

**PROGRAMMATIC AGREEMENT  
AMONG  
THE BUREAU OF LAND MANAGEMENT,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING  
THE MANNER IN WHICH THE BLM WILL MEET ITS RESPONSIBILITIES  
UNDER THE NATIONAL HISTORIC PRESERVATION ACT**

*Preamble*

**Bureau of Land Management.** The Bureau of Land Management (BLM), consistent with its authorities and responsibilities under the Federal Land Policy and Management Act of 1976 (FLPMA), is charged with managing public lands principally located in the states of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming in a manner that will “protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values,” and “that will provide for outdoor recreation and human occupancy and use.”

The BLM also has specific responsibilities and authorities to consider, plan for, protect, and enhance historic properties and other resources that may be affected by its actions, in compliance with the National Environmental Policy Act (NEPA), the National Historic Preservation Act of 1966 (NHPA) and implementing regulations of Section 106 of the NHPA at 36 CFR part 800, the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, the Historic Sites Act of 1935, the Antiquities Act, the American Indian Religious Freedom Act, the Religious Freedom Restoration Act, Executive Order (EO) 13007 (“Indian Sacred Sites”), EO 13287 (“Preserve America”), EO 13175 (“Consultation and Coordination with Indian Tribal Governments”), and related authorities.

In carrying out its responsibilities specific to the NHPA, the BLM has: (1) developed policies and procedures through its directives system (BLM Manual Sections 8100-8170); (2) executed a national programmatic agreement (PA) in 1997 to help guide the BLM’s planning and decision making as it affects historic properties as defined in the NHPA; and (3) assembled a cadre of cultural heritage specialists to advise the BLM’s managers and to implement cultural heritage policies consistent with the BLM’s statutory authorities.

**State Historic Preservation Officers.** State Historic Preservation Officers (SHPO) are represented by the National Conference of State Historic Preservation Officers (NCSHPO) for the purpose of negotiating and executing this agreement, and have responsibilities under state law as well as under Section 101(b) of the NHPA that include:

- “advise and assist as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;”
- “maintain inventories” of historic properties in cooperation with Federal and state agencies; and

- “consult with the appropriate Federal agencies in accordance with [the NHPA] on Federal undertakings that may affect historic properties, and the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties.”

In addition, under Section 110(a)(2)(D) and Section 110(a)(2)(E) of the NHPA, Federal agencies are required to consult with the SHPO to identify and evaluate historic properties for listing in the National Register of Historic Places (National Register), and on the development and implementation of agreements regarding the means by which adverse effects on such properties will be considered.

In certain cases, others may be authorized to act in the place of the SHPO. Where the Secretary of the Interior has approved an Indian tribe’s preservation program pursuant to Section 101(d)(2) of the NHPA, a Tribal Historic Preservation Officer (THPO) may perform some or all SHPO functions with respect to tribal lands, defined as all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities, consistent with 36 CFR 800.16(x). A certified local government acting through the chief local elected official may fulfill some SHPO-delegated functions, where the Secretary has certified the local government pursuant to Section 101(c)(1) of the NHPA, and its actions apply to lands in its jurisdiction. Pursuant to the regulations implementing Section 106 of the NHPA (36 CFR 800.3(c)(4)), the Advisory Council on Historic Preservation (ACHP) may at times act in lieu of the SHPO.

**Advisory Council on Historic Preservation.** The ACHP has the responsibility to: (1) administer the process implementing Sections 106, 110(f), and 111(a) of the NHPA; (2) to comment with regard to Federal undertakings subject to review under Sections 106, 110(f), and 111(a) of the NHPA in accordance with its implementing regulations (36 CFR part 800); and (3) “review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out” under Section 202(a)(6) of the NHPA.

**Indian Tribes.** This agreement is entered into pursuant to the NHPA, which specifically requires that agencies consult with federally recognized tribes as defined in that Act so that these Indian tribes may: (1) identify their concerns about historic properties, including those of traditional religious and cultural significance to them; (2) advise agencies on the identification and evaluation of historic properties; (3) articulate their views on the potential effects of an undertaking; and (4) participate in resolving adverse effects. The BLM consults with Indian tribes on a government-to-government basis consistent with the Department of the Interior’s tribal consultation policy. While the BLM may initiate consultation under multiple authorities at one time, this agreement governs compliance with the NHPA and in no way supersedes the BLM’s other treaty, trust, and consultation responsibilities to Indian tribes under multiple other authorities.

**Consulting Parties.** Consulting parties include representatives of local governments, applicants, and certain individuals and organizations with a demonstrated interest in the undertaking due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking’s effects on historic properties (36 CFR 800.2(c)(3-5)). In consultation with the SHPO/THPO, the BLM shall identify consulting parties and invite them to participate in consultation and shall consider all written requests of individuals and organizations to participate as consulting parties (36 CFR 800.3(f)).

**The Public.** The views of the public are essential to informed Federal decision-making, and the BLM shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties. The BLM must also provide the public with information about an undertaking and seek public comment and input (36 CFR 800.2(d)). Pursuant to 36 CFR 800.2(d)(3), the BLM may use its agency procedures as contained in the BLM-SHPO protocols or BLM NEPA procedures to involve the public.

**The BLM, NCSHPO, and the ACHP**—in consultation with Indian tribes and interested parties—now wish to ensure that the BLM will organize its programs to operate efficiently, effectively, according to the spirit and intent of Section 106 of the NHPA, and in a manner consistent with 36 CFR Part 800. The parties also wish to ensure that the BLM will integrate its historic preservation planning and management decisions with other policy and program requirements to the maximum extent. The BLM, the SHPOs, and the ACHP desire and intend, in the public interest, to streamline and simplify procedural requirements, reduce unnecessary paperwork, and emphasize the common goal of planning for and managing historic properties under the BLM’s jurisdiction and control.

### *Basis for Agreement*

Proceeding from these responsibilities, goals, and objectives, the parties acknowledge the following basis for agreement:

WHEREAS the BLM’s management of lands and mineral resources may affect historic properties as defined by the NHPA; and

WHEREAS, among other things, the BLM’s historic preservation program, established in response to Section 110(a)(2) of the NHPA and related authorities provides a systematic basis for: (1) identifying, evaluating, and nominating historic properties under the BLM’s jurisdiction or control to the National Register of Historic Places (National Register); (2) managing and maintaining properties listed in or eligible for the National Register in a way that considers the preservation of their archaeological, historical, architectural, and cultural values and the avoidance of adverse effects in consultation with Indian tribes, local governments, consulting parties, and the interested public; and (3) giving special consideration to the preservation of such values in the case of properties designated as having national significance; and

WHEREAS the BLM’s program is also intended to ensure that the bureau’s preservation-related activities will be carried out in consultation with Indian tribes, other Federal agencies, local governments, consulting parties, and the interested public; and

WHEREAS the BLM’s program also is intended to: (1) ensure that the bureau’s procedures for compliance with Section 106 of the NHPA are consistent with current regulations issued by the ACHP pursuant to Section 211 of the NHPA (36 CFR part 800, “Protection of Historic Properties”); (2) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with SHPOs, Indian tribes, local governments, consulting parties, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered and resolved; and

WHEREAS the BLM recognizes that the 1997 PA and resulting internal BLM formal guidance do not incorporate the current 36 CFR Part 800 definition of “adverse effect” and role

of “consulting parties” in the NHPA Section 106 process, and the BLM will initiate revision of the relevant manual sections upon execution of this agreement; and

WHEREAS individual SHPOs, particularly those in states containing a high percentage of public land under the BLM’s jurisdiction and control, have a great interest in forming a cooperative relationship with the BLM to facilitate a more effective and efficient Section 106 consultation process, and promote activities of mutual interest, and;

WHEREAS the BLM acknowledges that Indian tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them in accordance with 36 CFR Part 800.4(c)(1), and;

WHEREAS the BLM’s programs benefit from consultation with Indian tribes in BLM’s identification and management of properties of religious and cultural significance and will ensure that its NHPA Section 106 procedures recognize the interests of Indian tribes in historic properties potentially affected by BLM decisions and afford tribes participation in the process leading up to a BLM decision, in accordance with 36 CFR Part 800; and

WHEREAS this agreement will not apply to proposed BLM undertakings located on or affecting historic properties on tribal lands, with respect to which the BLM will comply with the regular Section 106 process under 36 CFR 800.3 through 800.7, the process under 36 CFR 800.8(c), or an applicable program alternative under 36 CFR 800.14, and;

WHEREAS, for undertakings not on tribal lands, the BLM employs the basic principles of government-to-government consultation with Indian tribes under cultural resources authorities including the NHPA as reflected in this PA; and consults with the tribal representatives designated by the tribal governments for the purpose of identifying properties of religious and cultural significance that may be eligible for listing on the National Register and to understand tribal concerns; and

WHEREAS Indian tribes, especially those whose present or ancestral lands are located in areas where the BLM has surface or subsurface management responsibilities, may enter into formal or informal agreements with the BLM regarding consultation procedures under the NHPA Section 106 and that some tribes may want to form a cooperative relationship with the BLM in a manner consistent with the purposes of this agreement to achieve a more effective and efficient Section 106 consultation process; and

WHEREAS the parties intend that efficiencies in the NHPA Section 106 process, realized through this agreement, will enable the BLM, SHPO, and ACHP staffs to devote a larger percentage of their time and energies to proactive work, including: (1) analysis and synthesis of data accumulated through decades of Section 106 compliance; (2) historic property identification where information is needed, not just in reaction to proposed undertakings; (3) long-term preservation planning; (4) National Register nominations; (5) planning- and priority-based historic resource management; (6) creative public education and interpretation; (7) more efficient and effective BLM, SHPO, tribal, and ACHP coordination, including program monitoring and dispute resolution; and (8) other activities that will contribute to readily recognizable tribal and public benefits; and

WHEREAS the BLM has consulted with the Indian tribes and the interested public regarding ways to ensure that the BLM’s planning and management will be more fully integrated and consistent with the above authorities, requirements, and objectives;

NOW, THEREFORE, the BLM, the ACHP, and the NCSHPO mutually agree that the BLM, consistent with the provisions of Component 1 of this PA below, will meet its responsibilities under the NHPA through this agreement as provided for in 36 CFR 800.14(b), rather than by following the procedure set forth in 36 CFR 800.3 through 800.7. The BLM will integrate the manner in which it meets its historic preservation responsibilities as fully as possible with its other responsibilities for land-use planning and resource management under FLPMA, National Environmental Policy Act (NEPA), other statutory authorities, and executive orders and policies.

The BLM shall ensure that the following components are carried out:

### *Components of Agreement*

#### **1. Applicability**

This agreement supersedes the 1997 PA. Existing state-specific BLM-SHPO protocols under the 1997 agreement will remain in effect until the respective BLM state director executes a successor BLM-SHPO protocol with each state per Component 6 of this agreement or until terminated. No existing informal and formal agreements between the BLM and an Indian tribe or tribes will be altered by this agreement. Any state not operating under a BLM-SHPO protocol will operate under 36 CFR 800.3 through 800.7, 36 CFR 800.8(c), or an applicable program alternative under 36 CFR 800.14.

#### **2. BLM Consultation Responsibilities with SHPOs and the ACHP under this Agreement**

a. This agreement encourages:

- (1) BLM state directors and SHPOs to develop mutually agreed upon two-party BLM-SHPO protocols regulating their relationship and how consultation will take place;
- (2) BLM state directors and SHPOs to establish streamlined (as opposed to case-by-case) consultation on evaluation of cultural resources for National Register eligibility and for no-historic-properties-affected, no-adverse-effect, and adverse-effect determinations when BLM and SHPO reach agreement on resolving the adverse effect(s);
- (3) BLM state directors to make a schedule of pending actions, including land exchanges, available to the public and Indian tribes on a regular basis;
- (4) BLM state directors to contact on a regular basis Indian tribes affected by undertakings within his or her jurisdiction and develop tribe-specific procedures for tribal consultation; and
- (5) BLM state directors to use phased identification and evaluation as described in 36 CFR 800.4(b)(2) as a strategy for meeting the BLM's NHPA Section 106 responsibility for programs implemented through a phased decision making process beginning with land use planning designations that may affect large land areas. A phased compliance process requires that the bureau demonstrate that it has taken some steps to take into account the effect of the undertaking on potentially eligible sites in each phase, and that until a reasonable effort has been made to identify all potentially eligible sites, the bureau retains the ability to modify the project, if

necessary, e.g., through no-surface-occupancy or other stipulations, or specific permit restrictions or covenants.

b. This agreement requires:

- (1) the BLM to follow the process at 36 CFR 800.3 through 800.7, 36 CFR 800.8(c), or another applicable program alternative under 36 CFR 800.14, for undertakings within any state that does not have a BLM-SHPO protocol under this agreement and for undertakings on or affecting tribal lands;
- (2) the BLM to consult with the relevant SHPO, Indian tribes (see Component 6.c), and other consulting parties for all undertakings that will adversely affect properties that are eligible for listing in the National Register, and for the development of any procedures such as project-specific PAs;
- (3) the BLM to invite the ACHP to participate in consultation when undertakings meet the thresholds in Component 5 of this agreement; and
- (4) the BLM to follow the process at 36 CFR 800.6(b)(2) or 800.14(b) to resolve adverse effects whenever the ACHP formally participates in the resolution of adverse effects for an undertaking.

### **3. Operation of the BLM's Preservation Board**

a. The BLM Director will maintain a Preservation Board to advise the BLM Director, assistant directors, state directors, and district and field office managers in the development and implementation of the BLM's policies and procedures for NHPA implementation.

b. The Preservation Board will be chaired by the BLM's Federal Preservation Officer (FPO) designated under Section 110(c) of the NHPA, and will include a professionally qualified Deputy Preservation Officer (DPO) from each state office and the BLM national Tribal Coordinator as ex officio members. Field management will be represented by at least four line managers (i.e., officials who are authorized by the Director's or state directors' delegation to make land-use decisions). Field office cultural resource specialists will be represented by two members. Line manager and field office cultural resource specialist positions will be term positions.

c. The Preservation Board will perform primary staff work and make recommendations to the BLM Director and state directors concerning policies and procedures (Component 4 below), bureau-wide policy implementation (Component 4 below), training (Component 7 below), certification and decertification of district or field offices (Component 9 below), monitoring of district and field offices' historic preservation programs (Component 10 below), and responses to public inquiries (Component 10 below).

d. In addition, the Preservation Board shall meet with the ACHP and NCSHPO on a regular basis. In coordination with individual BLM DPO(s) and/or BLM Tribal Coordinator(s), as appropriate, the Preservation Board will address formal communications it receives from the ACHP and the NCSHPO, individual SHPOs, local governments, preservation and professional associations, individual tribes, and other tribal entities that have identified themselves to the Board as interested parties, regarding recurrent problems or concerns with state, regional, or national practice, and will otherwise seek to create opportunities to advance the purposes of this agreement.

#### **4. Cultural Resource Management Procedures for Consideration of the Effects of the BLM's Undertakings on Historic Properties**

As required by the NHPA Section 106 process and this agreement, the field manager—with the assistance of qualified professional staff and in consultation with the SHPO according to the process in the BLM-SHPO protocol, and with Indian tribes and consulting parties—identifies, evaluates, and assesses effects of the BLM's proposed actions on historic properties. This Component sets out the alternative framework, which, at a minimum, must be reflected in BLM-SHPO protocols or reflected with respect to individual projects utilizing this agreement to comply with Section 106.

a. Consultation with Indian tribes and the SHPO at the outset of land use planning is a vital part of identification and management of historic properties. Involving tribal governments and SHPOs closely at this level of resource consideration will greatly facilitate coordination and consultation at later stages of planning and project development and will afford the best opportunity to foresee and avoid potential conflicts between BLM-authorized land uses and significant historic properties. District and Field office managers will seek information in accordance with BLM land use planning and environmental review processes and the tribal consultation policies outlined in Section f of Component 4 below, from Indian tribes and other parties likely to have knowledge of or concerns with historic properties in the area to:

- (1) Identify properties of religious and cultural significance that may be eligible for listing in the National Register of Historic Places;
- (2) Understand tribal and other parties' concerns sufficiently to better understand the effects that potential future Federal undertakings might have on eligible properties; and
- (3) Consider comments provided in making decisions on the land use plan, and notify consulted parties of the relevant final land use planning decisions.

b. Prior to initiating or authorizing a proposed action that meets the definition of "undertaking" in 36 CFR 800.16(y) and is a type of activity that generically has the potential to cause effects to historic properties (with the assumption that historic properties are present), the responsible district or field office manager shall:

- (1) Determine the undertaking's area of potential effects;
- (2) Review existing information on historic properties potentially affected by the undertaking, including documentation of previous tribal consultation;
- (3) Seek information in accordance with BLM land use planning and environmental review processes from Indian tribes and other parties likely to have knowledge of or concerns with historic properties, particularly properties of traditional religious and cultural significance, in the area;
- (4) Determine the need for further actions, such as field surveys and predictive modeling to identify historic properties in the area;
- (5) Make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking as described in 36 CFR 800.4(b)(1); and

(6) Determine if any properties within the area of potential effect, including properties of traditional religious and cultural significance to an Indian tribe, meet one or more eligibility criteria specified in 36 CFR 60.4 (association with events; association with lives of significant persons; embodiment of distinctive characteristics of a type, period, or method of construction or possessing high artistic value; have yielded or are likely to yield important data), while acknowledging that a formal determination of eligibility may be requested from the Keeper of the National Register pursuant to 36 CFR 800.4(c)(2) and 36 CFR part 63.

- (i) If the BLM field manager determines, consistent with the process in the State's BLM-SHPO protocol, that a property does not meet the eligibility criteria in 36 CFR 60.4, he or she will provide documentation to the SHPO according to the reporting schedule in the State's BLM-SHPO protocol, and the property shall be considered not eligible for listing in the National Register and therefore not subject to further consideration under Section 106 and this PA.
- (ii) If the field manager determines, consistent with the process in the State's BLM-SHPO protocol, that a property meets one or more eligibility criteria in 36 CFR 60.4, the property shall be considered eligible for listing in the National Register for purposes of complying with Section 106 of the NHPA and this PA (i.e., an "historic property").

c. The field manager, upon determining that National Register-listed or eligible historic properties may be affected by an undertaking, shall determine whether those properties may be affected, giving consideration to the views of the interested public and any consulting parties, including, but not limited to Indian tribes.

- (1) If the field manager finds that the undertaking will not affect those characteristics of the property that qualify it for listing in the National Register, the field manager will document this finding, proceed with the undertaking, and provide documentation of "no historic property affected" to the SHPO in accordance with the reporting schedule specified in the State's BLM-SHPO protocol.
- (2) If the field manager finds that the undertaking may affect those characteristics of the property that qualify it for listing in the National Register, the field manager will apply the Criteria of Adverse Effect to determine whether the proposed undertaking may alter, directly or indirectly, those characteristics in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association (36 CFR 800.5(a)(1)) and will document this finding. If the field manager finds that the effect is not to be adverse or the undertaking is modified to avoid adverse effects, per 36 CFR 800.5(b), and does not meet the threshold for case-by-case review in the State's BLM-SHPO protocol or the threshold for ACHP notification, the field manager will document this finding, proceed with the undertaking, and report it to the SHPO according to the BLM-SHPO protocol.

d. When a proposed agency decision or undertaking meets the threshold for case-by-case review in accordance with the BLM-SHPO protocol and/or the threshold for ACHP notification as specified in this PA (see Component 5), the field manager shall consult with the SHPO to determine the specific process to be followed in that case including, as appropriate:

- (1) Additional actions necessary to identify historic properties;

- (2) National Register-listed or eligible historic properties affected by the undertaking;
- (3) Effects the undertaking would have on National Register-listed or eligible historic properties; and
- (4) Methods for avoiding, minimizing, or mitigating adverse effects.

e. If the field manager finds the effect to be adverse and decides to proceed with the undertaking, he or she shall make a reasonable and good faith effort to avoid, minimize, or mitigate adverse effects to the most reasonable and fitting extent, in consultation with the SHPO, Indian tribes, and other consulting parties, considering the nature of the effects and the characteristics and qualities that lend the property its significance.

f. The special legal status of tribal governments requires that the BLM's official interactions with them, including consultation, will be carried out in accordance with government-to-government procedures to ensure that tribal participation occurs pursuant to the statutory and regulatory directives in Sections 101(d)(6) and 110(a)(2)(E) of the NHPA and 36 CFR 800.2(c)(2). Consistent with those directives and Department of the Interior tribal consultation policy, the BLM will consult with the tribal government's official designee in accordance with the following policies.

- (1) BLM State directors, and district and field office managers, as appropriate, shall represent the United States in government-to-government meetings with Indian tribes.
- (2) District and/or field managers shall establish working relationships with tribal officials comparable to their working relationships with State and local government officials.
- (3) District and/or field managers and staffs shall recognize that traditional tribal practices and beliefs are an important, living part of our Nation's heritage and seek to avoid to the degree possible under existing law and regulation their potential disruption as a consequence of a proposed BLM land use decision.
- (4) District and/or field managers and staffs shall protect from disclosure to the public sensitive and confidential information about traditional tribal practices and beliefs, and the locations with which they are associated, to the greatest degree possible under law and regulation. District and field offices shall maintain the confidentiality of sacred sites to the degree possible under existing law and regulation.
- (5) District and/or field managers and staffs shall consider and consult with Indian tribes regarding whether a proposed undertaking may inhibit or destroy tribal access to public lands for the purposes of religious use and other traditional uses, such as gathering natural resources, and, shall, consistent with Executive Order 13007, seek to accommodate access to and ceremonial use of sacred sites, as well as avoid unnecessary interference with or adverse effects to traditional religious and cultural properties.
- (6) District and/or field managers and staffs shall consult with affected Indian tribes to identify and consider tribal concerns related to the identification and management of historic properties in BLM land use planning and decision-making, and shall document all consultation efforts.

- (7) District and/or field managers and staffs shall ensure that information on tribal religious and cultural issues receives good faith consideration during decision-making, and that, to the extent consistent with the law, BLM decisions do not substantially burden the pursuit of traditional religious and cultural practices.

## **5. Thresholds for ACHP Notification**

a. The BLM procedures will identify specific circumstances and conditions that, when met, call for the ACHP's notification.

b. At a minimum, the BLM will request the ACHP's participation in the following classes of undertakings:

- (1) nonroutine interstate and/or interagency projects or programs;
- (2) undertakings adversely affecting National Historic Landmarks;
- (3) undertakings that the BLM determines to be highly controversial; and
- (4) undertakings that will have an adverse effect and with respect to which disputes cannot be resolved through formal agreement between BLM-SHPO, such as a memorandum of agreement.

c. The development and approval of program alternatives, including project-specific PAs, will follow the process under 36 CFR 800.14.

d. The ACHP reserves the right to participate, on its own initiative or at the request of the SHPO, an Indian tribe, a local government, an applicant or other consulting party, in any proceeding taking place in fulfillment of the BLM's NHPA Section 106 responsibilities under the regulations, this agreement, or BLM-SHPO protocols, in a manner consistent with its role under 36 CFR Part 800 and the criteria under Appendix A of 36 CFR Part 800 and will notify the responsible BLM state director, and/or district or field office manager and the Director when it decides to participate.

## **6. Cooperation and Enhanced Communication**

This section establishes how the BLM will implement the alternate process afforded by Component 4 above with respect to potential and/or existing BLM-SHPO protocols. It also establishes how the BLM will develop cooperation and enhanced communication with the States and with Indian tribes potentially affected by BLM undertakings.

a. **Information on the Web.** The BLM will ensure the following information is available on the national BLM web site and will widely publicize this availability:

- (1) copy of this revised agreement;
- (2) reference copy of the existing BLM internal guidance, including Manual Sections and Manual Handbooks related to "Cultural Resource Management;"
- (3) copy of existing BLM-SHPO protocols under the 1997 agreement, used by the BLM within an individual state office's jurisdiction;

- (4) current list of Preservation Board members;
- (5) list of BLM DPOs and BLM tribal contacts for each state office;
- (6) map of each state showing BLM district and field office boundaries;
- (7) annual BLM Washington Office reports; and
- (8) BLM's Preserve America Section 3 report.

b. BLM-SHPO Protocols

Within 12 months of execution of this agreement, each BLM state director or his/her designee will meet with each relevant SHPO to review and consider the need for changes in the BLM-SHPO protocol for that state to meet the minimum requirements specified in this component and notify the ACHP of the results of their review. The state director may request ACHP assistance in identifying specific changes needed in the State's BLM-SHPO protocol prior to the state director initiating any changes associated with implementation of this agreement. BLM-SHPO protocols determined to require revision must be changed within 24 months of the date of this agreement.

The SHPO or BLM state director may ask the NCSHPO, the Preservation Board, and/or the ACHP to assist at any stage in revising BLM-SHPO protocols. The Preservation Board and the ACHP will be kept informed of the progress of protocol review and revision, and the BLM state office will provide the ACHP an opportunity to review and comment on revised protocols before execution. The state director will also provide the Preservation Board, ACHP, and NCSHPO with an information copy of any signed revision and post it on the BLM web site for that state.

Recognizing that BLM-SHPO protocols implement this agreement, any revisions to BLM-SHPO protocols that alter the process for complying with Section 106 specified in this agreement and any BLM-SHPO protocol that was executed or last revised 10 or more years prior to the date of this agreement, will be subject to consultation requirements as set forth in 36 CFR 800.14, including, in particular, the tribal consultation requirements under 36 CFR 800.14(f).

At a minimum, BLM-SHPO protocols will incorporate the framework outlined in Component 4 of this agreement and address the following:

- (1) a means for making a schedule of pending undertakings, including land transfers, available to the public and Indian tribes on a regular basis
- (2) a commitment to fulfill tribal consultation obligations;
- (3) the manner in which public participation is addressed for protocol-guided compliance processes;
- (4) the manner in which the involvement of consulting parties is addressed for protocol-guided compliance processes;
- (5) data sharing, including information resource management development, support and security—at a minimum annual transmittal of all site forms and project reports;

- (6) data synthesis, including geographical and/or topical priorities for reducing the backlog of un-synthesized site location and report information, and data quality improvement;
- (7) public education and community involvement in preservation;
- (8) preservation planning;
- (9) cooperative stewardship;
- (10) agreement as to the types of properties for which BLM may determine ineligibility without seeking SHPO agreement. Eligibility determinations regarding possible traditional cultural properties will continue to require SHPO agreement and consultation with tribes.
- (11) agreement as to types of undertakings and classes of affected properties that will trigger case-by-case review, including all undertakings that will have an adverse effect on historic properties, as well as any development of alternative procedures such as project-specific PAs, and how this review will proceed, consistent with Component 4 above;
- (12) manner in which the BLM will ensure that appropriate professional expertise will be obtained or made available for specific types of undertakings or historic properties;
- (13) provisions for resolving disagreements and amending or terminating the BLM-SHPO protocol;
- (14) circumstances under which the BLM and/or SHPO may choose to operate under 36 CFR 800.3 through 800.7 in place of the BLM-SHPO protocol;
- (15) the substance and format of supplemental information to the BLM annual report that the state director will prepare in satisfaction of Component 10b of this agreement and the manner in which the report will be made available to affected Indian tribes and the public via the state BLM website. Supplemental information shall include information on BLM actions relative to undertakings and classes of affected properties that did not trigger case-by-case review; and
- (16) training of a new manager or archaeologist with Section 106 responsibilities in a state that operates under this PA within 90 days of his or her report date in the procedures outlined in the PA and appropriate BLM-SHPO protocol.

c. BLM-Tribal Relations

BLM shall consult with Indian tribes on individual undertakings in the context of an ongoing government-to-government relationship sustained through regular periodic meetings supplemented by additional undertaking-specific consultation. Within 12 months following execution of this agreement, each state director will have begun contacting Indian tribes that are affected by BLM undertakings within his or her jurisdiction on a regular basis for the purpose of initiating a discussion about ways in which BLM and each Indian tribe can foster better communication. This discussion between the appropriate BLM and tribal representatives is an

opportunity to establish effective methods for meeting tribal consultation requirements regarding identification and evaluation of historic properties, including traditional cultural properties, and for the resolution of adverse effects of undertakings. This process should be carried out in coordination with other state directors, as appropriate, and should seek to:

- (1) identify geographic areas, types of historic properties, and undertakings of concern to Indian tribes;
- (2) identify confidentiality issues;
- (3) answer questions on the existing BLM-SHPO protocol;
- (4) provide a tribal point of contact for the state office and each district and field office within his or her jurisdiction;
- (5) develop a process for providing information and schedules of pending actions, including land exchanges, permits, and approvals on a regular basis; and
- (6) offer Indian tribes the opportunity to establish a formal ongoing relationship through an agreement for conducting the consultation required under the NHPA Section 106 within the framework of the BLM's government-to-government relationship with Indian tribes and other authorities.

d. The state director, will seek, as appropriate, the active participation of SHPOs, Indian tribes, and the interested public in BLM land-use planning and associated resource management activities consistent with section 202 of FLPMA, 43 U.S.C. § 1712, and implementing regulations at 43 CFR 1610.2. This participation will be sought so that historic preservation considerations may influence large-scale decisions and inform the analysis of cumulative effects of more routine decisions, before the BLM makes key commitments and its management options are limited.

e. If deemed helpful and appropriate by the Indian tribe and the BLM, the BLM will seek to establish agreements and/or other formalized working arrangements with Indian tribes, relative to identifying undertakings, identifying properties, evaluating properties, determining effects, and protecting historic properties. All existing project and special purpose agreements with Indian tribes will function normally according to their terms.

f. When potentially relevant to the purposes and terms of this agreement, the BLM FPO will forward to the ACHP and the NCSHPO, in a manner that allows for consultation at their request, information concerning the following:

- (1) major policy initiatives;
- (2) proposals for new BLM regulations;
- (3) proposals for organizational change potentially affecting relationships addressed in this agreement;
- (4) the Administration's budget proposal for BLM historic preservation activities, following its submittal to Congress;
- (5) relevant training opportunities; and

(6) long range planning and regional planning schedules.

## **7. BLM Staff Training Program**

The BLM will maintain an internal training program to: (a) instruct BLM line managers and cultural heritage specialists on the policies underlying and embodied in this agreement, including tribal consultation and state specific BLM-SHPO protocol implementation; and (b) enhance skills and knowledge of other BLM personnel involved with “Heritage Resource Management” activities, including land use planning and resource management staffs. In cooperation with the ACHP and NCSHPO, the BLM may identify partners, as appropriate, to assist in developing training programs. The BLM may seek the active participation of Indian tribes and individual SHPOs in training sessions.

## **8. Professional Development**

a. The DPOs, in consultation with supervising line managers and cultural heritage specialists in their state, will document each district and field office’s preservation professional staffing capabilities in their annual report to the SHPO. Documentation will include any recommended limitations on the nature and extent of authorized functions. Where a field manager’s immediate staff does not possess the necessary qualifications to perform specialized preservation functions (e.g., historical architecture, historical landscape architecture, ethnography), the field manager will seek specialized expertise from outside the immediate staff.

b. The DPOs may request that the Preservation Board assist the supervising line manager and the cultural heritage specialist in assessing the manager’s needs for special skills not presently available on the immediate staff, and the specialist’s opportunities for professional development and career enhancement through training, details, part-time graduate education, and other means.

## **9. District or Field Office Certification and Decertification**

a. The Preservation Board, in coordination with the appropriate DPO, SHPO, and the ACHP, and with consideration of tribal comments, may choose to review the status of a district or field office’s certification to employ BLM-SHPO protocols developed pursuant to this agreement; or the district or field manager, the state director, the ACHP, or the SHPO, may request that the Preservation Board initiate a review of a district or field office’s certification.

b. If a review is being conducted, the FPO, appropriate DPO(s), SHPO(s), the ACHP, and the Preservation Board will participate in the review, and the BLM may consider including other legitimate affected parties as participants in the review, as appropriate.

- (1) If a district or field office is found not to have maintained the basis for its certification (e.g., lacks the professional capability needed to carry out these policies and procedures, or is proceeding in contravention of its BLM-SHPO protocol or BLM internal guidance), and the office’s manager has not voluntarily suspended participation under this agreement, the Preservation Board will recommend that the state director decertify the district or field office. If a suspended or decertified district or field office is found to have restored the basis for certification, the Preservation Board will recommend that the state director recertify the district or field office.

- (2) A state director may ask the Director to review the Preservation Board's decertification recommendation, in which case the Director may request the ACHP's participation in the review.
- (3) The Preservation Board will notify the appropriate SHPO(s), the ACHP, and the review requestor, of the findings of the review, including any recommended changes to the certification status of the office.
- (4) When a district or field office is suspended or decertified, the district or field manager will follow the procedures of 36 CFR 800.3 through 800.7, or 36 CFR 800.8(c), or an applicable program alternative under 36 CFR 800.14, to comply with Section 106.

c. If the Preservation Board receives a request to perform a review and decides not to conduct the review, it will provide a response to the requester, including the rationale for its decision.

## **10. Accountability Measures**

a. It will be the Preservation Board's duty in accordance with Component 3.c and 3.d above to foster consistency and conformity with BLM policies and procedures. Where problems with implementation are found, it will be the Preservation Board's duty to move promptly toward effecting correction of the problems, in coordination with the individual DPO.

b. Each state director will prepare an annual report in consultation with the appropriate SHPO(s), outlining the preservation activities conducted under this agreement. The annual report will be consistent with the BLM's annual Washington Office reporting requirements, and will include supplemental information agreed upon by the BLM and SHPO. The state reports will be made available to the public via the BLM state web sites, and BLM will notify the ACHP of their availability via email.

c. Annually, each state director that maintains a BLM-SHPO protocol pursuant to this agreement or his/her designee will meet with the SHPO to review the implementation of that BLM-SHPO protocol.

d. The Preservation Board or the BLM Washington Office, in consultation with the ACHP and SHPOs, may select one or more certified state, district, or field offices for a detailed field review of this agreement's implementation. The FPO and the appropriate DPO(s), SHPO(s), and the ACHP will participate in the review and may include other parties as appropriate. Findings and recommendations based on this field review will be provided to the participants, the Director, the state director, and the Preservation Board for appropriate action.

e. The FPO and DPOs will prepare responses to public inquiries for the signature of the Director or a state director regarding inquiries about the BLM's exercise of its authorities and responsibilities under this agreement, such as the identification, evaluation, and management of resources. Responses will include establishing the facts of the situation and, where needed, recommendations to the Director or state director for corrections or revisions in a practice or procedure.

f. Each meeting of the Preservation Board will be documented by a report. The Preservation Board will post a copy of each report on the national BLM web site.

## 11. Reviewing and Changing the Agreement

a. The signatories to this agreement may agree to revise or amend it at any time. Changes that would affect the opportunity for public participation or tribal consultation will be subject to public notice and tribal consultation. An amendment will go into effect when signed by all the signatories.

b. Should any signatory to this agreement object to any matter related to its implementation, the signatories will meet to attempt to resolve the objection. If a signatory determines that such objection cannot be resolved, BLM will:

1. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the other signatories. The signatories shall provide BLM with their response to the BLM's proposed resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the signatories, and provide them with a copy of this written response. BLM will then proceed according to its final decision.

2. If the signatories do not provide their advice regarding the dispute within the thirty (30) day time period, BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, BLM shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the agreement, and provide them with a copy of such written response.

3. BLM's responsibility to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute remain unchanged.

c. Any signatory to this agreement may terminate it by providing 90 days notice to the other signatory, provided that the signatory will meet during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, all state-specific BLM-SHPO protocols developed under the authority of this agreement and/or the 1997 PA will be terminated, and the BLM will comply with Section 106 through the process in 36 CFR 800.3 through 800.7, or 36 CFR 800.8(c), or an applicable program alternative under 36 CFR 800.14.

d. Within 1 year of the execution of this agreement and every 2 years thereafter, the signatories to this agreement will meet to review its implementation.

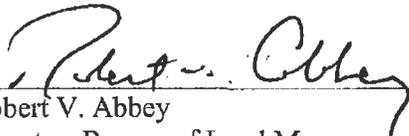
e. Specific references to 36 CFR Part 800 are to the regulations that became effective on August 5, 2004. Generic references to 36 CFR Part 800 in this agreement may be read in the future as referencing the version that is in effect at the time of reading.

f. This agreement will be in effect for a period of 10 years from the date of execution, with an option for renewal in 2-year increments with agreement of its signatories.

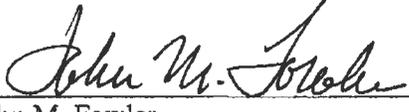
### *Affirmation*

The signatures below represent the affirmation of the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers that successful execution of the Components of this agreement will satisfy

the BLM's obligations under Section 106 and serve as partial satisfaction of the BLM's obligations under Sections 110(f) and 111(a) of the National Historic Preservation Act.

  
\_\_\_\_\_  
Robert V. Abbey  
Director, Bureau of Land Management

2-9-12  
Date

  
\_\_\_\_\_  
John M. Fowler  
Executive Director, Advisory Council on Historic Preservation

2/9/12  
Date

  
\_\_\_\_\_  
Ruth Pierpont  
President, National Conference of State Historic  
Preservation Officers

2/9/12  
Date

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**PROGRAMMATIC AGREEMENT  
AMONG  
THE BUREAU OF LAND MANAGEMENT,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING  
THE MANNER IN WHICH BLM WILL MEET ITS RESPONSIBILITIES  
UNDER THE NATIONAL HISTORIC PRESERVATION ACT**

*Preamble*

**Bureau of Land Management.** The Bureau of Land Management (BLM), consistent with its authorities and responsibilities under the Federal Land Policy and Management Act of 1976 (FLPMA), is charged with managing public lands principally located in the States of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming in a manner that will “protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values,” and “that will provide for outdoor recreation and human occupancy and use.”

The BLM also has specific responsibilities and authorities to consider, plan for, protect, and enhance historic properties and other cultural properties which may be affected by its actions in those and other States, including its approval for Federal mineral resource exploration and extraction, under the National Environmental Policy Act, the National Historic Preservation Act of 1966 (NHPA), the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, the Historic Sites Act of 1935, the Antiquities Act, the American Indian Religious Freedom Act, the Religious Freedom Restoration Act, Executive Order 13007 (“Sacred Sites”), and related authorities.

In carrying out its responsibilities, the BLM has developed policies and procedures through its directives system (BLM Manual Sections 8100-8160) to help guide the BLM's planning and decision making as it affects historic properties and other cultural properties, and has assembled a cadre of cultural heritage specialists to advise the BLM's managers and to implement cultural heritage policies consistent with these statutory authorities.

**State Historic Preservation Officers.** State Historic Preservation Officers (SHPOs), as represented by the National Conference of State Historic Preservation Officers (NCSHPO), have responsibilities under State law as well as under Section 101(b)(3) of the National Historic Preservation Act that include to “advise and assist as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities,” and to “consult with the appropriate Federal agencies in accordance with [NHPA] on Federal undertakings that may affect historic properties, and the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties.”

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In certain cases others may be authorized to act in the SHPO's place. Where the Secretary has approved an Indian tribe's preservation program pursuant to Section 101(d)(2) of the NHPA, a Tribal Preservation Officer may perform some SHPO functions with respect to tribal lands. A local historic preservation commission acting through the chief local elected official may fulfill some SHPO-delegated functions, where the Secretary has certified the local government pursuant to Section 101(c)(1) of the NHPA, and its actions apply to lands in its jurisdiction. Pursuant to the regulations implementing Section 106 of the NHPA [36 CFR 800.1(c)], the Council may at times act in lieu of the SHPO.

**Advisory Council on Historic Preservation.** The Advisory Council on Historic Preservation (Council) has the responsibility to administer the process implementing Sections 106, 110(f), and 111(a) of the National Historic Preservation Act, to comment with regard to Federal undertakings subject to review under Sections 106, 110(f) and 111(a) in accordance with its implementing regulations (36 CFR Part 800), and to "review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under [NHPA]" under Section 202(a)(6) of the NHPA.

The above-named parties now wish to ensure that the BLM will organize its programs to operate efficiently, effectively, according to the spirit and intent of the NHPA, and in a manner consistent with 36 CFR Part 800; and that the BLM will integrate its historic preservation planning and management decisions with other policy and program requirements to the maximum extent. The BLM, the SHPOs, and the Council desire and intend to streamline and simplify procedural requirements, to reduce unnecessary paperwork, and to emphasize the common goal of planning for and managing historic properties under the BLM's jurisdiction and control in the public interest.

***Basis for Agreement***

Proceeding from these responsibilities, goals, and objectives, the parties acknowledge the following basis for agreement:

WHEREAS the BLM's management of lands and mineral resources may affect cultural properties, many of which are historic properties as defined by the National Historic Preservation Act and are therefore subject to Sections 106, 110(f), and 111(a) of the NHPA; and

WHEREAS, among other things, the BLM's program established in response to Section 110(a)(2) and related authorities provides a systematic basis for identifying, evaluating, and nominating to the National Register historic properties under the bureau's jurisdiction or control; for managing and maintaining properties listed in or eligible for the National Register in a way that considers the preservation of their archaeological, historical, architectural, and cultural values and the avoidance of adverse effects in light of the views of

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local communities, Indian tribes, interested persons, and the general public; and that gives special consideration to the preservation of such values in the case of properties designated as having National significance; and

WHEREAS the BLM's program is also intended to ensure that the bureau's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, and the private sector; and

WHEREAS the BLM's program also has as its purpose to ensure that the bureau's procedures for compliance with Section 106 are consistent with regulations issued by the Council pursuant to Section 211 of the NHPA (36 CFR Part 800, "Protection of Historic Properties"), and provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and

WHEREAS the BLM's program also intends to ensure that its Section 106 procedures recognize the historic and traditional interests of Indian tribes and other Native American groups in lands and resources potentially affected by BLM decisions, affording tribes and other groups adequate participation in the decisionmaking process in accordance with Sections 101(d)(6), 110(a)(2)(D), and 110(a)(2)(E)(ii) of the NHPA, and provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with Section 3(c) of the Native American Graves Protection and Repatriation Act, in accordance with Section 110(a)(2)(E)(iii) of the NHPA; and

WHEREAS this agreement will not apply to tribal lands, but rather, a proposed BLM undertaking on tribal lands will require consultation among the BLM, the Tribal Preservation Officer, and the Council; or among BLM, tribal officials (where no Tribal Preservation Program exists) the SHPO, and the Council; and such consultation will be outside the compass of this agreement and will follow 36 CFR Part 800 or the Indian tribe's alternative to 36 CFR Part 800; and

WHEREAS the BLM's program, the elements of which were defined in the BLM Manual between 1988 and 1994, does not incorporate some recent changes in legal, regulatory, and Executive Order authorities and recent changes in the nature and direction of historic preservation relationships, rendering the program directives in need of updating, and this need is recognized by the BLM, the Council, and the NCSHPO as an opportunity to work jointly and cooperatively among themselves and with other parties, as appropriate, to enhance the BLM's historic preservation program; and

WHEREAS the States, particularly those containing a high percentage of public land under the BLM's jurisdiction and control, have a strong incentive in forming a cooperative relationship with the BLM to facilitate and promote activities of mutual interest, including

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direction and conduct of a comprehensive statewide survey and inventory of historic properties, identification and nomination of eligible properties to the National Register of Historic Places, preparation and implementation of comprehensive historic preservation plans, and development and dissemination of public information, education and training, and technical assistance in historic preservation, and

WHEREAS the parties intend that efficiencies in the Section 106 process, realized through this agreement, will enable BLM, SHPO, and Council staffs to devote a larger percentage of their time and energies to proactive work, including analysis and synthesis of data accumulated through decades of Section 106 compliance; historic property identification where information is needed, not just in reaction to proposed undertakings; long-term preservation planning; purposeful National Register nomination; planning- and priority-based historic resource protection; creative public education and interpretation; more efficient BLM, SHPO, and Council coordination, including program monitoring and dispute resolution; and other activities that will contribute to readily recognizable public benefits and to an expanded view of the Section 106 context, and

WHEREAS the BLM has consulted with the Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation Officers (NCSHPO) regarding ways to ensure that BLM's planning and management shall be more fully integrated and consistent with the above authorities, requirements, and objectives;

NOW, THEREFORE, the BLM, the Council, and the NCSHPO mutually agree that the BLM, after completing the actions summarized in 1. below, will meet its responsibilities under Section 106, 110(f), and 111(a) through the implementation of the mechanisms agreed to in this agreement rather than by following the procedure set forth in the Council's regulations (36 CFR Part 800), and the BLM will integrate the manner in which it meets its historic preservation responsibilities as fully as possible with its other responsibilities for land-use planning and resource management under FLPMA, other statutory authorities, and executive orders and policies.

*Components Of Agreement*

**1. Applicability**

The Council's regulations (36 CFR Part 800) and existing State programmatic agreements will continue to apply to BLM undertakings under a State Director's jurisdiction. The Director and State Directors, with the advice of the Preservation Board, assisted by the Council, the NCSHPO, the SHPOS, and other participating parties, as appropriate, have updated and revised national BLM policies and procedures; developed State-specific BLM/SHPO operating protocols; and trained all field managers and their cultural heritage staffs in the operation of the policies, procedures, and protocols. Field offices under a State Director's jurisdiction

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(including those under the jurisdiction of the Eastern States Director) will not begin to employ the streamlined procedures developed pursuant to this agreement until the Director has certified that the State Director's organization is appropriately qualified to do so.

### **2. Establishment of Preservation Board**

a. The BLM's Director will establish a Preservation Board to advise the Director, Assistant Directors, State Directors, and field-office managers in the development and implementation of BLM's policies and procedures for historic properties. Authority, responsibilities, and operating procedures for the Preservation Board will be specified in the BLM Manual.

b. The Preservation Board will be chaired by the BLM's Preservation Officer designated under Section 110(c) of the NHPA, and will include a professionally qualified Deputy Preservation Officer from each State Office. The field management organization will be represented by at least three line managers (i.e., officials who are authorized by the Director's or State Directors' delegation to make land-use decisions).

c. The Preservation Board will perform primary staff work and make recommendations to the Director and State Directors concerning policies and procedures (3. below); bureauwide program consistency (3. below); training (6. below); certification and decertification of field offices (8. below); monitoring of field offices' historic preservation programs (9. below); and responses to public inquiries (9. below).

d. In addition, the Preservation Board will confer regularly with the Council and NCSHPO and involve them in its activities, as appropriate, including the development of the items listed in 2.c. The Preservation Board will also confer regularly with individual SHPOs and such other parties as have identified themselves to the Board as interested parties, including Tribal Preservation Officers, local governments, and preservation associations, to promote consistency with State, regional, and national practice, to identify recurrent problems or concerns, and to create opportunities in general to advance the purposes of this agreement.

e. The BLM will provide assistance, where feasible and appropriate, with reasonable and prudent expenses of the Council related to its activities pursuant to 2.c. and 2.d. above.

### **3. Revision of "Cultural Resource Management" Procedures**

a. Within 6 months from the date of its establishment under 2. above, the Preservation Board will provide notice to Indian tribes and the public and, in accordance with 2.c. above, will begin to review, update, revise, adapt, and augment the various relevant sections of its Manual (8100-Series). These are:

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8100 - "Cultural Resource Management";  
8110 - "Cultural Resource Identification";  
8111 - "Cultural Resource Inventory and Evaluation";  
8130 - "Cultural Resource Planning";  
8131 - "Cultural Resource Management Plans";  
8132 - "Cultural Resource Project Plans";  
8140 - "Cultural Resource Protection";  
8141 - "Physical and Administrative Protection";  
8142 - "Recovery of Cultural Resource Data";  
8143 - "Avoidance and/or Mitigation of Adverse Effects to Cultural Properties";  
8150 - "Cultural Resource Utilization";  
8151 - "Cultural Resource Use Permits";  
8160 - "Native American Coordination and Consultation"; and  
H-8160-1 - "General Procedural Guidance for Native American Consultation."

b. Manuals will be revised in consultation with the Council, NCSHPO, and the SHPOs, and will consider the views of other interested parties who have identified themselves in response to 2.d. (above).

c. Procedures will be revised to be consistent with the purposes of (1) this agreement, (2) the principles and standards contained in the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800); (3) the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* regarding identification, evaluation, registration, and treatment, (4) the Office of Personnel Management's classification and qualification standards as revised under Section 112 of the NHPA, and (5) other applicable standards and guidelines, and will include time frames and other administrative details for actions referred to in this agreement.

d. The BLM will ensure adequate public participation and consultation with parties outside the BLM when revising policy and procedures under 3.a. The BLM's procedures for implementing the National Environmental Policy Act (NEPA) will be used as appropriate for ensuring adequate public participation in the BLM's historic preservation decision making. Provisions of Section 110 of the NHPA and the Council's regulations will be the basis for tailoring the NEPA procedures to historic preservation needs. Mechanisms for continuing public involvement in BLM's historic preservation process will be incorporated in BLM/SHPO protocols under 5. below.

e. The BLM will provide Indian tribes and other Native American groups with appropriate opportunities for involvement. Consultation with tribes pursuant to Sections 101(d)(6) and 110(a)(2)(E) of the NHPA will follow government-to-government conventions. Procedures to ensure timely and adequate Native American participation will follow the direction in Sections 101(d)(6) and 110(a)(2)(E) of the NHPA, and BLM Manual Section 8160 and Manual Handbook H-8160-1, as revised pursuant to a. and b. above. Revisions to the 8160 Manual Section and Manual Handbook will treat the cited NHPA direction as the

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minimum standard for Indian tribes' and other Native American groups' opportunities to be involved. Provisions for Native American participation in BLM's procedures for historic property identification, evaluation, and consideration of adverse effects will be incorporated in BLM/SHPO protocols under 5. below. For Indian tribes with historic preservation programs approved by the Secretary under Section 101(d)(2) of the NHPA, Tribal Preservation Officers will be involved in place of SHPOs when tribal land would be affected. Such involvement will occur under the Council's and/or the Tribe's procedures in all cases, not under this programmatic agreement.

f. It will be the Preservation Board's duty in accordance with 3.b. above to ensure that the policies and procedures, as revised pursuant to this section, are being followed appropriately by field offices. Where problems with implementation are found, it will be the Preservation Board's duty to move promptly toward effecting correction of the problems. This responsibility of the Preservation Board, among others, will be spelled out in the BLM Manual under 2.a. above.

#### 4. Thresholds for Council Review

- a. The BLM procedures will identify circumstances calling for the Council's review.
- b. At a minimum, the BLM will request the Council's review in the following classes of undertakings:
  - (1) nonroutine interstate and/or interagency projects or programs;
  - (2) undertakings directly and adversely affecting National Historic Landmarks or National Register eligible properties of national significance;
  - (3) highly controversial undertakings, when Council review is requested by the BLM, SHPO, an Indian tribe, a local government, or an applicant for a BLM authorization.

#### 5. Cooperation and Enhanced Communication

a. Immediately following execution of this agreement, the BLM will offer each affected SHPO and the Council (and others who have identified concerns under 2.d. above) the following information, and will provide or update as needed:

- a reference copy of the existing BLM Manual Sections and Manual Handbooks related to "Cultural Resource Management;

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- a copy of any Handbook, Manual Supplement, or other standard procedure for "Cultural Resource Management" used by the BLM within an individual State Office's jurisdiction
  - a list of Preservation Board members;
  - a list of BLM cultural heritage personnel within each State Office's jurisdiction;
  - a map of the State showing BLM field office boundaries and responsibilities;
  - the best available map of the State showing tribal lands, ceded lands, and ancestral use areas; and
  - a brief summary of land holdings, major ongoing development projects or permitted uses, proposed major undertakings such as land exchanges or withdrawals, and particularly significant historic properties on BLM lands within each State Office's jurisdiction.
- b. Within 6 months after revised policies and procedures become available, each State Director will meet with each pertinent SHPO to develop a protocol specifying how they will operate and interact under this agreement. Where a State Director has few interactions with an SHPO due to minimal public land holdings, protocols need not be pursued and historic preservation consideration will continue to be carried out under the procedures of 36 CFR Part 800. Adoption of protocols, as formalized by the State Director's and SHPO's signatures, will be a prerequisite for the certification described in 8. The Preservation Board and the Council will be kept informed of the progress of protocol development, and will receive an information copy of any signed BLM/SHPO protocol. The SHPO and State Director may ask the NCSHPO, the Preservation Board, and the Council to assist at any stage in developing protocols.

At a minimum, protocols will address the following:

- the manner in which the State Director will ensure the SHPO's involvement in the BLM State management process;
- data sharing, including information resource management development and support
- data synthesis, including geographical and/or topical priorities for reducing the backlog of unsynthesized site location and report information, and data quality improvement;
- public education and community involvement in preservation;
- preservation planning;
- cooperative stewardship;
- agreement as to types of undertakings and classes of affected properties that will trigger case-by-case review (case-by-case review will be limited to undertakings that BLM finds will affect historic properties; the parties to this agreement agree that such case-by-case review will be minimized);
- BLM/SHPO approaches to undertakings involving classes of, or individual examples of, historic properties for which the present BLM staff lacks specialized capabilities;
- provisions for resolving disagreements and amending or terminating the protocol; and
- relationship of the protocol to 36 CFR Part 800.

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c. As agreed under the protocol, but at least annually, the BLM will regularly send to the SHPO copies of forms and reports pertaining to historic properties, in a format appropriate to the SHPO's established recording systems, and consistent with the confidentiality provisions of Section 304 of the NHPA, so that information can be shared to the maximum extent and contribute to State inventories and comprehensive plans as well as to BLM land use and resource management planning.

d. The State Director, with the assistance of the Preservation Board, will seek, as appropriate, the SHPO's active participation in the BLM's land-use planning and associated resource management activities so that historic preservation considerations can have a greater influence on large scale decisions and the cumulative effects of the more routine decisions, before key BLM commitments have been made and protection options have been limited. Where SHPO participation will be extensive, State Directors may provide funding, if available.

e. Relevant streamlining provisions of BLM Statewide programmatic agreements currently in force in Arizona, California, Colorado, Nevada, New Mexico, and Wyoming (and other programmatic agreements and/or formalized working arrangements between BLM and SHPOs in any State, relative to identifying undertakings, identifying properties, evaluating properties, determining effects, and protecting historic properties) may be incorporated in BLM/SHPO protocols as appropriate and as consistent with 5.b. above, after which the State Directors will notify the SHPO and Council that the Statewide agreements may be suspended for so long as this agreement remains in effect. Project and special purpose programmatic agreements will function normally according to their terms.

f. When potentially relevant to the purposes and terms of this agreement, the BLM will forward to the Council information concerning the following, early enough to allow for timely briefing and consultation at the Council's election:

- major policy initiatives;
- prospects for regulations;
- proposals for organizational change potentially affecting relationships addressed in this agreement;
- the Administration's budget proposals for BLM historic preservation activities;
- training schedules; and
- long-range planning and regional planning schedules.

## 6. Training Program

In cooperation with the Council and the NCSHPO, and with the active participation of individual SHPOs, the Preservation Board will develop and implement a training program to (a) instruct BLM line managers and cultural heritage program personnel on the policies underlying and embodied in this agreement, as well as specific measures that must be met

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prior to its implementation, and (b) enhance skills and knowledge of other BLM personnel involved with "Cultural Resource Management" activities, including land use planning and resource management staffs. Training sessions will be open to Indian tribes, cultural resource consultants, and other parties who may be involved in the implementation of this agreement. The BLM may, where feasible and appropriate, reimburse the Council for assistance in developing training programs.

**7. Professional Development**

a. The Preservation Board, in consultation with the supervising line manager and cultural heritage specialist, will document each specialist's individual attainments as a preservation professional, consistent with OPM guidance and Section 112 of the NHPA and giving full value to on-the-job experience. Documentation will include any recommended limitations on the nature and extent of authorized functions. When a field office manager's immediate staff does not possess the necessary qualifications to perform specialized preservation functions (e.g., historical architecture), the documentation will identify available sources of specialized expertise from outside the immediate staff, such as from other BLM offices, the SHPO, other Federal agencies, or non-governmental sources.

b. The Preservation Board, the supervising line manager, and the cultural heritage specialist will assess the manager's needs for special skills not presently available on the immediate staff, and the specialist's opportunities for professional development and career enhancement through training, details, part-time graduate education, and other means.

**8. State Office Certification and Decertification**

a. The Preservation Board, in consultation with the appropriate SHPO and the Council, will certify each BLM State Office to operate under this agreement upon determining that (1) managers and specialists have completed the training referred to in 7. above, (2) professional capability to carry out these policies and procedures is available through each field office's immediate staff or through other means, (3) each supervising line manager within the State has assigned and delimited cultural heritage specialists' duties, and (4) the State Director and the SHPO have signed a protocol outlining BLM/SHPO interaction in accordance with 5. above.

b. The Preservation Board may choose to review a field office's certification status. The field office's manager, the State Director, the Council, or the SHPO may request that the Preservation Board initiate a review, in which case the Preservation Board will respond as quickly as possible. If a field office is found not to have maintained the basis for its certification (e.g. the professional capability needed to carry out these policies and procedures is no longer available, or the office is not in conformance with the BLM/SHPO protocol, the procedures developed under 3. above, or this agreement) and the office's manager has not

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voluntarily suspended participation under this agreement, the Preservation Board will recommend that the State Director decertify the field office. If a suspended or decertified field office is found to have restored the basis for certification, the Preservation Board will recommend that the State Director recertify the office.

c. A State Director may ask the Director to review the Preservation Board's decertification recommendation, in which case the Director will request the Council's participation in the review.

d. The Preservation Board will notify the appropriate SHPO(s) and the Council if the status of a certified office changes.

e. When a field office is suspended or decertified, the responsible manager will follow the procedures of 36 CFR Part 800 to comply with Section 106.

## 9. Accountability Measures

a. Each State Director will prepare an annual report in consultation with the appropriate SHPO(s), outlining the preservation activities conducted under this agreement. The annual report's content will be specified in the revised Manual. The report will be provided to the Council and made available to the public.

b. Once each year, the Council, in consultation with the BLM, SHPOS, and interested parties, and with assistance from the BLM, may select a certified State or States, or field offices within a State, for a detailed field review limited to the implementation of this agreement. Selecting parties may consider including other legitimate affected parties as participants in the review, as appropriate. The Preservation Officer and the appropriate Deputy Preservation Officer(s) and SHPO(s) will participate in the review. Findings and recommendations based on this field review will be provided to the Director, the State Director, and the Preservation Board for appropriate action.

c. The Preservation Officer and Deputy Preservation Officers will prepare responses to public inquiries for the Director's or a State Director's signature. This applies only to inquiries about the BLM's exercise of its authorities and responsibilities under this agreement, such as the identification, evaluation, and protection of resources, and not to general inquiries. Preparing responses will include establishing the facts of the situation and, where needed, recommending that the Director or State Director prescribe corrections or revisions in a practice or procedure.

d. Each meeting of the Preservation Board will be documented by a report. The Preservation Board will provide a copy of each report to the Council, the NCSHPO, and participating SHPOs.

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**10. Reviewing and Changing the Agreement**

- a. The parties to this agreement may agree to revise or amend it at any time. Changes that would affect the opportunity for public participation or Native American consultation will be subject to notice and consultation, consistent with 3.e. above.
- b. Should any party to this agreement object to any matter related to its implementation, the parties will meet to resolve the objection.
- c. Any party to this agreement may terminate it by providing 90 days notice to the other parties, provided that the parties will meet during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the BLM will comply with 36 CFR Part 800, including any relevant suspended State programmatic agreements (see 5.e. above).
- d. Not later than the third quarter of FY 1999, and every two years thereafter, the parties to this agreement will meet to review its implementation.

*Affirmation*

The signatures below represent the affirmation of the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers that successful execution of the components of this agreement will satisfy the BLM's obligations under Sections 106, 110(f), and 111(a) of the National Historic Preservation Act.

/s/ Sylvia V. Baca	3/26/97
_____ Director, Bureau of Land Management	_____ Date
/s/ Cathryn B. Slater	March 26, 1997
_____ Chairman, Advisory Council on Historic Preservation	_____ Date
/s/ Judith E. Bittner	Mar 26, 1997
_____ President, National Conference of State Historic Preservation Officers	_____ Date

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**BUREAU OF LAND MANAGEMENT**

**CHARTER FOR THE  
PRESERVATION BOARD**

The Preservation Board is established to assist the Directorate, the State Directors, and Field Office managers in meeting their responsibilities under the National Historic Preservation Act. The Board serves in a professional staff function, assuring that Bureauwide quality standards are observed and maintained, and recommending adjustments in policy, procedures, and practice when needed. The Board coordinates with the Advisory Council on Historic Preservation (Council), the National Conference of State Historic Preservation Officers (NCSHPO), and individual State Historic Preservation Officers (SHPO), and responds to inquiries from the public, according to provisions of the National Programmatic Agreement, dated March 26, 1997, executed by the Director, the Chairman of the Council, and the President of the National Conference of SHPO's.

This Charter will be reviewed during the third quarter 1999, in conjunction with the scheduled review of the National Programmatic Agreement's implementation, and afterward will continue to be reviewed on the same schedule as reviews of the National Programmatic Agreement.

**I. Membership**

A. Ex officio members:

1. The BLM's Preservation Officer, designated under Section 110(c) of the National Historic Preservation Act (Chair)
2. A professionally qualified Deputy Preservation Officer representing each State Director (State Office Cultural Heritage Program Lead)

B. Rotating-term members, recommended by the Board and appointed by the Director:

1. An Associate State Director (two-year term)
2. Two Field Office managers (two-year term)
3. A Field Office Cultural Heritage staff specialist (one-year term)
4. Additional line or staff manager(s) as appropriate (two-year term)

**II. Roles**

The Preservation Board's roles are:

- To perform primary staff work and make recommendations to the Director and State Directors concerning –
- historic preservation policy and procedures
  - bureauwide program consistency
  - training

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- certification and decertification of Field Offices
- monitoring of Field Offices' historic preservation activities, and
- responses to public inquiries;

To confer regularly with the NCSHPO and the Council and with parties who have identified themselves to the Board as interested parties, including SHPO's, Tribal Preservation Officers (TPO's), trade and professional associations, and authorized users of the public lands –

- to promote consistency with State, regional, and national historic preservation practice, and
- to identify recurrent problems or concerns.

### III. Scope and Responsibilities

The scope of the Preservation Board's staff and advisory functions is consistent with the scope of responsibilities that come to the Director (as “head of [a] Federal agency”) under the National Historic Preservation Act, whether those responsibilities are met at Field Office, State, inter-State, or Bureauwide levels. Where they bear on the BLM's capability to meet the Director's legal responsibilities, funding, staffing, and other budgetary aspects of program management may be included in the Board's advisory scope.

#### A. Bureauwide Historic Preservation Policy and Procedures

The Preservation Board will review and make recommendations to the Directorate on Manual Sections, Manual Handbooks, and temporary directives addressing historic preservation.

#### B. Bureauwide Historic Preservation Practice

The Preservation Board will monitor Field Office performance under Bureauwide historic preservation policy and procedures and State-level protocols developed with SHPO's, and will recommend adjustments where needed to correct problems.

### IV. Board Support and Ad-hoc Board Assignments

The Preservation Board may call on the host office for space, normally available equipment, and clerical or other staff support needed to facilitate its meetings. The Cultural Heritage, Wilderness, Special Areas and Paleontology Group in the Washington Office will maintain file copies of Board reports and recommendations.

The Preservation Board may identify special ad-hoc advisors or advisory teams to provide technical support, subject to assignment by the responsible manager(s).

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**V. Meetings**

The Preservation Board will meet at least twice each year. Schedules and locations will be determined by the Board. Other meetings involving all Board members or a representative special committee may be held as needed to examine special issues. The Board will develop procedures for conducting its meetings. Each meeting of the Board or a Board committee will be documented by a report, a copy of which will be provided to the NCSHPO and Council for their information.

Recommended by:	/s/ John G. Douglas	9/18/97
	Preservation Officer	Date
Reviewed and concurred in by:	/s/ Marilyn W. Nickels	9/18/97
	Group Manager, Cultural Heritage, Wilderness, Special Areas and Paleontology	Date
for	/s/ Tom Walker	9/18/97
	Assistant Director, Renewable Resources and Planning	Date
Approved by:	/s/ Pat Shea	10/1/97
	Director	Date

**BUREAU OF LAND MANAGEMENT**

**CHARTER FOR THE  
PRESERVATION BOARD**

**REVISION**

The following changes revise the Preservation Board charter of October 1, 1997.

**From Section I, Membership, remove the existing paragraph B:**

B. Rotating-term members, recommended by the Board and appointed by the Director:

1. An Associate State Director (two-year term)
2. Two Field Office managers (two-year term)
3. A Field Office Cultural Heritage staff specialist (one-year term)
4. Additional line or staff manager(s) as appropriate (two-year term)

**and replace with a new paragraph B:**

B. Rotating-term members with overlapping terms of 2 years each, recommended by the Board and appointed by the Director:

1. Four line managers representing the tiers of the Field organization
2. Two Field Office cultural heritage staff specialists

Recommended:

/s/ John G Douglas

11/15/99

\_\_\_\_\_  
Preservation Officer on behalf of the  
Preservation Board

\_\_\_\_\_  
Date

Approved:

/s/ Tom Fry

12/1/99

\_\_\_\_\_  
Director

\_\_\_\_\_  
Date

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Council Letter With Transition Questions and Answers

**Advisory  
Council On  
Historic  
Preservation**

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The Old Post Office Building  
1100 Pennsylvania Avenue, NW, #809  
Washington, DC 20004

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May 24, 1999

Dear Preservation Partner:

The Council is pleased to convey a copy of the revised 36 CFR Part 800, "Protection of Historic Properties." Published in the *Federal Register* May 18, 1999, at 64 F.R. 27043-27084, they go into effect June 17, 1999. The document also includes the Council's "Recommended Approach for Recovery of Significant Information From Archaeological Sites" (pp. 27085-27087).

The new regulations significantly modify the Section 106 review process, introducing new streamlining while incorporating changes mandated by the 1992 amendments to NHPA. They give greater deference to decisions made by Federal agencies and SHPOs; focus Council actions on larger issues such as monitoring Federal preservation program trends and overall performance; define and strengthen the roles of Indian tribes and other Native Americans; recognize the role of applicants; and encourage early compliance.

The rule also encourages Federal agencies to integrate Section 106 review with reviews required under the National Environmental Policy Act and other laws. Specific provisions now allow agencies to use information and analyses prepared for one law to meet the requirements of another. Revisions and refinements throughout the regulations cumulatively improve the operation of the Section 106 review process.

In addition to the rule itself, the materials in this package include an overview of significant changes, a flow chart of the new process, procedural Q&As, and information about transitional briefings. Additional materials will be posted on our Web site [www.achp.gov](http://www.achp.gov) as they become available.

Thank you for your support throughout the process of regulatory revision. With your help, we now have a more effective and efficient Section 106 review process.

Sincerely,



John M. Fowler  
Executive Director

Enclosures

Transition Questions and Answers

**Revised Section  
106 Regulations**

Effective June 17, 1999

**ACHP 106**

Major Changes

Full Text of the  
Revised Regulations

Regs Flow Chart

Flow Chart  
Explanatory Material

Archeology  
Guidance

Transition Questions  
and Answers

Briefings Schedule

**Making the Transition to the  
Council's Revised Regulations:  
Questions and Answers**

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**Introduction**

**1. Are existing Memoranda of Agreement and Programmatic Agreements still valid?**

**2. What interpretation applies to provisions of MOAs/PAs executed before the effective date of the new regulations that refer to the former regulations by section numbers?**

**3. How are existing MOAs/PAs to be interpreted that do not specifically refer to a section of the former regulations but refer instead to the Council's regulations in a general manner?**

**4. Under what regulations must cases in progress be handled?**

**5. How are MOAs prepared under the former regulations to be executed when they are received by the Council after the new regulations go into effect?**

**6. If it is decided that the former regulations are to be used for one purpose under an MOA/PA, is use of the revised regulations precluded for another purpose in the same MOA/PA?**

**7. To what address must case materials be sent?**

**Summary**

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**Introduction**

The Advisory Council on Historic Preservation has revised the regulations that implement Section 106 of the National Historic Preservation Act. Published in the *Federal Register* (64 FR 27043-27084) on May 18, 1999, the revised regulations go into effect June 17, 1999. This briefing sheet addresses questions that are expected to arise during the transition from the former regulations to the revised ones.

The revisions are the culmination of careful Council review of the Section 106 process, which was last amended in 1986. This review reaffirmed the basic tenets of the Section 106 process, while

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**Transition Questions and Answers**

introducing new flexibility and options for agencies to meet their legal obligations. The process continues to focus on constructive resolution of potential conflicts between a Federal undertaking and historic properties through consultation and agreement among the agency, the State or Tribal Historic Preservation Officer (SHPO/THPO), and the Council.

**1. Are existing Memoranda of Agreement and Programmatic Agreements still valid?**

Yes. Memoranda of Agreement (MOAs) and Programmatic Agreements (PAs) executed under the former regulations are still valid. The revised regulations contain changes to the process by which agreements will be developed and executed after June 17, 1999.

**2. What interpretation applies to provisions in Memoranda of Agreement and Programmatic Agreements executed before the effective date of the new regulations that refer to the former regulations by section numbers?**

When the parties to existing MOAs and PAs entered into those agreements, the former regulations were in place. By referring to sections of those regulations, the signatories expressed their intent to be bound by the terms of the regulations existing at the time the agreements were executed.

Unless a particular MOA or PA expressly states that the most current version of the regulations is to apply, each MOA or PA must be interpreted under the version of the regulations that was current at the time the agreement was executed. If an MOA or PA states that the most current version of the regulations is to govern the agreement's terms, then the revised regulations should be used. Few, if any, agreements contain such a provision.

Under both the former and the revised regulations and under most MOAs and PAs, signatories are entitled to seek amendment to the agreement. Thus, if a signatory is unhappy with a reference to a section of the former regulations or its interpretation, that party would be free to seek amendment to bring the MOA or the PA under the revised regulations.

However, except in a highly unusual situation, it is anticipated that amendments will be pursuant to the revised regulations. In addition, all the signatories to the original document must agree to the amendment.

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**Transition Questions and Answers**

**3. How are existing MOAs and PAs to be interpreted that do not specifically refer to a section of the former regulations but refer instead to the Council's regulations in a general manner?**

By including in the Memoranda of Agreement a general reference to the Council's regulations rather than a specific reference, the parties agreed to a general process and not to specific steps as might be contained in a particular section or subsection of the former regulations.

This sort of general reference is often seen in stipulations in MOAs that require the agency to seek the comments of the Council under 36 CFR Part 800 if the provisions of the MOA cannot be met. Although it could be shown that the parties intended the processes contained in the former regulations to apply, it is more reasonable to assume that the most current process is applicable. Therefore, new consultation required by such general references, including that occurring in the context of an MOA, should be conducted under the revised regulations.

Again, parties may seek amendment of MOAs or PAs to clarify any ambiguities.

**4. Under what regulations must cases in progress be handled?**

Even if an agency has initiated the Section 106 process prior to June 17, 1999, the revised regulations should be applied unless circumstances strongly warrant completing the process under the former regulations. This approach should not cause delay in completing the Section 106 process.

Generally, regarding cases in progress when the revised regulations go into effect, it will be assumed that the revised regulations apply unless the consulting parties agree to the contrary. The parties should consider the following factors in deciding which regulations to use to complete the process:

- How long ago did the agency initiate the process? If the process was initiated so long ago that the agency might have reasonably expected that the former regulations would apply, it might make sense to continue to apply those regulations.
- How far into the process is the case? If a case has been nearly completed under the former regulations, it might be

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**Transition Questions and Answers**

more expedient to complete the process under the former regulations. If the process has only begun, the revised regulations should be applied.

- Will continued application of the former regulations create any delay, expense, or hardship? If so, it is more reasonable to apply the revised regulations.
- Will continuing to use the former regulations deprive any party (e.g. THPO, other tribes, applicants, local governments) or the public of an opportunity to participate? If so, the revised regulations should apply.

If the Agency Official, SHPO, and Council cannot agree, then the revised regulations should apply.

**5. How are Memoranda of Agreement prepared under the former regulations to be executed when they are received by the Council after June 17, 1999?**

When agreements that have been prepared under the former regulations come to the Council for consideration and signature, the Council will assume that the revised regulations apply to its own actions with regard to those agreements. The Council will treat them as MOAs under §800.6(b)(2) of the revised regulations, requiring the Council's signature.

Although the appropriate documentation required by the revised regulations should be submitted, the Council will apply the documentation requirements flexibly when, in its estimation, circumstances so warrant.

**6. If it is decided that the former regulations are to be used for one purpose under an MOA or a PA, is use of the revised regulations precluded for another purpose in the same MOA or PA?**

Although it is preferable to apply only one set of regulations to any given MOA or PA, there may be circumstances in which it would be more reasonable to apply both the former and the revised regulations for different purposes. For example, when an existing MOA or PA refers to a specific section of the former regulations and it is clear that the parties intended the particular terms of that section to apply, then the specified section of the former regulations may be used.

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**Transition Questions and Answers**

The same MOA or PA may also require the parties to seek Council comment when the terms of the agreement cannot be met. For this second reference, the revised regulations would apply. (See answer to question #3.)

**7. To what address must case materials be sent?**

All case materials developed under the regulations should be sent to the Director, Office of Planning and Review. Materials for cases originating in localities east of the Mississippi River, as well as in Minnesota, Iowa, and Missouri, should be sent to ACHP, 1100 Pennsylvania Ave., NW, Suite 809, Washington, DC 20004. Materials for cases originating west of the Mississippi River (exclusive of Minnesota, Iowa, and Missouri) should be sent to ACHP, 12136 W. Bayaud Ave., Suite 330, Lakewood, CO 80228.

**Summary**

Specific references to sections of the former regulations in existing agreements should be interpreted under the version of the regulations that existed at the time the agreement was executed, unless the MOA or PA contains a provision to the contrary or the signatories agree that the MOA or PA should be interpreted under the revised regulations. General references to the Council's regulations in existing MOAs or PAs should be interpreted as references to the revised regulations unless the MOA clearly indicates otherwise.

Cases in progress generally should follow the revised regulations. However, the consulting parties, who began consultation before the effective date of the new regulations, and having considered all pertinent factors, may agree to complete the process under the former regulations. Such agreement should be in writing and should state the reasons for the decision.

The Council staff is available to answer any questions and provide guidance on application of the regulations in specific circumstances. For questions related to the regulations, call (202) 606-8508, or e-mail [regs@achp.gov](mailto:regs@achp.gov).

Source: <http://www.achp.gov/regsq&a.html>. Transmitted with App. 15, page 1, May 24, 1999.



January 19, 2022

Tracy Stone-Manning, Director  
Bureau of Land Management  
1849 C Street NW  
Washington, DC 20240

Ref: *BLM National Programmatic Agreement, Two-Year Extension*  
*ACHP Project Number: 017474*

Dear Director Stone-Manning:

Enclosed is your copy of the fully executed extension to the Bureau of Land Management's (BLM) National Programmatic Agreement. By carrying out the terms of the Agreement as extended, the BLM will fulfill its responsibilities under Section 106 of the National Historic Preservation Act and the regulations of the ACHP. Please ensure that all consulting parties are provided a copy of the executed amendment. The original amendment will remain on file at our office. We also recommend that the document be made publicly available through the BLM's website.

In accordance with Section 201 of the NHPA, 54 U.S.C. § 304101(f), when the office of the Chairman of the ACHP is vacant the Vice Chairman shall perform the functions of the Chairman. Therefore, the Vice Chairman has signed this Agreement on behalf of the ACHP.

If we may be of further assistance as the Agreement is implemented, please contact Bill Marzella, ACHP Liaison to the BLM, at (202) 517-0209 or by e-mail at [bmarzella@achp.gov](mailto:bmarzella@achp.gov) and reference the ACHP Project Number.

Sincerely,

Reid J. Nelson  
Director  
Office of Federal Agency Programs

Enclosure

**PROGRAMMATIC AGREEMENT  
AMONG  
THE BUREAU OF LAND MANAGEMENT,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING  
THE MANNER IN WHICH THE BLM WILL MEET ITS RESPONSIBILITIES  
UNDER THE NATIONAL HISTORIC PRESERVATION ACT**

Two-year extension pursuant to Component 11. f.  
February 9, 2022, to February 9, 2024

**Signature pages follow**

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**PROGRAMMATIC AGREEMENT  
AMONG  
THE BUREAU OF LAND MANAGEMENT,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING  
THE MANNER IN WHICH THE BLM WILL MEET ITS RESPONSIBILITIES  
UNDER THE NATIONAL HISTORIC PRESERVATION ACT**

**SIGNATORY**



January 7, 2022

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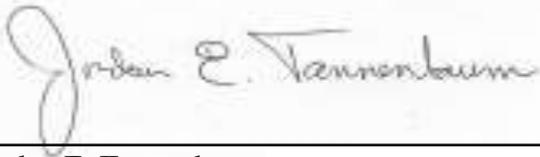
Tracy Stone-Manning  
Director  
Bureau of Land Management

Date

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**PROGRAMMATIC AGREEMENT  
AMONG  
THE BUREAU OF LAND MANAGEMENT,  
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THE MANNER IN WHICH THE BLM WILL MEET ITS RESPONSIBILITIES  
UNDER THE NATIONAL HISTORIC PRESERVATION ACT**

**SIGNATORY**



1/19/2022

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Jordan E. Tannenbaum  
Vice Chairman  
Advisory Council on Historic Preservation

Date

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**PROGRAMMATIC AGREEMENT  
AMONG  
THE BUREAU OF LAND MANAGEMENT,  
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REGARDING  
THE MANNER IN WHICH THE BLM WILL MEET ITS RESPONSIBILITIES  
UNDER THE NATIONAL HISTORIC PRESERVATION ACT**

**SIGNATORY**



1/18/2022

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Ramona Bartos  
President  
National Conference of State Historic Preservation Officers

Date

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