C. Disaster-Specific Memorandum of Understanding

Introduction

The Disaster-Specific Memorandum of Understanding (Disaster-Specific MOU) is an agreement to be used by Federal, Tribal, state, and local Agencies to assist and define the relationship between and among Agencies during disaster recovery efforts. This Instruction may be used in conjunction with the Interagency Meeting Checklist, which is meant to assist EHP Practitioners through planning for and participating in an Interagency Meeting (See Appendix D).

In conjunction with the Unified Federal Review (UFR) Process, the National Disaster Recovery Framework (NDRF) describes concepts and principles to promote effective Federal recovery assistance. In regards to the Disaster-Specific MOU, the NDRFs' structure includes a Federal Disaster Recovery Coordinator (FDRC) and a Natural and Cultural Resources Recovery Support Function (NCR RSF) that may be used as contacts to coordinate and effectively negotiate an MOU. In Presidentially-declared disasters in which an FDRC is deployed, he or she may activate the NCR RSF, and include a UFR Advisor, which will then assume its roles and responsibilities for implementing the UFR. The UFR Advisor is a new role developed by the UFR effort to coordinate between the NCR RSF and the FDRC. A UFR Advisor will deploy on behalf of the NCR RSF to the Joint Field Office or other deployment location to support the FDRC or other Recovery Leadership. The UFR Advisor, normally funded by FEMA, would make the determination whether to create disaster-specific tools to support interagency coordination, such as a Disaster-Specific MOU. In the event that the FDRC or other recovery leadership does not activate the NCR RSF and UFR Advisor, then the FDRC will make decisions for the UFR Process, including the decision whether to implement a Disaster-Specific MOU in consultation with the EHAD. When no FDRC has been named, the FEMA EHAD and/or FEMA Regional Environmental Officer will lead in coordinating UFR compliance strategies. For more information on the NDRF, please visit: http://www.fema.gov/national-disaster-recovery-framework .

How to Use this Tool

This tool is intended to be your guide in preparing for and writing Disaster-Specific MOUs for coordinating EHP reviews during disaster recovery. You should prepare a Disaster-Specific MOU to increase communication, collaboration, and transparency among Agencies participating in disaster recovery. The instruction is designed to fit the recommended Disaster-Specific MOU structure with explanations of the purpose and content to consider for each section.

The Disaster-Specific MOU should be customized to resources and disaster-specific needs in order to consider the unique circumstances that parties may face while coordinating EHP reviews. Additionally, General Counsel should review Disaster-Specific MOUs before execution.

Disaster-Specific MOU Instruction and Sections

Purpose

The Purpose section begins the MOU by identifying the parties who are entering into the agreement. The Purpose is designed to identify which disaster this MOU applies to, the agreement content, and briefly states the general commitments of the Agencies. This section should include a concise statement discussing the intention of the MOU related to interagency coordination of EHP reviews. The importance of this section is to memorialize the communication and collaboration efforts required by the MOU. This section does not need to address specific details of the agreement.

I. Purpose

The *[insert Agencies]*, enter into this Memorandum of Understanding (MOU) to unify and expedite the environmental and historic preservation reviews for disaster recovery projects that are associated with Presidentially-declared disaster *[insert disaster name]*. This MOU is to formalize the commitments among the listed Agencies to work together to facilitate uniformity, consistency, and transparency by setting forth roles and responsibilities for Lead and Cooperating Agencies, establishing interagency communication protocols (or procedures), and identifying environmental and historic preservation priorities related to this disaster.

Background

The Background section briefly states the background of and the rationale for pursuing a Disaster-Specific MOU. Specifically, this section identifies the need for working together based on the UFR effort's goals to unify and expedite EHP reviews. This section also functions as a way to identify existing programmatic agreements or MOUs that the parties may wish to adopt or reference in this Disaster-Specific MOU. This should always include the MOU Establishing the Unified Federal Environmental and Historic Preservation Review Process created by the UFR effort. Finally, this section does not need to include background of past efforts, lessons learned, or how the Agencies reached this level of agreement.

II. Background

[Insert the following here: information on the specific disaster, impacted area, event type, etc. Provide any and all information that will provide a context to a cold reader to describe the nature of the event.]

As the result of *[insert disaster name/event]*, the Parties, have identified the need for coordination in order to expedite the conclusion of EHP reviews conducted to fulfill the requirements of the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA), and other applicable Federal, Tribal, state, and local regulations.

Additionally, the Parties, acknowledge that on *[insert date]* the MOU Establishing the Unified Federal Environmental and Historic Preservation Review Process, was signed. The MOU formalizes Federal Agencies' commitments to a UFR to expedite and unify the environmental and historic preservation reviews for disaster recovery projects, and is consistent with applicable law.

Existing Agreement

This section identifies existing programmatic agreements (PA), Mission Assignment Agreements, MOAs, or MOUs that the parties may wish to adopt or reference in this MOU.

III. Existing Agreements

To help provide a coordinated and interagency approach, the Parties have shared existing agreements with each other that will be utilized during the disaster recovery period to expedite the environmental and historic preservation reviews and have attached them as an Appendix to this MOU.

[Insert the following list of existing PAs, Mission Assignment Agreements, MOAs, and MOUs that will be utilized by the Parties for the purposes of complying with environmental and historic

Responsibilities of Parties

This section identifies when parties are responsible as Lead Agency or Cooperating Agency during coordinated EHP reviews. Specifically, it addresses each party as a Lead Agency or Cooperating Agency based on the program funding and/or location of a disaster recovery project. The purpose of this section is to provide clarity and assist in coordination prior to the execution of an EHP review. When drafting this section consider: 1) when will parties' funding or programs be utilized during disaster recovery projects (e.g. "HUD RE" portion in the sample MOU excerpt below); and 2) what authorities does each party rely upon during disaster recovery projects (e.g. "FWS" portion in the sample MOU excerpt below).

IV. Responsibilities of Parties

Disaster recovery projects may involve funding, permitting, or approval from several Federal Agencies, in addition to Tribal, state, and local entities. Each Agency will be responsible for identifying issues that must be addressed to satisfy the National Environmental Protection Act and Section 106 of the National Historic Preservation Act and for coordinating with other Agencies as necessary. *[Attached in Appendix C, is a list of the Parties authorities and programs that will be utilized during this disaster event.]* Each of the Parties to this MOU will be responsible for the following:

[Sample text provided below for responsibilities; please insert the appropriate Parties as necessary]

FEMA – will serve as a Lead Agency and coordinate all project reviews for projects funded under FEMA programs related to the disaster designated *[insert FEMA disaster number]*, serve as a Cooperating Agency for NEPA projects funded under other authorities as appropriate, and provide technical assistance for National Flood Insurance Program related issues.

FHWA – will serve as a Lead Agency and coordinate all project reviews for projects funded under FHWA programs, serve as a Cooperating Agency for NEPA projects funded under other authorities as appropriate, and provide technical assistance for road related projects.

FWS – will serve as a Cooperating Agency for NEPA projects and provide technical assistance, as necessary, in evaluating projects to ensure threatened and endangered species are identified, any impacts avoided or minimized, and mitigation resolved.

HUD RE – will serve as a Lead Agency and coordinate all project reviews for projects funded by HUD REs and will serve as a Cooperating Agency for NEPA projects funded under non-HUD RE authorities, as appropriate.

NOAA - will serve as a Cooperating Agency for NEPA projects and engage in permitting and other responsibilities as required by the Endangered Species Act, the Marine Mammal Protection Act, the Magnuson Stevens Fishery Conservation and Management Act, and the Coastal Zone Management Act.

USACE – will serve as a Cooperating Agency if such activity or portions thereof also require authorization from the Corps under Sections 9 or 10 of the RHA, Section 404 of the CWA, and/or Section 103 of the MPRSA. The Corps will ensure the lead Federal Agency is aware of any information the Corps needs to complete its review such as compliance with CWA Section 404(b)(1) Guidelines and Mitigation Plan, including demonstrated avoidance, minimization, and compensation, as appropriate. The Corps' review will occur concurrently with the Lead Agency to the extent appropriate and practicable.

Commitments of Agencies

This section outlines the obligations of the parties. First, this section addresses the parties' roles and responsibilities during the EHP reviews. Secondly, this section identifies the commitments required by the Disaster-Specific MOU. Commitments that should generally be included in Disaster-Specific MOUs include but are not limited to: sharing information on project reviews, identifying potential barriers to efficient and effective EHP reviews, and commitments to provide resources such as trained staff. Lastly, it outlines the timelines for communication between Agencies, such as timelines for providing and responding to comments or schedules for meetings to facilitate collaboration. When building this section consider your Agency's priorities based on the disaster and consider incorporating comment response periods to ensure prompt coordination and regular meeting times. Some Agencies may have regulations/policies that dictate timelines for the validity of an MOU.

V. Commitments of Agencies

The Parties hereby commit, to the extent practicable, to early involvement and cooperation to ensure timely decisions are made and that the responsibilities of each Party are met. The Parties commit to working together and as appropriate with Indian Tribes, multistate entities, state Agencies, and other interested persons. In particular the Parties agree to:

A. Timely Coordination: Cooperating Agencies will submit reviews in accordance with the timeline for each project established by the Lead Agency with the concurrence of Cooperating Agencies.

B. Project Meetings: Parties will meet every [insert time length] to share project developments, project status, and project reviews.

C. Interagency Communication: The Cooperating Agency will notify the Lead Agency when it determines it has no related action and further participation is no longer warranted.

D. Project Development: Lead Agency, in conjunction with Cooperating Agency(ies), will provide recommendations for avoidance, minimization, and mitigation at the earliest stage possible in project development.

E. Personnel and Expertise: Cooperating Agencies will provide appropriate personnel and/or expertise to the Lead Agency, as appropriate, and as resources allow.

F. Provide Data and Studies: Cooperating Agencies will be responsible for the provision of any information necessary to complete application reviews and authorizations in accordance with the target timeline established by the Lead Agency with the concurrence of Cooperating Agencies.

   a. Lead Agencies, where appropriate, will provide to the Cooperating Agency(ies), Applicant or the prospective Applicant relevant studies, data (such as maps), and any other information concerning the status of matters the Party considers relevant, including matters that may be under consideration, such as [insert examples of types of activities].

Duration

The purpose of this section is to identify how long the parties will be bound by your Disaster-Specific MOU. Consider which parties are disaster-response focused or disaster-recovery focused. Also consider the benefits of generalized timelines rather than specific timelines based on each Agency's level of involvement. Based on the scale, type of disaster, and the Agencies involved, it may be beneficial to have a more general duration term. This section should take into account these factors.

VI. Duration

This MOU shall remain in effect for only as long as the FEMA Joint Field Office is in operation or for three (3) years, whichever comes first. Prior to such time, Parties may consult to reconsider the terms of this MOU and extend it for another term. Any extension should be made or captured in writing. Prior to such an extension the Parties may amend the MOU in accordance with Stipulation VI. below.

Amendments

The Amendments section allows parties to amend the Disaster-Specific MOU as changes occur during the disaster recovery process. Further, this section can be used to include additional Agencies who would like to participate in the MOU.

VII. Amendments

This MOU may be amended when such an amendment is agreed to in writing by all Parties. The amendment will be effective on the date a copy of the amended MOU has been signed by all of the Parties.

Termination

The purpose of the Termination section is to allow parties to formally end their involvement in the Disaster-Specific MOU either singularly or as a group. This section acknowledges that parties may disagree and if amendments cannot be reached prescribes a method for exiting the agreement. In the spirit of collaboration, consider requiring notifications and/or consultation before the termination.

VIII. Termination

If any Party determines that the terms of the MOU will not or cannot be carried out, that Agency shall immediately consult with the other Parties to develop an amendment in accordance with Stipulation VI, above. If within thirty (30) days *[Insert another time period agreed to by all Parties]* an amendment cannot be reached, any Party may terminate the MOU upon written notification to the other Parties.

Issue Elevation

The purpose of the Issue Elevation section is to provide a last resort process to resolve interagency disputes related to terms or implementation of the MOU. This Issue Elevation section is identical to the one used in the MOU Establishing the Unified Federal Environmental and Historic Preservation Review Process created by the UFR effort.

IX. Issue Elevation

Any issue or dispute that arises between or among the Parties during the course of the EHP review associated with a Disaster Recovery Project shall be addressed expeditiously to avoid delay in making the Federal Agency Decision(s) on a proposed project. This provision is intended to ensure that all Parties work as collaboratively and quickly as possible to resolve any issues or disputes that could delay a Federal Agency Decision. If there is a dispute resolution process established in an applicable law, regulation, or a legally binding agreement then it will be implemented using, to the maximum extent practicable, the timeframes in this provision.

Federal Agencies involved in reaching a Federal Agency Decision(s) for a proposed Disaster Recovery Project will seek to resolve issues or disputes at the earliest possible time through discussion at the lowest appropriate organizational level, i.e., project-level staff who have day-to-day involvement in a project. If an issue cannot be resolved through meetings among the project-level staff, then the staff will notify the appropriate Agency personnel having regional management responsibilities over this issue. The regional management staff will enter discussions to resolve the issue or dispute and will have ten days in which to do so, unless, at the end of the ten day period, all regional management staff involved in the issue or dispute agree that progress toward resolution is being made, in which case the discussions may be extended for an additional ten days. Where appropriate, the project Applicant should be engaged and its issues should also be addressed through this collaborative process.

Should discussions among those regional managers fail to achieve resolution within 20 days or where there are no such personnel with regional management responsibilities in an Agency involved, then the dispute will be elevated to a senior Agency official at the Agency's headquarters office. The senior Agency official will promptly contact his/her counterparts at the other Agencies involved in the dispute to expeditiously address the matter and to avoid delay in the timely completion of the Federal Agency Decision. If a resolution of the matter cannot be achieved at this level the matter will be elevated to the relevant signatories of this agreement for resolution.

If an Agency has vested, by regulation, the ultimate decision making authority for a Federal Agency Decision in a particular Agency official, then that official will participate as the senior Agency official, but will notify their headquarters office of the nature of the issue and their participation in this process.

In the event a matter is elevated to the signatories of this MOU and FEMA was not already a Party to the issue elevation process, then the FEMA Administrator will join the process.

As appropriate, the Agency whose Federal Agency Decision is the subject of the issue or dispute will provide the other Agencies involved in the issue or dispute with the necessary guidance and direction regarding the proper application of its relevant authorities. Nothing herein precludes any Party involved in the issue from consulting with relevant offices of other executive branch departments or Agencies.

Appendices

The Appendices section lists additional information and resources to be incorporated into a Disaster-Specific MOU as attachments. Every MOU should include "Definitions," and "Point of Contacts," and "Brief Agency Description" Appendices to help facilitate communications across Agencies. Each Appendix is discussed in detail within the "Appendices" section of this Guidance. Consider what has been referenced in the agreement, but not explicitly spelled out in a term of this MOU. Identify each within an Appendix. Also consider adding any previous agreements referenced in the MOU and standard Agency forms that should be included in your MOU.

X. Appendices

1. Definitions
2. Point of Contacts
3. Brief Agency Description of funding and assistance programs that they will be utilizing during the event.

Signatures

This section indicates the official authorization and date for the Disaster-Specific MOU by the Agencies involved. Consider your Agency's delegation of authority to identify the appropriate signatory person. Consider the required internal review processes in order for your Agency to become a signatory to a Disaster-Specific MOU. Agencies' internal review processes typically involve multiple review cycles. Consult with your general counsel if you are uncertain where to begin.

SIGNATURES:

[insert Agency name]

_____ Date

[insert Agency official name and title]

[insert name of state or Tribe] ["state" or "Tribal"] Historic Preservation Officer

_____ Date

[insert name and title]

Appendices

The Definitions, Points of Contact and Brief Agencies Descriptions Appendices below are included in the Disaster-Specific MOU. However, additional Appendices can be added in order to further customize your Disaster-Specific MOU to fit your unique disaster. Examples of additional appendices include data sharing agreements (See Appendix **G Data Sharing Agreement Content** and UFR Webpage).

A. Definitions

The Definition section describes the technical and operational terms contained in the MOU. Providing definitions will help avoid confusion and uncertainty. Definitions are particularly useful when multiple Agencies use terminology in different ways.

Appendix A. Definitions

Applicant - An individual, organization, or government who applies for direct Federal funding or assistance, can include any of the following: Federally recognized Native American Indian Tribes, Alaskan Native Tribal Governments, authorized Tribal organizations, Alaskan Native village or organizations, state Government Agencies, local governments and special districts, private non-profit organizations, or individual home and business owners.

Agency Decision - Any approval, disapproval, concurrence, or non-concurrence by a Federal Agency that is required as part of the EHP review process associated with providing Federal funding or a Federal permit, license, or other determination necessary for a Disaster Recovery Project to proceed.

Cooperating Agency - Any Federal Agency other than a Lead Agency that has jurisdiction by law or special expertise with respect to any environmental impact, involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. A state or local Agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the Lead Agency become a Cooperating Agency. Cooperating Agencies are selected in accordance with NEPA regulations (40 CFR 1501.6).

Disaster Recovery Project - An action taken after the immediate threat to life and property in a Presidentially-declared disaster has been addressed and which action (1) is subject to Federal involvement by reason of Federal funding (in whole or in part), Federal permitting, or other Federal approval; and, (2) is to (a) restore a community's facilities to pre-disaster condition or to pre-disaster capacity with such changes as may, for example, aid efficiency, resilience, or sustainability in those capabilities, or (b) provide hazard mitigation activities. Note: An action may be a disaster recovery project even while other "disaster response" actions continue to neutralize ongoing threats to the preservation of life and other property. There is no calendar deadline after which projects to restore a semblance of normal life in a disaster area are no longer considered disaster recovery projects. An action may be preliminary to actual restoration, such as providing debris removal or temporary housing. Furthermore, a community's facilities may include those that are man-made or part of the natural environment, whether in public or private ownership.

Disaster Response - Actions taken immediately after a Presidentially-declared disaster occurs to save lives, protect property and the environment, meet basic human needs, stabilize the incident, restore basic services and community functionality, and establish a safe and secure environment moving toward disaster recovery.

Environmental and Historic Preservation Reviews - The Federal review necessary to comply with environmental and historic preservation law.

Lead Agency - The Lead Agency is designated to supervise preparation of the environmental analysis and conduct any relevant historic preservation reviews that are applicable to the project. Federal Agencies, together with Tribal, state, or local Agencies, may act as joint Lead Agency.

Party - Agencies that have signed and committed to the roles and responsibilities outlined in this MOU.

Responsible Entity (or HUD RE) - A recipient of a Community Development Block Grant funding from the U.S. Department of Housing and Urban Development. Responsible entities may be an Indian Tribe, Alaskan Native village or organization, the Department of Hawaiian Home Lands, state, or unit of general local government, responsible entities assume the authority and responsibility of fulfilling Federal environmental and historic preservation requirements.

B. Point of Contact

The Point of Contact (POC) Appendix designates responsible parties for maintaining the terms of the Disaster-Specific MOU. There are many Agencies involved in disaster recovery and staff rotation is common. Therefore, it is important to include POCs along with methods to update contact information. Consider adding contacts based on the Agency's chain of

command, decision-making ability, and usefulness during the issue elevation process. Consider POCs from the NDRF Framework.[1] Identify how often should your points of contact information be reviewed and updated.

Appendix B.

Each Party hereby designates the following employees as the principal contacts regarding this MOU. These contacts may be changed through written notice to each Participant and Party. [*Pick Agencies as appropriate*]

BLM	EPA	FEMA
FHWA	FS	FTA
FWS	HUD RE	NOAA
NPS	USACE	USCG

C. Brief Agency Descriptions

The purpose of this Appendix is to educate parties on each other's organization, roles, authorities, and programs to increase transparency and improve coordination for the disaster recovery process. A sample Brief Agency Description for FEMA is found on the next page (C-11).

[1] Positions such as Local Disaster Recovery Managers, Tribal and state Disaster Recovery Coordinators, Federal and state Disaster Recovery Coordinators, and related Recovery Support Functions may be helpful. For more information on the positions and roles within the NDRF, please visit: http://www.fema.gov/pdf/recoveryframework/ndrf.pdf

APPENDIX C - SAMPLE

Brief Agency Description:
Federal Emergency Management Agency (FEMA)

The following programs, legal authorities, and staff roles are the primary means by which FEMA supports disaster recovery efforts.

PROGRAMS

1. Hazard Mitigation Grant Program (HMGP) – HMGP provides grants to Tribal Governments, states, Territories, local governments, and eligible private nonprofits to implement long-term hazard mitigation measures after a major disaster declaration declared by the President. HMGP includes Pre-Disaster Mitigation, Flood Mitigation, Severe Repetitive Loss, and Repetitive Flood Claims Grants. The purpose of the HMGP is to reduce the loss of life and property due to natural disasters and to enable mitigation measures to be implemented during the immediate recovery from a disaster.
2. Public Assistance (PA) Grant Program – This program helps Tribal, state, and local governments and eligible private nonprofits in their response and recovery to a disaster by providing financial assistance in the form of grants from major disasters or emergencies declared by the President. The program also encourages protection of damaged facilities from future events by providing assistance for hazard mitigation measures during the recovery process.
3. Individual Assistance (IA) Grant Program – This program provides temporary assistance for individuals to include temporary housing and financial assistance with other needs, such as emergency sheltering and minor home repairs.

LEGAL AUTHORITIES

1. Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, as amended, 42 U.S.C. 5121-5207) – provides the statutory authority for Federal disaster response activities and for FEMA's disaster assistance programs. FEMA's emergency and disaster assistance programs are implemented at 44 CFR Part 206.
2. Executive Order 11988 *Floodplain Management*: FEMA is tasked with review of projects to ensure compliance with this executive order. Further guidance can be found at http://www.fema.gov/environmental-planning-and-historic-preservation-program/executive-order-11988-floodplain-management.
3. Executive Order 11990 *Protection of Wetlands* – Executive order 11990 require Federal Agencies to avoid, minimize, and mitigate harm to wetlands from Federal activities. FEMA maintains a floodplain Map Service Center with publicly available information about the location of floodplains. FEMA also maintains the National Flood Insurance Program, which provides insurance to homeowners, renters, and business owners.

STAFF & ROLES

1. Cadre of On-Call Response/Recovery Employees (CORE) – work full time for a specific, limited period (between two to four years) for a disaster.
2. Federal Disaster Recovery Coordinators (FDRCs) – coordinate disaster relief through field offices. FDRCs facilitate disaster recovery coordination and collaboration among the various stakeholders involved in disaster recovery, including Agencies, Tribes, and community organizations. FDRCs and Recovery Office Directors manage the Federal response and recovery to a disaster. The FDRC, FCO, and Recovery Office Directors coordinate relief through field offices and takes action to

provide Federal assistance.

3. Recovery Office Directors – oversee recovery operations for one or more disasters within a recovery office.
4. Federal Coordinating Officer (FCO) – manages the Federal response operations for each Presidentially-declared disaster or emergency. FCOs are responsible for government and intergovernmental coordination, assessing the needs of a disaster, establishing a Joint Field Office, and identifying staffing and other resource requirements. FCOs oversee disaster recovery efforts while the event is transitioning from disaster response to disaster recovery.
5. Environmental and Historic Preservation Advisor (EHAD) – acts as primary point of contact for coordinating EHP reviews and addressing questions and concerns at a disaster.
6. Regional Environmental Officer (REO) – directs the regional EHP program. REOs coordinate with, or act as, EHADs during a disaster declaration.
7. Deputy REO (DREO) – supports the REO with a range of EHP duties. The DREO assists with the completion of EHP reviews.
8. UFR Advisor–acts as a liaison and coordinator between Federal Agencies. The UFR Advisor is often a FEMA employee, but if FEMA is unable to fill the role during a disaster due to capacity issues, the UFR Advisor may come from other support Agencies of the NCR RSF. If the Federal disaster recovery leadership determines the need for a UFR Advisor, the UFR Advisor will deploy to support leadership in the Joint Field Office or other deployment locations. There may be multiple UFR Advisors if there are multiple Joint Field Offices. The UFR Advisor will make the determination whether to create disaster-specific mechanisms to support interagency coordination, such as a Disaster-Specific MOU.
9. Environmental and Historic Preservation Cadre- part-time staff that are deployed to disasters to work in the Recovery Offices, Regional Offices or a Joint Field Office to help assist with EHP reviews.