner (California Health and Safety Code 7050.5(b)) or Sheriff if *ex officio* Coroner (Nevada Revised Statutes 259) shall be notified immediately. If the remains are determined to be Native American or if Native American (Indian) cultural items pursuant to NAGPRA are uncovered, the provisions of NAGPRA and its regulations at 43 CFR 10 and ARPA at 43 CFR 7 shall be followed on federal lands.

(b) If such remains or items are discovered off federal lands within California, for projects authorized by the Forest Service (see Stipulation 1.4), the provisions of the California Native American Graves Protection and Repatriation Act (California Health and Safety Code 8010-8030, and California Public Resources Code 5097.98-99) shall be followed.

(c) If Indian burials are discovered off federal lands within Nevada, for projects authorized by the Forest Service (see Stipulation 1.4), the provisions of Nevada's Protection of Indian Burial Sites (Nevada Revised Statutes 383.150-190) shall be followed.

(d) For undertakings on federal lands, the provisions of a Written Plan of Action (43 CFR Part 10.5(e)) or Comprehensive Plan (43 CFR Part 10.5(f)) governing the intentional or inadvertent discovery of human remains and cultural items described in NAGPRA shall be followed in lieu of the above procedures.

7.10 Discoveries and Inadvertent Effects

(a) In the event that either cultural resources are discovered, or historic properties are inadvertently affected, during implementation of an undertaking which has been duly considered under the terms of this PA, the Forest will submit written notification describing the circumstances of the discovery to the Regional Heritage Program Leader and SHPO within two working days (e.g., letter or email notification). Forests will provide written reports describing the status or resolution of the discovery/inadvertent effect every six months until it is resolved.

(b) In the event that properties are discovered during implementation of an undertaking which has been duly considered under the terms of this PA and in which the property cannot be protected, Forests shall address the discovery in accordance with the provisions of 36 CFR 800.13 (see Appendix C). In consultation with the SHPO, ACHP and Indian tribes attaching religious and cultural significance to the property, Forests shall select the appropriate mitigation option.

(c) In the event that properties are discovered during implementation of an undertaking which has been exempted under Stipulation 7.1, the HPM may recommend the use of standard protection measures (Appendix E) where appropriate based on professional judgment. If standard protection measures are not adopted as recommended by the HPM/DHPS, Region 5 shall consult with the SHPO, ACHP, consulting parties, and Indian tribes which may attach religious and cultural significance to the property to identify appropriate mitigation measures.

(d) Where properties are inadvertently encroached on by project activities, and the HPM determines that no effects or not adverse effects to historic properties have occurred (e.g., trees felled into site boundaries or vehicles driven onto sites), SHPO and ACHP notification are not required provided that HPM recommendations are limited to non-disturbing treatment measures and these recommendations are implemented as prescribed. Once these treatment measures are implemented, the case will be considered resolved (Stipulation 7.10(a)). If HPM recommendations will not be implemented, the Forest shall consult with the SHPO on effects and possible resolution, and with the ACHP, Indian tribes and consulting parties as appropriate if an adverse effect has occurred.

(e) If consultation under 7.10 determines that an adverse effect has occurred, the forest will then consult with other consulting parties or Indian tribes as appropriate to identify acceptable mitigation or treatment measures. The results of any interested party or Indian tribe consultation will be included in further consultation efforts with the SHPO and/or ACHP to resolve the inadvertent effects.

(f) In instances where the involvement of the SHPO occurs after steps have been taken under the PA, the Forest Supervisor or other Line Officer shall not be required to reconsider previous findings or determinations unless those findings or determinations are the subject of unresolved disputes or disagreements.

7.11 Emergency Undertakings

Region 5 shall develop an appendix to this PA, through the amendment process in Stipulation 12.0, identifying procedures for protecting historic properties during emergency undertakings, such as wildfire. Until such an amendment is developed and approved, the following shall apply: should Region 5 /Forest find it necessary to implement an emergency undertaking as an immediate response to a declared emergency, undeclared emergency, or another immediate threat to life or property in a manner that would preclude the use of this PA, Region 5 /Forest and its mutual aid partners, will

implement to the extent prudent and feasible any measures that could avoid or minimize harm to historic properties and shall implement measures to rehabilitate and stabilize damages to historic properties caused by agency activities during the emergency. For management purposes, Region 5 may assume the eligibility of a cultural resource or group of resources for inclusion on the NRHP without consultation with the SHPO where proposed rehabilitation and stabilization measures are unlikely to affect prospective NRHP values and measures are needed to prevent further resource damage or destruction. Region 5 shall evaluate any historic property that may be adversely affected by rehabilitation and stabilization measures. Region 5 shall comply with the provisions of 36 CFR 800.12 and 36 CFR Part 78 for such emergency undertakings. Region 5 shall document properties discovered or affected by the emergency undertaking, including post-fire rehabilitation, and shall submit a report to the SHPO.

8.0 SITUATIONS WARRANTING SHPO CONSULTATION

Region 5 shall initiate formal consultation with the SHPO on the following undertakings and shall follow the procedures set forth in 36 CFR part 800 (Appendix C). Notwithstanding, Region 5 and SHPO may agree to continue under the PA in consideration of specific conditions or characteristics of a specific undertaking which would normally require continuation of formal consultation.

8.1 Initiate SHPO Consultation:

(a) Where the Forest has made a determination that an undertaking may have an adverse effect as defined by 36 CFR 800.5(a)(1) (Appendix C), including adverse effects to National Historic Landmarks (NHL) or properties either considered eligible for, or which are listed in, the National Register of Historic Places.

(b) Where the Heritage Program Manager position at a Forest Supervisor's Office is vacant (excluding Acting HPM meeting professional qualifications) or where expertise is required that Region 5 does not possess or cannot obtain (e.g., architectural historian).

(c) Where Region 5 has been designated and acts as the lead agency on behalf of other Federal agencies for an entire undertaking, the designated agency official shall consult with SHPO to determine whether this PA can be used to fulfill requirements of 36 CFR 800, and if there is agreement, act on behalf of all agencies in fulfilling their collective responsibilities under section 106 (36 CFR 800.2(a)(2)). Where more than one federal agency is involved but no lead agency has been agreed to, consultation with the SHPO is required.

(d) Where a Region 5 undertaking may have effects beyond the boundaries of Region 5 Forests in California and Nevada, or may involve other Federal agencies, the Region 5 agency official will consult as appropriate with SHPO and those other Federal agencies. In such cases, Region 5 will either consult with the respective SHPO and agencies regarding an appropriate compliance process either under the terms of this PA, or develop a new PA for that undertaking, or proceed in compliance with 36 CFR part 800 (Appendix C).

(e) Where Region 5 proposes to complete less than an intensive survey of the affected (selected) lands, except where survey requirements are identified in any amendment to the PA, and when informal consultation with SHPO staff yields consensus agreement to proceed with formal consultation (Stipulation 4.4(c)).

- (f) Where an undertaking involves a land exchange or sale when the cultural resources inventory has not been completed and/or cultural resources have been identified.
- (g) Where Region 5 proposes to transfer lands to the State of California or the State of Nevada.
- (h) Where determinations of eligibility involve a historic property that may be eligible as a Traditional Cultural Property.
- (i) Where Traditional Cultural Properties, or historic properties that are sacred sites or also are or may be of religious or cultural significance to an Indian Tribe, may be affected.
- (j) Where land use plans and amendments are initiated.
- (k) Where unresolved disagreements or disputes, internal to Region 5, arise concerning an exempt undertaking.
- (l) Where a Forest declines to participate in any supplemental procedures (Appendix I: Amendments) which would normally govern the undertaking or class of undertaking.
- (m) Where PA stipulations and procedures in the FSM 2360 (Appendix B) may conflict with the procedures established in 36 CFR part 800 (Appendix C).
- (n) Where supplemental procedures appended to this PA require such consultation.
- (o) Where historic properties are discovered and unanticipated, potentially adverse effects are found after completing the procedural steps at Stipulation 7.10 of this PA.
- (p) Where historic properties have not been protected in the manner prescribed during project activities, possible effects may have occurred, and Stipulation 7.10(c) does not apply.
- (q) Where an objection by the public arises to a Screened Undertaking and remains unresolved (Stipulation 7.2(e) of this PA).
- (r) Where a member of the public or an Indian tribe or other Indian group or individual objects at any time to the manner in which this PA is being implemented for a specific undertaking (Stipulation 12.1(b)), except where the subject Undertaking is part of a Forest Service NEPA appeal process under 36 CFR 215.

9.0 THRESHOLDS FOR ACHP CONSULTATION

9.1 Notifying ACHP

- (a) If the Forest Supervisor has found that an undertaking may have an adverse effect on a historic property, and the SHPO/THPO has concurred with this finding, the Forest Supervisor shall notify the ACHP of its finding and determine whether the ACHP will participate in the consultation to resolve adverse effects.
- (b) Notification of the ACHP shall include all documentation prepared regarding the undertaking and meet the documentation standards at 800.11(e).

9.2 Inviting ACHP to Consult

The Forest Supervisor's notice to the ACHP shall include an invitation to the ACHP to consult when:

- (a) The Forest is proposing and developing program alternatives for compliance with NHPA Section under 36 CFR 800.14 (see FSM 2360); or
- (b) The Forest wants the ACHP to participate in the consultation (e.g. where there is no agreement with the SHPO, Indian tribes, or other consulting parties regarding effect to historic properties); and
- (c) The undertaking has an adverse effect upon a National Historic Landmark.

9.3 Consulting with the ACHP

The Forest Supervisor shall formally consult with the ACHP when:

- (a) The ACHP applies its Appendix A to Part 800 "Criteria for Council Involvement in Individual Section 106 Cases" and notifies the Chief Forester of the Forest Service in accordance with 800.6(a)(1)(iii) that it will participate in the consultation to resolve adverse effects.
- (b) Revisions or amendments to this programmatic agreement are proposed (Stipulations 12.2 and 12.3); or
- (c) Disputes need to be resolved (Stipulation 12.1).

10.0 STAFFING

10.1 Professional Staff

Under this PA, Region 5 operates with limited external oversight. In order to successfully act on behalf of the SHPO and to maintain the trust of the SHPO, Region 5 shall continually strive for a high level of professional capability. Region 5 is committed to employing a professional staff. In hiring new full time professional staff, Region 5 will follow Section 112(a)(1)(B) of the NHPA and emphasize the selection of candidates that meet the Secretary of the Interior's Professional Qualifications Standards or the education and experience standards in Office of Personnel Management (OPM) X118 standards. Forests shall employ at least one full-time, permanent professional Heritage Program Manager. Forests which do not have the services of a professional Heritage Program Manager, either on staff or through arrangement with another Region 5 administrative unit, shall consult with the SHPO on all undertakings.

10.2 Professional Capability

When Region 5 is involved in an undertaking requiring expertise not possessed by available Region 5 staff, it may request the assistance of the SHPO in such cases or may obtain the necessary expertise through contracts, Forest Service personnel from other states or Forests, cooperative arrangement with other agencies or institutions, or by other means.

10.3 Non-Professional Personnel

Region 5 may employ technicians, volunteers, and Certified Paraprofessional Archaeological Surveyors (**Paraprofessionals**) who do not meet Secretary of the Interior Standards or OPM X118 standards for professional Heritage Program personnel. In such instances, individuals who do not meet these Standards shall work under the direct technical supervision of Region 5 Heritage Program staff and may not substitute for professional Heritage Program staff in making decisions or determinations regarding the identification and evaluation procedures set out in this PA or in Section 36 CFR part 800. Certification of paraprofessionals will follow the standards and requirements of Region 5's Certified Paraprofessional Archaeological Surveyors program (Appendix G).

11.0 CERTIFICATION

11.1 Certification

The Regional Forester may review, reconsider, or change a Forest's certification status at any time. Region 5, in consultation with the SHPO and the ACHP, will certify each Forest to operate under this PA based upon the following: (1) Forest Line Officers and Heritage Program staff have received required PA training within three months of the PA's effective date; and (2) professional capability to carry out these policies and procedures is available through each Forest's immediate staff or through other means. Upon execution of this PA, Forests with Regional Forester approval to participate under the RPA or SPA will automatically operate under Provisional Certification for no more than four months or until they are either certified or decertified. The SHPO or ACHP may provide recommendations on the certification of Forests to the Regional Forester who will consider these recommendations when making decisions about certification.

(a) Region 5 PA Training

Region 5 PA training for Forest Line Officers and Heritage Program staff shall include the following:

(1) *Forest Line Officers.* Forest Heritage Program Managers and/or trained Heritage Program training cadre will provide a minimum of 2 hours of training for Forest Line Officers focused on a review of the agreement's basic components and the Line Officer's roles and responsibilities. The Forest Heritage Program Manager may recommend that other District or Forest level staff also participate in such training. New Line Officers shall receive the minimum training within 60 days of reporting to a Forest, unless they have received it at a previous duty station.

(2) *Heritage Program Staff.* The Regional Heritage Program Leader will schedule initial training for Forest Heritage Program staff to develop training cadres for each forest. Each Forest's HPM and/or other training cadre are responsible for any required Forest level PA training. All Heritage Program staff and non-permanent Heritage Program staff with PA roles and responsibilities that did not attend the initial regional training will receive a minimum of 5 hours of training. This training will be similar in content to the regional training and focus on a comprehensive review of the agreement, including roles and responsibilities, documentation, reporting, consultation, evaluation, and best practices.

(3) All required training for Line Officers and Heritage Staff shall be completed within the timeframe for Forest certification (Stipulation 11.1).

(b) Participation by Forests in any future Region 5 PA training, and Heritage Program staff completion of any required culture resource management training shall be key considerations for continuing certification of individual Forests.

11.2 Provisional Certification

The Regional Heritage Program Leader, the SHPO, or the ACHP may also recommend that the Regional Forester place a Forest or Ranger District on provisional status based on findings from any of the reviews specified at Stipulation 5.5 of this PA or other identified deficiencies. Provisional status may extend from one to two years, although the term of the provisional status shall be determined by the Regional Forester and shall reflect the complexity of the deficiencies identified. While on provisional status, a Forest or Ranger District will have the opportunity to correct deficiencies that have been identified. Progress in resolving identified deficiencies shall be reported to the Regional Heritage Program Leader every six months or whenever such information is requested by the Heritage Program Leader. Upon expiration of the provisional status term, the Regional Forester, in consultation with the SHPO, shall determine whether identified deficiencies have been satisfactorily corrected. Should the Regional Forester determine that such deficiencies remain uncorrected, or should new deficiencies that the Regional Forester or other Signatories deem significant be identified, provisional status may be extended, or the suspension and decertification process shall be initiated as described at Stipulation 11.3 of this PA.

11.3 Suspension and Decertification

The Regional Heritage Program Leader, the SHPO, or the ACHP may also recommend that the Regional Forester suspend a Forest or Ranger District based on findings from any of the reviews specified at Stipulation 5.5 of this PA or other identified deficiencies. The Forest Supervisor, the SHPO, or the ACHP may also request that the Regional Forester review a Forest's certification status. Upon receipt of such a request, the Regional Forester will notify the requestor and other parties if a review will be conducted. Based on the findings of such a review, the Regional Forest may or may not take any action that would change the certification status of a Forest. If a Forest is found not to have maintained the basis for its certification (e.g. the professional capability needed to carry out these policies and procedures is no longer available, or the Forest is not in conformance with this PA) and the Forest Supervisor has not voluntarily suspended participation under this PA, the Regional Forester will decertify the Forest.

(a) A Forest may ask the Regional Forester to review a decertification recommendation, in which case the Regional Forester will request SHPO participation in the review. The ACHP may also participate if it so chooses.

(b) The Regional Forester will notify the SHPO and the ACHP if the status of a certified Forest changes. In consultation with the SHPO, and the ACHP if it chooses to participate, a Plan of Action that addresses the identified deficiencies will be prepared and approved by the Regional Forester.

(c) When a Forest is suspended or decertified, the responsible Forest Supervisor shall follow the procedures of 36 CFR Part 800 to comply with Section 106.

11.4 Recertification

If a decertified Forest is found to have restored the basis for certification, either under provisional or full performance levels, the Regional Heritage Program Leader will recommend that the Regional Forester recertify the Forest. The SHPO and ACHP shall be notified when the Regional Forester recertifies a Forest. If the SHPO or ACHP objects to the Regional Forester's decision to recertify a Forest, the objection will be resolved under Stipulation 12.1.

12.0 RESOLVING DISPUTES OR OBJECTIONS, REVISION, AMENDMENT, TERMINATION AND EXPIRATION

12.1 Procedure for Resolving Objections

(a) Region 5, the SHPO, the ACHP, or Indian tribes may object to an action proposed or taken by the other pursuant to this PA. The objecting party shall notify the other party in writing of the objection. Within seven (7) calendar days following receipt of notification, the Signatories shall consult for 30 calendar days to resolve the objection. If the objection is resolved within this time frame, the parties shall proceed in accordance with the terms of that resolution. If the objection is not resolved within this time frame, and the Signatories have not agreed to extend the consultation period, the Regional Forester shall submit the objection, including copies of all pertinent documentation, to the ACHP for 30 day comment. Within 30 calendar days following receipt of any ACHP comments, the Regional Forester shall make a final decision regarding resolution of the objection and in writing notify the SHPO and the ACHP of that decision. The objection shall thereupon be resolved. In reaching a final decision regarding the objection, the Regional Forester shall take into account any comments received from the SHPO and the ACHP pursuant to this stipulation.

(b) A member of the public or an Indian tribe or other Indian group or individual may object in writing at any time to the manner in which this PA is being implemented in a specific case (except as part of administrative appeals of NEPA decisions (Stipulation 12.1(d))). The elected leader of an Indian tribe (e.g., Chairman or President) or THPO may also contact the Forest Supervisor or District Ranger on a forest to register a verbal notice of dispute, to be followed by a written notice within 7 days, whenever a historic property of significance to an Indian tribe is being or may be adversely affected by implementation of an undertaking. The Forest shall then consult with the objecting party for a period not to exceed 30 days and, if the objecting party requests, with the SHPO, to resolve the objection. If a dispute involves an undertaking's effect or potential effect on historic properties, the THPO of any tribe whose aboriginal land includes the area where the undertaking is located, may also participate in efforts to resolve the objection if the Indian Tribe or THPO makes such a request to the Forest Supervisor or SHPO. If the objecting party and the Forest resolve the objection within 30 days, the Forest shall proceed in accordance with the terms of that resolution. If the objection cannot be resolved, the Forest shall refer the objection to the ACHP for a 30 day comment period. Within 30 calendar days following receipt of any ACHP comments, the Forest Supervisor shall make a final decision regarding resolution of the objection and shall, in writing, notify the objecting party, the SHPO and the ACHP of that decision. The objection, and any similar objections, shall thereupon be resolved. In reaching a final decision regarding the objection, the Forest Supervisor shall take into account any comments received from the objecting party, the SHPO, and the ACHP pursuant to this paragraph. Any objection filed pursuant to this paragraph shall not prevent the Forest from proceeding with project planning or implementing those portions of an undertaking that are not the subject of the objection. For objections involving possible effects to historic properties, implementation shall cease on those portions of the undertaking that are the subject of the objection and will be deferred until the objection is resolved pursuant to the terms of this paragraph.

(c) Only Signatories to this PA may object or dispute Regional Forester decisions regarding certification, decertification, or recertification. Such objections or disputes shall be resolved under 12.1.

(d) The Forest Service NEPA appeals process at 36 CFR 215 (*Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities*), or successor regulations, shall be used to consider NEPA related appeals involving historic properties. Until a NEPA decision for an undertaking is made, specific objections from Indian tribes, Indians, and interested parties about the identification of historic properties and their values, and the effects to and treatment of historic properties, within an undertaking shall be resolved under this PA's dispute resolution procedures (Stipulations 12.1(a) – 12.1(b)) or 36 CFR part 800 (36 CFR 800.4(d)(ii-iv), 800.5(c)(2-3), 800.9(a)). Once the agency makes a decision on an undertaking, objections and appeals will follow the procedures at 36 CFR 215 or successor regulations.

12.2 Revision of this PA

This PA is intended to be responsive to changing circumstances. Therefore, Region 5, the SHPO, or the ACHP may propose revision of this PA, whereupon the parties shall consult to consider the proposed Revision. "Revision" as used herein refers to the process of review and rewriting stipulations in the PA. Revisions shall only become effective upon written concurrence of the Signatories. Any signatory can recommend that the suggested revisions be considered under the Amendment provisions (Stipulation 12.3) rather than this stipulation. Any disagreements on which stipulation to follow shall be resolved under the resolving objections stipulation (12.1).

12.3 Amendment of this PA

In keeping with the intended responsive nature of this PA, any party or Indian tribe may propose amendment of this PA at any time, whereupon the Signatories shall consult to consider such amendment. "Amendment" as used herein refers to the process of revising all or portions of this PA, extending its effective date, and the process of adding supplemental procedures for specific Region 5 programs when Signatories to the PA wish those procedures to be made explicit. The amendment process culminates in the issuance of an amended PA, which replaces the previous PA on its effective date. Amendments to the PA will only become effective upon approval of all the Signatories.

12.4 Termination, Amendment, Expiration, and Review of this PA

(a) Region 5, SHPO, or ACHP may terminate this PA or any PA Amendment. The party proposing termination shall in writing notify the other Signatories of their intent to terminate and explain the reasons for proposing termination. Within seven calendar days following receipt of such notification, the parties shall consult for up to 90 days to seek alternatives to termination. Should such consultation result in agreement on an alternative to termination, the parties shall proceed in accordance with the terms of that agreement. Should such consultation fail, the party proposing termination may terminate this PA or any PA Amendment by providing the other party with written notice of such termination. Termination hereunder shall render this PA or any terminated PA Amendment without further force or effect

(b) In the event of termination of this PA, Region 5 shall comply with the provisions of 36 CFR part 800 (Appendix C) for all undertakings previously covered by this PA, with the exception of those Supplemental Procedures described in PA Amendments which, by written agreement of the Signatories, may remain in full force and effect. Undertakings previously approved by a Forest under

the terms of this PA shall remain unaffected by its termination. In the event a PA Amendment is terminated, Region 5 shall comply with 36 CFR part 800 for the program or practices subsumed under the PA Amendment except insofar as SHPO, ACHP, and Region 5 in writing agree to subsume such program or practices under this PA.

(c) This PA and Region 5's activities under this PA shall be reviewed by the SHPO and ACHP on about the fourth anniversary of its execution. The purpose of such review shall be to determine whether the terms of this agreement have been satisfactorily implemented and whether the Signatories can agree to extend this PA in accordance with Stipulation 12.4(d).

(d) At midnight of the fifth anniversary of the date of its execution, this PA shall automatically expire and have no further force or effect, unless it is extended by written agreement of the Signatories. Should the PA not be extended and should no successor agreement document be in place at the time of expiration, Region 5 shall comply with 36 CFR part 800 (Appendix C).

13.0 OTHER STATE-SPECIFIC PROCEDURES

In addition to the procedures agreed to in this PA, Region 5 shall follow procedures and adhere to policies detailed in the FSM 2360 (Appendix B) and reasonably conform with standards and guidelines promulgated by the respective state SHPO (California's Office of Historic Preservation and Nevada State Historic Preservation Office). Region 5, in consultation with SHPO, may develop other guidance as necessary as supplemental procedures to this PA (Stipulation 12.3).

14.0 EXECUTION


This PA shall take effect on **the date** it has been fully executed by Region 5, SHPO, and the ACHP,.

Execution of this PA by Region 5, SHPO, and the ACHP, and subsequent implementation of its terms, evidence that Region 5 has afforded the ACHP a reasonable opportunity to comment on an undertaking and its effects on historic properties; that Region 5 has taken into account the effects of an undertaking on historic properties; and that Region 5 has satisfied its responsibilities under section 106 of the NHPA and applicable implementing regulations for all aspects of its undertaking.

**PROGRAMMATIC AGREEMENT
AMONG THE
U.S.D.A. FOREST SERVICE, PACIFIC SOUTHWEST REGION (REGION 5)
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
NEVADA STATE HISTORIC PRESERVATION OFFICER, AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE
PROCESSES FOR COMPLIANCE WITH SECTION 106 OF
THE NATIONAL HISTORIC PRESERVATION ACT
FOR MANAGEMENT OF HISTORIC PROPERTIES BY THE
NATIONAL FORESTS OF THE PACIFIC SOUTHWEST REGION**

SIGNATORY:

United States Forest Service, Pacific Southwest Region



Randy Moora
Regional Forester

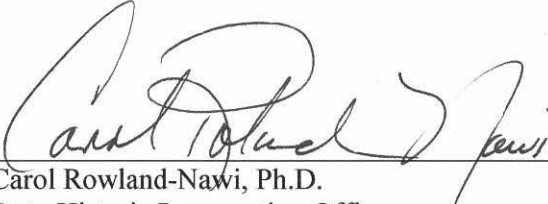
12/20/12

Date

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NATIONAL FORESTS OF THE PACIFIC SOUTHWEST REGION**

SIGNATORY:

State of California, Office of Historic Preservation




Carol Rowland-Nawi, Ph.D.
State Historic Preservation Officer

12-20-12
Date

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AMONG THE
U.S.D.A. FOREST SERVICE, PACIFIC SOUTHWEST REGION (REGION 5)
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NATIONAL FORESTS OF THE PACIFIC SOUTHWEST REGION**

SIGNATORY:


State of Nevada, Historic Preservation Office

for  _____ 12/20/12
Ronald M. James Date
State Historic Preservation Officer

**PROGRAMMATIC AGREEMENT
AMONG THE
U.S.D.A. FOREST SERVICE, PACIFIC SOUTHWEST REGION (REGION 5)
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NATIONAL FORESTS OF THE PACIFIC SOUTHWEST REGION**

SIGNATORY:

Advisory Council on Historic Preservation

for 

John M. Fowler
Executive Director

2/6/13 Date