

**MEMORANDUM OF AGREEMENT
FOR CERTAIN UNDERTAKINGS WHICH MAY BE HANDLED AS
CATEGORICAL EXCLUSIONS
BETWEEN
OZARK-ST. FRANCIS NATIONAL FOREST, ARKANSAS
OUACHITA NATIONAL FOREST, ARKANSAS AND OKLAHOMA
and
ARKANSAS STATE HISTORIC PRESERVATION OFFICER
ARKANSAS STATE ARCHEOLOGIST
OKLAHOMA STATE HISTORIC PRESERVATION OFFICER
OKLAHOMA STATE ARCHEOLOGIST
and
CHOCTAW NATION OF OKLAHOMA
CHICKASAW NATION
CADDO NATIONS OF OKLAHOMA
QUAPAW TRIBE
OSAGE NATION
CHEROKEE NATION**

WHEREAS it is the responsibility of the USDA Forest Service, Ouachita National Forest and Ozark-St. Francis National Forests to manage and conserve heritage resources under its jurisdiction, and;

WHEREAS it is the responsibility of the State Historic Preservation Officers (SHPOs) and State Archeologists to protect and preserve Heritage Resources in Arkansas and Oklahoma; and

WHEREAS the Choctaw Nation of Oklahoma, the Chickasaw Nation, the Caddo Nation of Oklahoma, the Quapaw Tribe, the Osage Nation, and the Cherokee Nation each have ancestral interests in lands now occupied by the Ouachita and Ozark-St. Francis National Forests in Arkansas and Oklahoma and may attach religious and cultural significant to historic properties likely to be affected; and

WHEREAS both federal agencies and the Arkansas and Oklahoma SHPOs, State Archeologists and Tribes understand that sound management for the protection of heritage resources is a responsible and worthwhile goal of federal, state and tribal governments; and

WHEREAS both federal agencies and the Arkansas and Oklahoma SHPOs, State Archeologists and Tribes understand the need to manage heritage resources including their inventory, evaluation, protection and enhancement; and

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WHEREAS, during the planning of an undertaking, the USDA Forest Service is responsible under Section 106 of the National Historic Preservation Act and Title 36, Code of Federal Regulations, Part 800.4 to take positive action to identify properties in the undertaking's area of environmental impact which are eligible for the National Register of Historic Places and to consider the effect that undertakings may have on such properties; and

WHEREAS the National Historic Preservation Act (16 U.S.C. 470) and its implementing regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800) require that the Advisory Council be afforded the opportunity to comment on undertakings prior to their implementation, and

WHEREAS the USDA Forest Service, Ouachita and Ozark-St. Francis National Forests, has determined that management of these forests involves a number of undertakings which are unlikely to have an effect on properties that may be eligible for inclusion on the National Register of Historic Places, and:

WHEREAS these projects may occur with overall frequency and on any of the Ranger Districts across the Ouachita National Forest and the Ozark-St. Francis National Forests;

NOW, THEREFORE, the USDA Forest Service, Ouachita and Ozark-St. Francis National Forests, the Arkansas and Oklahoma SHPOs and State Archeologists, and the Choctaw Nation of Oklahoma, the Chickasaw Nation, the Caddo Nations of Oklahoma, the Quapaw Tribe, the Osage Nation, and the Cherokee Nation, agree that:

1. The professional Heritage Resource staffs of all parties to this understanding will work together to develop sound management programs which inventory, evaluate, protect, enhance and which meet the legal requirements of Section 106 in a timely and efficient manner.
2. The parties agree that the two classes of undertakings listed and described below in this Memorandum of Understanding are unlikely to have an effect on properties that may be eligible for inclusion on the National Register of Historic Places, and therefore, may be handled as Categorical Exclusions.

I. Activities to be handled as Documented Categorical Exclusions

- A. Prescribed burns in areas that have been burned previously. Prescribed burns are low intensity burns conducted in order to enhance browse for wildlife and to remove slash/ground litter to lower the damage from possible wildfires. The areas in which these prescribed burns are utilized have often been burned repeatedly in past years. The low intensity of these burns will not likely effect prehistoric sites.

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Historic wooden features located within these areas will have previously been burned. When it can be documented through a burn plan that an area has been previously burned and no new construction will take place, no archeological survey will be necessary. The categorical exclusion must reference the year and documentation of the previous burn. (**NOTE:** Any new fire line construction will require a survey of the lines; existing lines are excluded provided that the location does not change and provided that the existing line is not within the boundaries of an archeological site. A reconnaissance survey shall be needed to make this determination. The reconnaissance shall be documented in field notes attached to the categorical exclusion.)

- B. Actions that take place in existing road rights-of-way. The Forest receives numerous requests for actions that occur within existing roads. These actions may include permit actions (such as overhead or buried transmission/phone lines, collection of building stone rock, access along forest service roads into adjacent private lands) or in-house actions such as decking timber. In these cases, there is no additional construction on the existing roads. (**NOTE:** Buried cable routes [telephone, electric, etc.] will be placed within the existing roadbed [between the ditches].)
- C. Insect/Storm/Drought Damaged Timber. The following mitigation measures will be followed to eliminate adverse impacts from insect suppression and control treatments and storm/drought damaged timber on archeological or historic sites that are listed on, or eligible for listing on, the National Register of Historic Places (NRHP).
1. All locations to be treated and associated temporary access roads scheduled for treatment with the cut and remove suppression method will be checked by the Zone Archeologist, certified Heritage Resource Technician (HRT), or Forest Archeologist prior to any treatment activity.
 - a) Treatment locations and associated temporary access roads/routes proposed for cut and remove will be located with a GPS unit and accurately plotted on a legible copy of a USGS topographic map (or comparable quality GIS map). The location will be compared to the Heritage Resource Atlas to determine if the area has previously been surveyed, has known sites and the NRHP eligibility of the known sites. Treatment locations in areas previously surveyed where no sites were found or where sites have been found but which have been determined not to be eligible for inclusion on the NRHP require no further review and the treatment action may commence. Documentation will be by a Heritage Resources categorical exclusion.
 - b) Treatment locations and associated temporary access roads proposed for cut and remove and located in high and medium probability areas that have not been previously surveyed, will be surveyed by an archeologist or certified HRT prior to implementation of control treatments. All cultural properties recorded, with the exception of

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isolated finds and historic fields, will be considered eligible for inclusion on the NRHP and protected until the State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officers (THPOs) have commented as provided in section 2 below. Any ground disturbing activities must avoid areas with known National Register listed or eligible sites.

2. All treatment locations surveyed and categorically excluded, or sites found as discovery situations, will be reported in the month following the survey/exclusion to the SHPO and THPOs.
 3. Relocate and mark known NRHP listed or eligible cultural properties prior to suppression activities and choose techniques that avoid or minimize disturbance, such as cut and leave or cut and spray. GPS (UTM) locations will also be recorded for each historic property.
 4. If additional cultural properties are discovered during implementation, the Zone Archeologist will be contacted and appropriate documentation and protective measures employed.
- D. Seismic Lines. Seismic surveys conducted within existing roads. **NOTE**: All other seismic lines require survey.
- E. Wildlife and Fisheries. Improvements consisting of hand planting stream banks for stabilization, sediment sampling and channel improvement (where the channel work is restricted to the existing stream channel). Any use of heavy equipment will be restricted to the stream channel. [See also Section II.S. below]
- F. Trail Construction. Construction of hiking or horse trails within used or abandoned roads or within railroad trams can be handled as a categorical exclusion. **NOTE**: All other new trail construction cannot be categorically excluded.)
- G. Clean up of Chip Piles. Lands acquired from private individuals or timber companies will occasionally contain piles of chipped wood from logging activities that occurred prior to federal acquisition. These chip piles will usually be removed from the area through the use of a bulldozer and/or front-end loader. This activity can be handled as a categorical exclusion only with the provision that an Archeologist or a Certified HRT monitors the activity if the Archeologist determines that they are located in an area likely to contain archeological resources. If the Archeologist determines that the likelihood of the presence of archeological resources is low, then no monitoring will be required. The Categorical Exclusion must identify that individual who will be monitoring the activity, if monitoring is deemed necessary.
- H. Work in Project Areas Previously Surveyed. As more and more areas of the forest are surveyed at an intensive level of effort, it will become more and more common that future project areas will be located in those areas previously

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surveyed. Categorical Exclusions will be accepted for project activities that are wholly located within areas that have been surveyed after January 1, 1989, with an adequate and intensive level of effort and for which the forest has documentation that the SHPO and/or Tribes have concurred with the previous archeological investigations, eligibility assessments and recommendations for avoiding effects. A copy of the SHPO consultation documentation and a reference to the previous survey report must be included with the Categorical Exclusion.

- I. Closure of Open Wells and Mine Shafts for Safety Reasons. Many historic house sites and mining sites contain open wells or mine shafts and adits that present a serious safety hazard. Placing concrete caps, metal grates, or fencing over or around these features or filling with sterile sand can be handled as a categorical exclusion. (**NOTE:** The activity will not meet the criteria for a categorical exclusion unless the site has been previously and adequately documented [shovel testing and completed site form; adequate documentation will also include size (diameter/depth) of well or shaft to be filled/covered]. A copy of the site form must accompany the categorical exclusion when submitted to the Zone Archeologist.)

- J. Wildlife ponds/openings. Construction of new wildlife ponds/and openings in previously disturbed areas (i.e. gravel pits, strip mines, quartz mines) can be handled as a categorical exclusion. (**NOTE:** Maintenance of wildlife openings is an undertaking and requires Section 106 review prior to implementation unless it meets the criteria in Stipulation H above.)

- K. Historic buildings. Numerous historic buildings occur across the forest, primarily in established Recreation Areas. These historic buildings are constructed primarily by the Civilian Conservation Corps. Roofing and repair (stabilization) of structural elements, as part of continued maintenance, of these buildings that is accomplished with the use of in-kind materials and recreates the appearance of the original structure can be handled as a categorical exclusion with concurrence of the Archeologist.

- L. Road closures. Any road closure (i.e. tank trap, gates and barriers, etc.) which involves earth disturbance (shallow pits and/or mounds) that does not penetrate below soils previously disturbed by road construction may be handled as a categorical exclusion. This may also include scarification and seeding within the existing road right-of-way.

- M. Cut and Leave: Several types of projects may occur in which vegetation is cut by hand and allowed to remain on the ground during which disturbance to archeological resources is very unlikely to occur. These may include: Wildlife Stand Improvement - Overstory Removal (WSI-overstory involves the thinning of pole-sized hardwoods to allow crown expansion in residual trees. Selected stems usually less than 10" dbh are cut with chainsaws and allowed to remain on the

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ground within the improvement areas. No heavy equipment is used in the process nor are new roads constructed for access); Wildlife Stand Improvement - Mid-story Removal (Mid-story removal involves the removal of relatively small vegetation to create an open forest environment); Insect Infestation treatments (where trees are cut and allowed to remain on the ground and are not harvested); Pre-commercial thinning of pine plantations (small pine timber thinned out of the plantation is allowed to remain on the ground and is not harvested); Chainsaw site prep (The action will consist of the use of chainsaws to control undesirable vegetation). In all these cut and leave actions, vegetation to be removed will be cut with chainsaws and allowed to remain on the ground within the improvement areas. No heavy equipment is used in the process nor are new roads constructed for access. (**NOTE:** If the Overstory Removal, Mid-story Removal or Insect Infestation treatment are handled as a timber sale, they will not be handled as a categorical exclusion. Cut and Leave will not be categorically excluded in cases where historic properties with above ground features are included within the project area.)

Process for Categorical Exclusions requiring documentation.

The Forest Service will insure that management of activities that fall within the above-described categorical exclusions will be handled with the following measures:

1. The Districts shall complete a Categorical Exclusion form for each project. These forms are to be signed by the originator and the District Ranger. [A copy of this categorical exclusion form is attached and made a part of this agreement.]
2. The Forest Archeologist will make the final determination of whether a categorical exclusion applies to an undertaking; the Forest Archeologist may delegate this responsibility to the District/Zone Archeologist. The Forest Service Archeologist will review the project to ensure that it meets the requirements for a Categorical Exclusion and sign if the requirements are met. If not, then recommendations will be made for survey or other SHPO consultation.
3. Those projects where known National Register eligible sites occur within or adjacent to the project area will not be handled as Categorical Exclusions.
4. An annual summary of the approved Categorical Exclusions will be forwarded to the Consulting Parties for review at the end of the fiscal year.

The Categorical Exclusion forms will provide the following information:

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1. Description of the project.
2. Location of the project.
3. Specific Exclusion Stipulation that applies to the undertaking.
4. Project area clearly marked on a clean, uncluttered copy of a USGS topographic map.

II. Undertakings which require no further 106 review or documentation

- A. Maintenance/construction on FS buildings that are less than 50 years old. Maintenance or alteration of existing Forest Service facilities less than 50 years old that do not involve additional ground disturbance. These may include administrative structures, recreation structures, boat launch ramps, campgrounds, cattleguards, fences, stock tanks (Regional PA:V.B.6.);
- B. Herbicide site prep. Existing timber stands that are scheduled for herbicide site prep may be handled as a non-documented categorical exclusion. In these cases, the action will consist of the application of herbicide to control undesirable vegetation. In some cases, herbicide treatment will be used with Cut-and-Leave treatments (See I.M. above). No ground-disturbing action will take place;
- C. Revegetation. Non-disturbing broadcast seeding and mulching for establishment of vegetation (Regional PA:V.B.13.);
- D. Routine Recreation Area/Vista Site Maintenance. This would involve non-ground-disturbing activities such as replacement of barriers or signs, re-graveling of roads and parking areas, maintenance of an existing trail within a campground, and hazard tree removal when a skidder is not used. Creation and/or maintenance of vistas are done with hand tools with no ground surface disturbance; may also include clearing of vistas for hang gliding;
- E. Paving. Paving of existing graveled parking areas or roads within recreation areas and at administrative sites which does not require the removal of earth from the sites will not require 106 review or documentation. (**NOTE:** New construction will require a survey and SHPO/Tribal consultation.);
- F. Firewood Cutting. The Forest Service provides permits to individuals to allow them to cut firewood in specified areas. In some cases, the timber removed in the wildlife stand improvement areas, listed above, is offered for firewood. In many cases, hardwood within other timber sale areas or dead and down timber within a

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road ROW is offered for firewood. No heavy equipment (i.e. bulldozers, skidders, etc.) or new access is provided for firewood areas. (**NOTE:** Firewood cutting areas within or adjacent to historic properties may not be categorically excluded.);

- G. Routine maintenance of Forest System Roads. Routine road maintenance and resurfacing where work is confined to previously maintained surfaces, ditches, culverts, and cut and fill slopes where there are no known historic properties or historic properties would not be affected because proposed work is clearly within a disturbed context (Regional PA:V.B.5.) These are roads that are maintained by the Forest Service for general Forest use by the public. (**NOTE:** Maintenance on roads on which CCC rock and/or concrete culverts and bridges occur require documentation of these historic features. Section 106 consultation must occur before these features can be removed/replaced. The routine maintenance non-documented CE does not allow for construction of new leadoff ditches, road realignment, or turning over to the County for maintenance.);
- H. Recreation Structures and Other Facilities. The placement of facilities that require no excavation or ground disturbance or that do not present a visual intrusion on historic properties may be handled as a non-documented Categorical Exclusion;
- I. Acquisition of lands. Land acquisition or transfers of administrative control to the Forest Service, where the historic properties received are not considered in exchange for any relinquished (Regional PA:V.B.4.);
- J. Existing Wildlife Ponds and Openings. The cleaning and relining of existing ponds, as long as they are not enlarged, will not impact existing Heritage Resources. Bush hogging of existing openings, installation/maintenance of nesting structures will also have no effect and may be handled as non-documented categorical exclusions. (**NOTE:** Plowing of wildlife openings cannot be categorically excluded.);
- K. Rehabilitation of open pit quarries. Numerous open pit quarries (such as gravel pits, shale pits, quartz mines, etc.) occur across the forests. The rehabilitation of these open pits, once quarry operations have ceased will require no Section 106 review or documentation if they have been actively quarried within the past 45 years. These types of projects include resurfacing of borrow pits with existing stockpiled fill material;
- L. Trash Dump Clean up. There are numerous instances of recent trash dumps on the forests. The clean up and removal of these dumps, less than 45 years old, require no 106 review or documentation;
- M. Research Activities. Research activities involving no destructive actions on known historic properties (including demolition or dismantling) or ground disturbance (Regional PA:V.B.1);

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- N. Permits, easements, etc. Permits, easements, rights-of-way, and leases that do not authorize ground disturbance (Regional PA:V.B.2);
- O. Easement acquisitions. Where the historic properties received are not considered in exchange for any historic properties relinquished (Regional PA:V.B.3);
- P. Pesticide use. Pesticide spray projects involving no timber thinning or other ground disturbance (Regional PA:V.B.8);
- Q. Withdrawal revocations. These are lands that return to Forest Service control from other Federal or State agencies (Regional PA:V.B.9);
- R. Wilderness study areas;
- S. Stream channel work. Snagging and clearing of streams within stream channels, not including work on terraces, cutbanks, and similar locations;
- T. Sign post and monuments. Installation of sign and gate posts and monuments, unless within known historic property boundaries, or where no new ground disturbance is involved (Regional PA:V.B.10 and V.B.12). This also includes land line maintenance and maintenance of existing property corners;
- U. Trail maintenance. Routine foot trail maintenance that does not involve new ground disturbance (Regional PA:V.B.11);
- V. Environmental Surveys. Includes survey for American Burying Beetle, Threatened and Endangered Species surveys, etc.;
- W. Heliports. Maintaining existing heliports through hand tool brush control;
- X. Borrow/quartz pits. Existing shale pits/gravel pits/ quartz mines in which the horizontal extent is not expanded;
- Y. Transfer of use authorization. Transfer of use authorization from one authority to another when an action such as a boundary adjustment necessitates changing a right-of-way or easement from one authority to another (e.g., Forest Service Special Use Permit to a USFA Title V Right-of-Way)(Regional PA: V.B.7);
- Z. Geophysical Seismic Monitoring. Placement of geophysical seismic monitoring equipment on the surfaced portion or within the prism (area clearly associated with road construction, from road surface to top of cut and/or toe of fill) of a regularly maintained road (Regional PA: V.B.14).

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Administrative

1. No member of, or Delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this agreement, or to any benefit that may arise there from; but this provision shall not be construed to extend this agreement if made with a corporation for its general benefit.
2. Nothing herein shall be construed as obligating the Forest Service to expend, or as involving the United States in any contract or other obligation for the future payment of money in excess of appropriations authorized by law or administratively allocated for the work.
3. This Memorandum of Agreement shall become effective when signed by the parties hereto and shall remain in force for two (2) years. At the end of two years, the Agreement shall be reviewed. As part of the review, the SHPOs, Tribes and Forest Service to determine the adequacy and effectiveness of the application of this agreement shall review all projects treated within this agreement jointly. If all parties agree that it is necessary and effective, the Agreement shall be continued for a period two (2) years. Amendment to this Agreement may be proposed by any party and shall become effective upon approval by all parties. Termination of this Agreement shall be by mutual agreement by all parties upon 30 days written notice. Failure to sign this agreement by one of the Consulting Parties does not negate the agreement.
4. Points of Contact within each agency are shown below:

Ouachita National Forest:	Meeks Etchieson, 501-321-5252
Ozark-St. Francis Nat'l Forest:	David Jurney, 501-964-7233
Oklahoma SHPO:	Charles Wallis, 405-521-6381
Oklahoma State Archeologist :	Robert L. Brooks, 405-325-7211
Arkansas SHPO:	George McCluskey, 501-324-9880
Arkansas State Archeologist:	Ann M. Early, 501-575-3556
Choctaw Nation Of Oklahoma:	
Chickasaw Nation:	
Caddo Nations Of Oklahoma:	
Quapaw Tribe:	
Osage Nation:	
Cherokee Nation:	

5. Execution of this Memorandum of Agreement evidences that the USDA, Forest Service, Ouachita and Ozark-St. Francis National Forests, has afforded the Council a reasonable opportunity to comment on the management of projects that are unlikely to have an effect on properties listed on or eligible for inclusion to the National Register of Historic Places.

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IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last date written below:

Forest Supervisor (date)
Ouachita National Forest

Choctaw Nation of (date)
Oklahoma

Forest Supervisor (date)
Ozark National Forest

Chickasaw Nation (date)



Oklahoma SHPO 5/19/03 (date)

Quapaw Tribe (date)

Oklahoma State (date)
Archeologist

Caddo Nations (date)

Arkansas SHPO (date)

Osage Nation (date)

Arkansas State (date)
Archeologist

Cherokee Nation (date)

The authority and format of this instrument has been reviewed and approved for signature.

/s/ Michael R. Harper

April 15, 2003

(Name)

Date

Agreements Coordinator