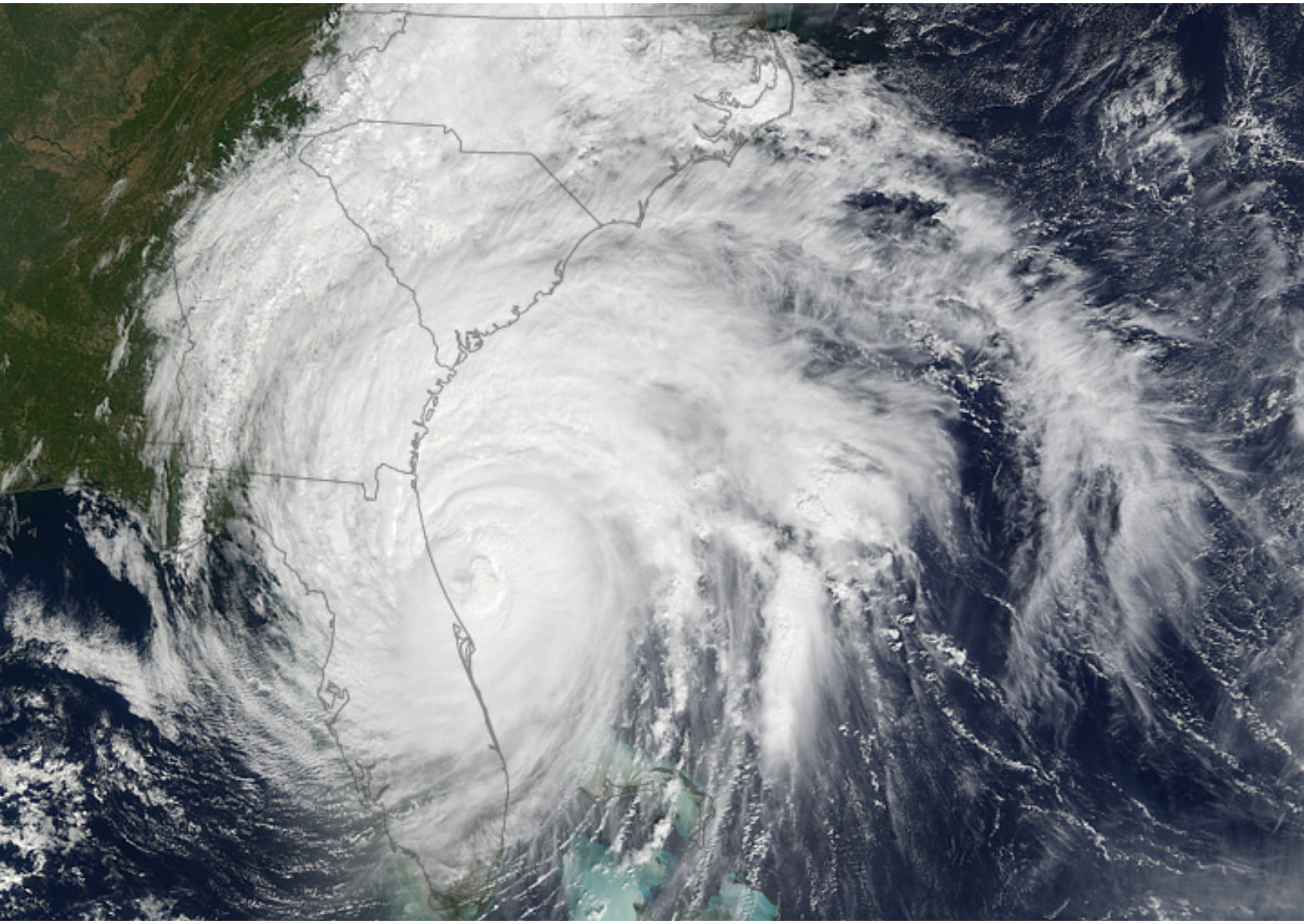
Protecting Florida's History from Hazards

A Guide to Integrating Cultural Resources into Disaster Planning



UF Levin College of Law
Conservation Clinic
UNIVERSITY of FLORIDA

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Cover Photo: Hurricane Matthew Brushes Florida Coast (October 7, 2016). NASA Earth Observatory image by Jesse Allen, using data from the Land Atmosphere Near real-time Capability for EOS (LANCE). Caption by Pola Lem.

Protecting Florida's History from Hazards

A Guide to Integrating Cultural Resources into Disaster Planning

Prepared by

University of Florida Levin College of Law, Conservation Clinic

in partnership with

National Park Service

Belinda B. Nettles, Ph.D. Candidate
University of Florida College of Design, Construction & Planning

Thomas T. Ankersen, Esq.
Legal Skills Professor and Director, Conservation Clinic, University of Florida Levin College of Law

W. Thomas Hawkins, Esq.
Policy & Planning Director, 1000 Friends of Florida

Adrienne Burke, Esq.
Executive Director, Riverside Avondale Preservation

Joseph I. Pardo, J.D.
Student Associate, Conservation Clinic, University of Florida Levin College of Law

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Contents

List of Abbreviations ..... **vii**

Introduction **I-1**

Integrating Cultural Resources into Disaster Planning I-1

Defining Cultural Resources I-1

Significance of Cultural Resources I-2

Guide Overview: Four Strategies I-3

Strategy 1: Incorporate Cultural Resources into the Emergency Management Framework **1-1**

Strategy 1 Summary 1-1

Introduction 1-2

Emergency Management Planning Framework 1-3

Federal Emergency Management Planning 1-3

State Emergency Management Planning 1-5

Comprehensive Emergency Management Plan 1-6

Enhanced Hazard Mitigation Plan 1-9

Local Emergency Management Planning 1-11

Other Relevant Emergency Management Plans 1-13

Post-Disaster Redevelopment Plan 1-13

Local Disaster Housing Plan 1-15

Case Study: Local Planning in Nassau County, Florida 1-16

Strategy 2: Incorporate Emergency Management into the Historic Preservation Framework **2-1**

Strategy 2 Summary 2-1

Contents

Historic Preservation Framework 2-1

Federal Historic Preservation 2-1

State Historic Preservation 2-3

Local Historic Preservation 2-4

Local Preservation Ordinances 2-5

Historic District Guidelines 2-7

Case Study: Exemptions for Historic Structures in Cedar Key 2-8

Strategy 3: Incorporate Cultural Resources into Actions under the National Flood Insurance Program 3-1

Strategy 3 Summary 3-1

Community Rating System 3-1

Inventory Historic Resources 3-5

Map Vulnerable Cultural Resources 3-5

Share Information about Flood Risks to Cultural Resources 3-6

Adapt Historic Structures 3-6

Encourage Government Acquisition of Cultural Resources 3-7

Case Study: Floodproofing the Train Depot in Fernandina Beach 3-8

Strategy 4: Address Hazard Mitigation for Cultural Resources in Comprehensive Planning 4-1

Strategy 4 Summary 4-1

Growth Management Policy 4-1

Include Policies that Require Periodic Surveys and Maintain Inventories of Cultural Resources 4-5

Include Policies that Encourage Maintenance and Hazard Mitigation for Historic Properties 4-6

Case Study: Comprehensive Planning in Fernandina Beach, Florida 4-7

List of Abbreviations

AAA	Adaptation Action Area
ACHP	Advisory Council on Historic Preservation
CEMP	Comprehensive Emergency Management Plan
CLG	Certified Local Government
CRS	Community Rating System
DMP	Debris Management Plan
EHMP	Enhanced Hazard Mitigation Plan
EOP	Emergency Operation Plans
EMI	Emergency Management Institute
ESF	Emergency Support Function
FDEM	Florida Division of Emergency Management
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Map
FMSF	Florida Master Site File
FPAN	Florida Public Archaeology Network
HMP	Hazard Mitigation Plan
HSPD-5	Homeland Security Presidential Directive 5
LDC	Land Development Code
LMS	Local Mitigation Strategy
NFIP	National Flood Insurance Program
NGO	Non-governmental Organization
NHPA	National Historic Preservation Act
NIMS	National Incident Management System
NPS	National Park Service
NRF	National Response Framework

PDRD	Post-Disaster Redevelopment Plan
PPD-8	Presidential Policy Directive 8
SERT	State Emergency Response Team
SHMPAT	State Hazard Mitigation Plan Advisory Team
SHPO	State Historic Preservation Office

Introduction

Integrating Cultural Resources into Disaster Planning

Florida's historic and archaeological sites help define the character of communities and draw in tourist revenue. However, these are also vulnerable to natural disasters and the impacts of coastal change, including sea level rise. Disaster planning for these sites, broadly known as "cultural resources," is often inadequate, and frequently addressed only after a disaster has occurred. This, unfortunately, can lead to further damage occurring during recovery efforts.

Over the past decade, federal and state policy makers have begun to develop strategies for improving the integration of cultural resource protection into disaster planning, but more still needs to be done. Focused on Florida, this guidebook furthers this effort by describing current emergency management and preservation planning frameworks, providing examples of disaster planning practices, and presenting new policy and planning recommendations.

Defining Cultural Resources

In the most general sense, cultural resources are the physical evidence or place of past human activity.[1] One scholar describes cultural resources as "those aspects of the environment--both physical and intangible, both natural and built--that have a cultural value of some kind to a group of people."[2]

While applicable state and federal law do not further define cultural resources, definitions exist for related terms such as 'historic property' and 'historic resources.' The National Historic Preservation Act (NHPA) provides the following definition for use by the National Park Service:

> *"Historic property" or "historic resource" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource.*[3]

1 National Park Service, *Cultural Resources,* Cultural Resources - Acadia National Park (National Park Service) (2015), https://www.nps.gov/acad/learn/management/rm_culturalresources.htm.
2 Thomas F. King, Cultural Resource Laws & Practice 3-4 (AltaMira Press 2008).
3 National Historic Preservation Act, 16 U.S.C. § 470 (1966).

Florida Statutes similarly define 'historic property' and 'historic resource' for the purpose of historic programs as "any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural, or archaeological value, and folklife resources."[4]

The Federal Emergency Management Agency (FEMA), in its guidance document *Integrating Historic Property and Cultural Resource Considerations Into Hazard Mitigation Planning* (FEMA 386-6), defines cultural resources as follows:

> *Non-living examples of objects acquired and preserved because of their potential value as examples, as reference material, or as objects of artistic, historic, scientific, educational, or social importance, either individually or as a collection.*
>
> *Cultural resources include "moveable heritage," such as collections of artifacts, statuary, artwork, and important documents or repositories. Often housed in libraries, museums, archives, historical repositories, or historic properties, these resources range from three-dimensional examples such as sculptures, historic furnishings, family heirlooms, or textiles, to two-dimensional examples such as family records, written history or memorabilia, old photographs and maps, and other archival materials.*[5]

The common thread among these definitions is that cultural resources are any tangible feature of significance to a group of people which is traditionally associated with those people.[6]

Significance of Cultural Resources

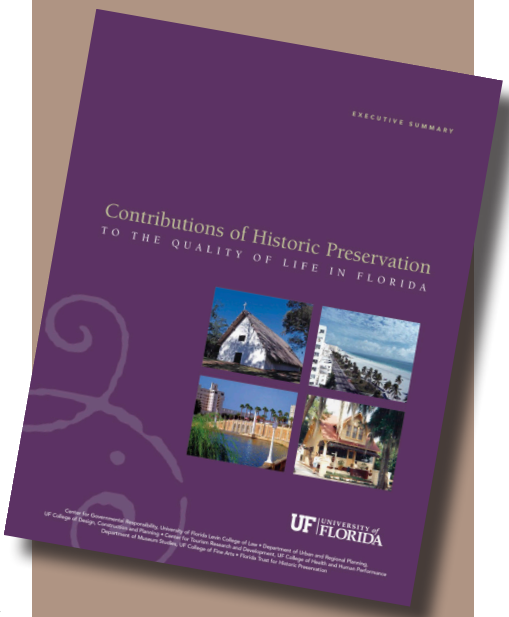
Cultural resources are "valuable economic assets that increase property values and attract businesses and tourists" to a city.[7] In Florida, this economic impact is profound. A 2010 study concluded that historic preservation created 111,509 jobs in Florida between 2007 and 2008.[8] Preservation related activities had an estimated $6.3 billion impact in Florida over the same time period.[9] This includes approximately

4 Fla. Stat. § 265.7025(4) (2016).
5 Federal Emergency Management Agency, FEMA, Pub. No. 386-6, Integrating Historic Property and Cultural Resource Considerations Into Hazard Mitigation Planning vii (2005), *available at* https://www.fema.gov/pdf/fima/386-6_Book.pdf
6 National Park Service, *supra* note 1.
7 FEMA, *supra* note 5, at vi.
8 Timothy McLendon, *et al.*, Economic Impacts of Historic Preservation in Florida, Center for Governmental Responsibility, University of Florida Levin College of Law 7 (2010), *available at* http://dos.myflorida.com/media/32432/economic_impact_executive_summary_2010_pdf.pdf.
9 *Id.* at 8.

$4.13 billion in heritage tourism spending plus net historical museum operations, net Main Street Program activity, and rehabilitation of historic structures.[10] About half of all tourists to Florida visit a historic site during their stay[11] and in 2008, 13 million people visited a history museum in Florida.[12]

Cultural resources help create a community's sense of place and contribute to the quality of life of the residents and visitors. In one study, participants indicated that the primary reasons to preserve Florida's historic resources are for future generations, scenic purposes, and education.[13] Preserving a city's cultural resources and incorporating them into a city's hazard mitigation plan could help protect a community's viability and economic vitality after a natural disaster occurs.

The following guidebooks provide more information on the economic and quality of life (QOL) contributions of historic preservation.



Guide Overview: Four Strategies

This guide is organized around 4 broad strategies that build upon each other and work together to support long-term success in integrating cultural resources into disaster planning. These strategies are:

1. Incorporate Cultural Resources into the Emergency Management Framework
2. Incorporate Emergency Management into the Historic Preservation Framework
3. Incorporate Cultural Resources into Actions under the National Flood Insurance Program
4. Address Hazard Mitigation for Cultural Resources in Comprehensive Planning

Even though these strategies are presented in a specific order, communities can begin with any

10 *Id.*
11 *Id.* at 7.
12 *Id. at 7, 9.*
13 Timothy McLendon, *et al.*, Contributions of Historic Preservation to the Quality of Life in Florida, Center for Governmental Responsibility, University of Florida Levin College of Law, 9 (2006), *available at* https://www.law.ufl.edu/_pdf/academics/centers-clinics/centers/UF-Historic-report-final-2006.pdf.

strategy and implement them in any order to correspond with the community's individual circumstances and needs. Some strategies are iterative and may need to be revised or repeated. This process needs to be repeated regularly to keep plans up-to-date and to incorporate new information. For instance, communities may need to incorporate new floodplain data as it becomes available. Additionally, communities need to periodically review their list of cultural resources because additional structures become eligible for consideration while others may have been demolished.

Strategy 1

Incorporate Cultural Resources into the Emergency Management Framework

Strategy 1 Summary

This section outlines the federal, state, and local emergency management framework and describes the types of plans developed at each level. Recommendations for incorporating cultural resources into the emergency management framework include:

» Incorporate cultural resources into the following federal, state, and local emergency management plans:
- Comprehensive Emergency Management Plans (CEMPs)
- Hazard Mitigation Plans (HMPs)
- Local Mitigation Strategies (LMSs)

» Incorporate cultural resources into an existing Emergency Support Function (ESF) or create an additional ESF. Non-governmental organizations and government agencies in the ESF could include:
- Division of Historical Resources
- Florida Public Archaeology Network (FPAN)
- Florida Trust for Historic Preservation

» Identify preservation professionals to assist with post-disaster assessments

» Encourage cultural resource stakeholders to participate in the State Hazard Mitigation Plan Advisory Team (SHMPAT)

» Enhanced Hazard Mitigation Plan (EHMP) should address:
- Impacts of hazards on cultural resources
- Goals, strategies and actions to reduce damage to cultural resources

» Utilize and include cultural resources in other types of Emergency Management Plans. These include:
- Post-Disaster Redevelopment Plans (PDRP)
- Debris Management Plans (DMP)
- Local Disaster Housing Plans

Introduction

A key strategy is to *formally* include cultural resources into emergency management planning. Emergency management plans guide the community disaster response and recovery processes, and include hazard mitigation plans that seek to lessen the impacts of disasters and reduce losses. Additionally, planners and preservationists who work with cultural resources need to be included in the emergency management planning process at the state and local level.

FEMA explains the importance of incorporating cultural resources into a city's hazard mitigation plan as follows:

> *Historic preservation planning allows for the protection of historic properties and cultural resources before they are threatened with demolition or alteration. Hazard mitigation planning allows for the protection of life and property from damage caused by natural and manmade hazards. Integrating these two planning processes will help to ensure the future growth of safe and sustainable historic communities.*[1]

In the wake of a natural disaster, preserving cultural resources to maintain community resiliency has tremendous value.[2] According to FEMA, the benefits of mitigation planning on the front-end include: making the community more sustainable and disaster-resistant, allowing city leaders and emergency management to focus their post-disaster efforts on the hazard areas most important to them, and saving money.[3] This applies equally to a community's cultural assets.

Nonetheless, emergency management planning often fails to include cultural resources. Instead, these resources are most often addressed during recovery efforts because the National Historic Preservation Act (NHPA) requires federal agencies to consider the effects of their undertakings

Include cultural resources in:

- Comprehensive Emergency Management Plans (CEMPs)
- Hazard Mitigation Plans (HMPs)
- Local Mitigation Strategies (LMSs)

1 Federal Emergency Management Agency, FEMA, Pub. No. 386-6, Integrating Historic Property and Cultural Resource Considerations Into Hazard Mitigation Planning vi (2005), *available at* https://www.fema.gov/pdf/fima/386-6_Book.pdf
2 *Id.* at v-vi.
3 *Id.* at iii.

on properties that are on or eligible for the National Register of Historic Places.[4] FEMA and federal funds are often involved in post-disaster recovery efforts, so all undertakings using these funds that impact historic structures must comply with the NHPA. Instead of waiting until recovery, hazard planning and mitigation should consider cultural resources prior to a disaster and incorporate them into the Comprehensive Emergency Management Plan, Hazard Mitigation Plan, and Local Mitigation Strategy.

Emergency Management Planning Framework

The following sections describe the current federal, state, and local emergency management planning framework and discusses how to incorporate cultural resources into this framework.

Federal Emergency Management Planning

The federal government influences each state's emergency management framework. Through statutes, regulations, and grants, FEMA exerts considerable control over the emergency management plans states adopt.[5] The most significant of these controls is the **Robert T. Stafford Disaster Relief and Emergency Assistance Act**, or **Stafford Act**, which received substantial updates in 2000 and again in 2013.[6] For example, Section 322 of the Stafford Act requires states to have FEMA-approved hazard mitigation plans in order to receive increased federal hazard mitigation assistance.[7] The federal government also influences flood management policy through the **National Flood Insurance Program (NFIP)**.

Other recent directives that have shaped emergency planning are the **Homeland Security Presidential Directive 5 (HSPD-5)** and the **Presidential Policy Directive 8 (PPD-8**). HSPD-5 called for the development of the **National Incident Management System (NIMS)**.[8] This system presents a standardized template for governments, agencies, departments, non-governmental organizations (NGOs), and private sector partners from all levels to coordinate emergency planning, response, and

4 Florida Department of State, Florida Division of Historical Resources, Division of Emergency Management, Florida Department of Community Affairs, and 1000 Friends of Florida, Disaster Planning for Florida's Historic Resources 3 (2003), *available at* http://www.1000friendsofflorida.org/building-better-communities/disaster-planning/; National Historic Preservation Act, 16 U.S.C. § 470 (1966).

5 Federal Emergency Management Agency, *Hazard Mitigation Planning Laws, Regulations & Policies*, Fema.gov (2016), http://www.fema.gov/hazard-mitigation-planning-laws-regulations-policies.

6 *Id.*

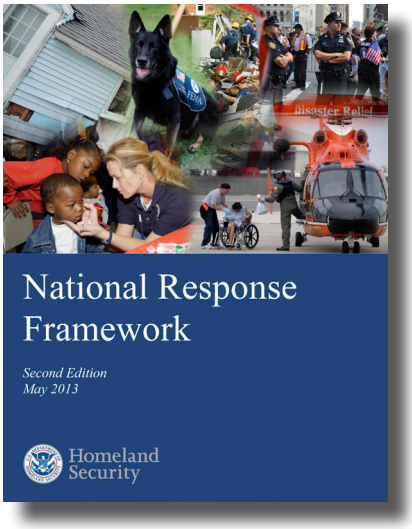
7 Mitigation Planning, 42 U.S.C. § 5165 (2000).

8 Federal Emergency Management Agency, Emergency Planning Independent Study 235.b 2.1 (2011), *available at* https://training.fema.gov/emiweb/is/is235b/is235b.pdf.

recovery.[9] NIMS is not a plan. Instead, it is a "set of doctrines, concepts, principles, terminology, and organizational processes."[10] Compliance with NIMS includes entities incorporating it into their Emergency Operation Plans (EOPs) and Comprehensive Emergency Management Plans (CEMPs).

PPD-8 calls for a series of national planning frameworks to coordinate all levels of government in reaching the National Preparedness Goal. This goal is to have "a secure and resilient nation with the capabilities required across the whole community to prevent, protect against, mitigate, respond to, and recover from the threats and hazards that pose the greatest risk."[11] The National Planning Framework found in PPD-8 consists of five documents, one for each of the five mission areas.[12] These are:

- National Prevention Framework
- National Protection Framework
- National Mitigation Framework
- National Response Framework
- National Disaster Recovery Framework



Four of the five frameworks address natural hazards. These are protection, mitigation, response, and disaster recovery.[13] Prevention specifically addresses terrorist attacks.[14] The overall planning frameworks are developed at the federal level and influence state and local plans through various regulations and guidelines.

9 *Id.*
10 *Id.*
11 Federal Emergency Management Agency, *National Planning Frameworks*, FEMA.gov (2016), http://www.fema.gov/national-planning-frameworks.
12 *Id.*
13 U.S. Department of Homeland Security, National Protection Framework (2nd ed. 2016), *available at* https://www.fema.gov/media-library-data/1466017309052-85051ed62fe595d4ad026edf4d85541e/National_Protection_Framework2nd.pdf; U.S. Department of Homeland Security, National Mitigation Framework (2nd ed. 2016), *available at* https://www.fema.gov/media-library-data/1466014166147-11a14dee807e1ebc67cd9b74c6c64bb3/National_Mitigation_Framework2nd.pdf; U.S. Department of Homeland Security, National Response Framework (3rd ed. 2016), *available at* https://www.fema.gov/media-library-data/1466014682982-9bcf8245ba4c60c120aa915abe74e15d/National_Response_Framework3rd.pdf; U.S. Department of Homeland Security, National Disaster Recovery Framework (2nd ed. 2016), *available at* https://www.fema.gov/media-library-data/1466014998123-4bec8550930f774269e0c5968b120ba2/National_Disaster_Recovery_Framework2nd.pdf.
14 U.S. Department of Homeland Security, National Prevention Framework (2nd ed. 2016), *available at* https://www.fema.gov/media-library-data/1466017209279-83b72d5959787995794c0874095500b1/National_Prevention_Framework2nd.pdf.

The federal government addresses cultural resources throughout the National Planning Frameworks. The **National Response Framework (NRF),** which serves as the model for **Florida's Comprehensive Emergency Management Plan (CEMP)**,[15] guides disaster response and includes preserving the cultural resources of impacted jurisdictions.[16] One of the critical tasks listed in the NRF is to "identify, evaluate, and implement measures to prevent and minimize impacts to the environment, natural and cultural resources, and historic properties from all-hazard emergencies and response operations."[17] The NRF also indicates that state governments are responsible for the health of their cultural heritage.[18]

The NRF consists of a base document, **Emergency Support Functions (ESF) Annexes**, and Support Annexes.[19] The ESFs are groups of organizations bound together to address core capabilities, and each ESF consists of a number of primary and support organizations led by one agency that serves as the Coordinator.[20] At the federal level, ESF #11-Agricultural and Natural Resources, addresses the protection of natural and cultural resources.[21] The Department of Agriculture is the ESF Coordinator and one of two Primary Agencies for this ESF.[22] The Department of the Interior serves as the Primary Agency for the protection of natural and cultural resources and historic properties.[23] The Advisory Council on Historic Preservation (ACHP) and the Heritage Emergency National Task Force serve as Support Agencies.[24]

State Emergency Management Planning

The State of Florida has adopted numerous plans related to its hazard mitigation process. Of significance are the **CEMP** and the **Enhanced Hazard Mitigation Plan (EHMP)**. These documents differ in that the CEMP is the overarching document that outlines the state's planned response to emergencies,[25] whereas the EHMP supports the CEMP by providing additional information that includes a hazard assessment.[26]

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15 State Emergency Response Team, The State of Florida 2014 Comprehensive Emergency Management Plan, Basic Plan 5 (2014), *available at* http://www.floridadisaster.org/documents/CEMP/2014/2014%20State%20CEMP%20Basic%20Plan.pdf.
16 U. S. Department of Homeland Security, National Response Framework (3rd ed. 2016), *available at* http://www.fema.gov/media-library-data/1466014682982-9bcf8245ba4c60c120aa915abe74e15d/National_Response_Framework3rd.pdf.
17 *Id.* at 23.
18 *Id.* at 12.
19 *Id.* at 2.
20 *Id.* at 33, 37-38.
21 *Id.* at 36.
22 Emergency Support Function #11-Agriculture and Natural Resources Annex ESF #11-1 (2016), *available at* https://www.fema.gov/media-library-data/1473679204149-c780047585cbcd6989708920f6b89f15/ESF_11_Ag_and_Natural_Resources_FINAL.pdf.
23 *Id.*at ESF #11-11 - 12..
24 *Id.*at ESF #11-16.
25 SERT, *supra* note 15, at 5.
26 *Id.* at 9-10.

Comprehensive Emergency Management Plan

The Florida State Emergency Management Act obligates the Florida Division of Emergency Management (FDEM) to create a CEMP.[27] The State CEMP is "the master operations document for the State of Florida in responding to all emergencies, and all catastrophic, major, and minor disasters."[28] The State CEMP was revised in 2014 by the Florida Division of Emergency Management and the State Emergency Response Team (SERT).[29] The 2014 plan was updated in 2016, and this plan is currently awaiting adoption. The proposed 2016 State CEMP states its function as follows:

> *The state CEMP describes the basic strategies, assumptions, operational objectives, and mechanisms through which the SERT will mobilize resources and conduct activities to guide and support local emergency management efforts through preparedness, response, recovery, and mitigation.*[30]

Its objective is to "reduce the possible consequences of the emergency by preventing loss of life and injuries, reducing damage to infrastructure, buildings and homes, and accelerating the resumption of normal daily life activities."[31]

The CEMP parallels the federal National Response Framework (NRF) and complies with the National Incident Management System (NIMS).[32] The CEMP includes a Basic Plan that "describes the process for preparedness, response, recovery and mitigation activities of federal, state, and local agencies, private volunteer organizations, and non-governmental organizations that form the SERT."[33] Consistent with the Basic Plan is a four-phase effort to be implemented

27 Fla. Stat. § 252.35(2)(a) (2016).
28 SERT, *supra* note 15.
29 *Id.*
30 State Emergency Response Team, The State of Florida 2016 Comprehensive Emergency Management Plan, *Basic Plan* 5 (2016), *available at* http://www.floridadisaster.org/documents/CEMP/2016/2016%20State%20CEMP%20(COMPLETE%20FINAL%20DRAFT).pdf (awaiting adoption).
31 *Id.* at 6.
32 SERT, *supra* note 15.
33 *Id.* at 6.

before, during, and after an emergency by each level of government.[34] The four phases are:

» **Mitigation** - reducing vulnerability prior to a disaster

» **Preparedness** - ensuring local governments, residents, and visitors are ready for an emergency

» **Response** - performing activities immediately before and during an emergency

» **Recovery** - restoring services and normality through short-term and long-term operations[35]

In addition to the Basic Plan there are eighteen Emergency Support Functions (ESFs), state mechanisms for providing support.[36] Similar to the federal framework, the state ESFs consolidate "jurisdictional and subject matter expertise of agencies that perform similar or like functions into a single, cohesive unit."[37] In its Incident-Specific Annexes, the State CEMP describes in detail how the State of Florida responds to certain, specific incidents.[38] For example, the CEMP includes a tropical and non-tropical severe weather annex that describes notification and warning as well as protective action decision making.[39]

Unlike the NRF, Florida's CEMP gives little attention to cultural resources or historic properties. The only mention of cultural resources in the State CEMP Basic Plan is to identify where personnel with expertise in natural and cultural resources and historic preservation fall in the command hierarchy of a joint field office established during an emergency.[40] The annex to the State CEMP relating to Wildfires also mentions historic and cultural resources but only to note that a threat to such resources is a criterion to be considered when requesting federal help in responding to a wildfire.[41] Neither of these references provides substantive policy guidance related to the protection of or planning for cultural resources.

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34 *Id.* at 6-7.
35 *Id.*
36 *Id.* at 5, 19.
37 *Id.* at 19.
38 *Id.* at 6.
39 State Emergency Response Team, The State of Florida Tropical and Non-tropical Severe Weather Annex to the State of Florida Comprehensive Emergency Management Plan (2014), *available at* http://www.floridadisaster.org/documents/CEMP/2014/2014%20Hazard%20Annexes/2014%20Tropical%20and%20Non-Tropical%20Severe%20Weather%20Annex%20%20to%20the%20CEMP.pdf.
40 SERT, *supra* note 15, at 43.
41 State Emergency Response Team, The State of Florida Wildfire Operations Annex to the State of Florida Comprehensive Emergency Management Plan 4-2 (2014), *available at* http://www.floridadisaster.org/documents/CEMP/2014/2014%20Hazard%20Annexes/2014%20Wildfire%20Annex%20to%20the%20CEMP.pdf.

Table 1. *Comparison of federal and state Emergency Support Functions*

Emergency Support Functions (ESFs)		
Number	Federal NRF	State of Florida CEMP
1	Transportation	Transportation
2	Communications	Communications
3	Public Works & Engineering	Public Works & Engineering
4	Firefighting	Firefighting
5	Information & Planning	Information & Planning
6	Mass Care, Emergency Assistance, Temporary Housing, & Human Services	Mass Care
7	Logistics	Resource Management
8	Public Health & Medical Services	Health & Medical
9	Search & Rescue	Search & Rescue
10	Oil & Hazardous Materials Response	Environmental Protection
11	Agriculture & Natural Resources	Food & Water
12	Energy	Energy
13	Public Safety & Security	Military Support
14	Superceded by National Disaster Recovery Framework	External Affairs - Public Information
15	External Affairs	Volunteers & Donations
16	N/A	Law Enforcement & Security
17	N/A	Animal & Agricultural Issues
18	N/A	Business, Industry, & Economic Stabilization

Agencies or organizations that address cultural resources are not included in any of the state's ESFs. The state should incorporate cultural resources into an existing ESF or create an additional ESF that addresses cultural resources. The Division of Historical Resources, which houses the State Historic Preservation Office (SHPO), should be the lead agency. Other agencies and organizations that should be included are the Florida

Incorporate cultural resources into an existing Emergency Support Functions (ESF) or create an additional ESF that addresses them

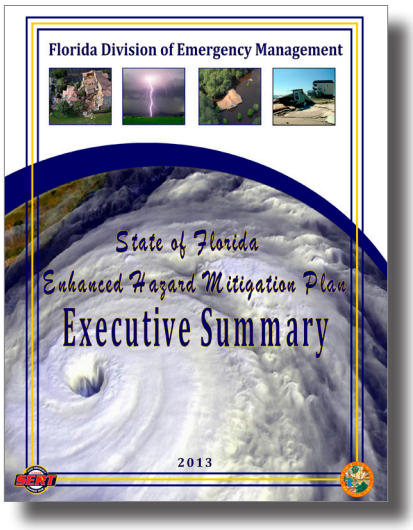
Agencies or organizations in the ESF could include:

- Division of Historical Resources
- Florida Public Archaeology Network
- Florida Trust for Historic Preservation

Public Archaeology Network (FPAN) and the Florida Trust for Historic Preservation. FPAN is a network of public archaeology centers established by Florida Statute 267.145.[42] The Florida Trust is a non-governmental organization that promotes preservation.

The cultural resources ESF should specifically identify organizations that can provide technical advice, information, or other assistance to assess, stabilize, or restore cultural resources following a disaster. Government agencies may have staff members or consultants that specialize in historic preservation or cultural resources. However, when a disaster impacts an area with a large number of cultural resources, such as a historic district, additional people with preservation training may be needed to assist with FEMA's damage assessments. These people can be volunteers that are knowledgeable about cultural resources or trained to assess cultural resources. To enable timely assessments and minimize post-disaster damage to cultural resources, the networks of people that may be available to provide assistance following a disaster and any necessary training procedures should be identified beforehand.

Enhanced Hazard Mitigation Plan



As mentioned earlier, Section 322 of the Stafford Act requires states to have a FEMA-approved Hazard Mitigation Plan to be eligible for certain federal grants.[43] States with enhanced status, such as Florida, are eligible for an additional five percent of post-disaster funds for mitigation.[44]

Florida's current **Enhanced Hazard Mitigation Plan** is for the years 2013 through 2018,[45] and it was developed by the State Hazard Mitigation Plan Advisory Team (SHMPAT) coordinated by the Florida Division of Emergency Management (FDEM).[46] The team, which meets on a continuing basis, consists of three sub-groups: risk assessment subgroup, strategy subgroup, and planning and maintenance subgroup.[47] Preservation and cultural resource agencies and organizations are not currently a part of the SHMPAT. These organizations should participate in order to address the impact of

42 Fla. Stat. § 267.145 (2016).
43 Florida Division of Emergency Management, State of Florida Enhanced Hazard Mitigation Plan 2 (2013), *available at* http://www.floridadisaster.org/Mitigation/State/Index.htm.
44 *Id.*
45 Florida Division of Emergency Management, *2013 State of Florida Enhanced Hazard Mitigation Plan,* FloridaDisaster.org (2017), http://www.floridadisaster.org/Mitigation/State/Index.htm.
46 FDEM, *supra* note 43, at 3.
47 *Id.*

hazards on cultural resources and to help develop mitigation goals, strategies, and actions to reduce losses to the state's cultural resources.

Cultural resource stakeholders should be included in the State Hazard Mitigation Plan Advisory Team (SHMPAT)

The Enhanced Hazard Mitigation Plan (EHMP) should further address:

- Impacts of hazards on cultural resources
- Goals, strategies, and actions to reduce damage to cultural resources

Reflecting the extent to which Florida is subject to hazards and its proactive planning for responses, Florida's EHMP is approximately 1,500 pages long. Unlike the State CEMP, which the EHMP describes as "operations-oriented and establish[ing] a framework through which the State of Florida prepares for, responds to, recovers from, and mitigates the impacts of all hazards that could adversely affect people and property,"[48] the EHMP identifies hazards, establishes goals related to reducing future losses, and documents Florida's compliance with applicable federal criteria.[49] The EHMP is integrated into other state and local planning documents. These include: the Florida Building Code, local CEMPs, Local Mitigation Strategies (LMSs), local comprehensive plans, and Post-Disaster Redevelopment Plans (PDRPs).[50] Incorporating cultural resources at the state level sets the stage for local governments to do the same.

The EHMP includes several components of note. First is an assessment of risks faced by Florida. This includes an in-depth analysis of those threats to which the state is most prone, such as wildfires, floods, and storms, and a less robust analysis of those threats to which the state is less prone, such as earthquakes.[51] A second notable component is a mitigation strategy presented as four goals with supporting objectives.[52] Third, the EHMP includes discussion of coordination and integration of local government mitigation planning.[53] Finally, the EHMP includes nineteen appendices that provide supporting information and describe mitigation efforts.[54]

One goal and several supporting objectives of the EHMP make substantial reference to cultural resources and even to threats posted by sea level rise. They are:

48 FDEM, *supra* note 43, at 4.75.
49 *Id.* at 2, 1.3.
50 *Id.* at 15.
51 *Id.* at 3.36 - 3.203.
52 *Id.* at 14.
53 *Id.* at 15.
54 *Id.* at 17-18; FDEM *supra* note 45.

> ***Goal 4:*** *Support mitigation initiatives and policies that protect the state's cultural, economic, and natural resources.*[55]
>
> ***Objective 4.1:*** *Support land acquisition programs that reduce or eliminate potential future losses due to natural hazards and that are compatible with the protection of natural or cultural resources.*[56]
>
> ***Objective 4.5:*** *Participate in climate change and sea level rise research that will further the state and local government's ability to plan for and mitigate the impacts of future vulnerability.*[57]

In the State Risk Assessment section of the EHMP, threats to cultural resources are mentioned in relation to just two threats. First, the EHMP mentions destruction of cultural resources as one potential effect of wildfires.[58] Second, the EHMP more substantively mentions the connection between the loss of cultural resources and coastal erosion. According to the EHMP, "[a]bout 410 miles of the state's 825 miles of sandy beaches have experienced 'critical erosion,' a level of erosion that threatens substantial development, recreational, cultural, or environmental interests."[59] Also, the EHMP integrates consideration of cultural resources into its vulnerability analysis which identifies and inventories locations of critically eroded shoreline.[60] That analysis identifies critically eroded areas as "segment[s] of the shoreline where natural processes or human activity have caused or contributed to erosion and recession of the beach or dune system to such a degree that upland development, recreational interests, wildlife habitat, or important cultural resources are threatened or lost."[61] Further, "[f]or an erosion problem area to be critical, a threat to or loss of one of four specific interests must exist: upland development, recreation, wildlife habitat, or important cultural resources."[62]

Local Emergency Management Planning

Each of Florida's sixty-seven counties is required to have its own CEMP and **Local Mitigation Strategy (LMS)**.[63] Florida Administrative Code 27P-6.0023 specifies the criteria for county CEMPs.[64] The state also works to ensure that local CEMPs

55 *Id.* at 4.5.
56 *Id.*
57 *Id.*
58 *Id.* at 3.102.
59 *Id.* at 3.144.
60 *Id.* at 3.150.
61 *Id.*
62 *Id.*
63 Fla. Stat. § 252.38 (2016); Disaster Mitigation Act of 2000.
64 F.A.C. 27P-6.0023 (July 18, 2013).

and LMSs include applicable requirements of the EHMP.[65]

Include cultural resource stakeholders in development of the county Comprehensive Emergency Management Plan and Local Mitigation Strategy

Incorporate cultural resources into an existing Emergency Support Functions (ESF) or create an additional ESF that addresses them

Address cultural resources in the Local Mitigation Strategy

Federal law requires local governments to have a LMS to apply for FEMA Hazard Mitigation Assistance grant programs.[66] The LMS can be multi-jurisdictional, and each local jurisdiction has to participate in the planning process and adopt the plan.[67] The FDEM ensures that each local government addresses all regulations and recommended best management practices, and the state, through the FDEM, reviews the LMS prepared by each local government for consistency with the EHMP.[68] The EHMP provides:

> *The Federal Disaster Mitigation Act of 2000 significantly expanded the mitigation planning requirements imposed on both state and local jurisdictions to maintain eligibility for federal mitigation funds. ... The purpose of the LMS is to reduce or eliminate the impact of hazards within a community and diminish the loss of life and property damage. Local Mitigation Strategies serve as a bridge between a local government's comprehensive growth and emergency management plans, land development regulations, building codes, ordinances, and related policies. With these plans in place, communities are able to prioritize and coordinate efforts to reduce or eliminate hazards in the future.*[69]

The FDEM is not the only agency facilitating each local government in its adoption of a LMS. Regional Planning Councils also "provide planning and technical services to assist their local governments in developing Local Mitigation Strategies."[70] In its Appendix Q, titled Recommended Integration Practices: Strengthening the Floodplain Portions of the Local Mitigation Strategy, the EHMP states:

65 FDEM, *supra* note 43, at 4.75.
66 *Id.* at 4.69.
67 44 C.F.R. § 201.6(a)(4) (2011).
68 FDEM, *supra* note 43, at 4.73.
69 *Id.* at 4.45.
70 *Id.*

> *Regional coordination is a vital aspect to improving mitigation and flood management plans. While counties have clear boundaries, many environmental hazards do not, which emphasizes the importance of regional cooperation.*[71]

Other Relevant Emergency Management Plans

The Florida Division of Emergency Management encourages communities to develop additional plans, and some of these could further enhance disaster planning for cultural resources. These plans are:

- Post-Disaster Redevelopment Plan (PDRP)
- Debris Management Plan (DMP)
- Local Disaster Housing Plan

Post-Disaster Redevelopment Plan

Communities strive to recover from disasters quickly, and without prior planning, they may miss opportunities to increase community resilience.[72] The **Post-Disaster Redevelopment Plan (PDRP)** "identifies policies, operational strategies, and roles and responsibilities for implementation that will guide decisions that affect long-term recovery and redevelopment of the community after a disaster."[73] This is an optional plan, but it was required for coastal counties and communities prior to 2011.[74] Cultural resources should be addressed in all 6 suggested topic areas:

- Land Use
- Housing
- Economic Redevelopment
- Infrastructure and Public Facilities
- Health and Social Services
- Environment

71 *Id.* at Appendix Q 30.
72 Florida Division of Emergency Management, *Post-Disaster Redevelopment Planning,* FloridaDisaster.org (2011), http://floridadisaster.org/Recovery/IndividualAssistance/pdredevelopmentplan/Index.htm.
73 *Id.*
74 Fla. Stat. § 163.3177(7)(l) (2010); F.A.C. 9J-5.012(3)(b)(8) (2010).

The **land use topic area** should address repair options for historic structures. Since historic structures can lose their integrity, and thus their listing status, if they are altered inappropriately, Florida Building Code standards for historic structures provide more options for their repair than for non-historic structures.[75]

The **housing topic area** should discuss temporary housing criteria within historic districts. FEMA may provide temporary on-site trailers for residents with destroyed houses. The PDRP should address allowable locations for temporary housing, time frames for removal, and enforcement.[76]

The **economic redevelopment topic area** addresses impacts to businesses and tourism.[77] Cultural resources and historic districts can be an important contributor to the local economy, and the impacts to these resources and strategies for recovery should be addressed. This can include assistance for small business owners in the historic downtown districts, workforce retention for employees that may be temporarily unemployed due to loss or damage to their workplace, and renewal of tourism through marketing campaigns.[78]

The **infrastructure and public facilities topic area** should address cultural resources in the consideration of debris removal, infrastructure mitigation, and capital infrastructure improvements in historic districts. In some instances, out-dated stormwater systems in historic districts exacerbate flood conditions. Plans to upgrade and improve these systems should be included in the PDRP.

The **health and social services topic area** includes quality of life factors, such as the restoration of features that make a community desirable.[79] These features may include cultural resources, and if so, this should be addressed under this topic area.

The **environment topic area** addresses restoring and protecting the natural resources.[80] This includes the necessary environmental and historic reviews that need to be addressed in the selection of temporary sites for housing, debris, staging, and other recovery activities.[81]

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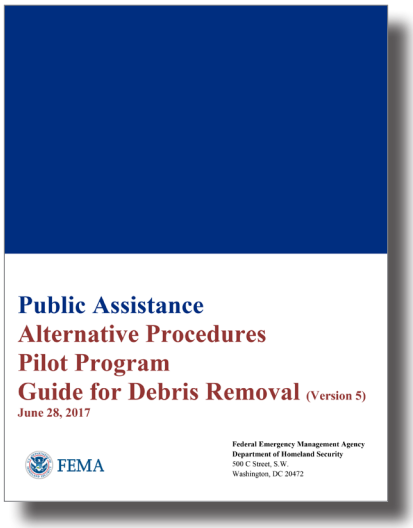
75 Florida Department of Community Affairs and Florida Division of Emergency Management, Post-Disaster Redevelopment Planning: A Guide for Florida Communities 52 (2010), *available at* http://www.floridadisaster.org/Recovery/documents/Post%20Disaster%20Redevelopment%20Planning%20Guidebook%20Lo.pdf.
76 *Id.* at 56.
77 *Id.* at 61.
78 *Id.* at 64-67.
79 *Id.* at 92.
80 *Id.* at 93.
81 *Id.* at 97.

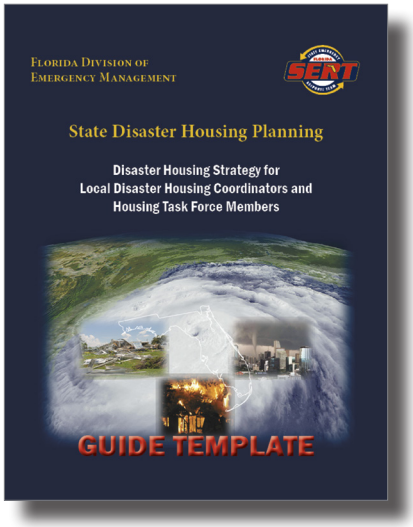
Debris Management Plan

The **Debris Management Plan (DMP)** is currently an optional plan that addresses debris removal. Communities with a DMP approved by the Florida Division of Emergency Management and FEMA, may receive additional funding assistance from FEMA for debris removal.[82] This plan should address cultural resources and ensure that debris sites do not compromise archaeological sites, historic parks, or historic districts. Additionally, this plan should address recovery, storage, and reuse of historic materials from historic structures that must be demolished due to extensive disaster damage.



Local Disaster Housing Plan

Following Hurricane Katrina, FEMA developed the National Disaster Housing Strategy to guide the process for housing people displaced by a disaster.[83] The Florida Division of Emergency Management developed a State Strategy and a plan template for local jurisdictions.[84] Local housing plans should consider where FEMA trailers can be located and how long they will be allowed to stay. If this is not addressed, FEMA trailers could be located in historic districts well beyond the time frame that they are needed. This plan should be consistent with the CEMP, Land Development Code (LDC), PDRP, and other relevant planning documents.[85]



82 Federal Emergency Management Agency, Public Assistance Alternate Procedures Pilot Program Guide for Debris Removal (Version 5) 7 (2017), *available at* https://www.fema.gov/media-library-data/1498835950370-988ea041a72cba2cd9dc7104cc6a0ee1/PAAP_Guide_for_Debris_Removal_v5_508_FINAL_06282017.pdf.

83 Florida Division of Emergency Management, *State Disaster Housing Planning: Disaster Housing Strategy for Local Disaster Housing Coordinators and Housing Task Force Members Guide Template 3 - 4 available at* http://www.floridadisaster.org/Recovery/IndividualAssistance/Disastertemporaryhousing/documents/Local%20Housing%20Template-Final%20MAY.pdf.

84 Florida Division of Emergency Management, *State Disaster Housing Plan Initiative*, FloridaDisaster.org (2012), http://www.floridadisaster.org/Recovery/IndividualAssistance/Disastertemporaryhousing/sdhpi.htm.

85 Florida Division of Emergency Management, State Emergency Response Team, State Disaster housing Planning: Disaster Housing Strategy for Local Disaster Housing Coordinators and Housing Task Force Members *65 available at* http://www.floridadisaster.org/Recovery/IndividualAssistance/Disastertemporaryhousing/documents/Local%20Housing%20Template-Final%20MAY.pdf.

Case Study: Local Planning in Nassau County, Florida

During development of this guidebook, the University of Florida's Levin College of Law Conservation Clinic worked closely with the City of Fernandina Beach, Florida. Fernandina Beach, which served as the primary case study, is a coastal community on a barrier island that contains vulnerable cultural resources including its Downtown Historic District and historic cemetery, Bosque Bello. During the project, the study team toured the cultural resources and reviewed relevant plans. The City does not have its own emergency management plans and works through County Emergency Management. For security reasons, the Comprehensive Emergency Management Plan (CEMP) can only be reviewed in the Nassau County offices.

Nassau County's CEMP does not significantly address cultural resources.[1] Even though cultural resource stakeholders are not currently included in the planning process or in the CEMP's organizational chart, the county is open to having them participate.[2]

However, Nassau County's Local Mitigation Strategy (LMS) does include two projects that directly address cultural resources and lists other infrastructure projects that could mitigate damage to cultural resources.[3] One of these projects is a mitigation study for the county's cultural resources.[4] The other project is a study to address stabilization of the bluff in Fernandina's Old Town.[5] The plan includes other storm water and street modifications that could reduce flooding in the historic districts.[6] While specific cultural resource agencies or organizations were not involved in the development of the LMS, City of Fernandina Beach employees with cultural resource knowledge ensured that they were addressed in this plan.[7] Once again, the county is open to having cultural resource stakeholders participate in the planning process.[8] Additionally, cultural resources are included in the County Post-Disaster Redevelopment Plan because of City of Fernandina Beach employee participation.

1 Telephone interview with Nassau County Emergency Operations (April 22, 2016).
2 Telephone interview with Nassau County Emergency Operations (July 14, 2016).
3 *Id.*
4 *Id.*
5 *Id.*
6 *Id.*
7 *Id.*
8 *Id.*

Strategy 2

Incorporate Emergency Management into the Historic Preservation Framework

Strategy 2 Summary

This section describes the federal, state, and local historic preservation framework. Recommendations for incorporating emergency management into the historic preservation framework include:

- Address the integration of cultural resources into emergency management plans in the statewide comprehensive preservation plan
- Utilize FEMA's exemption for historic properties from NFIP's substantial improvement and substantial damage requirements
- Address post-disaster considerations in preservation ordinances
- Review historic district guidelines for potential adaptations

Historic Preservation Framework

The following sections describe the current federal, state, and local historic preservation framework and discusses how to incorporate emergency management into this framework.

Federal Historic Preservation

The federal government influences the state and local historic preservation framework primarily through the **National Historic Preservation Act of 1966 (NHPA)**. The NHPA consists of four major elements:

- National Register of Historic Places
- Sections 106 and 110 processes
- Standards for the treatment of historic properties
- Framework for federal/state/local partnerships[1]

1 National Historic Preservation Act,16 U.S.C. § 470 (1966).

The National Register of Historic Places (National Register) administered by the National Park Service (NPS) on behalf of the Secretary of the Interior is a list of properties determined to be eligible through a nomination and review process.[2] The National Register includes buildings, structures, sites, districts, and objects.[3] Properties 50 years of age or older are eligible if they have maintained their integrity and

1. are associated with historic events or patterns of history
2. are associated with significant people
3. possess distinctive characteristics
4. yield or could yield data[4]

Some exceptional properties that have gained historical significance, such as the sites associated with the space program, can be listed prior to reaching 50 years of age.[5] The seven aspects of integrity are "location, design, setting, materials, workmanship, feeling, and association."[6] Properties within a historic district are listed as contributing or non-contributing. Contributing structures contribute to the overall character of the district and have retained their integrity.[7] Non-contributing structures are typically more recent additions to the district, or properties that have been altered significantly and have lost their integrity.[8]

Sections 106 and 110 regulate Federal agencies and their undertakings. Section 106 requires Federal agencies to consider the effect of Federal undertakings on historic properties that are on or eligible for the National Register and to allow the Advisory Council on Historic Preservation (ACHP) an opportunity to comment.[9] Federal undertakings are "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval."[10] Since Section 106 includes projects carried out with Federal financial assistance, disaster mitigation or recovery projects that receive FEMA funding must comply with this section. Section 110 describes Federal agencies' historic preservation responsibilities that includes the establishment of a preservation program to identify, evaluate, nominate, and protect historic properties under their ownership or control.[11]

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2 National Park Service, How to Apply the National Register Criteria for Evaluation i (National Register Bulletin 1997), *available at* https://www.nps.gov/nr/publications/bulletins/pdfs/nrb15.pdf.
3 *Id.*
4 *Id.* at 2.
5 *Id.* at 25.
6 *Id.* at 48.
7 *Id.* at 46.
8 *Id.*
9 36 C.F.R. § 800.1(a); 36 C.F.R. § 800.16(l)(1-2).
10 36 C.F.R. § 800.16(y).
11 Federal Preservation Institute, *Section 110 of the National Historic Preservation Act,* National Park Service (2013), https://www.nps.gov/fpi/Section110.html.

The National Park Service, on behalf of the Secretary of the Interior, developed standards and guidelines for the treatment of historic properties.[12] The current Standards were codifed as 36 CFR Part 68 in 1995.[13] The Standards are regulatory for projects receiving federal assistance or Historic Preservation Fund grant funding and for projects seeking certification for federal tax benefits.[14] However, the Standards have been adopted by numerous Certified Local Governments and local preservation boards.[15]

State Historic Preservation

The **National Historic Preservation Act** establishes a federal-state partnership for implementing the preservation programs it authorizes. As part of the partnership, states are required to establish a state preservation program that meets the approval of the Secretary of the Interior.[16] The state preservation programs are administered by State Historic Preservation Officers (SHPO).[17] In Florida, the SHPO is the Director of the Division of Historic Resources.

The state historic preservation program is responsible for identifying potential historic resources, maintaining an inventory of historic sites, and assisting with nominating and evaluating nominations of historic properties to the National Register.[18] Florida's inventory, the Florida Master Site File (FMSF), does not provide any special protection for a site, and the significance of a site is not evaluated for inclusion on the FMSF.[19]

The SHPO reviews and evaluates the impact of state and federal undertakings on historic sites. The federal/state partnership outlined in the NHPA establishes that the SHPO consults with Federal agencies on undertakings as part of the Section 106 process.[20] Florida Statute 267.061 specifies the responsibilities of state agencies of the executive branch.[21] These responsibilities include consideration of the effects of any state or state-assisted undertaking on historic properties in, or eligible for inclusion in, the National Register, which is similar to the Section 106 process.[22]

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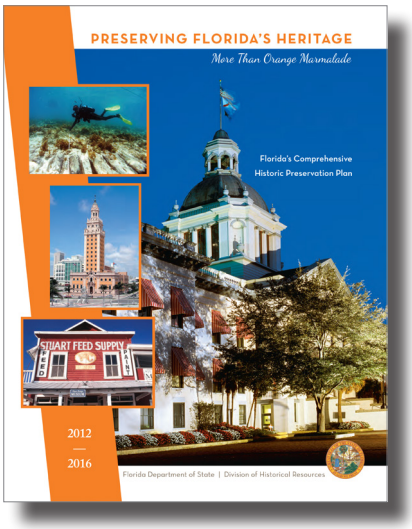
12 Anne E. Grimmer, The Secretary of the Interior's Standards for the Treatment of Historic Properties: with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings vii (Department of the Interior, National Park Service, Technical Preservation Services 2017), *available at* https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf.
13 *Id.* at inside cover.
14 *Id.*
15 *Id.* at vii.
16 54 U.S.C. § 302301 (2014).
17 54 U.S.C. § 302303(a) (2014).
18 54 U.S.C. § 302303(b)(1-2) (2014).
19 Florida Division of Historical Resources, *Master Site File,* Florida Division of Historical Resources (2017), http://dos.myflorida.com/historical/preservation/master-site-file/faqs/#217.
20 54 U.S.C. § 302303(b)(9) (2014).
21 Fla. Stat. § 267.061(2) (2016).
22 Fla. Stat. § 267.061(2)(a) (2016).



The SHPO is also responsible, under the NHPA, for preparing and implementing a statewide historic preservation plan.[23] Florida's current comprehensive historic preservation plan is for 2012-2016, and the 2017-2021 plan is being developed.[24] The current plan has a limited discussion of disaster planning and almost no reference to coastal change.[25] In the current plan, two items under one of its objectives address disaster planning. These items address the goal of increasing technical knowledge by presenting "workshops and/or webinars on developing disaster preparedness plans" and creating "disaster preparedness and mitigation training videos."[26] The current plan also mentions the three disaster planning publications developed by the 1000 Friends of Florida.[27] In this statewide historic preservation plan, the state should identify the integration of cultural resources into emergency management planning as a statewide goal to encourage better coordination at the state level and to provide an example for local governments.

> ☑ Identify the integration of cultural resources into emergency management planning as a statewide goal in the state historic preservation plan

Local Historic Preservation

Federal or state law does not mandate local historic preservation programs; however, the NHPA sets out provisions for Certified Local Governments (CLGs).[28] Local governments that meet specific preservation requirements, such as having a historic preservation ordinance and a historic preservation board or commission, can be approved by the SHPO and the Secretary of the Interior as a CLG. Communities can have preservation ordinances and boards without becoming a CLG, but becoming a CLG grants the local government additional responsibilities and incentives. CLGs participate in reviewing and commenting on National Register nominations for

23 54 U.S.C. § 302303(b)(3) (2014).
24 Florida Department of State, Florida Division of Historical Resources, *Florida's Comprehensive Historic Preservation Plan,* Florida Division of Historical Resources (2017), http://dos.myflorida.com/historical/publications/floridas-comprehensive-historic-preservation-plan/.
25 Florida Department of State, Florida Division of Historical Resources, *Preserving Florida's Heritage-More than Orange Marmalade* (2012), *available at* http://ia601407.us.archive.org/10/items/62683_FDS_84Pg_Publication/62683_FDS_84Pg_Publication.pdf.
26 *Id.* at 65.
27 *Id.* at 45-46.
28 54 U.S.C. § 3025 (2014).

properties located within their jurisdiction.[29] As an incentive, CLGs are eligible for grant funding from the Bureau of Historic Preservation.[30]

Local Preservation Ordinances

Whether or not communities become a CLG, they have the option to have a preservation ordinance. In their regulations, communities have the option to exempt historic properties from normal standards including housing codes and zoning restrictions. City administrators may require "improvements to a lesser standard that will not result in a delisting of the property" from the National Register.[31] Local governments also have the option to exempt or issue variances from NFIP's substantial improvement and substantial damage requirements to historic structures.[32] These requirements dictate that structures undergoing substantial improvement or those that have sustained substantial damage to be "brought into compliance with the NFIP requirements for new construction, including the requirement that lowest floors be elevated to or above the base flood elevation (BFE)."[33] Substantial damage is defined as:

- Include disaster planning and mitigation in local preservation ordinances and historic district design guidelines
- Address post-disaster considerations in local preservation ordinances
- Utilize NFIP's exemption for historic structures from substantial improvement and substantial damage requirements
- Include allowable building/site adaptations for flooding and other hazards in Historic District Guidelines

> *damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Work on structures that are determined to be substantially damaged is considered to be substantial improvement, regardless of the actual repair work performed*[34]

29 54 U.S.C. § 302504 (2014).
30 Florida Department of State, Florida Division of Historical Resources, *Certified Local Governments,* Florida Division of Historical Resources (2017), http://dos.myflorida.com/historical/preservation/certified-local-governments/.
31 Jenifer Eggleston and Jen Wellock, *The National Flood Insurance Program and Historic Resources*, 29(4) ForumJournal 42 (2015).
32 44 C.F.R. § 59.1 (2016); 44 C.F.R. § 60.6(a) (2016).
33 Federal Emergency Management Agency, Substantial Improvement/Substantial Damage Desk Reference Pub. P-758, 1-1, (2010), *available at* https://www.fema.gov/media-library-data/20130726-1734-25045-2915/p_758_complete_r3.pdf.
34 *Id.*

Whereas substantial improvement is defined as:

> *any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure (or smaller percentage if established by the community) before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed The term does not, however, include either:*
>
> *(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or*
>
> *(2) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure.*[35]

The substantial improvement exclusion for historic structures also applies to structures that have been substantially damaged.[36]

The NFIP regulations allow communities to use the exclusion for historic structures or to issue a variance. The variance provision states:

> *Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.*[37]

Utilizing this option can not only provide for maintenance, rehabilitation, and adaptation of historic structures; it can also allow historic structures to be restored if they are substantially damaged during a disaster. Communities should include one of these allowable options in its local regulations to provide greater opportunities for historic structures to be rehabilitated, restored, or repaired without having to come into compliance with the NFIP regulations or elevate the structure, especially since the construction costs for historic structures are typically higher than the costs for non-historic structures. Property owners, however, should consider implementing hazard mitigation strategies that will not damage the integrity of the structure.[38]

35 *Id.*at 3-5 - 3-6.
36 *Id.* at 6-23.
37 44 C.F.R. § 60.6(a) (2016).
38 FEMA, *supra* note 33, at 6-24.

Municipalities should also ensure that post-disaster considerations are addressed in their preservation ordinances in order to help protect historic structures during the recovery efforts. The following items should be addressed in the ordinances:

- Demolition and salvage protocol
- Expedited Certificate of Approval or Appropriateness review process
- Stabilization and repair without review
- Decisions regarding which items can be reviewed by staff
- Acceptance of 106 review in lieu of local review

Historic District Guidelines

Local governments with historic districts often have historic district guidelines that describe the types of alterations and new construction that are allowable within the historic district. These guidelines should consider the types of adaptations that are allowable within their districts. Numerous types of adaptations are possible, such as raising structures, wet floodproofing, and dry floodproofing. While these contribute to resiliency; they can also compromise integrity. To provide property owners with information about adaptation options, historic district guidelines should include recommendations regarding elevation, utilities, storm shutters, safe rooms, tie downs, and trees. The National Park Service is currently revising the Secretary of the Interior's Standards to address adaptation for historic structures. Local governments should address the types of strategies that are acceptable for their communities and carefully consider the effect those strategies may have on historic integrity.

Case Study: Exemptions for Historic Structures in Cedar Key

In 2016, the University of Florida Levin College of Law Conservation Clinic worked with with the City of Cedar Key, Florida on floodplain management issues for historic structures and water-dependent uses. A quitessential working waterfront, the City of Cedar Key is located on barrier islands along the Gulf of Mexico. Nearly the entire city, plus additional county land, is located in the Cedar Keys Historic and Archaeological District.[1] The city contains approximately 120 historic structures and much of the city is located in the floodplain.[2] The city's historic structures help define the character of the community, and damaging the historic integrity of these structures would alter the community's overall sense of place. To help protect these structures from alteration, the Conservation Clinic drafted language creating a variance for historic structures in its Land Development Code that allows historic structures to avoid flood resistant construction requirements. Adopted by the City just prior to the arrival of Hurricane Hermine in September of 2016, the Variance states:

> ***Historic buildings***. *A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the Florida Building Code, Existing Building, Chapter 12 Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the Florida Building Code.*[3]

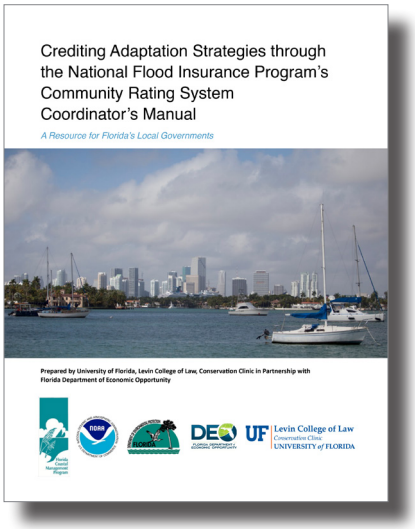
1 National Register of Historic Places, Cedar Keys Historic and Archaeological District, Cedar Key, Levy County, Florida, National Register #88001449 (1988).
2 *Id.*
3 Laws of Cedar Key, Land Development Code, 6.07.07(D) (2017).

Strategy 3

Incorporate Cultural Resources into Actions under the National Flood Insurance Program

Strategy 3 Summary

This section outlines FEMA's **Community Rating System (CRS)** and suggests ways to incorporate actions that could reduce the vulnerability of cultural resources. Recommendations include:



- Inventory historic resources
- Map vulnerable cultural resources
- Share information about flood risks to cultural resources
- Adapt historic structures
- Encourage government acquisition of cultural resources

Community Rating System

The CRS is a part of the **National Flood Insurance Program (NFIP)** that encourages communities to take actions to reduce the risk of floods.[1] FEMA uses a flood insurance premium rate reduction incentive to accomplish local government implementation of CRS activities.[2] The program pursues this end through three objectives.[3] The first is to lower actual flood damage to insurable property by reducing existing and new buildings' exposure to flood damage.[4]

1 Federal Emergency Management Agency, National Flood Insurance Program Community Rating System Coordinator's Manual FIA-15/2017 110-1 (2017) *available at* https://www.fema.gov/media-library-data/1493905477815-d794671adeed5beab6a6304d8ba0b207/633300_2017_CRS_Coordinators_Manual_508.pdf. For more information on general adaptation strategies, *see*: University of Florida, Levin College of Law, Conservation Clinic, Crediting Adaptation Strategies through the National Flood Insurance Program's Community Rating System Coordinator's Manual: A Resource for Florida's Local Governments (2015), *available at* https://www.ufl.edu/_pdf/academics/centers-clinics/clinics/conservation/resources/final-deliverable-1B-crs-guidance-document.pdf.

2 *Id.* at 110-2.

3 *Id.*

4 *Id.*

The second objective of the CRS is to "strengthen and support the insurance aspects of the NFIP."[5] This second objective includes two strategies: (1) to improve actuarial ratings of insured properties by generating improved data, and (2) to disperse risk of flood events by expanding the policy base.[6]

The third objective is to have local governments "implement comprehensive local floodplain management programs,"[7] in order to seek improved floodplain management for other reasons such as enhanced water quality and reduced habitat loss.[8]

The **CRS Manual**, the FEMA document that establishes the details for the CRS, provides a series of nineteen activities that local governments may undertake to accomplish the above mentioned goals.[9] When communities undertake these activities, they can request CRS credit, and they are placed in one of ten CRS classes. The community's flood insurance premiums are based on the community's CRS class, and property owners in communities with a lower CRS class will pay lower flood insurance premiums.[10] Notably, the CRS program does not explicitly consider a community's cultural resources, and future editions should include activities specifically aimed at reducing the vulnerability of cultural resources.

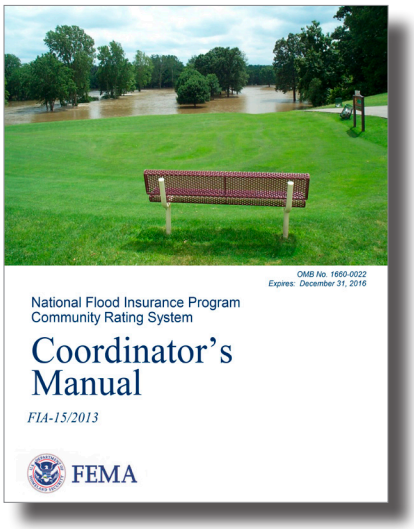
Table 2. CRS classes and premium discounts.

CRS Classes	Credits	Premium Reduction	
		In SFHA*	Outside SFHA*
1	4,500 and Above	45%	10%
2	4,000 to 4,499	40%	10%
3	3,500 to 3,999	35%	10%
4	3,000 to 3,499	30%	10%
5	2,500 to 2,999	25%	10%
6	2,000 to 2,499	20%	10%
7	1,500 to 1,999	15%	5%
8	1,000 to 1,499	10%	5%
9	500 to 999	5%	5%
10	0 to 499	0%	0%
* Special Flood Hazard Area			

FEMA, *supra* note 1, at Table 110-3.

5 *Id.*
6 *Id.*
7 *Id.*
8 *Id.*
9 *Id.* at 110-4.
10 *Id.* at 110-3.

The CRS Coordinator's Manual describes how completing its nineteen activities makes communities eligible for flood insurance rate reductions. If a community earns 4,500 credits or more, it qualifies for Class 1, the highest class.[11] In Class 1, the owners of property within the floodplain receive a 45% discount on their premiums.[12] Nine remaining classes are available at 500 credit increments. Each offers rate reductions at 5% increments.[13]



The manual presents its nineteen actives in four sections: the 300 series, the 400 series, the 500 hundred series and the 600 series.[14]

Table 3. CRS series and types of activities

Series	Activities related to:
300 Series	Public Information
400 Series	Mapping and Regulations
500 Series	Flood Damage Reduction
600 Series	Warning and Response

University of Florida, Levin College of Law, Conservation Clinic, Crediting Adaptation Strategies through the National Flood Insurance Program's Community Rating System Coordinator's Manual: A Resource for Florida's Local Governments (2015) at Table 2.

The 300 series groups activities related to public information.[15] Activities in this series increase general public awareness of flood risk and improve actuarial aspects of the flood insurance program through collecting and sharing information.[16] For example, community's can receive credits for designing and implementing a Program for Public Information that conveys a message to the public.[17]

The 400 series groups activities related to mapping and regulations.[18] Activities in this series focus on new development and include preserving open space, improving stormwater management, and mapping new areas prone to flooding.[19]

11 *Id.*
12 *Id.*
13 *Id.*
14 *Id.* at 110-4.
15 *Id.*
16 *Id.*
17 *Id.* at 330-3.
18 *Id.* at 110-4.
19 *Id.*

The 500 series groups activities related to flood damage reduction.[20] Activities in this series focus on protecting existing structures from flood damage.[21] These include "acquiring, relocating, or retrofitting existing buildings; maintaining and improving natural channels and storage basins; and planning for the best ways to implement these and other loss prevention and reduction activities."[22]

The 600 series groups activities related to warning and response.[23] Activities in this section focus on coordinating emergency management functions and providing public information.[24] These activities include flood warning and response, levee maintenance, and dam safety programs.[25]

A community action to address cultural resources may be a creditable activity even if the CRS Manual does not explicitly address that action. The manual addresses its limitations by saying:

> *The CRS activities are not design standards for local floodplain management. The Coordinator's Manual is an insurance tool that describes methods of calculating credit points for various community activities. The fact that the Coordinator's Manual does not list a specific credit for some activities does not mean that they should not be implemented by communities that need them.*

And:

> *An activity may deserve credit even if the Coordinator's Manual does not include it. The Coordinator's Manual cannot predict or list everything that can be done to support the goals of the CRS. Communities are always welcome to request credit for alternate approaches or innovations that are not included in the Coordinator's Manual.*[26]

Since the CRS is a federal program, certain land-altering and building activities must comply with applicable federal historic preservation and environmental laws and regulations in order to be considered for CRS credit.[27] This applies to projects under the following activities:

20 *Id.*
21 *Id.*
22 *Id.* at 500-1.
23 *Id.* at 110-4.
24 *Id.*at 600-1.
25 *Id.*
26 *Id.* at 110-7.
27 *Id.* at 500-15.

» Acquisition and Relocation (Activity 520)

» Flood Protection (Activity 530)

» Drainage System Maintenance (Activity 540)

» Levees (Activity 620)[28]

Additionally, projects utilizing any FEMA or federal funding must comply with all federal historic preservation and environmental laws and regulations.[29]
The following sections describe five (5) specific actions communities can take to potentially improve their CRS rating that specifically address cultural resources.

Inventory Historic Resources

A historic building inventory can be an important component of an overall building inventory and a vulnerability assessment. While this action itself is not expressly creditable, it can be useful in determining the impact adjustment necessary for some activities. The CRS uses an impact adjustment to adjust the points credited to reflect the number of buildings affected by the activity.[30]

Actions that reduce flood damage to cultural resources while potentially decreasing the community's flood insurance premiums:

- Inventory historic resources
- Map vulnerable cultural resources
- Share information about flood risks to cultural resources
- Adapt historic structures
- Encourage government acquisition of cultural resources

Map Vulnerable Cultural Resources

Identifying vulnerable resources is a threshold activity in protecting cultural resources. Portions of Activity 510, Floodplain Management Planning, grants credit for assessing hazards and their impacts.[31] To get credit for this activity, local governments must develop a plan that follows FEMA's 10-step planning process.[32] Step four considers vulnerability by assessing the flood hazard to include location(s),

28 *Id.*
29 *Id.* at 500-15.
30 *Id.* at 300-4.
31 *Id.* at 510-2.
32 *Id.* at 510-1.

depth(s), and source(s) or cause(s).[33] Step five assesses the flood hazard impact on the community, which includes affected buildings.[34]

Share Information about Flood Risks to Cultural Resources

Increased knowledge of the risks of flooding is a powerful tool in changing behavior of the owners and managers of cultural and historic resources. Activity 330 grants credits for outreach projects in each of six priority topics including "Protect your property from the hazard."[35] Information about flood hazards and cultural resources can be integrated into communications related to any of these six topics or could stand alone as its own topic. Similarly, Activity 350 grants credits for public information campaigns.[36] A public information campaign is a local program to raise awareness of the hazards of flooding and coastal hazards by communicating those risks. Specific actions creditable under this section could include:

» A flood protection campaign specifically targeting cultural resources

» Housing pertinent information in the public library, such as:
  - FEMA publications on flood protection for historic properties
  - Other references on flood-related issues[37]

Adapt Historic Structures

Communities could receive credits for providing flood protection assistance or 'retrofitting' projects for historic buildings. Flood protection assistance is creditable under Activity 360.[38] Points can be received for providing advice on retrofitting techniques, drainage improvements, or financial assistance programs.[39] Additional points are available if the advisor makes a site visit or has graduated from the Emergency Management Institute (EMI) courses on retrofitting and grant programs.[40]

Retrofitting projects are covered under Activity 530, and the "credit is based on the number of insurable buildings in the regulatory floodplain that have been retrofitted since the date of the community's original Flood Insurance Rate Map (FIRM).[41] Retrofitting techniques include:

33 *Id.* at 510-14.
34 *Id.* at 510-16.
35 *Id.* at 330-4.
36 *Id.* at 350-2.
37 *Id.* at 350-1.
38 *Id.* at 350-11.
39 *Id.* at 360-2.
40 *Id.* at 360-10.
41 *Id.* at 530-2.

- Elevating buildings
- Dry floodproofing
- Wet floodproofing
- Protecting basements
- Barriers for individual structures[42]

Communities can assist property owners with financing retrofitting projects. Potential sources include property assessed financing, tax increment financing districts, private/public partnerships, and state or federal grants. Retrofitting is an especially sensitive consideration for cultural resources, since inappropriate retrofits could compromise integrity. Providing guidance on appropriate retrofitting could potentially yield additional credits.

Encourage Government Acquisition of Cultural Resources

FEMA encourages communities to acquire property located in the floodplain, including the removal of buildings from flood hazard areas in order to restore the natural floodplain.[43] In some cases, historic buildings can be relocated to outside of the floodplain. However, this should not be undertaken lightly because changing the location and setting of a historic structure negatively impacts its historic integrity.[44]

If the acquired land does not contain "buildings, filling, or encroachments on flood flows", it will earn community credits under Activity 420, Open Space Preservation.[45] This strategy is more likely to be beneficial when the acquired land is a historic landscape or contains archaeological resources, which are more consistent with being managed to support the natural function of floodplains.

42 *Id.*
43 *Id.* at 420.2, 520-2.
44 Anne E. Grimmer, The Secretary of the Interior's Standards for the Treatment of Historic Properties: with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings 138 (Department of the Interior, National Park Service, Technical Preservation Services 2017), *available at* https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf.
45 FEMA, *supra* note 1, at 420-4.

Case Study: Floodproofing the Train Depot in Fernandina Beach

In 2012, the City of Fernandina Beach, Amelia Island Convention and Visitor's Bureau, and the Amelia Island Fernandina Restoration Foundation began an extensive restoration project on the city's historic train depot.[1] The 1899 brick train depot, which is on the National Register of Historic Places as a contributing structure in the Fernandina Beach Historic District, is built on grade and located approximately one block from the Amelia River in the city's 100-year flood plain.

During the restoration, the depot was floodproofed. Since the brick walls would probably not be able to withstand the external water pressure if it was dry-floodproofed, it was wet-floodproofed instead.[2] This included raising the depot's electrical and HVAC systems above Base Flood Elevation (BFE). Additionally, water-resistant materials were used on the floors and lower portions of the walls.[3]

Historic train depot in Fernandina Beach

Photo Credit: Belinda B. Nettles

HVAC located on a wooden platform above BFE and shielded from view by vegetation

Photo Credit: Belinda B. Nettles

1 Suanne Z. Thamm, *The Historic Fernandina Beach Train Depot: Then, Now, and the Future,* Fernandina Observer News (26 March 2013), *available at* http://fernandinaobserver.com/2013/03/26/the-historic-fernandina-beach-train-depot-then-now-and-the-future/
2 Interview with Fernandina Beach Community Development Department (21 August 2015).
3 *Id.*

Strategy 4

Address Hazard Mitigation for Cultural Resources in Comprehensive Planning

Strategy 4 Summary

This section outlines Florida's growth management policy and describes how to address hazard mitigation for cultural resources in comprehensive planning. Recommendations are:

» Utilize the Adaptation Action Area (AAA) designation, when applicable, to prioritize adaptation planning in historic districts

» Include policies that require periodic surveys and maintain inventories of cultural resources

» Include policies that encourage maintenance and hazard mitigation for cultural resources

Growth Management Policy

State land use planning efforts are categorized as either growth management or laissez-faire. Growth management states "attempt to guide the location and timing of development" whereas laissez-faire states do not.[1] As Florida is a growth management state, a body of state law provides a framework for how the state and each local government plan for growth and development.

The Florida Constitution requires the state to have a **state long range comprehensive plan** anticipating how the state and local governments will accommodate growth through the future use of land, development of necessary infrastructure, and the protection of vital resources.[2] Also, Florida statutes require that each of Florida's local governments adopt a comprehensive plan which is consistent with the state comprehensive plan.[3] While the Florida Comprehensive Planning Act allows discretion in the way a local plan is written and formatted, it states that these are typically "expressed in goals, objectives, policies and

1 Arthur C. Nelson, *Comparing States With and Without Growth Management: Analysis Based on Indicators With Policy Implications*, 16 Land Use Policy 122 (1999).
2 Fla. Const. Art. III, § 19(h). *See also*, Fla. Stat. Ann. § 186.007(1) (2016); Fla. Stat. §187.101(1) (2016).
3 Fla. Stat. § 163.3177(6)(h)(1) (2016).

strategies."[4] Thus, each element in a plan will have a set of broad goals, typically followed by several targeted objectives to implement those goals, and ultimately legally enforceable policies that carry out the objectives. However, in most cases a comprehensive plan's goals, objectives and policies will be implemented through regulations, much in the way that federal or state regulations implement federal or state statutes.

While these local plans must be "based upon relevant and appropriate data" and "analysis," to be valid,[5] individual local governments have broad authority to draft comprehensive plans that establish the public policy preferences of the Legislature and local governments.[6] In particular, the future land uses must be "based upon surveys, studies, and data regarding the area,"[7] including any need for development, and shall include specific criteria to coordinate future land uses with the topography and soil conditions, and preserve "recreational and commercial working waterfronts for water-dependent uses in coastal communities."[8]

Although local governments have discretion over which professionally accepted sources of this information they choose to integrate into their **local comprehensive plans**, at least one commentator on the relationship between comprehensive planning and consideration of sea level rise, believes that this mandate for data-based planning means that communities must plan for sea level rise.[9]

Florida law specifically requires that comprehensive plans be organized by elements, or subject matter, and requires plans to include several elements.[10] These are:

» Future land use element

» Coastal management element (for coastal communities)

» General sanitary sewer, solid waste, drainage, and potable water, and natural groundwater aquifer recharge element

» Conservation element

» Housing element

4 Fla. Stat. § 163.3177(c) (2016).
5 Fla. Stat. § 163.3177(1)(f) (2016).
6 Under Florida law, comprehensive planning decisions are legislative and therefore subject to the deferential fairly debatable standard. *Martin Cnty. v. Yusem*, 690 So. 2d 1288, 1295 (Fla. 1997).
7 Fla. Stat. § 163.3177(6)(a)(2) (2016).
8 Fla, Stat. § 163.3177(6)(a)(3)(c),(e) (2016).
9 Richard Grosso, Planning for Sea Level Rise: Legal Issues Facing Florida 3 *available at* http://www.1000friendsofflorida.org/wp-content/uploads/2015/01/1501-sea-level-legal.pdf.
10 Fla. Stat. § 163.3177(1)(a) (2016).

- Intergovernmental coordination elements
- Transportation element
- Capital improvements element
- Recreation and open space element
- Other optional elements.[11]

Several of these required and optional elements are discussed below in connection with the statutory requirements and hazards.

The **future land use element** requires designation of "proposed future general distribution, location, and extent of the uses of land" within a community.[12] The **future land use element** must include criteria to "[e]nsure the protection of natural and historic resources."[13] Additionally, "[t]he land use maps or map series shall generally identify and depict historic district boundaries and shall designate historically significant properties meriting protection."[14] Specific to Florida, criteria must be included in each local comprehensive plan to "[e]ncourage preservation of recreational and commercial working waterfronts for water-dependent uses in coastal communities."[15] The **future land use element** of comprehensive planning is the "primary mechanism by which land use planning decisions impact mitigation and adaptation."[16]

The required **housing element** must make "provision for relocation housing and identification of historically significant and other housing for purposes of conservation, rehabilitation, or replacement."[17]

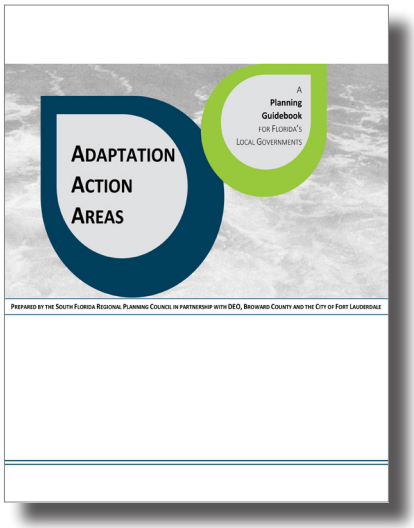
Local governments "abutting the Gulf of Mexico or the Atlantic Ocean, or which include or are contiguous to waters of the state where marine species of vegetation listed by rule as ratified in s. 373.4211 constitute the dominant plant community"[18] are required to include a **coastal management element** in their comprehensive plan.[19] In general, "it is the intent of the Legislature that local government comprehensive plans restrict development activities where such activities would damage or destroy coastal resources, and that such plans protect human life

11 Fla. Stat. § 163.3177 (2016).
12 Fla. Stat. § 163.3177(6)(a) (2016).
13 Fla. Stat. § 163.3177(6)(a)(3)(f) (2016).
14 Fla. Stat. § 163.3177(6)(a)(6) (2016); *see also* Fla. Stat. § 163.3177(6)(a)(10)(b)(I) (2016).
15 Fla. Stat. § 163.3177(6)(a)(3)(c) (2016).
16 Grosso, *supra* note 8, at 4.
17 Fla. Stat. § 163.3177(6)(f)(1)(e) (2016).
18 Fla. Stat. § 380.24 (2016).
19 Fla. Stat. § 163.3177(6)(g) (2016).

and limit public expenditures in areas that are subject to destruction by natural disaster."[20]

The **coastal management element** is to guide each local government's actions to "[p]reserve historic and archaeological resources, which include the sensitive adaptive use of these resources."[21] Florida statutes permit local governments with a **coastal management element** to adopt an **Adaptation Action Area (AAA)**. Specifically, the statute authorizes:

> *[a]t the option of the local government, develop an adaptation action area designation for those low-lying coastal zones that are experiencing coastal flooding due to extreme high tides and storm surge and are vulnerable to the impacts of rising sea level. Local governments that adopt an adaptation action area may consider policies within the coastal management element to improve resilience to coastal flooding resulting from high-tide events, storm surge, flash floods, stormwater runoff, and related impacts of sea-level rise. Criteria for the adaptation action area may include, but need not be limited to, areas for which the land elevations are below, at, or near mean higher high water, which have a hydrologic connection to coastal waters, or which are designated as evacuation zones for storm surge.*[22]



Such a designation can facilitate a local government in prioritizing resources for adaptation planning, in prioritizing protection of threatened cultural resources, and in consolidating data and plans related to a community's response to coastal flooding.

Prior to 2011, the statutes specifically listed **historic preservation** as one of the optional elements, and a number of communities have included this element in their comprehensive plans. Communities still have the option of including this element even though it is no longer named in the state statutes. In this element, or elsewhere in the plan, communities can include a variety of goals and objectives that promote hazard mitigation and encourage disaster planning for cultural resources. Many local governments may have a historic preservation ordinance, regardless of whether there is a specific element addressing cultural resources in the comprehensive plan. Regardless of whether a local government adopts an optional element or sub-

20 Fla. Stat. § 163.3178(1) (2016).
21 Fla. Stat. § 163.3177(6)(g)(9) (2016).
22 Fla. Stat. § 163.3177(6)(g)(10) (2016).

element addressing cultural resources and promoting mitigation, consideration of cultural resources can be included as individual goals, objectives or policies, where it is appropriate to do so. Communities should include these in their comprehensive plans because these plans guide policy, and funding agencies, such as FEMA and the Florida Department of Economic Opportunity, often consider whether grant proposals match the goals, objectives, and policies stated in the comprehensive plan.

- ☑ Include cultural resources in the comprehensive plan
- Include policies that require periodic surveys and maintain inventories of cultural resources
- Include policies that encourage maintenance and hazard mitigation for cultural resources

The following sections describe recommendations that encourage or support cultural resource resiliency through comprehensive planning and local regulations. These recommendations are closely related to activities described earlier in this guidebook under Strategy 3. However, including them in the comprehensive plan will help to ensure that they are taken seriously by local officials who are charged with implementing the plan. The case study at the end of this strategy illustrates a community that includes cultural resources in its comprehensive plan.

Include Policies that Require Periodic Surveys and Maintain Inventories of Cultural Resources

Conducting periodic surveys and maintaining inventories of cultural resources are two linked activities that are critical for increasing hazard or disaster resiliency. For planning, response, and recovery, communities need to have accurate and up-to-date inventories of cultural resources. Incorporating this requirement in the comprehensive plan will help to ensure that this is done. These inventories are an important first step in hazard mitigation because they identify communities' cultural resources. The resources can then be mapped, and these maps can be overlaid with other comprehensive plan maps to identify vulnerable cultural resources. During recovery efforts, these inventories allow responders to quickly identify historic properties and take appropriate actions.

Some inventory updates can be accomplished without a survey. For example, demolished properties can be removed from the inventory as part of a standard administrative process. However, new surveys are needed to periodically verify the inventory and to identify additional cultural resources. Properties are typically not considered for eligibility for the National Register of Historic Places or other historic registers until they have reached 50 years of age unless they are

exceptionally important.[23] Therefore, new sites are continuously becoming eligible for consideration. As communities are conducting surveys, they should engage community members to identify the resources they value. Additionally, surveys should include an assessment of each resource's vulnerability and adaptation potential.

As technology continues to improve, it will reduce the cost and improve the quality of data collection and potentially increase community engagement.

Include Policies that Encourage Maintenance and Hazard Mitigation for Historic Properties

Well-maintained properties tend to be more resilient. Following Hurricane Katrina in 2005, officials noted that the listed structures with maintenance issues prior to the hurricane tended to receive heavier damage.[24] This may be especially true with older properties, such as those on historic registers. Communities can assist property owners by providing information and incentives for maintenance and hazard mitigation. Information about maintenance to reduce damage and other hazard mitigation actions could take many forms. Communities could post information on a website, produce brochures, hold seminars, or meet with individual homeowners. Incentives could also come in different forms such as tax breaks, expedited permitting, or direct grants.

Communities could also consider a regulatory approach to hazard mitigation by requiring affirmative maintenance of especially vulnerable historic properties. General municipal code enforcement provisions typically requires structures to be maintained in a state of habitability. While this concept essentially means that structures ought to be maintained in a state which is safe for occupants and which will not be a hazard or a nuisance for neighboring property owners, it could include basic floodproofing requirements. Some communities have adopted so-called "demolition by neglect" ordinances for historic properties, typically affirmatively requiring minimal maintenance.[25] In such cases, neglect could include failure to adequately and appropriately floodproof a historic property. This approach can, however, raise significant legal issues.[26]

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23 National Park Service, How to Apply the National Register Criteria for Evaluation 25 (National Register Bulletin 1997), *available at* https://www.nps.gov/nr/publications/bulletins/pdfs/nrb15.pdf.

24 Deon Roberts, *Few Homes/Buildings in New Orleans Historic Districts Destoryed by Hurricane Katrina*, New Orleans City Business (16 January 2006).

25 Rachel Ann Hildebrandt, Demolition-By-Neglect: Where Are We Now? (Masters Thesis University of Pennsylvania, Philadelphia, PA 2012), *available at* http://repository.upenn.edu/cgi/viewcontent.cgi?article=1190&context=hp_theses.

26 *Id.*

Case Study: Comprehensive Planning in Fernandina Beach, Florida

Fernandina Beach's comprehensive plan provides examples of specific objectives and policies that demonstrate ways to address hazard mitigation for cultural resources in the comprehensive plan elements. This type of plan language is not unique to Fernandina Beach or specific to hazard mitigation, however, it provides a good example that other communities could follow.

The following examples promote maintaining inventories of cultural resources, which is a critical first step in the mitigation process.

Objective 11.01

> *The City shall continue to promote the preservation of resources through commitment to conduct historic, cultural and archaeological resource surveys and the continued development of ordinances, guidelines, and databases.*[1]

Policy 11.01.02

> *The City shall maintain an inventory of structures, sites and districts eligible or potentially eligible for listing on the National Register of Historic Places. Where identified, the City shall contact owners of historic resources and properties eligible or potentially eligible for listing on the National Register to encourage nomination of such properties to the National Register.*[2]

Policy 11.01.10

> *The City shall maintain updated information on historic properties, cultural resources and archaeological sites in the City's GIS mapping system.*[3]

1 City of Fernandina Beach, FL, City of Fernandina Beach 2030 Comprehensive Plan, *available at* http://www.fbfl.us/index.aspx?NID=81.
2 *Id.*
3 *Id.*

The following examples encourage maintenance and hazard mitigation.

Objective 11.04

The City shall actively encourage maintenance and preservation of historic structures.[4]

Policy 11.04.02.

The City shall conduct, at a minimum, annual windshield surveys of historic district properties in conjunction with Code Enforcement staff to monitor and maintain properties for any risk due to demolition by neglect.[5]

Policy 11.04.03.

The City shall evaluate incentives and identify partners that may allow the City and its partners to assist historic property owners with maintenance and preservation of their properties.[6]

Policy 11.04.04.

The City shall utilize a portion of the dedicated funds from the Historic Preservation Trust Fund to provide for small grants to historic district property owners to assist in maintenance and preservation efforts.[7]

4 *Id.*
5 *Id.*
6 *Id.*
7 *Id.*