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BLANKET EXTENSION REGARDING SECTION 106 REVIEW OF UNDERTAKINGS RESPONDING TO COVID-19 EMERGENCY AND DISASTER DECLARATIONS

April 3, 2020

The regulations implementing Section 106 of the National Historic Preservation Act (Section 106), at 36 C.F.R. 800.12, provide for special procedures that may be used by federal agencies to comply with Section 106 regarding undertakings that respond to a disaster or emergency declared by the President, a tribal government, or the governor of a state, or which respond to other immediate threats to life or property. Those procedures may be used for undertakings that will be implemented within 30 days after the declaration. However, that time period can be extended by the Advisory Council on Historic Preservation (ACHP).

Pursuant to 36 C.F.R. 800.12(d), the ACHP has extended, until May 29, 2020, that time period for all federal agencies regarding undertakings that respond to the following emergencies and disaster declarations on the outbreak of coronavirus disease (COVID-19):

- National emergency declared by President Trump on March 13, 2020 under 501(b) of the Stafford Disaster Relief and Emergency Assistance Act (42 USC 5121-5207) and the National Emergencies Act (50 U.S.C. 1601 et seq.); and
- All COVID-19 emergencies or disaster declarations that (a) have already been issued by the President, a tribal government, or the governor of a state, or (b) may be issued by any of them while this extension is in place.

This extension applies to state or local government officials that serve as the agency official for Section 106 compliance in place of the relevant federal agency.

Again, the Section 106 emergency procedures under 36 C.F.R. 800.12 can only be used for undertakings that respond to COVID-19 emergencies or disaster declarations. Such undertakings may include projects such as new construction or adaptation of existing buildings for COVID-19 testing, treatment, or quarantining; creation of COVID-19 temporary facilities; and development of infrastructure specifically built to serve COVID-19 facilities and services.

The emergency procedures under 36 C.F.R. 800.12 give federal agencies two options for handling the mentioned types of undertakings that respond to a declared emergency or disaster:

- (a) follow an existing agreement regarding such emergencies or disasters, including a Programmatic Agreement, approved by the ACHP; or, absent such an agreement,
- (b) follow a very shortened process whereby they notify the ACHP, the relevant State or Tribal Historic Preservation Officer (SHPO/THPO), Indian tribe, and Native Hawaiian organization (NHO) prior to the undertaking, and afford them an opportunity to comment within seven days of

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notification (or a shorter period if circumstances do not permit seven days).

For more comprehensive information and guidance on Section 106 Emergency Procedures, please look here: <https://www.achp.gov/digital-library-section-106-landing/role-section-106-disaster-response-frequently-asked-questions>.

The pausing of certain Section 106 deadlines under limited circumstances related to COVID-19 announced in the following link does not apply to reviews of undertakings under 36 C.F.R. 800.12 that respond to a disaster or emergency declared by the President, a tribal government, or the governor of a state, or which respond to other immediate threats to life or property: <https://www.achp.gov/digital-library-section-106-landing/section-106-and-coronavirus-impacts>.

Finally, we want to strongly encourage agencies that believe they will be using the emergency procedures under 36 C.F.R. 800.12 to proactively reach out to the SHPO/THPO, Indian tribes, and NHOs with whom they typically work to assess their availability during this time. Many of their offices are closed or operating under significant restrictions due to COVID-19. Knowing their availability ahead of time will better ensure that, when the shortened emergency process is used, it meets its goal of informed agency decisions regarding historic properties.

The ACHP is taking this action to extend the use of its emergency provisions in light of the nature of the COVID-19 pandemic in the United States which, unlike other types of emergencies or disasters, is an event that is expected to continue over a period well beyond 30 days from the national emergency declaration mentioned above. Depending on developments regarding COVID-19, the ACHP may decide to further lengthen this extension.



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