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Memoranda of Agreement and Programmatic Agreements in the disaster context

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As two of the Federal Emergency Management Agency's main program objectives include recovery efforts for victims of a disaster, it is important that Federal Emergency Management Agency (FEMA) actions be allowed to proceed in as timely a manner as possible. With respect to fulfilling our responsibilities under Section 106 of the National Historic Preservation Act, FEMA's Historic Preservation Officer has worked closely with the Advisory Council on Historic Preservation to streamline the standard review process.

Programmatic Agreements

The programmatic agreement allows for the requirements of the National Historic Preservation Act to be carried out in a manner tailored to the program requirements, time line and resources of FEMA. There are a number of ways in which the programmatic agreement has simplified the Section 106 review process:

1. Firstly, at the earliest moments of disaster response, the programmatic agreement assigns various responsibilities of historic preservation review to certain agencies or entities:
 - the programmatic agreement establishes partnerships among FEMA, the State, the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation; and

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- the programmatic agreement delegates responsibilities to the SHPO to assure that effects on historic and archaeological resources are considered; and delays to FEMA's delivery of assistance will be minimal. The programmatic agreement also can provide for a mechanism of reimbursement to SHPO for identification, evaluation and review activities not required of the SHPO under the standard Section 106 review process.
2. Secondly, the programmatic agreement spells out specific procedures which short cut the process otherwise outlined in Part 800:
- excludes from SHPO and the Advisory Council on Historic Preservation review routine activities with little potential to adversely affect historic properties (plumbing and electrical modifications, etc.);
 - abbreviates the time frames for SHPO and Council reviews still required by the programmatic agreement; and
 - provides standard treatment measures for adverse effects.

First Midwest Floods Programmatic Agreement

The first programmatic agreement which was fully coordinated between FEMA and the Advisory Council on Historic Preservation to address historic preservation efforts was developed in the aftermath of the 1993 Midwest Floods. The 1993 Floods were particularly suited to the programmatic agreement concept, since the floods had affected a large area across a number of states, resulting in similar damages to homes and public buildings.

- To address all of these projects, essentially simultaneously, through the full Section 106 process, would have taxed FEMA resources beyond our capabilities; the programmatic agreement simplified the process greatly, reducing the steps and obligations required by FEMA;
- The programmatic agreement also provided a means to assure a somewhat standardized process by which all of the midwestern states would handle historic review, as the identical agreement was used in each state; and
- The process of developing the programmatic agreement provided an opportunity for the Advisory Council on Historic Preservation and FEMA to make the Regional offices, the States and even the SHPOs more aware of the requirements of the National Historic Preservation Act and their respective roles in conducting historic review.

Since then, the programmatic agreement used for the Midwest agreements has gone through a number of changes and become more refined with each subsequent agreement - used in Georgia, Texas and in California for both the earthquakes and the flooding here in the north.

Nationwide Programmatic Agreement

The concept of the programmatic agreement continues to evolve with each draft that is developed for a new disaster. As FEMA has responded to more types of disasters with programmatic agreements, has encountered a greater variety of historic and cultural resources to be covered by the agreements (historic churches or city halls damaged by flood or earthquake, petroglyphs on quarry walls from which stone may be taken for a FEMA action, archaeological artifacts or Indian burial grounds at project sites), and as we have grown familiar with the types of FEMA activities which are *not* likely to adversely affect such resources, the programmatic agreement has evolved into a more comprehensive document.

Consequently, FEMA has initiated a project to develop a 'Nationwide Programmatic Agreement' which would act as an umbrella agreement which would apply to any disaster occurring anywhere in the country, and would further expedite FEMA's ability to react quickly in initiating disaster recovery and mitigation projects, as FEMA and the Advisory Council on Historic Preservation would not have to negotiate a new programmatic agreement each time there was a disaster. The development of the Nationwide programmatic agreement is an ideal opportunity to coordinate with the Council, other agencies and the states to arrive at a thoughtful and workable document, based on the input of a range of experiences and interests. This agreement, currently in draft form, will be circulated to the states through the National Emergency Management Association and to the SHPOs through the National Conference of State Historic Preservation Officers.

Memoranda of Agreements

The last issue I want to touch on are the memoranda of agreement. Although a programmatic agreement is intended to cover the bulk of all projects which are likely to arise in the course of disaster recovery or mitigation efforts with respect to any given disaster, there are sometimes projects arising from a disaster not covered by a programmatic agreement, or projects which are so large in scope and potential adverse effect that the increased surveying, review, consultation, treatment, documentation or controversy warrants a special agreement to address just the procedures for fulfilling Section 106 requirements for that project.

Whereas the key to an effective programmatic agreement seems to be to anticipate the issues which may arise in order to provide for treatment and coordination which will speed the Section 106 process along, the key to an effective memoranda of agreement seems to be the pre-agreement coordination of the Agency with interested parties.

There are several examples of where historic preservation groups provided input into the memoranda of agreement process with respect to a number of historic structures in California, such as San Francisco City Hall of the Los Angeles Coliseum. Probably the ultimate example of public participation from the FEMA experience was the proposal to rebuild a marine laboratory at a new site happened to contain a number of archaeological resources including - for example, Native American artifacts, midden, lithic workshop and remnants of human remains suggesting a possible Native American burial ground. In this case, an interest group sprang up to oppose the project and, of course, there were Native

American interests to be considered. The result was a very lengthy memoranda of agreement process, which it seemed would not end even when the signatures were collected, and that entailed more than giving the interested parties a chance to review the draft memoranda of agreement. It was not even clear who was entitled to be an interested party, as individual claims of tribal descent were not coming just from individuals recognized officially by the United States to be legal descendants.

The memoranda of agreement eventually included a number of innovative ways of retaining the Native American input throughout the project implementation, involving them in plan review, treatment and data recovery review, etc. In addition, the applicant agreed to implement an educational exhibit dealing with Native American culture, lifestyles and archaeology in cooperation with the Native Americans concurring in the memoranda of agreement. With the cooperation of the California SHPO and the Advisory Council on Historic Preservation, the memoranda of agreement seems now to have had a happy ending.

Conclusion

By way of conclusion, I would like to point out that through all of the agreements - programmatic agreements or memoranda of agreements - the Advisory Council on Historic Preservation, the SHPOs, the State Emergency offices and FEMA coordinated throughout on process and shared responsibilities, as well as on determining the language to be used to reflect those agreements. I expect that the same coordination will result in a useful nationwide programmatic agreement in the coming months.