

UNIFIED FEDERAL REVIEW PROCESS Newsletter

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"To keep every cog and wheel is the first precaution of intelligent tinkering."- Aldo Leopold

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Welcome!

Hello, and welcome to the Fall 2020 edition of the UFR newsletter! If you are a previous reader we're glad to have you back, and if you are a first-time reader, welcome. We know it has been quite a while since our last issue, but we are excited to share with you all the new developments within UFR that have occurred since then. UFR is a dynamic, ever-evolving process and there have been many updates and achievements that we are proud to exhibit. Within this issue you will learn about many of these, from new agreements, to a report to congress on UFR and recommendations for legislative and agency action you will find out more about from National UFR Coordinator Ryan Potosnak in the Coordinator's Corner.

What's Next for UFR?

- The New National UFR Coordinator, Benjamin Alexander, officially begins work on November 09!
- Benjamin is currently the FEMA Region IV Regional UFR Coordinator
- The National UFR Team and its partner agencies continue to work through the UFR Strategy and Implementation Plan 2020-2025, which was published earlier this year

Additional UFR Tools are available via the [UFR Library](#).

FEMA – Tribal National Historic Preservation Act Programmatic Agreements: Introduction and Updates from DR-4440-South Dakota: Rosebud Sioux and Flandreau Santee Sioux Tribes

Charles Bello, FEMA Region VIII Regional UFR Coordinator and Tribal Specialist

Programmatic Agreements (PAs) are important and effective components of any project streamlining effort. They directly relate to the overarching concept of the Unified Federal Review (UFR) process that expedites decision making during environmental planning and historic preservation reviews (Sandy Recovery Improvement Act 2013). FEMA uses the UFR to promote interagency engagement and cooperation, thereby delivering community assistance in an efficient manner and better serving communities recovering from disasters.

There are two basic types of Programmatic Agreements: specific and procedural. FEMA's Environmental & Historic Preservation Section (EHP) uses both. This article focuses on the utility of employing procedural agreements to fulfill EHP's Mission and Grant(s) Program project review responsibilities under Section 106 of the National Historic Preservation Act (NHPA) while working on Tribal lands.

PAs are tools for implementing approaches with State Historic Preservation Offices (SHPOs) or Tribal Historic Preservation Offices (THPOs) that do not follow the normal Section 106 process – such as in disasters when damages are widespread and/or where emergency preparedness or response measures are to be undertaken immediately. Specific Programmatic Agreements cover known and definable adverse effects to (mostly) individual sites or properties – such as structural repairs, demolitions or relocations, or impacts to archaeological sites/traditional cultural properties on/off Tribal lands.

The document that establishes a process parties take to meet broader compliance responsibilities for an agency program, or a category of projects or resource types is called a procedural Programmatic Agreement. A procedural PA is used when the effects of an Undertaking may not be fully known, but when there are reasonable expectations for the (benign) outcome of the proposed repairs. This is the type of PA recently implemented by FEMA Region VIII on both the Rosebud and Flandreau Santee Sioux Indian Reservations in South Dakota and follows six other similar agreements in place with Tribes in Montana, North Dakota, and Wyoming.

These agreements facilitate early coordination and scoping with connected parties/responsible entities and allow the "usual routine" categories of disaster damages/impacts to historic properties to be excluded from formal consultation (i.e., certain types of debris management; roadway repairs to pre-disaster geometric design and condition; in-kind repair or replacement of various facility types/elements; etc.). The resulting shortened compliance times allow projects to proceed faster and more efficiently.

A procedural PA is an asset for EHP reviews. It establishes a compliance process for common undertakings and types of historic/cultural resources, and/or frequently encountered effects. This type of agreement contains categorical exclusions, allowances, or standard treatments on a program basis, rather than through case-by-case consultation (which requires time). It fits the compliance process into FEMA's mission and the kinds of historic/cultural resources we most often encounter.

Section 14(b) of 36 CFR Part 800 (the implementing regulations of Section 106, NHPA) outlines the process through which PAs are developed and approved. It is comprehensive, and EHP practitioners follow it to the letter. The Advisory Council on Historic Preservation encourages the use of Programmatic Agreements as an alternative to standard Section 106 compliance. The benefits of using a PA occur in several ways: where effects on historic properties are similar and repetitive; where effects cannot be fully determined prior to either approval or implementation of a project; and where other parties are part of the decision-making process (common with FEMA projects).

FEMA uses staff qualified under standards set forth in the Federal Register at 48 Fed. Reg. 44716-01(09-29-1983), as amended, in completing identification and evaluation of historic properties and making determinations of effects.

THE UFR PROCESS

The Unified Federal Environmental and Historic Preservation Review Process (UFR Process) was established on July 29, 2014, by the execution of a Memorandum of Understanding (MOU) among eleven federal agencies involved in the environmental and historic preservation (EHP) reviews associated with disaster recovery assistance. The UFR Process focuses on the federal EHP requirements applicable to disaster recovery projects following a Presidentially-declared disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Through the UFR Process, federal agencies that fund or permit disaster recovery projects and those that perform EHP reviews associated with the decision-making process, will coordinate their independent EHP review processes leading to expedited decision making, which can result in the faster delivery of assistance and the implementation of recovery projects. The UFR Process recognizes the important role of tribes, state agencies, localities and the stakeholders working together with federal agencies to coordinate EHP reviews.

Over the past several years, the UFR Steering Committee, comprised of the Advisory Council on Historic Preservation (ACHP), the Council on Environmental Quality (CEQ), the Department of Homeland Security (DHS), and the Federal Emergency Management Agency (FEMA), have focused on implementing the UFR Process, reviewing the processes annually and updating it, as necessary. This has, and will continue to include engaging

stakeholders in the field, hosting webinars and attending conferences to educate federal, state, local, tribal and territory partners in the

UFR Process.

Additionally, the UFR Steering Group is hosting an invitational UFR Summit on June 24, 2020 in Washington, DC i for the UFR MOU signatory departments and agencies. This will be an opportunity for representatives from all UFR partner agencies to review successes and missed opportunities in UFR implementation, discuss the future of UFR, and reaffirm commitments to driving an integrated approach to streamlining environmental and historic preservation compliance review during disaster recovery operations.

FEMA EHP Region VIII (Denver, Colorado) works with six State Historic Preservation Offices (SHPOs) and twenty-eight Tribal Historic Preservation Offices (THPOs) in Colorado, North and South Dakota, Montana, Wyoming, and Utah). Region VIII has effectively utilized Programmatic Agreements for the past decade – some formerly codified and others where negotiations are ongoing (pending signature), or where agreements are in place for the interim use of certain stipulations, allowances, or time-frames.

The 2013 nation-wide Programmatic Agreement (template) established by FEMA is clear and thorough. It covers all aspects of historic preservation that may come to light as a result of fires, flooding, winter storms, tornados, earthquakes, and other natural disaster events. The agreement spells out formal and legally binding terms between FEMA and a State or a Tribe (as either a Grantee or Recipient, who will typically be the administrator for funds provided under a variety of FEMA programs) and establishes a process for consultation, review, and compliance.

Working in “Indian Country” can be an interesting and greatly rewarding experience. This is especially true when engaging directly with elders (who often are true “keepers of the traditional culture”) during disaster response/recovery. Tribal governments are often challenged in their ability to address disaster-related damages to historic/archaeological sites, traditional cultural properties, and sites related to ongoing spiritual/heritage activities. It is important to note that FEMA/Tribal disaster-related collaboration illustrates the importance each government places on balancing disaster response and recovery with historic and cultural preservation responsibilities (36 CFR 800.2(c)(4)).

Typically, in any given year FEMA funds thousands of projects – many of which are routine activities with little potential to adversely affect historic properties, but still require Section 106, NHPA review. Programmatic Agreements avoid redundancy and reinventing the wheel during project review and compliance. Consultation is

required only in certain situations – that are clearly spelled out and previously agreed to by all parties, resulting in reductions in

overall costs and time, and certainly the number of individual project reviews that would otherwise have to occur. The focus is on flexibility – allowing a quicker turnaround of projects so that the effects of Undertakings on historic properties may still be (legally) considered while minimizing delays to FEMA’s delivery of federal assistance (obligation of funds). The consultation that does occur is consistent and predictable – freeing both FEMA and SHPO/THPO to address higher priority or more complicated projects.

Two Tribal Programmatic Agreements were recently negotiated and signed in South Dakota Indian Country. The first was the Rosebud Sioux (Todd, Tripp, Lyman, Mellette, and Gregory counties). The second was with the Flandreau Santee Sioux (Moody County). At the time of signing almost the entire state was experiencing unprecedented levels of flooding. Pursuant to 36 CFR § 800.14(b)(4), these PAs allow consultation to occur on a direct government-to-government basis for “Undertakings” occurring on or affecting Tribal lands. The documents also allow other federal agencies to utilize the PA to fulfill their Section 106 responsibilities for response and recovery activities when appropriate.

The Rosebud Sioux Tribal Council met in early July 2019 to unanimously approve the Programmatic Agreement between the Tribe and FEMA. The document was officially signed a few days later by the Tribal Chairman, the Tribal Historic Preservation Officer, FEMA Region VIII Administrator, and the Region VIII Environmental Officer. A similar Agreement was put forth to the Flandreau Santee Sioux Executive Committee of the Tribal Council a few weeks later and signed through a resolution by the Tribal President, the Tribal Historic Preservation Officer, and FEMA Region VIII leadership.

The Rosebud and Flandreau Sioux are the latest federally recognized Tribes in FEMA Region VIII (and only the 8th/9th in the country) to sign a Programmatic Agreement streamlining FEMA’s responsibilities under Section 106 of the NHPA.



Rosebud Sioux Tribe Section 106 Coordinator Benjamin Young (L) and FEMA Region VIII Tribal Specialist Charles Bello (R) holding signed Programmatic Agreement

The Rosebud Sioux, also known as the Sicangu Lakota (Upper Brulé Sioux Nation) – is a large tribe adjacent to the Nebraska border, with approximately 21,000 enrolled members. The current boundaries of the Reservation were established in 1889 from the partition of the Great Sioux Reservation, and cover approximately 2,000 square miles (including extensive off-reservation trust land). It is the 18th largest Indian Reservation in the United States.

The Flandreau Santee Sioux Tribe was established in 1936 under the provisions of the Indian Reorganization Act of 1934. It is much smaller both in geography and population than the Rosebud Sioux. There are approximately 1,000 enrolled members comprised primarily of descendants of the Mdewakantonwan and Wakpekute bands of the Isanti Division (Santee Dakota people) of the Great Sioux Nation. The reservation comprises 5,000 acres of both trust and fee land along the Big Sioux River in a region of undulating farm and ranchland known as the Prairie Coteau (bordering Minnesota).

FEMA Region VIII has similar Programmatic Agreements with the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation (Montana), Sisseton-Wahpeton Oyate (South Dakota), Fort Belknap Indian Reservation (Montana); Spirit Lake Dakota Nation (North Dakota), Turtle Mountain Band of Chippewa Indians (North Dakota), and the Eastern Shoshone Tribe of the Wind River Indian Reservation (Wyoming). FEMA Region VIII remains committed to establishing interagency agreements and pursuing programmatic approaches during both steady state and in disaster activations with the 28 Tribal Nations in Colorado, North Dakota, South Dakota, Montana, Wyoming, and Utah.



Flandreau Santee Sioux Tribal Historic Preservation Officer Garrie Kills-a-Hundred (L) and FEMA Region VIII Tribal Specialist Charles Bello (R) holding signed Programmatic Agreement

Unified Messaging: Road Repair Best Practices

Sarah Carrino, FEMA Region VI Regional UFR Coordinator

In June 2019, Oklahoma Archaeological Survey (OAS) was notified of an inadvertent discovery of pre-historic remains that were uncovered as a result of the May and April flooding in Oklahoma. Under the purview of the State's Burial law, OAS responded to the discovery. The site had experienced looting, so OAS worked quickly to document and recover the site. OAS determined the site to be extensive, suggestive of a large village spanning multiple areas which just so happened to surround the local county roadways. While surveying the site, OAS witnessed the County repairing the roads that had been washed out due to the recent floods, declared under FEMA-4438/53-OK. The County was using heaving equipment (i.e. backhoes) to fill and reshape the road which posed a grave threat to the integrity of the surrounding newly discovered archaeological sites. The State Archaeologist requested work cease immediately given the proximity of the archaeological site. When confronted, the County complied with OAS's request. However, when OAS returned to the site later that week, they discovered the work had been completed.

In response, FEMA's Region VI Regional Environmental Officer and UFR Coordinator teamed up with the Oklahoma Department of Emergency Management (OEM), SHPO, OAS, and PA to develop Road Repair Best Practices in an effort to avoid after the fact consultations and minimize future harm to cultural resources, such as undiscovered archaeological sites and buried Native American cultural items adjacent to roadways in the State of Oklahoma. The Road Repair Best Practices were created and issued just six (6) days after the initial joint discussion was held that identified the threat and resulted in the group consensus for abrupt action. The joint best practices were designed to advise potential Applicants on preferred methods of road repair that would bolster conditions to avoid adverse impacts to cultural resources all together. The outcome of these joint agency efforts serves as a testament to the excellent coordination, communication, and collaboration taking place between Federal and State UFR partners in Oklahoma.



The type of coordination described above can be employed to expedite a variety of disaster recovery infrastructure projects, like the repair of this road in Alaska after the November 2018 Alaska Earthquake (Credit: FEMA/ Savannah Brehmer)

Unified Federal Review Continues to Support Recovery in Puerto Rico

Jose Alicea-Pou, FEMA UFR Advisor & John Dawson, FEMA Region II Regional UFR Coordinator



Miguel A. Bonini, Senior Historic Property Specialist, Archaeology, with the Puerto Rico State Historic Preservation Office presents to FEMA and The Puerto Rico Central Office for Recovery, Reconstruction and Resiliency (COR3) staff at the Joint Field Office in Guaynabo, PR

Recently, the Puerto Rico UFR team collaborated with the Puerto Rico State Historic Preservation Office (SHPO), an active UFR Working Group Participant, with EHP and the Interagency Recovery Coordination (IRC) group to offer various presentation regarding the Sec 106 process in Puerto Rico. The SHPO officials offered talks to the Recovery Support Function Federal Agencies Officials at the IRC meeting (Oct 8), at the UFR Working Group meeting (Oct 8) and to FEMA Public Assistance, Hazard Mitigation, and Central Office of Recovery, Reconstruction and Resiliency (COR3) representatives on Oct 11, 2019. This educational collaboration not only was great for these representatives to have additional context regarding the Commonwealth's historic review process under Sec. 106 of the National Historic Preservation Act (NHPA), but also offered another opportunity to strengthen the working relationship of SHPO with all these interested parties and with the UFR team

Coordinator's Corner:

Notes From the National UFR Coordinator

Ryan Potosnak, Former National UFR Coordinator

Hello UFR Partners. It has been a while, but the UFR Team and I are pleased to share a new issue of the UFR Newsletter. Since the release of our last issue in May of 2017 everyone has been extra busy putting all we've been building for the UFR into action. Articles in this issue are a testament to how important and effective the UFR has been as the federal interagency has risen to respond and support disaster survivors' recovery from some of the most powerful, destructive, and complex natural disasters this nation has ever seen.

Beyond the efforts of implementing the UFR, our work has also been building greater notoriety allowing us to tell of our successes, best practices, and lessons learned with an even wider audience that will soon include both house and congressional committees. The soon to be delivered Disaster Recovery Reform Act (DRRA) Section 1220 Unified Federal Review Report marks a huge step in the UFR being recognized for more effectively streamlining interagency disaster recovery.

Looking to the future had also been a major focus of what the UFR Interagency Team has been focusing on since our last issue. After reaching the end of the team's initial strategy, the UFR in December 2019 finalized a 5-year Strategic Plan that will guide the interagency development and implementation of the UFR through the year 2025.

Finally, with so much accomplished by the team I'd like to announce my leave from the National UFR Coordinator role. After four and a half years of holding the position and creating a path forward with a new 5-year strategic plan, I'm excited to hand the UFR to a new National Coordinator who will work with the interagency to accomplish even more to help disaster survivors. I will continue to remain a staunch supporter and partner of the UFR in my new role as National Coordinator of the Natural and Cultural Resource Recovery Support Function with the Department of Interior. It has been a pleasure working with you all the past few years, and I look forward to seeing the UFR continue to succeed thanks to all of your work and support.

Ryan Potosnak was the former National UFR Coordinator and is now the National Coordinator of the National and Cultural Resources Recovery Support Function at The Department of the Interior. He can be reached at ryan_potosnak@ios.doi.gov.