

**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
OKLAHOMA STATE HISTORIC PRESERVATION OFFICER
OKLAHOMA STATE ARCHEOLOGIST**

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 Officer (SHPO), to protect and preserve Heritage Resources in Arkansas; and

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

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

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 potentially 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, and;

NOW, THEREFORE, the USDA Forest Service, Ouachita and Ozark-St. Francis National Forests and the Arkansas and Oklahoma SHPOs agree that:

CATEGORICAL EXCLUSION AGREEMENT

1. The professional archeological 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, and therefore, may be handled as Categorical Exclusions.

I. Activities to be handled as Documented Categorical Exclusions

- A. Prescribed burns in areas which 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. 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 will be needed to make this determination. The reconnaissance will be documented in field notes attached to the categorical exclusion.)
- B. Actions which take place in existing road rights-of-way. The Forest receives numerous requests for special use permits for use of existing roads. These actions may include overhead or buried transmission/phone lines, collection of building stone rock, access along forest service roads into adjacent private lands. 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. Road Reconstruction (of roads constructed after 1970). Existing roadbeds occur throughout the forest which are no longer in general use, or in some cases, have been abandoned. In order to access timber sales, these old roads are frequently rehabilitated to allow log trucks direct access into the timber sale areas. The rehabilitation may include one or more of the following actions: blading (usually with a bulldozer), trimming vegetation from along the road right-of-way, adding culverts, water bars, lead-off ditches, and/or adding a gravel surface. Reconstruction of roads that have been constructed since 1970 can be handled as a categorical exclusion. (NOTE: Actions that must continue to be surveyed as a part of road reconstruction include: sections of road which will be constructed outside of the existing road bed and lead-off ditches in areas where they did not previously occur. Reconstruction of roads where CCC rock and/or concrete culverts occur require documentation of these historic features.)

CATEGORICAL EXCLUSION AGREEMENT

- D. Southern Pine Beetles. There are occasional occurrences on the forest where pine timber is killed through an infestation of Southern Pine Beetles (SPB). These areas are usually small and the infestation is curbed by the removal of the infested trees as well as a few buffer trees. It is crucial that infested trees be removed within a few days of discovery to curb the infestation. Removal of infested trees in areas of less than ten acres may be handled as a categorical exclusion if they are in areas that are determined by the Archeologist to be low probability for the presence of archeological sites. Spots in high probability areas, or spots containing or adjacent to previously documented archeological sites will not be categorically excluded and will require an archeological survey. If no sites are found during the survey of a SPB location in a high probability area, then the Heritage Resource Technician's fieldnotes shall be submitted to the Archeologist and attached to the CE, and this spot processed as a CE; If sites are found, then the site documentation and field notes shall be submitted to the Archeologist, a site assessment prepared and submitted to the SHPO as a Project Notification for a 7-day comment period. (NOTE: Any roads which have to be constructed (or reconstructed - unless they meet the criteria in exclusion C. above) can not be categorically excluded.
- E. Seismic Lines. Seismic surveys conducted within existing roads. (NOTE: All other seismic lines require survey.
- F. Wildlife and Fisheries. Improvements consisting of hand planting stream bank 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.W. below]
- G. 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 can not be categorically excluded.)
- H. Clean-up of Chip Piles. Lands acquired from private individuals or timber companies will occasionally contain piles of chipped wood from logging activities which 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 the activity be monitored by an Archeologist or a Certified HRT 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 form must identify that individual who will be monitoring the activity, if monitoring is deemed necessary.
- I. 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 surveyed. Categorical Exclusions will be accepted for projects which are located in 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 has concurred with the previous work and recommendations. A copy of the SHPO consultation documentation and a reference to the previous survey report must be included with the Categorical Exclusion form.

CATEGORICAL EXCLUSION AGREEMENT

- J. 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 which 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 form when submitted to the Zone Archeologist.)
- K. 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.
- L. Reroofing historic buildings. Numerous historic building occur across the forest, primarily in established Recreation Areas. These historic buildings were constructed, primarily, by the Civilian Conservation Corps. Since their original construction, most have had the roofs replaced at least once. Roofing as part of continued maintenance of these structures 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.
- M. Road closures. Any road closure (i.e. tank trap, gates and barriers, etc.) which involves earth disturbance (shallow pits and/or mounds) which 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.
- N. 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 is 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); Wildlife Stand Improvement - Mid-story Removal (Mid-story removal involves the removal of relatively small vegetation to create an open forest environment); Southern Pine Beetle treatments (where trees are cut and allowed to remain on the ground and are not harvested); Precommercial 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 Southern Pine Beetle treatment are handled as a timber sale, they will not be handled as a categorical exclusion.

Process for Categorical Exclusions requiring documentation.

CATEGORICAL EXCLUSION AGREEMENT

The Forest Service will insure that management of activities which 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 final determination of whether a categorical exclusion applies to an undertaking is made by a Forest Service 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 or potential 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 SHPO for review at the end of the fiscal year.

The Categorical Exclusion forms will provide the following information:

1. Description of the project.
2. Location of the project.
3. Project area clearly marked on a clean, uncluttered copy of a USGS topographic map.

II. Undertakings which require no further 106 review nor documentation

- A. Maintenance/construction on FS buildings which are less than 50 years old. Maintenance/construction on existing Forest Service facilities which are 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.) NOTE: Buildings constructed by the Civilian Conservation Corps, Works Progress Administration or German Prisoners of War are exceptions.
- B. Herbicide site prep. Existing timber stands which are scheduled for herbicide site prep may be handled as a categorical exclusion. In these cases, the action will consist of the application of herbicide to control undesirable vegetation. No ground-disturbing action will take place.
- C. Revegetation. Revegetation that is done by hand seeding which does not involve ground disturbance.
- 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

CATEGORICAL EXCLUSION AGREEMENT

of vistas is done with hand tools with no ground surface disturbance; may also include clearing of vistas for hang gliding.

- E. Grazing permits. Grazing permits will not require 106 review or documentation unless roads and/or buildings/structures [including corrals] are to be constructed.
- F. 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 consultation.
- G. 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 is offered for firewood either before or after the timber sale is completed. No heavy equipment or new access is provided for firewood areas.
- H. Routine maintenance of Forest System Roads. Routine road maintenance and road and parking area resurfacing where work is within previously maintained surfaces, ditches, and cut and fill slopes (Regional PA:V.B.) These are roads which are maintained by the Forest Service for general Forest use by the public. (NOTES: Maintenance on roads on which CCC rock and/or concrete culverts and bridges occur require documentation of these historic features.
- I. Recreation Structures. The placement of toilets, playground equipment, and other recreation facilities that require no excavation or ground disturbance.
- J. Acquisition of lands. Acquisition of lands by the Forest Service, whether through purchase or exchange, does not require an archeological survey.
- K. 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. Bushhogging of existing openings, installation/maintenance of nesting structures will also have no effect and may be handled as categorical exclusions.
- L. 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 106 review or documentation if they have been actively quarried within the past 45 years. These types of projects include refilling of borrow pits with existing stockpiled fill material.
- M. Trash Dump Clean-up. There are numerous instance 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.
- N. Research Activities. Research activities involving no destructive actions on known historic properties (including demolition or dismantling) or ground disturbance (Regional PA:V.B.)
- O. Permits, easements, etc. Permits, easements, rights-of-way, and leases that do not authorize ground disturbance (Regional PA:V.B.)

CATEGORICAL EXCLUSION AGREEMENT

- P. Easement acquisitions. (Regional PA:V.B.)
- Q. Pesticide use. Pesticide spray projects involving no timber thinning or other ground disturbance (Regional PA:V.B.).
- R. Withdrawal revocations. These are lands that return to Forest Service control from other Federal or State agencies (Regional PA:V.B.)
- S. Wilderness study areas. (Regional PA:V.B.)
- T. Stream channel work. Snagging and clearing of streams within stream channels, not including work on terraces, cutbanks, and similar locations (Regional PA:V.B.).
- U. Sign post and monuments. Installation of sign posts and monuments, unless within known historic property boundaries (Regional PA:V.B.). This also includes land line maintenance and maintenance of existing property corners.
- V. Trail maintenance. Routine recreation trail maintenance that does not involve new ground disturbance (Regional PA:V.B.).
- W. Environmental Surveys. Includes survey of American Burying Beetle, Threatened and Endangered Species surveys, etc.
- X. Heliports. Maintaining existing heliports through hand tool brush control.
- Y. Borrow/quartz pits. Existing shale pits/gravel pits/ quartz mines in which the horizontal extent is not expanded may be handled as categorical exclusions.

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 therefrom; 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, all projects treated within this agreement will be reviewed jointly by the SHPOs and Forest Service to determine the adequacy and effectiveness of the application of this agreement. If both 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 any party upon 30 days written notice.


CATEGORICAL EXCLUSION AGREEMENT

4. Until these management guidelines are implemented, the Forest Service shall continue to comply with Section 106 of the National Historic Preservation Act, as amended, in accordance with 36 CFR Part 800 for all its undertakings.
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.


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


David L. Hernandez 8/1/97
Acting Forest Supervisor (date)
Ouachita National Forest


Stephen Hoff 8/97
Forest Supervisor (date)
Ozark-St. Francis National Forests


Catherine A. Slater 7-16-97
Arkansas State Historic (date)
Preservation Officer


Blake Wade 3 April 97
Oklahoma State Historic (date)
Preservation Officer


Matt L. Bumb April 8, 1997
Oklahoma State Archeologist (date)