

PROGRAMMATIC AGREEMENT
Regarding Cultural Property Protection and Responsibilities
for the Weyerhaeuser/Ouachita National Forest Land Exchange

Among

**The Advisory Council on Historic Preservation,
Weyerhaeuser Company,
The Oklahoma State Historic Preservation Officer,
The Oklahoma Archeological Survey,
The Arkansas State Historic Preservation Officer,
the Caddo Tribe of Oklahoma,
the Choctaw Nation,
and the
Ouachita National Forest**

WHEREAS, the United States Forest Service (USFS) has determined that this proposed Weyerhaeuser/Ouachita National Forest land exchange will have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places and has consulted with the Advisory Council on Historic Preservation (Council) and the Arkansas and Oklahoma State Historic Preservation Officers (SHPOs) pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U. S. C. 470f) and Section 110 of the same Act [16 U. S. C. 470h-2(f)], and

WHEREAS, the USFS and the SHPOs agree that all identification, evaluation and reporting efforts will follow the Secretary of Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716), A Foundation for the Future: The Arkansas Historic Preservation Plan, Guidelines for Completing Cultural Resource Surveys on the National Forests in Arkansas and Oklahoma, Oklahoma Archeology: A 1981 Perspective and A State Plan for the Conservation of Archeological Resources in Arkansas, and

WHEREAS, the definitions of 36 CFR Part 800.2 are applicable throughout this agreement; and

WHEREAS, the Ouachita National Forest (ONF) has surveyed a sample of greater than 50% of the proposed federal exchange tracts for previous projects and has documented greater than 200 archeological and historical sites (only three sites have currently been identified as having exceptional values) within these surveyed lands, which do not in the aggregate exceed three acres, and

WHEREAS, the Oklahoma Archeological Survey has participated in consultation and has been invited to concur in this agreement; and

WHEREAS, Weyerhaeuser Company will acquire lands from the Forest Service in exchange for lands currently under their ownership, is interested and willing to cooperate and assist in the preservation and protection of historic properties affected by this exchange, has participated in consultation, and has been invited to concur in this agreement;

WHEREAS, the Choctaw Nation of Oklahoma and the Caddo Tribe have been consulted and have expressed an interest in participating further in consultation regarding the undertaking's potential effects to Native American human remains and properties of traditional and cultural importance to the Tribes; and have been invited to concur in this agreement; and

NOW THEREFORE, The ONF, the Oklahoma and Arkansas SHPOs, the Oklahoma Archeological Survey, the Choctaw Nation of Oklahoma, the Caddo Tribe, the Weyerhaeuser Company, and the Council

agree that the undertaking will be administered in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

I. Stipulations for Identification and Assessing National Register Eligibility of Cultural Properties

The ONF will ensure that the following measures are carried out:

- A. In consultation with the appropriate SHPO, the ONF will assess the 58 known cultural properties (listed in Appendix I, not previously evaluated), to determine if additional formal evaluation is needed or if some can be determined not eligible with this level of documentation. The fieldwork will be completed by September 15, 1996. Upon completion, consultation will proceed with the appropriate SHPO.
- B. The ONF will conduct additional archeological inventory in areas shown on the attached maps (Appendix II). This work will be completed by August 15, 1996. Once the inventory has been completed, then the ONF will enter into consultation with the appropriate SHPO to assess the eligibility of the newly discovered cultural properties.
- C. The ONF shall prepare a working document(s) providing the detailed results of the work completed in Sections I.A and I.B. This document shall be completed by the end of September 15, 1996 and shall include the following items:
 1. A brief overview of the project.
 2. A detailed narrative description of each of the assessed properties.
 3. A determination of eligibility (NOT ELIGIBLE, POTENTIALLY ELIGIBLE, ELIGIBLE) and justification of the determinations.
 4. Listing of all POTENTIALLY ELIGIBLE or ELIGIBLE cultural properties that require protection until the evaluation/mitigation can be completed.
 5. A plan and schedule for completing this evaluation/mitigation. The ONF agrees that a minimum of three cultural properties shall be evaluated each year.
 6. A budget for the evaluation work.
- D. The ONF shall submit the Working Document to the Oklahoma and Arkansas SHPOs, the Choctaw Nation, the Caddo Tribe, the Oklahoma Archeological Survey and Weyerhaeuser Company for review and comment. The reviewing parties will have 30 days from receipt to provide the ONF with their comments. The ONF will address any objections raised through revisions to the Working Document or through consultation as provided in Stipulation IX. Once finalized, the ONF will ensure that the Plan for evaluation/mitigation is implemented.
- E. Determinations of eligibility will be made in consultation with the appropriate SHPO pursuant to 36 CFR 800.4. Sites determined not to be eligible for the National Register through this consultation process will receive no further investigative effort.
- F. Mitigation plans shall be developed by the ONF through consultation with the Oklahoma and/or Arkansas SHPO, the Advisory Council on Historic Preservation, the Oklahoma Archeological Survey, the Choctaw Nation, and/or the Caddo Tribe and Weyerhaeuser Company for those properties that are determined to be eligible for inclusion on the National Register of Historic Places.

- G. Sites determined not to be eligible for the National Register through this consultation process will receive no further investigative effort.

II. Protection Measures

Those cultural properties that are determined to be potentially eligible or eligible in Sections I.A. and I.B. shall be protected from all destructive and/or potentially destructive activities (i.e. - road construction, mechanical ripping, timber harvest, fireline construction, etc.) that may adversely affect the integrity of the cultural deposits. The protection status shall not prevent the land exchange from proceeding. This protection shall take the following form:

- A. Weyerhaeuser Company agrees that the Forest Service shall retain a protective Affirmative Easement on each of the protected cultural properties. This Affirmative Easement shall include the total area of the site plus a 20-meter buffer around the cultural property, provided no one site, including the 20-meter buffer, shall exceed five (5) acres.
- B. The Affirmative Easement shall ensure that the cultural properties are protected (consistent with all applicable federal and state laws) from project activities and vandalism and shall afford continued protection through federal law enforcement investigations and actions should the cultural properties be damaged.
- C. The ONF agrees that each of these protected properties shall be monitored by ONF personnel until such time that the evaluation and/or mitigation efforts are undertaken and completed.
- D. The Affirmative Easement shall remain in place until such time that the evaluations/mitigation have been completed and consultation has occurred with all signatory parties to this agreement, not to exceed seven (7) years from the date of this agreement. Once the evaluation and/or mitigation has been completed and all parties agree that no further work is necessary at a specific property, the easement shall expire and Weyerhaeuser shall be free to conduct management activities across the area of that property. The agreement that no further work is needed at any particular properties shall be documented in writing by the ONF and the appropriate SHPO and attached to this agreement as an amendment.
- E. Human remains discovered during any phase of this work shall be handled in accordance with all state and federal laws and the Advisory Council Guidelines on the *Treatment of Human Remains and Grave Goods*. Human remains and grave goods shall be treated consistent with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001) throughout the term of this agreement.
- F. Previously unknown sites discovered during the course of work outlined in this agreement shall be handled under the terms of this agreement.

III. Stipulations for Formal Evaluations

- A. The plan developed by the ONF in Section I.C.5. above, shall be followed for the evaluation procedures. This plan, however, may be revised at the request of any and with concurrence of the parties to this agreement.
- B. If Weyerhaeuser Company needs any of the work completed more quickly than called for in the schedule, then they shall have the option of contracting for the evaluations. The contractor, scope of work and any resulting documentation shall be subject to review and approval by the ONF and the appropriate SHPO prior to implementation of the undertaking.

IV. Stipulations for Mitigation of Impact

The evaluation testing on some of the cultural properties may reveal that they contain cultural deposits of such importance that further mitigation of impact may be required. The following stipulations shall be followed should this occur. The mitigation plans may include, but not be limited to, one or more of the following methods:

- A. Data recovery. This will involve the excavation of a sufficiently large sample of the site(s) to mitigate the impact of their removal from federal ownership.
- B. Transfer of the Historic Property by Weyerhaeuser Company to a third party to ensure their continued protection. Such third parties may include: The Choctaw Tribe, The Caddo Tribe, the Archeological Conservancy, or other parties as deemed appropriate through consultation and approval of the appropriate SHPO.
- C. Transfer of the Historic Property by Weyerhaeuser Company to the ONF for continued protection.
- D. Maintenance of the Affirmative Easement by the ONF in perpetuity.

The ONF shall submit the Mitigation Plans to the Oklahoma and Arkansas SHPOs, the Choctaw Nation, the Caddo Tribe, Weyerhaeuser Company and the Oklahoma Archeological Survey for review and comment. The reviewing parties shall have 30 days from receipt to provide the ONF with their comments. The ONF will address any objections raised through revisions to the Mitigation Plans or through consultation as provided in Stipulation IX. Once finalized, the ONF shall ensure that the Mitigation Plan(s) is(are) implemented.

V. Personnel

All inventories, evaluations and mitigation work shall be conducted by or under the supervision of qualified professionals meeting the Secretary of the Interior's professional qualifications standards. The work may be completed under contract or by ONF personnel.

VI. Lands to be Acquired By the Ouachita National Forest

Previously documented sites do not occur on the lands to be acquired by the Ouachita National Forest in Arkansas. A total of 14 previously known archeological/historic sites, however, are located on lands to be acquired in Oklahoma by the Ouachita National Forest through this proposed land exchange. One site is currently listed on the National Register of Historic Places (Pine Creek Mound Group) and several others

are believed to be eligible for listing, although no formal evaluation efforts have been made. Within two years of acquisition, a management plan shall be developed providing a methodology for identification, documentation and evaluation of cultural properties, results of probability modeling with GIS, site protection, and evaluation measures for those sites currently believed to be eligible for inclusion in the National Register of Historic Places. If the eligible sites can not be protected from vandalism, then in consultation with the Oklahoma SHPO, the Choctaw Nation, the Caddo Tribe, and the Council, mitigation plans shall be developed for data recovery.

All other Ouachita National Forest undertakings on these lands will be handled through the standard 36 CFR 800 procedures.

VII. Amending the Programmatic Agreement

Should any of the consulting parties believe that the terms of agreement are not being met or cannot be met, that party shall immediately notify other signatories and request consultation in accordance with 36 CFR Part 800.13 to amend this agreement. The process to amend this agreement shall be conducted in manner similar to that leading to the execution of this agreement.

VIII. Terminating the Programmatic Agreement

If the Weyerhaeuser/ONF Land Exchange should not occur for any reason, this agreement shall become null and void. The ONF shall notify all parties and all parties shall concur in writing that the Agreement has been terminated.

IX. Dispute Resolution

Should any party to this agreement object within 30 days to any plans developed pursuant to this agreement, the ONF shall consult with the objecting party to resolve the objection. If the ONF determines that the objection cannot be resolved, the ONF shall request the further comments of the Council pursuant to 36 CFR 800.6(b). Any Council comment provided in response to such a request will be taken into account by the ONF in accordance with 36 CFR 800.6(c)(2) with reference only to the subject of the dispute; the ONF's responsibility to carry out all actions under this agreement that are not the subjects of the dispute will remain unchanged.

At any time during implementation of the measures stipulated in this agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, the ONF shall take the objection into account and consult as needed with the objecting party, the SHPO or the Council to resolve the objection.

X. Failure to Carry Out the Programmatic Agreement

Weyerhaeuser Company agrees that if any of the protected sites are damaged by their failure to follow this agreement, they shall fund the evaluation and/or mitigation work that may be required, provided the cost of evaluation and/or mitigation for any one site shall not exceed \$25,000. The extent of the work shall be determined through consultation with the ONF, the appropriate SHPO and the Council.

XI. Term of this Programmatic Agreement

This Programmatic Agreement shall remain in effect until all of the stipulations regarding the Historic Properties have been satisfied, or upon expiration of seven years from the date of this Programmatic Agreement, whichever first occurs (with the exception of those sites designated for protection). These parties will consult on a continuing basis to consider the results of this work.

XII. Limitations

Nothing in this agreement shall be construed as limiting or affecting the authority or responsibility of the Forest Service, Weyerhaeuser Company, the Oklahoma Archeological Survey, or SHPOs as binding to perform beyond the authority of each or to require either party to assume or expend any sum in excess of appropriations available. Regardless of funding, individual undertakings on the identified Historic Properties will not occur until the Forest Service has satisfied its Section 106 responsibilities.

Each provision of this Agreement is subject to the laws and regulations of the States of Oklahoma and Arkansas and the United States of America, the regulations of the Department Agriculture, and the regulations of the Advisory Council on Historic Preservation.

XIII. Fulfillment of Section 106 Responsibilities

Execution and implementation of this Programmatic Agreement evidences that the ONF has satisfied its Section 106 responsibilities for all individual undertakings of this land exchange, and has afforded the Council an opportunity to comment on the Weyerhaeuser/Ouachita National Forest Land Exchange and its effects on historic properties and that the ONF has taken into account the effects of the undertaken on historic properties.

XIV. PROJECT COORDINATORS: Administration of this agreement shall be accomplished by:

Mr. Meeks Etchieson
USDA Forest Service
Ouachita National Forest
Post Office Box 1270
Hot Springs, AR 71902
501-321-2579

Ms. Cathy Slater
SHPO
Arkansas Historic Preservation Program
1500 Tower Building, 323 Center St.
Little Rock, Arkansas 72201
501-324-9880

Dr. Robert Brooks
Oklahoma State Archeologist
Oklahoma Archeological Survey
111 E. Chesapeake, Bldg. 134
University of Oklahoma
Norman, Oklahoma 73019-0575
405-325-7211

Mr. Marshall Gettys
State Historic Preservation Office
Oklahoma Historical Society
2100 N. Lincoln Blvd.
Oklahoma City, OK 73105
405-521-6249

Mr. Don Dale
Area Timberlands Manager
209 W. Strawberry Road
Hot Springs, Arkansas 71909
501-984-6205

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XV. TERMINATION BY A PARTY:

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The ONF, the Oklahoma or Arkansas SHPO, Weyerhaeuser Company, or the Council may terminate this agreement by providing 30 days notice to the other parties, provided that the parties consult during the period prior to termination to seek agreement on amendments or other action that would avoid termination. Termination under this stipulation shall require the ONF to obtain the comments of the Council in accordance with 36 CFR Part 800.

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

Ouachita National Forest

BY: Alan G. Newman
Alan G. Newman
Forest Supervisor

DATE: 7/15/96

Weyerhaeuser Company

BY: J. C. Jessup, Jr.
J. C. Jessup, Jr.
V.P., Southern Timberlands

DATE: 7/17/96

Arkansas SHPO

BY: Cathy Slater
Cathy Slater
SHPO

DATE: 8-24-96

Oklahoma SHPO

BY: Blake Wade
Blake Wade
SHPO

DATE: 8-27-96

Oklahoma Archeological Survey

BY: Robert Brooks
Robert Brooks
State Archeologist

DATE: 2/22/96

Advisory Council

BY: Robert D. Bush
Robert D. Bush
Executive Director

DATE: 9-18-96

Choctaw Nation

BY: Hollis Roberts
Hollis Roberts
Chief

DATE: 08-04-96

Caddo Tribe

BY: Vernon Hunter
Vernon Hunter
Chairman

DATE: 8-1-96