STATE PROTOCOL AGREEMENT

AMONG

THE CALIFORNIA STATE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT
AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER

REGARDING

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

Revised 2014

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B. Historic Preservation Program for Public Lands in California and Northwestern Nevada (2014 version in preparation and will expire with Protocol)
C. Supplemental Procedures for Livestock Grazing Permit/Lease Renewals (expires with Protocol)
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PART 2 Additional References

National Programmatic Agreement (2/9/2012)
36 CFR § 800 (8/ 5/2004)
Secretary of the Department of the Interior's Standards and Guidelines
SO 3317 Department of the Interior Policy on Consultation with Indian Tribes
EO 13007 Indian Sacred Sites (5/24/1996)
EO 13175 Consultation and Coordination With Indian Tribal Governments
Presidential Memo on Tribal Consultation (11/5/2009)
EO 13604 Improving Performance of Federal Permitting (3/22/2012)

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PREAMBLE

The Bureau of Land Management (BLM) executed a national Programmatic Agreement (nPA), on February 9, 2012, (Part 2) with the Advisory Council on Historic Preservation (ACHP) and the National Council of State Historic Preservation Officers (NCSHPO). The nPA governs the manner in which the BLM shall meet its responsibilities under the National Historic Preservation Act (NHPA) and directs each BLM State Director (SD) to develop a mutually agreed upon Protocol with each State Historic Preservation Officer (SHPO) in their respective jurisdictions. The nPA encourages BLM SDs and SHPOs to develop mutually agreed upon BLM-SHPO protocols regulating their relationship and how consultation will take place by establishing streamlined (as opposed to case-by-case) consultations. Since California BLM administers land in California and Nevada, this Protocol has been negotiated by the California SD of the BLM with the California SHPO (CASHPO) and the Nevada SHPO (NVSHPO).

STIPULATIONS

1.0 PURPOSE AND APPLICABILITY

1.1 Purpose of this Protocol

The BLM and the SHPOs mutually agree that BLM California will meet its responsibilities under the NHPA through this Protocol as provided for in the nPA (Part 2), rather than by following the procedure set forth in 36 CFR § 800.3 through 800.7 for many undertakings. 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.

The California BLM, consistent with its authorities and responsibilities under the Federal Land Policy and Management Act of 1976 (FLPMA), is charged with managing public lands located in the States of California and Nevada, 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 Presidential Executive Order of March 2012 (Part2) requires the BLM to improve the performance of Federal permitting and review of infrastructure projects to achieve that objective, “our Federal permitting and review processes must provide a transparent, consistent, and predictable path for both project sponsors and affected communities.”

Authorities for managing cultural resources exist under the National Environmental Policy Act (NEPA, Pub. L. 91-190), the Federal Lands Policy and Management Act (FLPMA, Pub. L. 91-579), the Archaeological Resources Protection Act (ARPA, 16 USC 470), the Native American Graves Protection and Repatriation Act (NAGPRA, 25 USC 3001), the Historic Sites Act of 1935 (Pub. L. 73-292), the Antiquities Act of 1906 (16 USC 431-433), the American Indian Religious Freedom Act (AIRFA, Pub. L. 95-341), The Religious Freedom Restoration Act of 1993 (RFRA), Pub. L. No. 103-141, 107 Stat. 1488 (November 16, 1993), Executive Order 13007 ("Sacred Sites", 61 FR 105), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), the Department of the Interior Policy on Consultation with Indian Tribes (Secretarial Order 3317), Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation (75 FR 78709), and the National Historic Preservation Act of 1966 as amended (NHPA, Pub. L. 89-665).

In carrying out its responsibilities both under the nPA and statutory authorities, the Protocol guides the BLM's planning and decision making as it pertains to historic properties and historic preservation. The BLM employs a professional staff of Cultural Resource Specialists to advise the BLM's managers and to implement cultural resource policies consistent with these authorities throughout its lands in California and those it manages in Nevada.

1.2 Applicability of this Protocol

This revised State Protocol Agreement (Protocol) replaces the provisions of the Protocol Agreement between the California SD of the BLM and the California and the Nevada SHPOs, (revised on October 05, 2012) and will have full force and effect upon its execution when signed by all signatories. This Protocol will remain in effect until the California SD and the SHPOs execute a successor, terminate it, or it expires, whichever comes first. In the event of the termination of the nPA, the signatories to this Protocol shall promptly enter consultations to convert the Protocol into a statewide Programmatic Agreement pursuant to 36 CFR § 800.6 and § 800.14(b) (Part 2).

Public lands administered by the California BLM within California and northwestern Nevada and other public lands within California administered by the Arizona Field Offices of the BLM are included within the scope of applicability of this Protocol unless alternative agreements are reached subsequent to the adoption of this Protocol and are attached to this Protocol as Supplements approved by the BLM and the SHPOs.

With the exception of Tribal lands, this Protocol, subject to the limitations in this Protocol and threshold limitations specified in Stipulation 8.1, applies to all programs, funding initiatives, actions or decisions under the statutory or regulatory authority of the BLM that, regardless of land ownership, may affect historic properties unless the BLM, in formal consultation with the SHPOs, determines otherwise.

This Protocol is not applicable to certain kinds of projects that will instead be processed under the full procedures at 36 CFR § 800 or other alternative procedures developed under 36 CFR § 800.14. At present most large scale renewable energy projects with appurtenant structures that would generate more than 20 megawatts of energy shall not be processed under the Protocol. This definition of large scale renewable energy projects is consistent with the Solar Programmatic Environmental Impact Statement (PEIS) and the Desert Renewable Energy Conservation Plan (DRECP) currently in preparation at the time of execution of this Protocol. For purposes of this Protocol, renewable energy includes solar, wind, and geothermal energy production and appurtenant transmission facilities. In addition to large scale renewable energy projects several other types of projects are excluded from the Protocol. These involve other major infrastructure projects designated by the BLM Washington Renewable Energy Office as having national interest, projects that have the potential for presenting procedural problems, cases with substantial public controversy related to historic preservation issues, cases where disputes among or about consulting parties which the ACHP may be invited to help resolve, and cases that are involved or are likely to be involved in litigation on the basis of Section 106 as per Appendix A of 36 CFR § 800.

1.3 Definitions Used in this Protocol

The terms used in this Protocol are defined within the body of the Protocol itself, in appended documents, and in 36 CFR 800.16 (a-z) (Part 2).

1.4 Contents of this Protocol

This Protocol is divided into two main sections that include the main body of the text and appendices. The text involves Stipulations 1.0-19.0. The appendices are also part of the Protocol and cover Exempt Undertakings, the Historic Preservation Program (HPP) for Public Lands in California and Northwestern Nevada, and Supplemental Procedures for specific activities on lands administered by the BLM.

This Protocol also provides additional references in Part 2 but these references are not part of the Protocol. The Part 2 references include national foundational documents regarding cultural resources policy and guidance. These are attached to the Protocol as a courtesy to provide a more comprehensive document regarding the BLM's overall approach to cultural resources policy in California and northwestern Nevada. All attachments in Part 2 are the latest text version available at the time this Protocol was executed. In the event that attachments in Part 2 are revised or updated, then later versions take precedent over the ones attached regardless of whether or not new version are attached to this Protocol. In the event that attachments in Part 2 or other National BLM policy are modified in the future to conflict with this Protocol, then the BLM shall notify the other signatories and the signatories shall consult to determine how the Protocol should be revised, if necessary, pursuant to Stipulation 13.1.

2.0 ROLES OF FEDERAL AND STATE AGENCY PERSONNEL

2.1 The California BLM State Director (SD):

A. The SD with the SHPOs shall establish the most efficient method to consult on the evaluation of cultural resources for National Register eligibility and for no-historic-properties-affected, no-adverse-effect, and adverse-effect determinations.
B. The SD shall enter into Programmatic Agreements with the SHPO when undertakings are of statewide interest, involve multiple states, or multiple Field Offices, along with the ACHP and other agencies for implementing Section 106 in specific circumstances not covered by this Protocol.
C. The SD shall contact, on a regular basis, Tribes affected by undertakings within his or her jurisdiction and develop Tribally specific procedures for Tribal consultation
D. The SD shall meet annually with the SHPO and may meet more frequently upon the request of any signatory.
E. The SD shall designate a Deputy Preservation Officer (DPO) to represent California on the Preservation Board, and to advise him or her, Assistant Directors, and District and Field Managers (FMs) in the development and implementation of the BLM's policies and procedures for NHPA implementation.
F. The SD shall use procedures described in § 800.4(b)(2) to meet 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 BLM 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.

2.2 The BLM Field Manager (FM):

A. Shall concur in recommendations and determinations developed by their professional Cultural Resources Staff (CR Staff), including but not limited to, determinations of the Area of Potential Effects (APE), determinations of National Register eligibility, finding of effects.
B. Shall consult formally with the SHPO:
    a. in any situations that meet thresholds for SHPO review, as defined in this Protocol (Stipulation 8.1);
    b. when there is a finding of an adverse effect to a historic property;
    c. in the event of unresolved disagreement between the BLM CR Staff and the FM;
C. Shall specify and record the applicable National Register criteria used to determine the property's eligibility;
D. Shall, for the purposes of an undertaking, assume that all cultural resources are eligible without consulting the SHPO until such time that determinations are made;
E. Shall ensure that mandatory annual training for CR Staff and required training for new staff takes place including Protocol and Section 106 trainings(Stipulation 13.1);
F. Shall ensure the availability of cultural resources funding for preservation projects and the implementation of the Historic Preservation Plan (HPP);
G. Shall ensure the availability of funding for Tribal consultation for Section 106 projects consistent with 36 CFR § 800 (Part 2) and the Department of the Interior Policy (Part 2);
H. Shall execute Memoranda of Agreement (MOA) for adverse effects and Programmatic Agreements (PA) that are limited to their specific Field Offices;
I. Shall ensure that the documentation of cultural resources for an undertaking processed under this Protocol, is completed prior to the execution of any NEPA decision document except in cases of phased identification provided for by § 800.4 (b)(2);
J. Shall represent the United States in government-to-government meetings with Tribes at the Field Office level and establish working relationships with Tribal officials comparable to their working relationships with State and local government officials;
K. 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;
L. Shall protect from disclosure to the public, sacred sites, 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;
M. Shall consider and consult with 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 (Part 2), 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;

N. Shall consult with affected 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 document all consultation efforts; and
O. 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.

2.3 The BLM Associate Field Manager (AFM):

Consistent with efficient program management and BLM policies to delegate to the lowest organizational level possible, BLM District or FMs may delegate the authority to operate under the Protocol to Associate FMs, provided the AFM has received the required training in use and application of this Protocol.

2.4 The BLM Field Office Cultural Resources Staff (CR Staff):

A. Shall, without formal SHPO consultation, determine an undertaking's Area of Potential Effects (APE). Field Office CR Staff shall apply the definition of APE (36 CFR § 800.16(d)) and shall document the determination and the rationale used in reaching that determination.
B. In defining the APE, shall consider potential direct, indirect, and cumulative effects to historic properties and their associated settings as applicable, regardless of land ownership. In cases where the APE is subject to question or in which there are multiple Federal Agencies with jurisdiction in regard to the undertaking jurisdictions, the Field Office shall seek input from the SHPO;
C. Shall make a reasonable and good faith effort to identify historic properties that may be affected by an undertaking as described in 36 CFR § 800.4(b)(1);
D. Shall determine National Register eligibility of historic properties and make findings of no historic properties affected and/or no adverse effect to historic properties, and apply exemptions (Appendix A). The CR Staff shall employ the Secretary of the Interior's Standards (Part 2) and 36 CFR § 800 in assessing effects.
E. Shall maintain cultural resource records and transmits reports and records to data repositories appropriate for each State signatory to this Protocol;
F. Shall maintain professional knowledge and ability
G. Shall develop and implement Section 110 programs and projects according to the NHPA and consistent with priorities described in the nPA and the HPP;
H. Shall advise and assist the FM by coordinating Tribal Consultation;
I. Shall conduct and oversee inventories and develop Class II surveys (Stipulation 5.5); and
J. Shall ensure that archaeological contractors make a reasonable level of effort to identify, record, and evaluate historic properties and report problems to the DPO who is responsible for requiring the contractor to follow the conditions of the BLM California Cultural Resources Use Permit on behalf of the SD (Section 112(a)(1)(A) of the NHPA).

2.5 The BLM Deputy Preservation Officer (DPO):

A. Shall oversee implementation of the Protocol by providing technical oversight;

B. Shall conduct field office reviews;
C. Shall conduct Protocol and other professional training;
D. Shall recommend certification, provisional certification, decertification, and recertification of Field Offices;
E. Shall review or develop Programmatic Agreements (PA) and Memoranda of Agreement (MOA); and
F. Shall submit the Annual Reports to the SHPOs and provide other information to the SHPOs concerning implementation of the Protocol when requested.
G. The DPO may also lead consultation with the SHPOs in specific cases; and
H. May also be called upon to assist the District or a Field Office in Tribal coordination.

2.6 The BLM State Data Steward (SDS):

A. The DPO may serve as the SDS for the BLMs cultural resources geodatabase or may appoint a Field Office CR Staff to serve in the position.
B. The SDS shall coordinate the BLM data submittal to, and data sharing with, the SHPOs and/or the designated entity or entities responsible for maintaining the statewide inventory of historical resources on behalf of the SHPOs.
C. The SDS role shall emphasize compliance and consistency with the BLM Washington Office, Cultural Resources Data Sharing Program (CRDSP) data standards and those specified by the SHPOs, both of which help to fulfill data sharing and data synthesis goals of the nPA.

2.7 The State Historic Preservation Officers (SHPOs).

The SHPOs for California and Nevada have responsibilities under Section 101(b)(3) of the NHPA including 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 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."*

The Secretary of the Interior has approved a federally recognized Tribe's Preservation Program pursuant to Section 101(d)(2) of the NHPA, a Tribal Historic Preservation Officer (THPO) may perform SHPO functions with respect to Tribal lands. In a similar manner, this Protocol authorizes, within certain limits expressly defined in this Protocol, the BLM professional CR Staff to act without consulting with the SHPO on BLM managed lands.

3.0 PARTICIPATION OF INDIAN TRIBES

3.1 Government-to-government consultation

The special legal status of Federally recognized Tribal governments requires that the BLM's official interactions with them, including consultation, will be carried out in accordance with government-to-government procedures and policy established in the Department of the Interior Policy on Consultation with Indian Tribes (Part 2) and all other appropriate authorities. While the BLM may initiate consultation under multiple authorities at one time, this Protocol

governs compliance with the NHPA and in no way supersedes the BLM's other treaty, trust, and consultation responsibilities to Tribes under any other requirement.

During routine and government-to-government Tribal consultation, the BLM shall seek to:

A. Identify geographic areas, types of historic properties, and undertakings of concern to Tribes;
B. Identify Tribal confidentiality issues;
C. Answer questions about this Protocol;
D. Provide a Point of Contact for the State Office and each District and Field Office;
E. Develop a process for providing information and schedules of pending actions, including land exchanges, permits, and approvals on a regular basis;
F. Offer Tribes the opportunity to establish a formal agreement for conducting the consultation required under the NHPA Section 106.

3.2 Project Specific Consultation

The BLM shall coordinate and consult with Indian Tribes on individual undertakings in the context of an ongoing government-to-government relationship sustained through periodic meetings, as agreed upon between the Tribe and the BLM FM. These ongoing government-to-government consultations shall be supplemented by information sharing procedures described in Stipulation 12.1 and undertaking-specific consultation to ensure Tribes have the opportunity to participate 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). Consultations with Tribal communities for undertakings under this Protocol and any of its Supplements will be conducted so that these Tribes may:

A. Identify their concerns about historic properties, including those of traditional religious and cultural significance to them;
B. Advise the BLM on the identification and evaluation of historic properties;
C. Articulate their views on the potential effects of an undertaking; and
D. On a government-to-government basis, consistent with the Department of the Interior's Tribal consultation policy (Part 2), consult with the BLM.

3.3 BLM and Tribal Officials

The appropriate BLM officials to consult on a government-to-government basis are those individuals who are knowledgeable about the matters at hand, are authorized to speak for the BLM, and those who exercise delegated authority in the disposition and implementation of a BLM action. BLM officials will identify appropriate Tribal consulting parties who are elected or appointed Tribal leaders or officials designated in writing by a Tribe to represent the Tribe in government-to-government consultations early in the planning process and to provide the Tribes a meaningful opportunity to participate in consultation.

3.4 Tribal Historic Preservation Officers (THPOs)

In accordance with Section 101(d)(6) of the National Historic Preservation Act, some Indian tribes with a THPO may choose to designate the THPO as their tribal representative to assist BLM in identifying tribally significant cultural resources or historic properties potentially

affected by a proposed Federal undertaking on non-tribal lands. For undertakings on BLM lands, FM shall consult with the THPO in lieu of an Indian tribe only when they have been designated by the Indian tribe as the tribal representative for purposes of Section 106 to assist in identifying and evaluating properties of religious and cultural importance to the tribe. THPO consultation does not substitute for consultation with SHPO.

3.5 Information Sharing

The BLM supports and encourages the reciprocal sharing of sensitive cultural information with Federally recognized Tribes, Tribal communities and individual members during planning for specific undertakings as allowed for under applicable statute and regulation. The BLM shall solicit such input through the public participation opportunities afforded by the BLM's land use planning and NEPA review processes, government-to-government consultation, and in the development of BLM/Tribal protocol agreements. The BLM shall take into account any confidentiality concerns raised by Tribes and Tribal traditional practitioners during the identification process particularly those regarding sacred sites (Part 2).

3.6 Dispute Resolution

The BLM FM shall seek the concurrence of any Tribe that has made known to them that they attach religious and cultural significance to an historic property that is subject to Section 106 review by the SHPO. If the Tribe disagrees with the BLM findings, it may, within a 30-day review period, specify the reasons for disagreeing with the finding and request the ACHP to review and object to the findings pursuant to 36 CFR § 800.5(c)(2)(iii).

3.7 Non-Federally Recognized Tribal Entities

Although non-Federally recognized Tribes, Indian communities, and individual Tribal members cannot consult with the BLM on a government-to-government basis, they shall be encouraged to raise issues and express concerns during public scoping for specific undertakings. The BLM shall take into account any confidentiality concerns raised by non-Federally recognized Tribes and Tribal traditional practitioners during the identification process.

4.0 PARTICIPATION OF OTHER PARTIES

4.1 Consulting Parties

Consulting parties can 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)) such as non-Federally recognized Indian Tribes that have unique knowledge and expertise. In consultation with the SHPO/THPO, the BLM shall identify consulting parties and invite them to participate in consultation. The BLM shall also use its agency procedures as contained in this Protocol (Stipulation 12.1) and BLM NEPA procedures as additional opportunities to identify potential consulting parties and the BLM shall consider all written requests of individuals and organizations to participate as consulting parties (§ 800.3(f)).

4.2 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 shall use its agency procedures as contained in this Protocol (Stipulation 12.1) and BLM NEPA procedures to involve the public.

5.0 IDENTIFICATION OF HISTORIC PROPERTIES

As required by the NHPA Section 106 process and the nPA, the BLM FM—with the assistance of qualified professional CR Staff (Stipulation 13.4) and in consultation with the SHPO implements this Protocol, and with Tribes and consulting parties—identifies, evaluates, and assesses effects of the BLM's proposed actions on historic properties.

5.1 Exempt Undertakings

The definitions and procedures for application of Exemptions are found in Appendix A. Class A undertakings are those that the Field Office CR Staff and SHPOs find are generally exempted from further review or consultation. In addition, Field Office CR Staff may determine that any specific undertaking subsumed under the list of Class B undertakings qualifies as an exempt undertaking. Documentation regarding an undertaking's exemption from review under this Protocol shall be retained and entered into an electronic database. The list of exemptions may be revised in consultation with the SHPOs/THPOs to add, delete, or modify specific exemptions (see Appendix A).

However, the following exceptions apply:

A. Any Field Office may elect to review a normally exempted, specific undertaking under the terms of this Protocol or 36 CFR § 800.
B. Should an objection by the public arise to a Class B exempt undertaking prior to implementation, the Field Office shall consult with the objecting party and the SHPO for not more than 30 calendar days following receipt to resolve the objection. If the objection is resolved within this timeframe, the parties shall proceed in accordance with the terms of that resolution. If the objection cannot be resolved within this time frame, and the Field Office and the SHPO have not agreed to extend the consultation period, the Field Office shall submit the disputed exemption for review by the SHPO either under this Protocol or under 36 CFR § 800.
C. Any party to this Protocol may propose that Appendix A be modified by removal or revision of exempted undertakings or by addition of a previously non-exempted class of undertakings. Such proposals for modification of Appendix A shall be considered pursuant to the provisions for revisions of this Protocol at Stipulation 16.3. Appendix A may be revised as a component of the Protocol revision or may be revised at any time upon written agreement of the parties to this Protocol.

5.2 Establish the Area of Potential Effects (APE)

The BLM shall apply the definition of APE (36 CFR 800.16[d]) to each undertaking and shall include a description of the APE in the undertaking's Section 106 report. In defining the APE, the BLM shall consider potential direct, indirect, and cumulative effects to historic properties and their associated settings as applicable, regardless of land ownership. The BLM is not required to determine the APE in consultation with the SHPO in those cases when the BLM is using the review procedures outlined in this Protocol. However, in cases where the APE is subject to question, or multiple federal jurisdictions are involved, or a Traditional Cultural Property has been identified, the BLM shall seek the opinion of the SHPO (Stipulation 8.1).

5.3 Identification of Historic Properties

Unless otherwise agreed upon in consultation with the SHPO, the BLM shall ensure that planning and project specific surveys and other efforts to identify historic properties are conducted in accordance with the appropriate professional standards as defined in the Secretary's Standards and Guidelines (Part 2), and to the extent prudent and feasible with the California Office of Historic Preservation guidelines applicable to Federal agencies (available from the California Office of Historic Preservation).

5.4 Class III Inventory

The BLM will routinely conduct a Class III intensive field survey to identify historic properties on BLM administered lands or other lands that comprise BLM's direct APE for an undertaking. A Class III Survey is consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (Part 2). The intent of a Class III inventory is to locate and record all historic properties. Class III inventories conform to the prevailing professional survey standards for the geographic region, provided that the regional standards meet or exceed the Secretary's Standards and Guidelines. Because Class III survey is designed to produce a total inventory of the cultural properties observable within the target area, once it has been completed no further survey work should be needed in the target area as long as the current standards are met. Areas with a high probability of buried cultural materials or known cultural materials may require additional investigation and are analyzed on a case-by-case basis. Depending on the proposed action and the types of cultural resources present in the project area, additional inventory efforts may include, but are not limited to, sub-surface survey, professional monitoring, and/or data recovery excavations.

5.5 Class II Inventory

Class II inventories are statistically based sample surveys designed to aid in characterizing the probable density, diversity, and distribution of cultural properties in the area, to develop and test predictive models, and to answer appropriate research questions. Within individual sample units, survey aims, methods, and intensity are the same as those applied in Class III survey. In all cases where the CR Staff of the BLM determines that less than a Class III survey is appropriate for an undertaking, a written justification and research design or strategy shall be prepared. When Class II surveys are deemed appropriate, Field Office CR staff shall seek the

views of the SHPO Staff concerning the justification and research design/strategy for the reduced level of inventory. The SHPO may concur with the proposed approach or may determine that formal consultation shall be initiated (Stipulation 8.1).

Records of Class II surveys shall be retained in appropriate files and reported to the SHPOs in the Annual Report. Class II surveys may be conducted in several phases, using different sampling strategies, to improve statistical reliability.

5.6 Class I Inventory

Class I inventories are limited to landscape level planning and are very rarely sufficient for the purposes of Section 106 compliance for specific undertakings. Class I inventories are completed with the use of existing data from cultural resource inventory files maintained by both the BLM and the SHPOs. Class I inventories serve to identify known properties and are used to determine if more intensive inventory of specific areas is appropriate. This determination is made in consultation with the SHPO and often results in the completion of Class II or Class III inventories.

5.7 Prior Identification

No additional identification efforts are required if the APE is entirely within areas that have been previously inventoried; and BLM CR Staff have determined that the previous identification efforts meet standards set forth in this Protocol. Such a finding must be documented for the undertaking. When assessing and certifying the adequacy of previous inventory work (i.e., reports and documentation), BLM CR Staff should consider the following measures:

A. when the inventory was done;
B. who did the inventory;
C. whether there are any previously identified problems with similar inventories;
D. what parties were consulted and how;
E. whether methodology accounted for prehistoric resources, properties of traditional religious and cultural significance, and historic resources;
F. changes in environmental conditions (e.g., burn areas where the potential exists for new exposure of resources; erosion, landslides, flood events or other actions which may cause the exposure; or natural destruction of sites);
G. and adequacy of previous documentation.

The determination and the justification for determining that a prior survey was adequate to identify historic properties shall be reported in the Annual Report to the SHPOs.

5.8 Alternative Identification Procedures

Where Supplements to this Protocol apply to a particular undertaking and also address alternative identification procedures, those alternative methodological procedures shall be followed.

5.9 Ethnographic Overviews

An Ethnographic Overview is recommended, depending upon the availability of funding, for large scale projects processed under the Protocol with the goal of identifying resources traditionally valued by culturally affiliated Tribes or other ethnic groups on a landscape level. An Ethnographic Overview examines existing information about resources traditionally valued by these groups. The information is gathered primarily from archives, publications, and interviews with Tribal members or other constituents, and may include trips to specific sites to supply missing data and may identify the need for further research. These overviews should be undertaken prior to the undertaking when appropriate and possible, to facilitate identification, rather than as a mitigation measure. Ethnographic studies are an integral part of the identification process and do not usually constitute mitigation for adverse effects of an undertaking.

5.10 Working with Traditional Cultural Properties (TCPs) and Sacred Sites

If a TCP or Sacred Site is suspected to be present in an APE, then this is a threshold condition requiring consultation with the SHPO (Stipulation 6.5 and Stipulation 8.1) and with interested and concerned Tribes regarding what further identification efforts should be performed to ascertain the status of the resource. Any additional identification efforts will take into consideration guidance provided in Bulletin 38, other BLM and national policy, and shall be responsive to the concerns of living communities, but will be commensurate with the scope and magnitude of the undertaking triggering the investigation.

6.0 EVALUATION OF HISTORIC PROPERTIES

The BLM's nPA allows more efficient (as opposed to case-by-case) consultation on the evaluation of cultural resources for National Register eligibility when the SHPOs and the BLM agree on the approach. That agreement, as expressed in this Protocol, allows the BLM to determine certain types of properties ineligible without seeking SHPO agreement on each resource determination. However, any BLM FM or CR Staff may contact the SHPO or DPO concerning ineligibility determinations when assistance or additional perspectives related to the decision would be helpful. In the case of this Protocol, the BLMs authority to determine that individual archaeological properties or built environment resources do not meet the eligibility criteria in 36 CFR § 60.4, is limited to the following procedures.

6.1 Avoidance and Assumption of Eligibility

Where resources are identified but will be avoided by moving the project or by implementing protection measures, then, the BLM may treat cultural resources as eligible for inclusion in the National Register without formally evaluating or consulting with the SHPO for the purposes of that individual undertaking at that time. If the undertaking changes in any manner, a re-initiation of consultation as outlined under this Protocol should be undertaken. Avoidance treatments that rely on protection measures to preserve assumed eligible properties must ensure that all direct and indirect effects do not alter the characteristics of the property that would make it eligible and must ensure the qualifying characteristics of the integrity of the property are not diminished. Assuming a property as eligible and avoiding it neither precludes nor prejudices formal evaluation of the resource in the future.

6.2 Determinations of National Register Eligibility

When determining if there are historic properties within the APE, the BLM will apply the criteria for evaluation found in 36 CFR § 60.4 and National Register Bulletin 15 to all cultural resources that may be affected, including TCPs and properties of religious and cultural significance. As appropriate, BLM will invite interested parties to consult. The BLM also 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 § 800.4(c)(1).

All resources, including archaeological sites, shall be evaluated under all four National Register Criteria. The BLM Field Office CR Staff with jurisdiction over the resource shall review and approve all research designs for NRHP eligibility evaluations and may approve without consulting with SHPO a research design including 4 cubic meters or less volume of archaeological test excavation provided no more than 5 percent of the overall site area is affected. For test excavations involving more than 4 cubic meters or affecting more than 5 percent of the overall site area, the BLM Field Office CR Staff with jurisdiction over the resource shall informally consult with the SHPO to determine whether review and consultation is required.

6.3 Ineligible Properties

The BLM may determine archaeological or built environment resources are ineligible without the involvement of the SHPO, provided such determinations are fully documented in the same manner as eligible resources (Stipulation 6.6). Determinations of ineligibility must be made by qualified CR staff that meet professional qualifications standards described in Stipulation 13.4. Availability of this expertise to determine properties ineligible is a condition of certification for each Field Office. Any Field Office placed in provisional certification status (Stipulation 8.5) must submit all eligibility determinations to the DPO for approval prior to formally submitting to the SHPO for concurrence.

6.4 Eligible Properties

If the BLM determines that archaeological or built environment resources in the APE meet one or more of the National Register Criteria, the BLM must consult with the SHPO. This threshold condition that triggers SHPO review (Stipulation 8.1) requires a consensus be reached between the BLM and the SHPO. In order for SHPO to confirm that a resource proposed by the BLM is a historic property and make a consensus determination requires the following consultation conditions be met for each resource:

A. The BLM shall submit adequate documentation on appropriate Department of Parks and Recreation (DPR) or Intermountain Antiquities Computer System (IMACS) forms for each resource describing which National Register Criteria make each resource an eligible property;
B. The BLM shall provide sufficient written context and justification to support each determination but it need not be a full-scale evaluation report; and
C. SHPO has 15 working days after receipt of sufficient documentation to object to the BLM's decision in writing.

6.5 Consultation with SHPO on TCPs

If, through the course of consultation with Tribes and other identification efforts, the BLM identifies that a TCP is or may be present in the APE, the BLM shall consult with the SHPO regarding additional identification efforts (Stipulation 5.10). The BLM shall also seek SHPO concurrence on the eligibility of a TCP, pursuant to nPA Component 6.b(10).

6.6 Documentation Standards for Evaluations

The BLM shall document all evaluations, including applicable National Register criteria, and disclose those evaluations in the cultural resources geodatabase implemented by the BLM in 2013 and report the evaluations in the Annual Report to the SHPOs. The SHPOs may elect to review any evaluation as an element of its oversight role in this Protocol. All determinations, including determinations of ineligibility, will be documented, providing justification, detailing BLM's determination, resources consulted in making the determination, and included in the site record and report.

6.7 Disputes with Tribes, Consulting Parties, or the Public

Should an objection by a Tribe or the public arise to a determination of eligibility, the Field Office shall consult with the objecting party and the SHPO for not more than 30 calendar days, following receipt of the dispute in writing, to resolve the objection. If the objection is resolved within this timeframe, the parties shall proceed in accordance with the terms of that resolution. If the objection cannot be resolved within a 30 day time frame, and the Field Office and the SHPO have not agreed to extend the consultation period, the Field Office shall submit the disputed determination for review by the SHPO either under this Protocol or under 36 CFR § 800.4(c)(2).

6.8 Disputes with the SHPO

If the BLM and the SHPO cannot concur on eligibility of a cultural resource, and agreement cannot be reached within 30 days, then the BLM shall submit the dispute to Federal Preservation Officer (FPO) in the BLM Washington Office who shall request a formal determination of eligibility from the Keeper of the National Register of Historic Places (Keeper), pursuant to 36 CFR § Part 63 regulations on eligibility for inclusion in the National Register of Historic Places. The Keeper's determination shall be final.

7.0 FINDINGS OF EFFECT ON HISTORIC PROPERTIES

The FM, upon determining that National Register-listed or eligible historic properties may be affected by an undertaking, shall determine to what extent those properties may be affected, giving consideration to the views of the Tribes, the interested public, and any consulting parties pursuant to Stipulations 3.0, 4.0, and 12.1.

7.1 No Historic Properties Present and No Historic Properties Affected

If the FM finds that either no properties are present or the undertaking will not affect those characteristics of the property that qualify it for listing in the National Register, the FM will document this finding, proceed with the undertaking, and provide documentation of "no historic property affected" to the SHPOs in the Annual Report (Stipulation 14.3).

7.2 No Adverse Effect

If the FM finds that the effect would not be adverse or the undertaking would be modified to avoid adverse effects, per 36 CFR § 800.5(b), and does not meet the threshold for case-by-case review in this Protocol (Stipulation 8.1) or the threshold for ACHP notification (nPA Component 5), the FM will document this finding, proceed with the undertaking, and report it to the SHPOs according to this Protocol.

7.3 Adverse Effect

If the FM finds that the undertaking may affect those characteristics of the property that qualify it for listing in the National Register, the FM will apply the Criteria of Adverse Effect, in consultation with SHPO (Stipulation 8.1), Tribes, and other consulting parties, 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 FM decides to proceed with an undertaking that will cause adverse effects, he or she shall make every reasonable and good faith effort to avoid or minimize adverse effects and/or to mitigate such effects through consultation with the SHPO, Tribes, and other consulting parties through the process found at 36 CFR 800.6.

8.0 SITUATIONS WARRANTING SHPO CONSULTATION

8.1 Thresholds for SHPO Review

The BLM shall initiate formal consultation with the SHPO in the following situations to determine whether or not to follow the procedures set forth in 36 CFR § 800 instead of continuing under the Protocol. In these threshold circumstances, the BLM and the SHPO may agree to continue proceeding under the Protocol if both parties agree that the details of a specific undertaking merit staying under the Protocol or if the BLM and SHPO agree to specific conditions that allow the review to stay under the Protocol.

Unless BLM and the SHPO both agree that the undertaking can continue under the Protocol, these actions shall require formal consultation:

A. **Adverse Effect.** When undertakings may have an adverse effect as defined by 36 CFR § 800.5(a)(1) on a property eligible or listed in the National Register of Historic Properties;
B. **When a National Historic Landmark (NHL) is Affected.** When the BLM proposes an adverse effect to a NHL.

C. **When a TCP and/or a Sacred Site is Affected**. When the BLM proposes an adverse effect to an identified TCP or a sacred site.
D. **The BLM Acts as Lead Agency.** When the BLM acts either as lead agency for small scale, routine undertakings on behalf of other Federal agencies or in cooperation with other Federal agencies, or for undertakings that may have effects beyond the boundaries of the State and which involve other SHPOs. In such cases, the BLM will either consult with the respective SHPOs and agencies regarding an appropriate compliance process and proceed accordingly, or comply with 36 CFR § 800. Consultation with the SHPO is required when more than one federal agency is involved and no lead agency has been agreed upon. The BLM will comply with 36 CFR § 800 on any complex, non-routine undertaking.
E. **The BLM Proposes Less than a Class III Survey.** When the BLM proposes to complete less than a BLM Class III survey of the affected (selected) lands and when informal consultation with the SHPO Staff yields a consensus agreement to proceed with formal consultation;
F. **The BLM Proposes a Transfer, Lease, or Sale of Public Lands.** When an undertaking involves a transfer, lease, or sale of public lands out of Federal ownership or control and historic properties in the APE are proposed to be protected by legally enforceable restrictions or conditions to ensure long-term preservation;
G. **The BLM Proposes a Transfer of Land to the State.** When the BLM proposes to transfer lands to the States of California or Nevada absent an agreement document governing the undertaking;
H. **Professional Expertise is Unavailable.** When professional CR Staff expertise necessary to implement this Protocol is unavailable to a Field Office;
I. **Land Use Plans and Amendments.** When land use plans and amendments are initiated;
J. **Unresolved Disagreements.** When unresolved disagreements or disputes concerning professional findings exist between the CR Staff and FMs;
K. **Supplemental Procedure Non-participation.** When a Field Office declines to participate in any Supplemental procedure of this Protocol (Appendices) which would normally govern the undertaking or class of undertaking, and when the undertaking cannot be covered under this Protocol;
L. **BLM Policy Conflicts with 36 CFR § 800.** When BLM policy conflicts with the procedures established in 36 CFR § 800;
M. **Data Recovery.** When Data Recovery or other treatments to mitigate adverse effect are proposed by the BLM;
N. **Supplemental Procedure Requires Consultation.** When Supplemental procedures (Appendices) appended to this Protocol require such consultations;
O. **Unanticipated Adverse Effects**. When unanticipated, potentially adverse effects occur after surveys and findings of eligibility are consulted upon and completed;
P. **Objection by the Tribe(s) or the Public.** When a written objection by the Tribe(s) or the public is made to a Class B exempt undertaking (Appendix D) ; and/or

Q. **A Prior Determination Is Vacated or Property is Removed from the National Register**. When the BLM proposes to vacate a prior determination of eligibility or proposes to remove a historic property from the National Register (36 CFR § 60.15).

In instances where the involvement of the SHPO occurs after steps have been taken under the Protocol pursuant to 36 CFR § 800.2 through 800.5, the BLM shall not be required to reconsider previous findings or determinations unless those findings or determinations are the subject of unresolved disputes or disagreements and there have been no significant changes in the landscape since the findings or determinations were made.

8.2 SHPO Involvement in the BLM Cultural Resource Program

To encourage broad participation by the SHPOs in the BLM Historic Preservation Program, the following involvement opportunities are extended to the SHPOs:

A. **Planning Efforts.** At the earliest stage of the planning process, each District or FM responsible for preparing a land use plan, significant amendments to a plan, or revisions at the regional or local level shall ensure that an invitation is sent to the SHPO to participate in the planning effort, including seeking the SHPO's comment on proposed resource Use Allocations (see next section). The SHPO, may elect, in writing not to participate in specific planning efforts at any time in the process. The BLM shall consider the views of the SHPO on specific planning efforts when those views are expressed in writing. All draft and final land use plans shall be submitted to the SHPO for review and comment unless the SHPO declined to participate in writing. Completion of the consultation process for planning will be indicated by either the SHPO's written notification to not participate or by the BLM's written response to the SHPO's comments on the draft land use or cultural resource project plans. No decision documents for planning shall be issued prior to completion of the consultation. An agreement document specific to the planning effort may be requested by either party.

B. **Use Allocations.** The BLM may invite the SHPO to comment on proposed Use Allocations of evaluated cultural resources. The BLM may allocate cultural resources in a Resource Management Plan area, whether already recorded or projected to occur on the basis of existing data synthesis. The SHPO may also elect to review any unevaluated allocations since BLM Use Allocations pertain to cultural resources rather than areas of land. Resources can be designated to one or more uses according to their nature and relative preservation value: (Scientific Use, Conservation for Future Use, Traditional Use, Public Use, Experimental Use or Discharge from Management).

C. **Field Tours.** The BLM Field Offices may invite the SHPO/SHPO Staff to participate in field tours relating to land use planning efforts or specific undertakings whenever cultural resources may be affected. SHPO may participate at its discretion.

D. **General Coordination:** The SHPO Staff and the BLM CR Staff are encouraged to communicate on general concerns or issues related to specific undertakings. Informal consultation shall be documented by the BLM Field Office staff. Formal consultation outside the scope of this Protocol shall be conducted between the SHPOs and the BLM

FMs in consultation with the DPO. Documentation shall be retained in appropriate files under the control of the BLM Field Office CR Staff.

8.3 Internal BLM Program Review

Either SHPO may request a review of any Field Office at any time by making a written request to the SD. The BLM will review a minimum of three (3) Field Offices per year. The DPO will convene a review committee within sixty (60) days of the request. The BLM shall invite the SHPO's participation in internal Field Office program reviews and shall provide reports of reviews, exclusive of findings and recommendations specific to personnel matters.

8.4 Certification

The SHPOs and ACHP may recommend review of a Field Office's certification. The DPO shall periodically consider the certification status of each Field Office during the year and consult with the District and FMs to resolve problems informally when possible.

The Preservation Board, in consultation with the SHPOs and the ACHP, has authority to review the certification of each BLM Office and make recommendations to the SD regarding certification of individual offices' ability to operate under this Protocol based upon the following:

A. Managers and specialists have completed required training;
B. Professional capability to carry out these policies and procedures is available to each line manager within the State through each Field Office's immediate staff or through other means.

8.5 Provisional Certification

The DPO or either SHPO may recommend that the SD place a Field Office on a provisional status based on findings from any of the reviews specified at Stipulation 8.3. Provisional status may extend from one to two years, although the term of the provisional status shall be a matter of agreement among the parties to this Protocol and shall reflect the complexity of the deficiencies identified. While on provisional status, a Field Office will have the opportunity to correct deficiencies that have been identified and documented during review of Field Office practices under the Protocol. Upon expiration of the provisional status term, the parties to this Protocol shall convene to determine whether identified deficiencies have been satisfactorily corrected. Should the parties determine that such deficiencies remain uncorrected, or should new deficiencies be identified that the parties deem significant, the decertification process shall be initiated as described below.

8.6 Decertification

The Preservation Board may choose to review a Field Office's certification status. The FM, the DPO, the SHPO, or the ACHP may request that the Preservation Board initiate such a review, in which case the Preservation Board will respond under the terms of Component Eight of the nPA. 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 this Protocol or BLM internal guidance) and the Office

Manager has not voluntarily suspended participation under this Protocol, the Preservation Board will recommend that the SD decertify the Field Office.

A. A Field Office may ask the SD to review the Preservation Board's decertification recommendation, in which case the Director will request the ACHP's participation in the review.
B. The Preservation Board will notify the SHPOs and the ACHP if the status of a certified office changes. In consultation with the appropriate SHPO(s), the DPO will prepare a Plan of Action to address the identified deficiencies.
C. When a Field Office is decertified, the responsible manager shall follow the procedures of 36 CFR § 800 to comply with Section 106.

8.7 Recertification

The BLM shall consult with the SHPO(s) on the results of the Plan of Action developed under Stipulation 8.6B so that the SHPO(s) may review the basis for recommending recertification. If a decertified Field Office is found to have restored the basis for certification, the Preservation Board will recommend that the SD recertify the office.

9.0 INADVERTENT DISCOVERIES AND UNANTICIPATED EFFECTS

An inadvertent discovery is defined as the identification of previously unknown historic properties within the context of BLM activities other than planned archaeological excavations.

The BLM, in consultation with the SHPOs, Tribes and consulting parties, will seek to develop a monitoring and discovery plan for projects pursuant to 36 CFR § 800.13(a)(1) as appropriate for individual undertakings in consideration of these types of sites.

A. If the BLM determines that the implementation of a project or an Historic Properties Treatment Plan (HPTP) will affect a previously unidentified property that may be eligible for the National Register, or will affect a known historic property in an unanticipated manner, and a monitoring and discovery plan has not been finalized, the BLM, in coordination with the SHPO, will address the discovery or unanticipated effect by following the procedures at 36 CFR § 800.13(b)(3) when a process has not yet been agreed upon pursuant to 36 CFR § 800.13(a)(1).
B. The BLM at its discretion may assume any discovered property to be eligible for inclusion in the National Register. The BLM's compliance with this stipulation shall satisfy the requirements of 36 CFR § 800.13(a)(1).

10.0 EMERGENCY SITUATIONS

When the BLM finds it necessary to implement an undertaking in a manner that would preclude the use of this Protocol as in the case of an Emergency declared by the President, a Tribal government, or the Governor of a State, the BLM shall comply with the provisions of 36 CFR § 800.12 and 36 CFR § 78 for such undertakings. The BLM and its mutual aid partners will

implement to the extent prudent and feasible any measures that could avoid or minimize harm to historic properties and shall implement post-emergency rehabilitation measures and evaluations for properties which may have been damaged by agency activities during the emergency. The BLM may assume the eligibility of a cultural resource or group of resources for inclusion on the NRHP without consultation with the SHPO where proposed rehabilitation and stabilization measures are unlikely to affect prospective NRHP values and measures are needed to prevent further resource damage or destruction. The BLM shall document properties discovered or affected by the emergency undertaking or post-emergency rehabilitation and shall submit a report to the SHPO.

11.0 IDENTIFICATION AND TREATMENT OF HUMAN REMAINS

The Native American Graves Protection and Repatriation Act (NAGPRA) as outlined at 43 CFR § 10, the Archaeological Resources Protection Act (ARPA) at 43 CFR § 7, and State laws govern the treatment of human remains, associated and non-associated funerary objects, sacred objects, or objects of cultural patrimony (NAGPRA items). BLM FMs in consultation with affected Tribes shall coordinate these and other responsibilities under NAGPRA (43 CFR § 10) with those under the NHPA, as described in the laws, and shall follow all applicable State laws.

In consultation with the SHPO and federally recognized affiliated Tribes, the BLM shall select the option of leaving native human remains in place under Federal control or collection with repatriation under NAGPRA. BLM policy regarding human remains, associated funerary objects, and sacred objects discovered during land use allows BLM FMs to allow burial sites and cultural items on public lands to remain undisturbed whenever possible resulting in a “no historic properties affected” finding.

Where there is a reasonable probability of encountering undetected native human remains and/or NAGPRA items during a proposed land use, the FM shall consult with federally recognized Tribes prior to project authorization. The goal of the consultation is to provide the FM with a general understanding of the Tribes’ concerns regarding the treatment of previously unknown human remains that might be discovered. If discovery is likely, a Treatment Plan should be developed for the treatment of such properties, including consultation requirements and compliance with other laws, such as NAGPRA and applicable state laws prior to initiating or authorizing the undertaking.

If previously unknown native human remains are discovered during the implementation of an undertaking considered under the terms of this Protocol or during an exempted activity covered under the Exemptions (Appendix A) and the human remains cannot be protected, the BLM shall address the discovery in accordance with the provisions of NAGPRA and coordinate that process with 36 CFR § 800.13 as needed until such time that supplemental procedures are finalized and appended to this Protocol as a Supplement in the manner specified in Stipulation 16.1.

If such remains or items are discovered off federal lands within California, for projects authorized by the BLM, the provisions of the California Native American Graves Protection and Repatriation Act (California Health and Safety Code 8010-8030, and California Public Resources Code 5097.98-99) or the Nevada Protection of Indian Burial Sites statutes (Nevada Revised Statutes 383.150-190) shall be followed.

12.0 COOPERATION AND ENHANCED COMMUNICATION

This section establishes how the BLM will develop cooperation and enhanced communication with the ACHP, SHPOs, Indian Tribes potentially affected by BLM undertakings, consulting parties, and the public.

12.1 Information on the BLM California Web

The BLM Field Offices will ensure that the NEPA information on each Field Office web site maintains a current list of pending undertakings by listing active Environmental Impact Statements (EIS), Environmental Assessments (EA), Categorical Exclusions (CE), and Determinations of NEPA Adequacy (DNAs). At a minimum the pending undertakings information will be updated when the review is initiated and again when it is completed. Information will include a basic project location and description of either the proposed finding of effect, (no historic properties affected, no adverse effect to historic properties, or adverse effect to historic properties) or the proposed use of an exemption under the Protocol if that is the case.

Before the project review is completed the information regarding the proposed finding of effect or proposed use of an exemption under this Protocol will be available on the web for at least 7 days for CEs and DNAs. For EAs the information will be available for a minimum of 15 days and usually for 30 days. EISs will be available as per Council of Environmental Quality (CEQ) regulations and BLM policy for a minimum of 45 days.

The State Office will ensure that the following information is available on the California BLM web site within 60 days of execution of this Protocol and will widely publicize this availability:

A. An explanation of the current list of pending undertakings available on each Field Offices NEPA log.
B. A list of BLM California CR Staff and BLM Tribal contacts;
C. A map of California showing BLM District and Field Office boundaries;
D. A copy of the Annual BLM Report to the SHPOs;
E. A link to the BLM 8100 Series Cultural Resources Manuals; and
F. A link to BLM Manual 1780: Tribal Consultation

12.2 ACHP, NCSHPO, and the Preservation Board

The SHPOs or the BLM SD may ask the NCSHPO, the BLM Preservation Board, and/or the ACHP to assist at any stage in revising this Protocol. 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 the revised Protocol before execution.

12.3 Data Sharing and Reporting

This Protocol provides for data sharing, including information resource management development, support and security at a minimum annual transmittal of all site forms and project reports for all Section 106 and Section 110 activities.

The BLM maintains a Cultural Resources Geodatabase in a Geographic Information System (GIS) program in accordance with Section 112(2) of the NHPA. The geodatabase shall be updated, as data are available, with newly recorded and re-recorded resource and investigation data. Initiatives shall be undertaken to input cultural resource data as funding allows.

The BLM and the SHPOs shall jointly work to implement the electronic submission of records for tracking agency actions, using the documentation and submittal standards that may be specified in a supplemental agreement. The BLM and the SHPOs will work together to insure the program meets the BLM and the SHPOs needs for data sharing and access as allowed for under applicable policy and law.

Initiatives shall be undertaken to develop agreements whereby the BLM will work to input and share Cultural Resource data developed by the agency pursuant to Section 106 and Section 110 of the NHPA with the Cultural and Historic Resources Information System (CHRIS) and Nevada Cultural Resource Information System (NVCRIS). Depending on the exact nature of data sharing agreements and the participation of other agencies, these may be appended to this Protocol as a supplement amendment process described in Stipulation 16.3 or may be made up stand-alone agreements.

12.4 Documentation of Findings

All Cultural Resources investigations associated with implementing this Protocol regardless of findings shall be documented to standards described in BLM guidelines and/or standards stipulated in written guidance from the SHPOs, or those found in supplemental agreements. The BLM CR Staff shall document all determinations, findings, and recommendations made under this Protocol including, but not limited to, delineating the APE, determining National Register eligibility, applying exemptions, findings of effect, and other findings and determinations. Documented determinations, findings, and recommendations shall be retained as described as responsibilities under the Protocol of the BLM Field Office CR Staff (Stipulation 2.4).

12.5 Records Management

The BLM shall maintain complete, current, and permanent records for cultural resources activities, including but not limited to, survey areas, findings, determinations, reports, historic property records, archaeological site records, and correspondence to fully document fulfillment of its responsibilities under this Protocol, and other laws, regulations, and policies. Records management shall conform to BLM and government standards. Records pertaining to

undertakings shall be retained in files, under the control of Field Office CR Staff, which shall document inventory efforts, research designs, peer reviews, assessments of effect and impacts, and use of exemptions. Records shall include, but shall not be limited to, site records, monitoring and condition reports, effect findings, determinations of eligibility, images, use allocations, and cross references to other files or archived documents which contain information pertaining to the individual property.

In California all site records will use DPR forms and will be submitted to the appropriate Information Center of California Historical Resources Information System. In Nevada all site records will use the IMACS forms and will be submitted to Nevada Cultural Resource Information System (NVCRIS). The procedures governing the manner in which such documentation is submitted to the SHPO and the manner in which such documentation is incorporated into permanent repositories shall be made explicit in agreements among the BLM and the SHPOs after the execution of this Protocol. Such agreements may be administratively appended to this Protocol through the process described in Stipulation 16.3.

12.6 Non-sensitive Cultural Resources Compliance Documents

Findings, determinations, and recommendations and other non-confidential information may be disclosed to the public. However, the SD has determined, under the authority of Section 304 of NHPA and consistent with Section 9 of ARPA, that public disclosure of the location and character of cultural resources may put the resources at risk. Sensitive cultural resource information under the control of the BLM, regardless of ownership of the resource, shall not be disclosed to the general public and such information shall not be stored in documents open to the general public. This determination notwithstanding, the BLM may sufficiently characterize cultural resources in writing for the purposes of required analyses under NEPA.

13.0 BLM TRAINING, DEVELOPMENT, AND STAFFING

13.1 Training

Training and development are key elements in maintaining the effectiveness of the Protocol. FMs and others who may act in the role of FMs within the scope of this Protocol shall receive Protocol training within 90 days of their report date as specified in the nPA and annually thereafter. The SHPOs shall be offered the opportunity to comment on scope and content of training and may actively participate in training sessions. In cooperation with the SHPOs, the BLM may identify partners to assist in developing training programs.

After successfully completing the introductory training, each FM, and others who may act in the role of FMs within the scope of this Protocol, shall sign a signature sheet stating they understand and agree to follow all provisions of the Protocol for which they are responsible. Signature sheets shall be retained by the DPO with copies forwarded to the SHPOs as they become available.

BLM CR Staff, and other Staff as appropriate, shall receive training in the use and implementation of the Protocol, including the procedural requirements of 36 CFR § 800 which are to be implemented in instances when the Protocol does not apply. The DPO shall identify the need for specialized cultural resource management training. The BLM's CR Staff shall meet annually, usually in conjunction with the Society for California Archaeology meetings, to participate in workshops, training, exchange information, and to discuss issues concerning the Cultural Resources Program. The SHPOs and the ACHP shall be offered the opportunity to participate in this annual meeting and assist the BLM in on-going training of Line Officers and the CR Staff in the implementation of the Protocol. The SHPOs will also be offered the opportunity to comment on the scope and content of training.

The DPO will schedule initial training for BLM staff at the Annual Meeting. All CR Staff and non-permanent CR Staff with Protocol roles and responsibilities that do not attend the annual training shall receive a minimum of 8 hours of training. This training will be similar in content to the annual training and focus on a comprehensive review of the Protocol, how it relates to Section 106, and the current nPA, including roles and responsibilities, documentation, reporting, consultation, evaluation, and best practices.

13.2 Development

BLM FMs, in consultation with the DPO, shall review, as part of the Employee Performance and Appraisal Plan (EPAP), their CR Staff to ensure that current professional standards in the discipline can be met and maintained, and that training needs are identified. Training received shall be reported as a component of annual reporting (Stipulation 14.3). Appropriate training subjects will include but not be limited to, the Protocol, NHPA Section 106, Tribal Consultation, Oral History, Agreement Document Writing, Field Methods, and specialized trainings such as Osteology, Ceramic Identification, Lithics, and Rock Art Recordation.

A minimum of 4 hours of training for the BLM FMs shall be focused on a review of the Protocol's basic components and the Manager's roles and responsibilities. The DPO may recommend that other Field Office staff also participate in such training. New Field Managers shall receive the minimum training within ninety (90) days of reporting to a Field Office. Participation by Field Offices in any future Protocol training, and CR Staff's completion of any required culture resource management training shall be key considerations for continuing certification of individual Field Offices.

13.3 Professional Societies and Annual Meetings

The BLM recognizes that staying current in relevant professional literature and participation of Cultural Resource Staff in professional societies and annual meetings (e.g., Society for California Archaeology, Society for American Archaeology, Society for Historical Archaeology, California Council for the Promotion of History, Society of Architectural Historians) is integral to staying abreast of developments and advances in the discipline, for enhancing professional knowledge and skills, and for providing opportunities for leadership and service to the profession.

13.4 Staffing Commitment

The BLM is committed to employing a professional CR Staff. In hiring new, full time professional staff, the BLM will follow Section 112(a)(1)(B) of the NHPA and select candidates that meet the *Secretary of the Interior's Professional Qualifications Standards* or the education and experience standards called for by the U.S. Office of Personnel Management. FMs shall ensure the availability of cultural resources expertise at the Field Office level. Field Offices that do not have the services of a BLM Cultural Resources professional, either on staff or through arrangement with another BLM administrative unit, shall consult with the SHPO on all undertakings.

BLM's student training programs may be used to recruit new staff to assist the full time Cultural Resource Staff in the Field Office but the trainees shall not perform professional duties without appropriate direct oversight by qualified professional CR Staff.

13.5 Professional Staff

The DPO, in consultation with supervising line managers and CR Staff, will document each District and Field Office's professional staffing capabilities in their annual report to the SHPOs. Documentation will include any recommended limitations on the nature and extent of authorized functions. Where a FM's immediate staff does not possess the necessary qualifications to perform specialized preservation functions (e.g., historical architecture, historical landscape architecture, ethnography), the FM will seek specialized expertise from outside the immediate staff.

13.6 Professional Capability

The DPO may request that the Preservation Board assist the FM and the CR Staff in assessing the manager's needs for special skills not presently available on the immediate staff, and the CR Staff's opportunities for professional development and career enhancement through training, details, part-time graduate education, and other means. The BLM may request the assistance of the SHPOs in such cases or may obtain the necessary expertise through contracts, BLM personnel from other units, or arrangements with other agencies.

13.7 Non-Professional Cultural Resources Personnel

The BLM may employ CR Staff who do not meet the Secretary of the Interior's standards for professional CR Staff (student interns working towards a degree). In such instances, individuals who do not meet these standards shall work under the direct technical supervision of BLM professional CR Staff and may not substitute for professional CR Staff in making findings, determinations, or recommendations regarding the identification and evaluation procedures set out in this Protocol or in 36 CFR § 800.

14.0 ACCOUNTABILITY MEASURES

14.1 Meetings

The SHPOs and the SD, with their respective staffs shall meet annually, to review the BLM's implementation of the Protocol, annual reports of activities, and other pertinent issues. The

ACHP may be invited to participate in order to facilitate the ACHP's general oversight of the Section 106 process. At the annual meeting, the SHPOs and the BLM shall exchange information relevant to achieving the goals and objectives set forth in this Protocol. At any time the SHPO or the SD may convene a meeting to discuss issues. This Protocol encourages SHPO Staff and BLM CR Staff, to meet and to consult informally and frequently in order to maintain appropriate communication, to seek informal opinions and advice, and share information and knowledge.

14.2 Communicating by Reporting

The BLM SD will prepare an Annual Report to the SHPOs outlining the preservation activities conducted under the nPA and the Protocol. 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 the SHPOs. The Annual Report will be made available to the public via the BLM California web site, and BLM will notify the ACHP of its availability via email.

14.3 The BLM Annual Report to the SHPOs

The BLM Field Offices shall, by November 7th of each year, provide to the DPO for collating and reporting to the SHPOs by December 1st, a list of prior fiscal year undertakings including determinations of eligibility made, and a short narrative summarizing Section 106 work and Section 110 accomplishments:

A. List undertakings which made use of one or more of the Supplements to this Protocol and indicate which Supplement(s) was utilized;
B. List and track the number and types of exemptions applied;
C. List the number of acres surveyed by level and distinguish between Section 106 and Section 110 work;
D. List the number of cultural resources recorded or recordations updated and distinguish between Section 106 and Section 110 work;
E. List emergency actions, inadvertent discoveries, and unanticipated effects that occurred during the fiscal year;
F. List the number of National Register evaluations made for Section 106 actions; and
G. List the number and type of findings of effect made under the Protocol.

14.4 The BLM State Office Report to the SHPOs

By no later than March 1 of each year, the DPO shall provide a summary, of the previous year's Protocol compliance. This report shall include:

A. A list of staff who received Protocol training, a list of those who did not receive Protocol training and a planned schedule to train those people based on the data gathered from the narrative submitted by each Field Office;
B. All data gathered on undertakings for which the DPO provided assistance, a list of Field Offices which were subject to or will be subject to a program review;
C. A list of any Field Office suspended from use of the Protocol for any reason, any change of staffing in both CR Staff and managers and a list of legal actions involving cultural resources; and

D. Additional data may be requested by either SHPO until October 1 of the Federal fiscal year that is being reported upon.

14.5 BLM Public Reports

The DPO shall prepare responses for the signature of the BLM National Director or SD regarding public inquiries about the BLM's exercise of its authorities and responsibilities under the nPA and the State Protocol, such as the identification, evaluation, and management of resources. Responses will include establishing the facts of the situation and, where needed, recommendations to the BLM National Director or SD for corrections or revisions in a practice or procedure.

15.0 PROGRAM DEVELOPMENT AND ACTIVITIES UNDER SECTION 110

15.1 Preservation Planning

In return for the procedural flexibility that this Protocol provides in meeting 36 CFR § 800 responsibilities, the BLM commits to fulfill the responsibilities enumerated in Section 110 of the NHPA. The SD shall develop and implement a Historic Preservation Program (HPP) that (Appendix B) shall be appended as a Supplement to this Protocol using the process specified in Stipulation 16.3. The HPP shall guide the BLM in achieving measurable progress toward compliance with Section 110.

The 2007 HPP remains valid until the revised HPP is completed. Development of the new HPP is under way and the BLM commits to producing a final draft to the SHPOs for feedback within 90 days of the execution of this Protocol. The HPP may include, but shall not be limited to:

A. Programs of evaluation and National Register nomination;
B. Monitoring for historic property condition and ARPA;
C. Stabilization and preservation of resources;
D. Inventory and documentation of known but unrecorded properties;
E. Data synthesis and research targeting topical and geographic priorities to more fully develop proactive landscape scale management of cultural resources consistent with direction in Secretarial Order 3330 and planned for in the DRECP currently under preparation;
F. Strategies to improve the quality of existing GIS data and to reduce the backlog of un-synthesized site location and report information; and
G. Interpretation and public education involvement in historic preservation through site stewardship programs and other outreach activities.

15.2 Curation

The BLM will ensure to the greatest extent possible that curation and disposition of all archaeological and historical materials and data from Federal lands conform to 36 CFR 79 and the Secretary of the Interior's Standards for Archaeological Documentation:

A. Archaeological specimens and records are part of the documentary record of an archeological site. They must be curated for future use in research, interpretation, preservation, and resource management activities. Curation of important archaeological specimens and records should be provided for in the development of any archaeological program or project.
B. Archaeological specimens and records that should be curated are those that embody the information important to history and prehistory. They include artifacts and their associated documents, photographs, maps, and field notes; materials of an environmental nature such as bones, shells, soil and sediment samples, wood, seeds, pollen, and their associated records; and the products and associated records of laboratory procedures such as thin sections, and sediment fractions that result from the analysis of archeological data.
C. Satisfactory curation occurs when:

    i. Curation facilities have adequate space, facilities, and professional personnel;
    ii. Archaeological specimens are maintained so that their information values are not lost through deterioration, and records are maintained to an archival standard;
    iii. Curated collections are accessible to qualified researchers within a reasonable time of having been requested; and
    iv. Collections are available for interpretive purposes, subject to reasonable security precautions.
    v. Management of non-Federal archaeological materials and data will be consistent with applicable law and professional curation requirements as negotiated with non-Federal landowners or managers. Non-museum collections may be maintained at Field Offices, but only under appropriate curatorial conditions and with appropriate documentation.

16.0 REVISION, RESOLUTION OF OBJECTIONS, AND SUPPLEMENTAL PROCEDURES

16.1 Revision

This Protocol is intended to be responsive to changing circumstances. Therefore, the BLM or the SHPO may propose revision of this Protocol, whereupon the parties shall consult to consider the proposed Revision. “Revision” as used herein refers to the process of review and rewriting (including extension) of all or portions of the Protocol, including the addition, deletion, or modification of exempt undertakings. Revisions shall only become effective upon written concurrence of the signatories. Changes that would affect the opportunity for public participation or Tribal consultation will be subject to public notice and Tribal consultation. A revision will go into effect when signed by all the signatories.

16.2 Procedures for Resolving Objections

Should any signatory to this Protocol object to any matter related to its implementation, the signatories will meet to attempt to resolve the objection.

A. Between the BLM and the SHPO

The BLM or the SHPO may object to an action proposed or taken by the other pursuant to this Protocol. The objecting party shall notify the other party in writing of the objection. Within seven (7) calendar days following receipt of notification, the parties shall begin consultations for thirty (30) calendar days to resolve the objection. If the objection is resolved within this time frame, the signatories shall proceed in accordance with the terms of that resolution. The BLM's responsibilities to carry out all other actions subject to the terms of this Protocol that are not the subject of the dispute remain unchanged.

i. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the signatories. The signatories shall provide the 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, the 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. The BLM will then proceed according to its final decision.

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

iii. If the objection is not resolved within this time frame, and the parties have not agreed to extend the consultation period, the DPO shall refer the objection to the Preservation Board, which will provide the SD with its recommendations. If the SD accepts the Preservation Board's recommendations, the SD shall promptly notify the SHPO of such acceptance, provide a copy of the Preservation Board's recommendations, and afford the SHPO thirty (30) calendar days following receipt of the notification to comment on the recommendations. If the SHPO concurs with the Preservation Board's recommendations within this time frame, the SD and the SHPO shall proceed in accordance with the Preservation Board's recommendations and the objection shall thereby be resolved.

iv. If either the BLM SD or the SHPO rejects the Preservation Board's recommendations after consideration not to exceed thirty (30) days, the SD shall promptly notify the Preservation Board in writing of the rejection, and immediately thereafter submit the objection, including copies of all pertinent documentation, to the ACHP for comment in accordance with Component Five of the nPA. Within thirty (30) calendar days following receipt of any ACHP

comments, the SD shall make a final decision regarding resolution of the objection and in writing notify the Preservation Board, the SHPO and the ACHP of that decision. The objection shall thereupon be resolved. In reaching a final decision regarding the objection, the SD shall take into account any comments received from the Preservation Board, the SHPO, and the ACHP pursuant to this stipulation.

B. Between the BLM, the Public, the Tribes, Indian groups, or Individuals

If a member of the public or a Federally recognized Indian Tribe or other American Indian group, family or individual objects at any time to the manner in which this Protocol is being implemented in a specific case, the BLM shall consult with the objecting party for a period not to exceed forty-five (45) days and, if the objecting party requests, with the SHPO, to resolve the objection.

If the objecting party and the BLM resolve the objection within forty-five (45) days, the BLM shall proceed in accordance with the terms of that resolution. If the objection cannot be resolved, the DPO shall refer the objection to the Preservation Board, which will provide the SD and the objecting party with its recommendations for resolving the objection. If the SD and the objecting party accept the Preservation Board's recommendations, the SD shall proceed in accordance with these recommendations and the objection shall thereby be resolved.

C. Between the BLM SD and/or SHPO and the Preservation Board

If either the SD, SHPO, or the objecting party rejects the Preservation Board's recommendations for resolving the objection, the SD shall refer the objection to the ACHP in accordance with Component 5 of the nPA. Any objection filed pursuant to this paragraph shall not prevent the BLM from proceeding with project planning; however, project implementation shall be deferred until the objection is resolved pursuant to the terms of this stipulation.

i. The BLM shall forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the Preservation Board, the ACHP, and the SHPO. The ACHP shall provide the 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, the BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the parties, and provide them with a copy of this written response. The BLM shall then proceed according to its final decision.

ii. If the signatories do not provide their advice regarding the dispute within the thirty (30) day time period, the BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the 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.

16.3 Supplemental Procedures

In keeping with the intended responsive nature of this Protocol, the BLM or either SHPO may propose a Supplement to this Protocol at any time, whereupon the signatories shall consult to consider such an amendment. The BLM shall add supplemental procedures for specific BLM programs or projects when all signatories to the Protocol wish those procedures to be made explicit.

A. Adoption of Supplements

When new supplemental procedures are proposed that may change the participation and current consultation process for parties other than the BLM or the SHPOs, then the BLM shall consult with Consulting Parties, Tribes, and the ACHP on the development of the proposed Supplement. The process culminates in the issuance of a Protocol Supplement, administratively appended to the Protocol after signature by the signatories. Protocol Supplements shall be housed as Appendices to this Protocol.

B. Termination of Supplements

The BLM or SHPO may terminate a Supplement. The signatory proposing termination shall, in writing, notify the other signatories of the intent to terminate a Supplement and explain the reasons for proposing the termination. Within seven (7) calendar days following receipt of such notification, the parties shall begin to consult for up to thirty (30) days to seek alternatives to termination. Should such consultation result in agreement on an alternative to termination, the signatories shall proceed in accordance with the terms of that agreement. Should such consultation fail, the signatory proposing termination may terminate the Supplement by providing the other signatories with written notice of such termination. Termination hereunder shall render the Supplement without further force or effect.

C. Expiration of Supplements

Supplements expire on the individual expiration date of each Supplement or on the date of this Protocol if no date is specified in the supplement.

17.0 EXECUTION, EXTENSION, TERMINATION, AND EXPIRATION

17.1 Execution

The signatories to this Protocol agree that the execution of this Protocol implements the nPA dated February 9th, 2012 and shall not be adopted for such until reasonable and adequate consultation with the public, Federally recognized Indian Tribes, Tribal Historic Preservation Officers and affiliated non-federally recognized Indian groups occurs to the satisfaction of all signatories.

17.2 Extension

This Protocol and the BLM's activities under this Protocol shall be reviewed by the SHPOs on or about the fourth (4th) anniversary of its execution. The purpose of such a review shall be to determine whether the terms of this agreement have been satisfactorily implemented and whether the signatories can agree to extend this Protocol. An extension of the Protocol is a revision as defined in Stipulation 16.1 and an extension is executed by the procedures described in that stipulation.

17.3 Termination

Any signatory may terminate this Protocol. The party proposing termination shall notify the other signatories in writing of their intent to terminate and explain the reasons for proposing termination. Within seven calendar days following receipt of such notification, the parties shall consult for up to 60 working days to seek alternatives to termination. Should such consultation result in agreement on an alternative to termination, the parties shall proceed in accordance with the terms of that agreement. Should such consultation fail, the party proposing termination may terminate this Protocol by providing the other party with written notice of such termination. Until a new agreement is executed, all signatories shall follow procedures outlined in 36 CFR § 800 including those found at 36 CFR § 800.4 for making determinations of eligibility for the National Register.

17.4 Expiration

At midnight of the fifth (5th) anniversary of the date of its execution, this Protocol shall automatically expire and have no further force or effect, unless it is extended pursuant to Stipulation 17.2 in the manner specified in Stipulation 16.1. Should the Protocol not be extended and should no successor agreement document be in place at the time of automatic expiration, the BLM shall comply with 36 CFR § 800.

18.0 OTHER PROCEDURES

The BLM shall follow policies of the nPA (Part 2) along with the Secretary's Standards and Guidelines (Part 2) and/or those promulgated by the SHPOs. The BLM, in consultation with the SHPOs, may develop other guidance as necessary and shall consider incorporating such guidance as Supplemental procedures to this Protocol.

19.0 AFFIRMATION

The signatures below represent the affirmation of the BLM and the SHPOs of California and Nevada agreeing that the execution of this Protocol implements the nPA dated February, 2012 (the national Programmatic Agreement among the BLM, the ACHP, and the NCSHPO regarding the manner in which the BLM will meet its responsibilities under Section 106 and serves as partial satisfaction of the BLM's obligations under Sections 110(f) and 111(a) of the NHPA) and has not been adopted for such until reasonable and adequate consultation with the public, Federally recognized Indian Tribes, Tribal Historic Preservation Officers and affiliated non-federally recognized Indian groups occurred to the satisfaction of all signatories.

This Protocol shall become fully executed when signed by all signatories and transmitted to the BLM Field Offices managing lands in California and Nevada. Within three (3) months of execution, the BLM agrees to provide training acceptable to the SHPOs covering the terms and stipulations provided in this Protocol to both BLM FMs and CR Staff.

With my signature, I do hereby agree and have the authority to execute this Protocol and shall implement its stipulations until amended, replaced, terminated or expired.

STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, CALIFORNIA

James G. Kenna Date 2/10/2014

With my signature, I do hereby agree and have the authority to execute this Protocol and shall implement its stipulations until amended, replaced, terminated or expired.

STATE HISTORIC PRESERVATION OFFICER, CALIFORNIA

Date

Carol Roland-Nawi

Back of Signature page 2

With my signature, I do hereby agree and have the authority to execute this Protocol and shall implement its stipulations until amended, replaced, terminated or expired.

STATE HISTORIC PRESERVATION OFFICER, NEVADA

_____ Date _____

Rebecca L. Palmer

APPENDIX A
EXEMPT UNDERTAKINGS
February 2014

INTRODUCTION

Undertakings listed in this Appendix to the Protocol may be exempt (categorically excluded) from further review or consultation under the terms of this Protocol at Stipulation 5.1. The listed classes of undertakings are subdivided into Class A and Class B activities, which vary by the degree of review required. This review shall be conducted by the Field Office Cultural Resources Staff that meet the professional requirements of Protocol Stipulation 13.4.

Class A Activities

Class A activities are generally exempt but may require a records check to determine whether the activity may affect a known historic property or an unevaluated cultural resource. Cultural Resources Staff shall determine whether a records check is appropriate and shall conduct that check prior to exempting the activity. A Field Office may elect to provide further and more robust review, including field inventory, by Field Office Cultural Resource Staff if that Staff determines that a specific exempt undertaking may affect a cultural resource which is significant, documented, known but not recorded, or unevaluated.

Class A activities, submitted for further review, shall be documented and reported in annual reports. Class A exemptions which are not submitted for further review shall be documented in project case files in order to demonstrate compliance with Section 106 of NHPA using an appropriate exemption tracking form.

Class A Activity List

A1: Ground disturbing activities which involve no more than two (2) square meters of cumulative surface disturbance and no more than one (1) square meter of contiguous disturbance in any given one (1) acre location. This does not apply to ground disturbing activities within the site boundaries of a known unevaluated, eligible, or listed National Register cultural resource.

A2: Routine maintenance of existing facilities, including minor routine and preventative maintenance of the BLM facilities which do not disturb additional ground surface area or historic properties at the facility including the facility itself.

A3: Rendering formal classification of Federal lands in the United States pursuant to 43 CFR 2400 (Formal Land Classification Procedures).

A4: Removal of log jams and debris dams using hand labor or small mechanical devices.

A5: Special land use designations which do not authorize surface disturbance including ACECs, Wilderness Study Areas, environmental education areas, and Natural Areas.

A6: Alteration of structures which are known to be less than 45 years old in their entirety.

A7: Removing modern materials and trash scatters less than 45 years old and not associated with a larger eligible or unevaluated cultural entity. Abandoned vehicles and modern trash dumps are included in this class.

A8: Withdrawal continuations or extensions which would only establish a specific time period and where there would be essentially no change in use and/or no new uses would be permitted and continuation would not lead to environmental degradation.

A9: Withdrawal terminations, modifications or revocations that, because of overlying withdrawals or statutory provisions, involve merely a record clearing procedure.

A10: Withdrawal terminations, modifications, or revocations and cancellations of classification and opening orders where the land would be opened to discretionary land laws and where future actions would be subject to review under the terms of this protocol.

A11: Withdrawal terminations, modifications or revocations and opening orders that the Secretary of the Interior is under a specific statutory directive to execute, and where future actions would be subject to review under the terms of this protocol.

A12: Transfer of use authorization from one Federal agency to another when an action such as a boundary adjustment necessitates changing a right-of-way from one federal agency to another (e.g., Forest Service Special Land Use Permit to a BLM Title V Right-of-Way).

A13: Rights-of-way for overhead line (no pole or tower on BLM land) crossing over a corner of public land.

A14: Right-of-way which would add or remove another radio transmitter to an existing communication site that is neither an historic property nor located on or within the proximate area (10 m) of an historic property.

A15: Apiary sites adjacent to a designated road or route of travel and which do not involve ground disturbance.

A16: Acquisition of lands and easements.

A17: Transferring lands or interest in lands to other Federal agencies where future management will be subject to the Section 106 process.

A18: Cadastral survey.

A19: Designating areas closed to vehicles or areas limited to travel only on existing roads and trails where such designation does not require or involve Plans or Plan amendments and where access to traditional or sacred sites by Native Americans is not an issue.

A20: Installation of routine signs or markers on shoulders of existing roads and markers adjacent to existing roads, or placing recreational, special designation or information signs, or visitor registers, unless within known historic properties. Disturbance cannot exceed the restrictions set forth in Exemption A1.

A21: Operations in, and reclamation of, materials in existing borrow sites when the activity is entirely within the disturbed area.

A22: Administratively determining that land is mineral in character. Log but not necessary to report to SHPO.

A23: Continued development of borrow sources which have previously removed all Holocene and Pleistocene sediments and will not extend into any area which contains Holocene and Pleistocene sediments.

A24: Dispersed non-commercial recreation activities such as rock collecting, Christmas tree cutting, pine nut gathering, and personal use fuel wood collecting where it is unlikely to impact Cultural Resources.

A25: Issuance of special recreation permits:

a. River use permits where camping and put-in/take-out sites are established facilities where previous Section 106 consultation has been completed.

b. Long.-term visitor use permits in established Long Term Visitor Areas for which previous Section 106 consultation has been completed.

c. Other recreation use permits which do not have a ground disturbing component.

A26: Placement of recreational, special designation or information signs, visitor registers, portable kiosks and portable sanitation devices.

A27: Modification of existing fences, gates, grills, or screens to provide improved wildlife ingress and egress where such modification does not affect the integrity of potentially historic adits, stopes, or shafts.

Class B Activities

Class B activities may be exempt, depending on a finding by professional Field Office Cultural Resources Staff. The screening of potentially exempt Class B activities shall consider the nature of the proposed activity, adequacy of prior inventory, adequacy of documentation of historic properties and inventory efforts, information or knowledge of potentially affected Cultural Resources which were unknown at the time of the original inventory, and the nature or scope of any prior Section 106 review.

If the Field Office Cultural Resources Staff determines that an undertaking may be treated as exempt, then that undertaking shall be considered exempt under this Protocol and no further review or consultation would be required. If Field Office Cultural Resources Staff determines that an undertaking has an effect, may have an effect, or will continue an on-going effect, the undertaking shall not be exempt and shall be subject to the provisions of this Protocol or 36 CFR 800, as appropriate.

Class B reviews shall be documented on an appropriate exemption tracking form and reported in annual reports.

Class B Activity List

B1: Repair or stabilization of historic properties using in-kind workmanship and materials consistent with Secretary of the Interior's Standards for the Treatment of Historic Properties and that do not have an effect upon the values that make the properties significant.

B2: Emergency repair or stabilization of historic properties using methods consistent with Secretary of the Interior's Standards for the Treatment of Historic Properties and that do not have an effect upon the values that make the properties significant.

B3: Resource management actions which do not utilize motorized vehicles or create new surface disturbance and that do not have the potential to affect access to or use of resources by American Indians.

B4: Hazards abatement, including elimination of toxic waste sites, filling, barricading, or screening of abandoned mine shafts, adits, and stopes where such features are not historic or contributing properties.

B5: Removal of, recent (less than 45 years old) structures and materials not associated with older remains which may qualify for listing in the National Register and where no historic properties will be affected.

B6: Limited archaeological testing and/or artifact collection during field identification, evaluation, and recording activities, so that the significance or research potential of a cultural property may be better understood but not substantially diminished. Limited testing, in association with a research design, is defined as affecting no more than four (4) cubic meters or less volume of an archaeological deposit or affecting less than 5% of the overall site area. For test excavations involving more than 4 cubic meters or affecting more than 5 percent of the overall site area, the BLM shall informally consult with SHPO to determine whether review and consultation is required.

B7: Prescribed burns which will have no effect on historic properties, which do not disturb structures, or affect petroglyphs/pictographs, or require disturbance of the ground surface (cutting line, dozer work, fire breaks, fire retardant drops, helipads, etc.), or adversely affect access or use by California and Nevada Indians to harvest or gather traditionally used plant materials.

B8: Issuance of permits, leases, and rights-of-way where no surface or resource disturbance is authorized, that have no potential for adverse effects, and that do not have the potential to affect access to or use of resources by American Indians.

B9: Designation of existing transportation and utility corridors under Section 503 of FLPMA when current BLM information indicates that such corridors have a low probability of containing or being in proximity to historic properties.

B10: Activities at designated communication sites that do not affect historic properties and where Section 106 consultation has been previously completed.

B11: Approval of minor modifications to or minor variances from activities described in an approved mineral exploration plan that does not affect historic properties.

B12: Approval of minor modifications to or minor variances from activities described in an approved underground or surface mining plan of operations that does not affect historic properties for which previous Section 106 consultation has been completed.

B13: Seismic operations on maintained roads or trails, and those involving no use of explosives, grading, or other land modifications, and resulting in no appreciable disturbance or compaction of vegetation, soils, or desert pavement by vehicle movement or other means.

B14: The removal of oil well stand pipes where there is no evidence of historic or archaeological remains.

B15: Approval of an Application for a Permit to Drill (APD) or applications for rights-of-way for ancillary facilities within an established, utilized or developing oil and gas field for which Section 106 consultation has been completed or that does not involve historic properties.

B16: Issuance of special recreation permits where permitted use is consistent with planning decisions or OHV designations for which previous Section 106 consultation has been completed, and where there will be no new surface disturbance.

B17: Placement or removal of monitoring equipment (e.g., stream gauges) which does not disturb potentially sensitive ground surface or historic properties or other Cultural Resources.

B18: Maintenance of non-historic roads that does not widen or otherwise extend surface disturbance, unless previously unevaluated archaeological features are exposed.

B19: Renewals or reassignment of land use authorization where the action conveys no additional rights beyond those granted in the original authorization and where Section 106 consultation has been previously completed.

B20: Upgrading or adding new lines (power or telephone) to existing pole(s) when there is no change in pole configuration or number, and when the lines are not historic properties and no other Cultural Resources issues are known.

Inadvertent Discoveries during Implementation of an Exempted Undertaking

In the event of inadvertent discovery of Cultural Resources during implementation of an undertaking which has been exempted under Appendix A, the following procedure shall be undertaken. Field Office Cultural Resources Staff and the Field Manager shall be immediately notified by personnel responsible for implementation of the exempted undertaking. All work shall cease at the site of discovery and all other work which may damage the cultural resource shall also cease. The Field Office Cultural Resource Staff shall make an assessment of the situation and, in consultation with the Field Manager, may prescribe the emergency implementation of appropriate physical and administrative conservation measures. Physical protection measures may include indirect measures (signing, fencing/gating, patrol/surveillance, erosion control [off-site], and fire control [off-site]) and direct measures (stabilization, erosion control [on-site], fire control [on-site], detailed recording,). Administrative

conservation measures include withdrawal, closure to public and off highway vehicles, special designations, land acquisitions, recreation and public purposes act, easements, and public information and education. The Field Office Cultural Resource Staff shall notify the SHPO within 48 hours in order to develop an agreement on the appropriate course of action, and such agreement shall reflect the intent of 36 CFR § 800.13. The agreement shall be memorialized in writing and documented in project files. The Field Office Cultural Resource Staff shall document implementation of the agreed-upon steps and shall report the discovery event and the manner of its resolution in the annual accomplishment reporting required under this Protocol.

Addition, Deletion or Modification of Exemptions

This list of exemptions may be changed through addition, deletion, or modification of exemptions as described in Stipulation 16.1 of the Protocol. When the list of exemptions is modified a new Appendix A shall be appended with its effective date entered on the face of the Appendix. Upon issuance, all prior versions of Appendix A shall be superseded and shall have no further force or effect. When a specific exemption is deleted, its deletion shall be shown by striking through its text and, similarly, when terms in a specific exemption are modified, the modified terms shall be denoted by strikethrough and notification of the changes shall be provided to all FM by the DPO reflecting the revision and implementation date.

The 2014 Historic Preservation Program (HPP) for Public Lands in California and Northwestern Nevada is in preparation. Until it is completed the 2007 HPP remains active.

SUPPLEMENTAL PROCEDURES FOR LIVESTOCK GRAZING PERMIT/LEASE RENEWALS

A CULTURAL RESOURCES AMENDMENT
TO
THE STATE PROTOCOL AGREEMENT

BETWEEN

CALIFORNIA BUREAU OF LAND MANAGEMENT
AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

The purpose of this amendment is to address the National Historic Preservation Act (NHPA) Section 106 compliance procedures for processing approximately 400 grazing permit/lease (hereafter "permit") renewals scheduled for 2004 through 2008. This amendment shall cover grazing permit renewals for livestock as defined in 43 CFR 4100.0-5 as "….domestic livestock – cattle, sheep, horses, burros, and goats." The following procedures will allow for renewal of the permits while maintaining compliance with the NHPA. Alternative approaches to this amendment may be developed by individual Field Offices, but such approaches shall fall under the Section 106 regulations of the NHPA (36 CFR Part 800) and shall require individual Field Office consultation with the SHPO.

These supplemental procedures are an amendment to the State Protocol dated April 6, 1998, which is scheduled for termination on October 25, 2004. These supplemental procedures will remain in effect when that Protocol is terminated and will become an amendment to a successor Protocol document.

This amendment deviates from the Protocol in *Section VI. Thresholds for SHPO Review*, which states, "*BLM shall complete the inventory, evaluation and assessment of effects and document all findings, including negative inventories and no effect determinations, in BLM files before proceeding with project implementation.*" This amendment would allow for renewal of an existing grazing permit prior to completing all NHPA compliance needs as long as Protocol direction, the BLM 8100 Series Manual guidelines (Protocol Amendment F), and the following specific stipulations are followed:

I. Planning

Grazing permit renewals of any acreage size shall be scheduled for cultural resource compliance coverage over the next ten years. Such long term management includes scheduling for inventory, evaluation, treatment, and monitoring, as appropriate. Schedules for inventories of all renewals to be covered by this amendment shall be delineated by each participating Field

Office and submitted to the SHPO and the State Office at the first annual reporting cycle for FY 2004.

This amendment shall only apply to the reissuance of grazing permit authorizations and existing range improvements. All new proposed undertakings for range improvements shall follow the established procedures within the Protocol or 36 CFR 800, the implementing regulations for Section 106 of NHPA.

II. Inventory Methodology

To address the impacts of grazing on cultural resources, a Class II sampling or reconnaissance survey strategy shall be devised by the cultural resource specialist in consultation with range staff which focuses inventory efforts on areas where livestock are likely to concentrate within areas of high sensitivity for cultural resource site locations. Congregation areas where it has been shown that the greatest levels of impact are likely to occur are generally around springs, water courses, meadows, and range improvement areas such as troughs and salting areas.

All existing range improvements within areas of high sensitivity for the location of cultural resource sites shall be inventoried. However, due to the fact that cattle trailing occurs along fence lines and the area of impact is limited to a one meter wide swath and impacts to cultural resources are generally restricted to this corridor, existing linear improvements will not be inventoried except in areas of high sensitivity for the location of cultural resource sites.

Salting areas may change from season to season making locating these areas problematic. Salting locations will be assessed by the cultural resource specialist in consultation with range staff and the permitee. The permitee will be asked to provide a map designating salting areas and these locations will be inventoried if they occur in areas where the probability for the occurrence of cultural resources is high. All livestock loading and unloading areas and corral areas will also be inventoried within areas of high sensitivity for the location of cultural resources.

A Class I records search will also be conducted for each allotment to ascertain previously recorded site locations and areas of prior survey coverage which can be accepted as meeting current standards. Sites located within livestock congregation areas will be visited to evaluate grazing impacts.

All areas identified for inventory in the survey strategy shall be covered intensely. All unrecorded site locations will be recorded and a report of findings for each allotment will be completed. These investigations shall only address public lands administered by BLM. Private, state and county in-holdings will not be evaluated.

III. Tribal and Interested Party Consultation

Field Offices will be responsible for contacting and consulting with Tribes and interested parties as outlined in 36 CFR 800 and the 8120 manual guidelines. This will also meet BLM government-to-government responsibilities for consultation.

IV. Evaluation

Determinations of eligibility to the National Register of Historic Places shall only be undertaken on sites or properties where it can be reasonably ascertained or it is ambiguous that range activities will continue to impact sites and further consultation with SHPO could be required.

V. Effect

A. Range undertakings where historic properties are not affected may be implemented under the Protocol without prior consultation with SHPO. These undertakings shall be documented in the Protocol Annual Report.

B. Range undertakings where historic properties are identified within APEs, and where historic values are likely to be affected or diminished by project activities, require consultation with SHPO, and ACHP if necessary, on a case-by-case basis, pursuant to 36 CFR 800.5-6.

VI. Treatment

Standard Protective Measures can include but are not limited to:

A. Fencing or exclosure of livestock from the cultural resource sufficient to ensure long-term protection, according to the following specifications:

1. the area within the exclosure must be inventoried to locate and record all cultural resources; and

2. the exclosure (i.e.) fence must not divide a cultural resource so that a portion is outside of the fence; and

3. the cultural resource specialist will determine the appropriate buffer to be provided between the cultural resource and its exclosing fence.

B. Relocation of livestock management facilities / improvements at a distance from cultural resources sufficient to ensure their protection from concentrated grazing use.

C. Removal of natural attractants of livestock to a cultural resource when such removal, in the judgment of the cultural resource specialist, will create no disturbance to the cultural resource (e.g. removing vegetation that is providing shade).

D. Removal of the area(s) containing cultural resources from the allotment.

E. Livestock herding away from cultural resource sites.

F. Use salting and/or dust bags or dippers placement as a tool to move concentrations of cattle away from cultural sites.

G. Locating sheep bedding grounds away from known cultural resource sites.

H. Other protective measures established in consultation with and accepted by SHPO.

The Standard Protective Measures defined above may be used to halt or minimize on-going damage to cultural resources. If the standard protection measures can be effectively applied, then no evaluation or further consultation with SHPO on effects will be necessary. The adopted Standard Protective Measures shall be added to grazing permit "Terms and Conditions" as appropriate for each grazing permit issued or reissued as fully processed permits (completed NEPA analysis, consultation, and decision). The "Terms and Conditions" for each permit may be modified by the addition, deletion, or revision of Standard Protective Measures as described in Section VII of these Supplemental Procedures.

VII. Monitoring

A. Field Offices shall adopt the following monitoring guidelines:

1. monitoring shall be conducted yearly and documented to ensure that prescribed treatment measures are effective; and

2. when damaging effects to cultural resources from grazing activities are ambiguous or indeterminate, Field Offices shall conduct monitoring, as necessary, to determine if degrading effects are resulting from grazing activities and if they are continuing to affect the characteristics that may make properties eligible to the NRHP or if they are otherwise adversely affecting the values of cultural resources.

B. When monitoring has yielded sufficient data to make effect determinations, the following apply:

1. When no additional degrading damage will likely occur because standard treatment measures are adequate to prevent further damage from rangeland management activities, SHPO consultation on a case-by-case basis is unnecessary.

2. When no additional degrading damage will likely occur, even without implementation of standard treatment measures, then no further treatment

consideration of those resources is necessary, even if past grazing impacts to the ground surface are evident.

3. When additional degrading damage will likely occur, mitigation of adverse effects shall be addressed on a case-by-case basis, pursuant to 36 CFR 800.5-6.

When monitoring results or case-by-case consultation result in a determination concerning addition or deletion of Special Treatment Measure(s) for a specific allotment, then that Measure(s) will be added to, or deleted from, the Terms and Conditions of the fully processed permit for that allotment.

VIII. Disagreements

When a Field Office Cultural Heritage staff and Field Office Manager fail to agree on inventory, evaluation, monitoring, and application of Special Treatment Measures, then the Field Office Manager shall initiate consultation with the SHPO.

IX. Reporting and Amending

A. Each participating Field Office shall report annually to the SHPO and the State Office, a summary of activities carried out under this amendment to the Protocol during the previous fiscal year. The reporting shall be included in the Protocol Annual Report.

B. Annual reports shall summarize activities carried out under this amendment. These reports are not meant to be compilations of the individual project reports prepared for the range projects; they are meant to be programmatic summaries of data and significant findings.

C. Annual reporting shall include at least three major sections:

1. schedules and status of accomplishments in meeting schedules for cultural resource activities in relation to the range management program as identified in Stipulation I; and

2. results, as annual summaries of accomplishment and significant findings resulting from rangeland management cultural resource activities; and

3. appendices to the report that would include project, coverage and cultural resource location maps and tabular summaries of total number of cultural resources located, new cultural resources located, cultural resources evaluated, types of treatment measures employed at each location, and cultural resources monitored.

D. Annual reports may contain recommendations for new or revised treatment measures.

E. Either party to this amendment may initiate a process to negotiate new or revised treatment measures or to revise the schedule of inventories. When such a process is initiated, the parties to this amendment shall negotiate new or revised treatment measures or schedule of inventories and such revisions or additions shall be issued as Attachments to these Supplemental Procedures.

STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, CALIFORNIA

JAMES WESLEY ABBOTT

FOR By Mike Pool Date: 8/17/04

STATE HISTORIC PRESERVATION OFFICER, CALIFORNIA

milford wayne donaldson

By Milford Wayne Donaldson Date: 8/18/2004

SUPPLEMENTAL PROCEDURES FOR FLUID MINERALS LEASING

A CULTURAL RESOURCES AMENDMENT
TO
THE STATE PROTOCOL AGREEMENT

BETWEEN

CALIFORNIA BUREAU OF LAND MANAGEMENT
AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER

Section 106 of the National Historic Preservation Act (NHPA) requires agencies to make a reasonable and good faith effort to identify historic properties that may be affected by an agency's undertakings and take those effects into account in making decisions. Leasing actions are undertakings for the purpose of NHPA. For the purposes of this document, Fluid Minerals leasing activities include both oil and gas and geothermal development. These undertakings include environmental analysis and decision making for landscape level proposals for the leasing of lands. These supplemental procedures specifically address the appropriate identification efforts for Section 106 compliance under NHPA at the leasing stage. Site-specific land disturbing activities, which may be associated with these undertakings, would be identified and addressed in environmental documentation and decision making at a later date.

These supplemental procedures are an amendment to the State Protocol dated October 15, 2012.

This amendment deviates from the Protocol in *Section VI.c., Thresholds for SHPO Review*, which states, "*Where BLM proposes to complete less than a BLM Class III survey of the affected (selected) lands and when informal consultation with SHPO staff yields consensus agreement to proceed with formal consultation*" by allowing for a Class I record search and Tribal consultation to be considered adequate inventory and identification methodology for the purposes of Fluid Minerals decisions at the leasing stage. BLM shall require a Class III survey of all leased lands when surface occupancy is requested. In addition, BLM will make every reasonable effort to avoid effects to historic properties identified as a result of these surveys. The Class I record search and tribal consultation at the time of leasing are proposed to identify any potential adverse effects to historic properties which should be considered during the earliest phases of planning. This amendment would allow for this deviation from the protocol

as long as Protocol direction, the BLM 8100 Series Manual guidelines (Protocol Appendix B), and the following specific stipulations are followed:

I. Inventory Methodology

At the leasing stage the appropriate level of inventory is a Class I record search and consultation with Tribes, on a government-to-government basis, and with tribal communities and traditional practitioners. Completion of the Class I record search and consultation with Tribes and tribal communities allows for the identification of historic properties that, due to their size, spacing, and/or sensitivity, cannot be adequately considered or protected following issuance of a lease.

A Class I record search for the purposes of this amendment will include reviewing all pertinent existing documentation to assess the presence of significant historic properties.

II. Tribal and Interested Party Consultation

Field Offices will be responsible for contacting and consulting with Tribes, tribal communities and traditional practitioners, and other interested parties as outlined in 36 CFR 800 and the BLM 8120 Series Manual guidelines. This will also meet the BLM's government-to-government responsibilities for consultation. As this consultation will be conducted on a landscape level scale, it is imperative to provide information and maps that are easily understood by tribal members in the consultation process.

III. Findings and Effects

A. Where no significant historic properties or properties of significance to the Tribes, tribal communities, or other interested parties are identified, then "No Adverse Effect" shall be the appropriate determination for the undertaking. It should be noted that as the development of the lease progresses and specific ground disturbing actions are identified, there may be a potential for effect; however, historic properties can typically be avoided as ground disturbing activities are identified and considered under the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) as follows:

(1) *No historic properties affected.* If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the agency official shall provide documentation of this finding, as set forth in

§ 800.11(d), and II.B. of the Protocol to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking.

(2) *Criteria of adverse effect.* An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association as set forth in § 800.5(a)(1) reaching a threshold for SHPO review as set forth in VI.A of the Protocol. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative. In the event of a finding of adverse effect, consultation will be conducted using 36 CFR Part 800.

(3) *Finding of no adverse effect.* The agency official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (2) of this section or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects as set forth in § 800.5(b.

B. Where a search of the Class I records or Tribal consultation identifies significant historic properties or properties of cultural significance to Tribes and traditional practitioners (such as Traditional Cultural Properties), which may be affected by this landscape level proposal, consultation with the SHPO under 36 CFR 800 will be required.

C. All documentation and determinations associated with these undertakings shall be completed and considered within the timeframe of the NEPA process for the undertaking and prior to any decision point for lease issuance. Initiation of Section 106 consultation will begin no later than the initiation of the NEPA process.

IV. Reporting

A. Each participating Field Office shall report annually to the SHPO and the State Office, a summary of activities carried out under this amendment to the Protocol during the previous fiscal year. The reporting shall be included in the Protocol Annual Report.

B. Annual reports shall summarize activities carried out under this amendment. These reports are not meant to be compilations of the individual project reports prepared for leasing projects; they are meant to be programmatic summaries of data and significant findings.

V. Revision and Termination

The parties to this Amendment shall review the terms of this Amendment during scheduled reviews of the Statewide Protocol Agreement in order to determine whether continuation, revision, or termination is appropriate. Any party may propose revisions or terminate this Amendment by providing 90 days notice of the intent to terminate; all parties to this Amendment shall enter active negotiations to avoid termination.

This Amendment shall expire and have no further force or effect at midnight of the third (3rd) anniversary of the Amendment's date of execution unless a continuation for a specific period is mutually agreed between all parties.

STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, CALIFORNIA

Angie Lara

for By James G. Kenna Date: 2/14/13

STATE HISTORIC PRESERVATION OFFICER, CALIFORNIA

Carol Rowland-Nawi

By Carol Rowland-Nawi Date: 2-13-13

STATE HISTORIC PRESERVATION OFFICER, NEVADA (Acting)

Rebecca Palmer

By Rebecca Palmer Date: 2/15/13

SUPPLEMENTAL PROCEDURES FOR SAGE STEPPE ECOSYSTEM RESTORATION

A CULTURAL RESOURCES AMENDMENT
TO
THE STATE PROTOCOL AGREEMENT

AMONG

CALIFORNIA BUREAU OF LAND MANAGEMENT
AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER

The California Bureau of Land Management (BLM) and the U.S. Forest Service intend to restore the sage steppe ecosystem in northeastern California and northwestern Nevada. These supplemental procedures provide the process and means through which the BLM shall comply with Section 106 of the National Historic Preservation Act (NHPA) as sage steppe ecosystem restoration is implemented in the Alturas, Eagle Lake, and Surprise Field Offices (Northeastern Field Offices).

The strategy of the Sage Steppe Ecosystem Restoration Program (SSER) is generational in temporal scope, extending across 30 years, and landscape in geographic scale, covering over 1.1 million acres of public lands under BLM administration. The scale of the program is segmented into three 10 year blocks with increasing acreages treated in each successive block.

The vegetation treatment and restoration methods envisioned by the BLM have the potential to affect cultural resources and thus are undertakings for the purposes of compliance with the NHPA. The NHPA requires agencies to make a reasonable and good faith effort to identify historic properties that may be affected by an agency's undertakings and to take those effects into account in making decisions. The substantial scope of the Sage Steppe Ecosystem Restoration Program on public lands has led BLM to develop these supplemental procedures for compliance with Section 106 of the NHPA.

The purposes of these supplemental procedures are to provide a thoughtful alternative to complete archaeological survey in advance of restoration activities; to reduce archaeological survey costs; to address data gaps in archaeological information; to develop, test, and refine geographic models of archaeological sensitivity; to gain and refine understanding of the impacts and effects of restoration activities including use of mechanized equipment; and to develop and refine Standard Resource Protection Measures (SRPM). The developed models and SRPM will lead to greater reduced costs as they are refined and implemented with expectations of the greatest cost savings as increasing acreages are treated.

These supplemental procedures are an amendment to the Statewide Protocol Agreement (Protocol) dated October 15, 2007. These procedures deviate from the Protocol in *Section V.D.* and in Section *VI. Thresholds for SHPO Review,* which states "*Where BLM proposes to complete less than a BLM Class III survey of the affected (selected) lands and when informal*

consultation with SHPO staff yields consensus agreement to proceed with formal consultation" by allowing for less than a Class III survey. For the purposes of these Supplemental Procedures the term "SHPO" shall refer to the State Historic Preservation Offices of California and of Nevada.

It is the intention of BLM that adoption of these supplemental procedures will lead ultimately to an approach to landscape level inventory that can be applied to other classes of large scale undertakings.

I. Tribal and other Native American Consultation

In order to fulfill BLM government-to-government consultation responsibilities and to comply with 36 CFR 800 procedures, Field Offices shall be responsible for contacting and consulting with Tribes, tribal communities and traditional practitioners, and other interested parties as outlined in BLM 8120 Series Manual guidelines (Protocol Appendix B) Tribal consultation initiated during preparation of the Environmental Impact Statement for the SSER Strategy shall continue throughout implementation of the Strategy and these supplemental procedures.

II. Program Level Requirements and Procedures

BLM support of all elements and phases of these supplemental procedures, whether they apply to a programmatic level or to individual projects, is required for successful implementation. It is the responsibility of each Field Office manager to ensure that adequate funding and time are provided for cultural resources staff and others to complete the work prescribed in these supplemental procedures. Although these supplemental procedures are intended to encourage cooperation and coordination among the Northeastern Field Offices, should an individual Field Office fail to implement all conditions of this amendment, then that Field Office shall operate under the regular provisions of the Protocol (Section VI.K) and not under the terms of these supplemental procedures.

Cultural resources shall be taken into account from the earliest stages of project planning. Cultural Resource Staff shall have a key role in all stages of project development and implementation. Coordination among the cultural resources staff of the Northeastern Field Offices, particularly at all stages of the SSER program planning and implementation, shall occur to ensure the success of this program.

A core feature of this amendment is the compilation, testing, and refinement of a site sensitivity model. The purposes of such a model are to predict sensitivity of landforms so that appropriate inventory strategies can be designed. Cultural resources staff from the Northeastern Field Offices shall compile existing site sensitivity models, refine those models, and develop and test a comprehensive regional model to be used in the planning and implementation stages of SSER activities. However, projects may be implemented prior to completion of the compilation, testing, and refinement of a site sensitivity model provided that the other provisions of Stipulation II are met.

In collaboration with a BLM multi resource interdisciplinary team, the Cultural Resource Staff shall assist in a focusing of the geographic scope of the site sensitivity model by precisely identifying the limits of stands of western juniper and incorporating these data into a GIS data set.

In consultation with SHPO and the interdisciplinary team, the Cultural Resource Staff from the Northeastern Field Offices shall develop a body of Standard Resource Protection Measures (SRPM) for use in Sage Steppe Ecosystem Restoration project implementation. These measures will be developed by compiling appropriate existing SRPMs, constructing new measures to address specific projects and impact types, and modifying them as appropriate during the term of these supplemental procedures.

The core organizing principle of these supplemental procedures is adaptive management which encourages the modification of the model of site sensitivity, changes to SRPMs, and adjustments of stipulations for level of inventory over the lifespan of this endeavor.

III. Developing and Maintaining a Database

This Amendment is intended to further knowledge of the distribution of archaeological sites across types of environmental associations, to foster the development of information concerning impacts and effects of vegetation treatments on archaeological sites, and to encourage communication and sharing of information among multiple parties, many of whom are external to the Bureau of Land Management. For those reasons, these Supplemental Procedures require the establishment and ongoing maintenance of an electronic database. The database will be in the form of a shared drive that will be maintained and utilized by the Northeastern Field Offices.

The scope of that database shall include, but not be limited to, such cultural resource documents as overviews, studies, and sensitivity models; spreadsheets or other compilations of results and findings from the monitoring program and schedules; reports of accomplishments made under the covering of these Supplemental Procedures; and modifications of SRPMs and stipulations for level of inventory.

The contents of this database shall be made available to the SHPO and to federally recognized tribes by a means which shall be developed subsequent to the adoption of these Supplemental Procedures. This database is a compilation of information for the purpose of facilitating communication and completing the terms of this amendment. As such, it is separate from existing spatial databases maintained either by the SHPO or by BLM.

IV. Specifying and Implementing Inventory

Cultural Resources Staff shall specify the level of inventory based on the treatment methodology and/or sensitivity model and best professional judgment. Specific levels of inventory are stipulated in this Section and these levels of inventory would become effective upon the execution of these Supplemental Procedures. However, it is the purpose of these Supplemental Procedures that advances in understanding of impacts and effects of vegetation

treatments and continued refinement of the sensitivity model shall provide an opportunity to adjust the level of inventory.

A sensitivity model shall be developed by the Northeastern Field Offices for northeast California and northwest Nevada within the first year of implementation of these Supplemental Procedures. The model will be provided to the SHPOs for review and comment. The model will also outline a strategy for testing the assumptions presented and how the strategy will be implemented and refined. In applying sensitivity to inventory strategies for the first year, professional judgment by the Field Archaeologists shall be utilized in developing the survey strategy; consultation with SHPOs will be required prior to application per requirements of our Protocol.

Stipulated levels of inventory by area sensitivity that shall be applied at the outset of these Supplemental Procedures are:

1. Literature review and Tribal consultation for all sage steppe restoration projects, regardless of type of treatment.
2. Class III surveys in high and moderate sensitivity areas when mechanized vehicular equipment is to be used. Mechanized equipment includes crawler track and rubber tired equipment.
3. Class III inventory in low sensitivity areas in which have been identified as testing areas for the purpose of evaluating predictions of the sensitivity model.
4. Class II inventory in low sensitivity areas which have not been identified as testing areas for the purpose of evaluation predictions of the sensitivity model.

Areas which have been previously inventoried and meet current professional standards for inventory may require no further inventory.

If prescribed fire is utilized as a treatment for SSER, then the inventory methodology identified in the Supplemental Procedures for Prescribed Fire (Protocol Appendix E) may be utilized.

Inventory methods may be refined depending on the type of treatment utilized for SSER, i.e. mechanized vehicular equipment, hand treatment, over the snow or frozen ground treatments and as previously mentioned, prescribed fire.

Lack of consensus between the Field Office Manager and Cultural Resource Staff regarding level of inventory stipulations shall be resolved according to the process set out in Section VI.I of the Protocol.

V. Evaluations

Formal determinations of eligibility to the National Register of Historic Places shall only be undertaken on sites or properties where it can be reasonably ascertained or it is uncertain that project activities will impact sites and that further consultation with SHPO could be required.

VI. Standard Resource Protection Measures

Cultural Resources Staff shall specify the application of SRPMs for individual sites which would be impacted by vegetation treatment measures. Specific SRPMs are stipulated in this Section and these SRPMs would become effective upon the execution of these Supplemental Procedures:

1. Flag-and-avoid with buffering, edge feathering / gradual reduction of standing juniper, and felled juniper as livestock barriers.
2. Lop-and-scatter with constraints on heavy fuel loads left on archaeological sites.
3. Mechanical treatment on archaeological sites with prescriptions and active monitoring by Cultural Resource Staff or other professional archaeologist.
4. Areas left untreated where high densities of archaeological sites have been identified.
5. Hand treatment on archaeological sites in areas of heavy juniper fuel load where the hand treatment will not impact archaeological data associated with the site.

However, it is the purpose of these Supplemental Procedures that advances in understanding of impacts and effects of vegetation treatments and continued refinement of the sensitivity model shall provide an opportunity to modify SRPMs and add additional SRPMs in consultation with SHPO. The SRPM defined above may be utilized as a condition for project implementation to avoid impacts to cultural resources. If the SRPM can be effectively applied, then no evaluation or further consultation with SHPO on effects will be necessary; if SRPMs cannot be applied or are not effective, then evaluations for eligibilities to NRHP and effects shall be required. The adopted SRPM shall be documented in contracts for implementation of projects. These SRPMs are implemented not only to protect cultural resources from project implementation but also to provide for best management of the cultural resources.

VII. Monitoring

These Supplemental Procedures are intended to facilitate adaptive management. Thoughtful and careful monitoring is the primary information source for making adjustments to inventory levels, SRPMs, and other aspects of management of cultural resources during sage steppe restoration projects. The monitoring program associated with this Amendment is critical at the earliest stages of implementation of this program as it will validate or assist in refining the applicability of survey strategies initiated and the application and refinement of SRPMs. Monitoring is critical to the cost that could be saved as the SSER progresses.

Monitoring has two fundamental purposes. These are:

1. Testing the predictions of the sensitivity model against findings from Class III surveys
2. Assessing the success of applications of the SRPMs to archaeological sites.

The monitoring program is intended to be incorporated into the normal program of work for compliance with these Supplemental Procedures. Provision of adequate funding and time

for conducting planned monitoring activities is the responsibility of each Field Office Manager.

VII. Reporting

A. Each participating Field Office shall report annually a summary of activities, including monitoring, carried out under this amendment to the Protocol during the previous fiscal year to the SHPO and the State Office. The reporting will either take place annually and be referenced in the Protocol Annual Report or it may be done through incorporation into the Protocol Annual Report.

B. Annual reports shall summarize activities carried out under this amendment. These reports are not meant to be compilations of the individual project reports prepared for sage steppe restoration projects; they are meant to be programmatic summaries of data and important findings.

V. Revision and Termination

The parties to this Amendment shall review the terms of this Amendment during scheduled reviews of the Statewide Protocol Agreement in order to determine whether continuation, revision, or termination is appropriate. Any party may propose revisions or terminate this Amendment by providing 90 days notice of the intent to terminate; all parties to this Amendment shall enter active negotiations to avoid termination. Revision may include changes and additions to the SRPMs and to levels of inventory by sensitivity or project type.

This Amendment shall expire and have no further force or effect at midnight of the tenth anniversary of the Amendment's date of execution unless continuation for a specific period is mutually agreed between all parties.

STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, CALIFORNIA

James Wesley Abbott

for By Mike Pool Date: DEC. 18, 2008

STATE HISTORIC PRESERVATION OFFICER, CALIFORNIA

milford wayne donaldson

By Milford Wayne Donaldson, FAIA Date: 23 DEC 2008

STATE HISTORIC PRESERVATION OFFICER, NEVADA

Ronald M. James

By Ronald M. James Date: 21 January 2009

I concur

FIELD MANAGER, ALTURAS FIELD OFFICE

By Timothy Burke Date: 12/16/08

I concur

FIELD MANAGER, EAGLE LAKE FIELD OFFICE

By Dayne Barron

Date: 12/17/07

I concur

FIELD MANAGER, SURPRISE FIELD OFFICE

By Shane DeForest Date: 12-16-08

PART 2 ADDITIONAL REFERENCES

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
February 9, 2012

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:

1. To "advise and assist as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;"

2. To "maintain inventories" of historic properties in cooperation with Federal and state agencies; and

3. To "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 4 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 the BLM and SHPO reach agreement on resolving the adverse effect(s);

(3) The 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) The 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) The 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 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 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 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 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 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) Non-routine 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 the 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 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 the 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 the 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

The 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 the 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 the 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 the 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, the BLM will:

1. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the other signatories. The signatories shall provide the 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, the 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. The 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, the BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the 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. The 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.

ARCHEOLOGY AND HISTORIC PRESERVATION:

Secretary of the Interior's Standards and Guidelines
[As Amended and Annotated]

The BLM follows the Secretary's Standards and Guidelines as written by the National Park Service (NPS). Sections that have been deleted by the NPS and links to websites are not shown in this document.

Agency: National Park Service, Department of the Interior. Action: Notice.

Summary: This notice sets forth the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. These standards and guidelines are not regulatory and do not set or interpret agency policy. They are intended to provide technical advice about archeological and historic preservation activities and methods.

Dates: These Standards and Guidelines are effective on September 29, 1983.*

***[The National Park Service has not republished "The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" since 1983 (48 FR 44716). NPS has updated portions of the Standards and Guidelines. Where NPS has officially revised portions and published the revisions in the Federal Register, such as the Historic Preservation Project standards and the treatment definitions, we strike through the 1983 language and provide a link to the new material. Where the 1983 language is not current but NPS has not officially replaced it, such as the technical information, we strike through the out-of-date materials. We then provide current technical information and links to NPS and partner websites where this information is available.**

Language within brackets has *not* been published for effect in the Federal Register as a part of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.]

Supplementary Information: The Standards and Guidelines are prepared under the authority of sections 101(f) (g), and (h), and section 110 of the National Historic Preservation Act of 1966, as amended. State Historic Preservation Officers: Federal Preservation Officers including those of the Department of Agriculture, Department of Defense, Smithsonian Institution and General Services Administration; the Advisory Council on Historic Preservation; the National Trust for Historic Preservation; and other interested parties were consulted during the development of the Standards and Guidelines; additional consultation with these agencies will occur as the Standards and Guidelines are tested during their first year of use.

Purpose

The proposed Standards and the philosophy on which they are based result from nearly twenty years of intensive preservation activities at the Federal, State, and local levels.

The purposes of the Standards are:

- To organize the information gathered about preservation activities.
- To describe results to be achieved by Federal agencies, States, and others when planning for the identification, evaluation, registration and treatment of historic properties.

- To integrate the diverse efforts of many entities performing historic preservation into a systematic effort to preserve our nation's culture heritage.

Uses of the Standards
The following groups or individuals are encouraged to use these Standards:

1. Federal agency personnel responsible for cultural resource management pursuant to section 110 of the National Historic Preservation Act, as amended, in areas under Federal jurisdiction. A separate series of guidelines advising Federal agencies on their specific historic preservation activities under section 110 is in preparation.
2. State Historic Preservation Offices responsible under the National Historic Preservation Act, as amended, by making decisions about the preservation of historic properties in their States in accordance with appropriate regulations and the Historic Preservation Fund Grants Management Manual. The State Historic Preservation Offices serve as the focal point for preservation planning and act as a central state-wide repository of collected information.
3. Local governments wishing to establish a comprehensive approach to the identification, evaluation, registration and treatment of historic properties within their jurisdictions.
4. Other individuals and organizations needing basic technical standards and guidelines for historic preservation activities.

Organization
This material is organized in three sections: Standards; Guidelines; and recommended technical sources, cited at the end of each set of guidelines. Users of this document are expected to consult the recommended technical sources to obtain guidance in specific cases.

Review of the Standards and Guidelines
The Secretary of the Interior's Standards for Rehabilitation have recently undergone extensive review and their guidelines made current after 5 years of field use. Users and other interested parties are encouraged to submit written comments on the utility of these Standards and Guidelines except for the Rehabilitation Standards mentioned above. This edition will be thoroughly reviewed by the National Park Service (including consultation with Federal and State agencies), after the end of its first full year of use and any necessary modifications will be made. Subsequent reviews are anticipated as needed.

Secretary of the Interior's Standards for Preservation Planning

Preservation planning is a process that organizes preservation activities (identification, evaluation, registration and treatment of historic properties) in a logical sequence. The Standards for Planning discuss the relationship among these activities while the remaining activity standards consider how each activity should be carried out. The Professional Qualifications Standards discuss the education and experience required to carry out various activities.

The Standards for Planning outline a process that determines when an area should be examined for historic properties, whether an identified property is significant, and how a significant property should be treated.

Preservation planning is based on the following principles:

- Important historic properties cannot be replaced if they are destroyed. Preservation planning provides for conservative use of these properties, preserving them in place and avoiding harm when possible and altering or destroying properties only when necessary.
- If planning for the preservation of historic properties is to have positive effects, it must begin before the identification of all significant properties has been completed. To make responsible

decisions about historic properties, existing information must be used to the maximum extent and new information must be acquired as needed.

- Preservation planning includes public participation. The planning process should provided a forum for open discussion of preservation issues. Public involvement is most meaningful when it is used to assist in defining values of properties and preservation planning issues, rather than when it is limited to review of decisions already made. Early and continuing public participation is essential to the broad acceptance of preservation planning decisions.

Preservation planning can occur at several levels or scales: in a project area; in a community; in a State as a whole; or in the scattered or contiguous landholdings of a Federal agency. Depending on the scale, the planning process will involve different segments of the public and professional communities and the resulting plans will vary in detail. For example, a State preservation plan will likely have more general recommendations than a plan for a project area or a community. The planning process described in these Standards is flexible enough to be used at all levels while providing a common structure which promotes coordination and minimizes duplication of effort. The Guidelines for Preservation Planning contain additional information about how to integrate various levels of planning.

Standard I. Preservation Planning Establishes Historic Contexts

Decisions about the identification, evaluation, registration and treatment of historic properties are most reliably made when the relationship of individual properties to other similar properties is understood. Information about historic properties representing aspects of history, architecture, archeology, engineering and culture must be collected and organized to define these relationships. This organizational framework is called a "historic context." The historic context organizes information based on a cultural theme and its geographical and chronological limits. Contexts describe the significant broad patterns of development in an area that may be represented by historic properties. The development of historic contexts is the foundation for decisions about identification, evaluation, registration and treatment of historic properties.

Standard II. Preservation Planning Uses Historic Contexts To Develop Goals and Priorities for the Identification, Evaluation, Registration and Treatment of Historic Properties

A series of preservation goals is systematically developed for each historic context to ensure that the range of properties representing the important aspects of each historic context is identified, evaluated and treated. Then priorities are set for all goals identified for each historic context. The goals with assigned priorities established for each historic context are integrated to produce a comprehensive and consistent set of goals and priorities for all historic contexts in the geographical area of a planning effort.

The goals for each historic context may change as new information becomes available. The overall set of goals and priorities are then altered in response to the changes in the goals and priorities for the individual historic contexts.

Activities undertaken to meet the goals must be designed to deliver a usable product within a reasonable period of time. The scope of the activity must be defined so the work can be completed with available budgeted program resources.

Standard III. The Results of Preservation Planning Are Made Available for Integration Into Broader Planning Processes

Preservation of historic properties is one element of larger planning processes. Planning results, including goals and priorities, information about historic properties, and any planning documents, must be

transmitted in a usable form to those responsible for other planning activities. Federally mandated historic preservation planning is most successfully integrated into project management planning at an early stage. Elsewhere, this integration is achieved by making the results of preservation planning available to other governmental planning bodies and to private interests whose activities affect historic properties.

Secretary of the Interior's Guidelines for Preservation Planning

Introduction

These Guidelines link the Standards for Preservation Planning with more specific guidance and technical information. They describe one approach to meeting the Standards for Preservation Planning. Agencies, organizations or individuals proposing to approach planning differently may wish to review their approaches with the National Park Service.

The Guidelines are organized as follows:
Managing the Planning Process
Developing Historic Contexts
Developing Goals for a Historic Context
Integrating Individual Historic Contexts—Creating the Preservation Plan
Coordinating with Management Frameworks
Recommended Sources of Technical Information

Managing the Planning Process

The preservation planning process must include an explicit approach to implementation, a provision for review and revision of all elements, and a mechanism for resolving conflicts within the overall set of preservation goals and between this set of goals and other land use planning goals. It is recommended that the process and its products be described in public documents.

Implementing the Process
The planning process is a continuous cycle. To establish and maintain such a process, however, the process must be divided into manageable segments that can be performed, within a defined period, such as a fiscal year or budget cycle. One means of achieving this is to define a period of time during which all the preliminary steps in the planning process will be completed. These preliminary steps would include setting a schedule for subsequent activities.

Review and Revision
Planning is a dynamic process. It is expected that the content of the historic contexts described in Standard I and the goals and priorities described in Standard II will be altered based on new information obtained as planning proceeds. The incorporation of this information is essential to improve the content of the plan and to keep it up-to-date and useful. New information must be reviewed regularly and systematically, and the plan revised accordingly.

Public Participation
The success of the preservation planning process depends on how well it solicits and integrates the views of various groups. The planning process is directed first toward resolving conflicts in goals for historic preservation, and second toward resolving conflicts between historic preservation goals and other land use planning goals. Public participation is integral to this approach and includes at least the following actions:

1. Involving historians, architectural historians, archeologists, folklorists and persons from related disciplines to define, review and revise the historic contexts, goals and priorities;
2. Involving interested individuals, organizations and communities in the planning area in identifying the kinds of historic properties that may exist and suitable protective measures;
3. Involving prospective users of the preservation plan in defining issues, goals and priorities;
4. Providing for coordination with other planning efforts at local, State, regional and national levels, as appropriate; and
5. Creating mechanisms for identifying and resolving conflicts about historic preservation issues. The development of historic contexts, for example, should be based on the professional input of all disciplines involved in preservation and not be limited to a single discipline. For prehistoric archeology, for example, data from fields such as geology, geomorphology and geography may also be needed. The individuals and organizations to be involved will depend, in part, on those present or interested in the planning area.

Documents Resulting from the Planning Process
In most cases, the planning process produces documents that explain how the process works and that discuss the historic contexts and related goals and priorities. While the process can operate in the absence of these documents, planning documents are important because they are the most effective means of communicating the process and its recommendations to others. Planning documents also record decisions about historic properties.

As various parts of the planning process are reviewed and revised to reflect current information, related documents must also be updated. Planning documents should be created in a form that can be easily revised. It is also recommended that the format language and organization of any documents or other materials (visual aids, etc.) containing preservation planning information meet the needs of prospective users.

Developing Historic Contexts

General Approach
Available information about historic properties must be divided into manageable units before it can be useful for planning purposes. Major decisions about identifying, evaluating, registering and treating historic properties are most reliably made in the context of other related properties. A historic context is an organizational format that groups information about related historic properties, based on a theme, geographic limits and chronological period. A single historic context describes one or more aspects of the historic development of an area, considering history, architecture, archeology, engineering and culture and identifies the significant patterns that individual historic properties represent, for example, Coal Mining in Northeastern Pennsylvania between 1860 and 1930. A set of historic contexts is a comprehensive summary of all aspects of the history of the area.

The historic context is the cornerstone of the planning process. The goal of preservation planning is to identify, evaluate, register and treat the full range of properties representing each historic context, rather than only one or two types of properties. Identification activities are organized to ensure that research and survey activities include properties representing all aspects of the historic context. Evaluation uses the historic context as the framework within which to apply the criteria for evaluation to specific properties or property types. Decisions about treatment of properties are made with the goal of treating the range of properties in the context. The use of historic contexts in organizing major preservation activities ensures that those activities result in the preservation of the wide variety of properties that represent our history, rather than only a small, biased sample of properties.

Historic contexts, as theoretical constructs, are linked to actual historic properties through the concept of property type. Property types permit the development of plans for identification, evaluation and treatment even in the absence of complete knowledge of individual properties. Like the historic context, property

types are artificial constructs which may be revised as necessary. Historic contexts can be developed at a variety of scales appropriate for local, State and regional planning. Give the probability of historic contexts overlapping in an area, it is important to coordinate the development and use of contexts at all levels. Generally, the State Historic Preservation Office possesses the most complete body of information about historic properties and, in practice, is in the best position perform this function.

The development of historic contexts generally results in documents that describe the prehistoric processes or patterns that define the context. Each of the contexts selected should be developed to the point of identifying important property types to be useful in later preservation decision-making. The amount of detail included in these summaries will vary depending on the level (local, State, regional, or national) at which the contexts are developed and on their intended uses. For most planning purposes, a synopsis of the written description of the historic context is sufficient.

Creating a Historic Context
Generally, historic contexts should not be constructed so broadly as to include all property types under a single historic context or so narrowly as to contain only one property type per historic context. The following procedures should be followed in creating a historic context.

1. Identify the concept, time period and geographical limits for the historic context

Existing information, concepts, theories, models and descriptions should be used as the basis for defining historic contexts. Biases in primary and secondary sources should be identified and accounted for when existing information is used in defining historic contexts.
The identification and description of historic contexts should incorporate contributions from all disciplines involved in historic preservation. The chronological period and geographical area of each historic context should be defined after the conceptual basis is established. However, there may be exceptions, especially in defining prehistoric contexts where drainage systems or physiographic regions often are outlined first. The geographical boundaries for historic contexts should not be based upon contemporary political, project or other contemporary boundaries if those boundaries do not coincide with historical boundaries. For example, boundaries for prehistoric contexts will have little relationship to contemporary city, county or State boundaries.

2. Assemble the existing information about the historic context

a. Collecting information: Several kinds of information are needed to construct a preservation plan. Information about the history of the area encompassed by the historic context must be collected, including any information about historic properties that have already been identified. Existing survey or inventory entries are an important source of information about historic properties. Other sources may include literature on prehistory, history, architecture and the environment; social and environmental impact assessments; county and State land use plans; architectural and folklife studies and oral histories; ethnographic research; State historic inventories and registers; technical reports prepared for Section 106 or other assessments of historic properties; and direct consultation with individuals and organized groups.

   In addition, organizations and groups that may have important roles in defining historic contexts and values should be identified. In most cases a range of knowledgeable professionals drawn from the preservation, planning and academic communities will be available to assist in defining contexts and in identifying sources of information. In other cases, however, development of historic contexts may occur in areas whose history or prehistory has not been extensively studied. In these situations, broad general historic contexts should be initially identified using available literature and expertise, with the expectation that the contexts will be revised and subdivided in the future as primary source research and field survey are conducted. It is also important to identify such sources of information as existing planning data, which is needed to establish goals

for identification, evaluation and treatment, and to identify factors that will affect attainment of those goals.

The same approach for obtaining information is not necessarily desirable for all historic contexts. Information should not be gathered without first considering its relative importance to the historic context, the cost and time involved, and the expertise required to obtain it. In many cases, for example, published sources may be used in writing initial definitions of historic contexts; archival research or field work may be needed for subsequent activities.

b. Assessing information: All information should be reviewed to identify bias in historic perspective, methodological approach, or area of coverage. For example, field surveys for archeological sites may have ignored historic archeological sites, or county land use plans may have emphasized only development goals.

3. Synthesize information

The information collection and analysis results in a written narrative of the historic context. This narrative provides a detailed synthesis of the data that have been collected and analyzed. The narrative covers the history of the area from the chosen perspective and identifies important patterns, events, persons or cultural values. In the process of identifying the important patterns, one should consider:

- Trends in area settlement and development, if relevant;
- Aesthetic and artistic values embodied in architecture, construction technology or craftsmanship;
- Research values or problems relevant to the historic context; social and physical sciences and humanities; and cultural interests of local communities; and
- Intangible cultural values of ethnic groups and native American peoples.

4. Define property types

A property type is a grouping of individual properties based on shared physical or associative characteristics. Property types link the ideas incorporated in the theoretical historic context with actual historic properties that illustrate those ideas. Property types defined for each historic context should be directly related to the conceptual basis of the historic context. Property types defined for the historic context "Coal Mining in Northeastern Pennsylvania, 1860-1930" might include coal extraction and processing complexes; railroad and canal transportation systems; commercial districts; mine workers' housing; churches, social clubs and other community facilities reflecting the ethnic origins of workers; and residences and other properties associated with mine owners and other industrialists.

a. Identify property types: The narrative should discuss the kinds of properties expected within the geographical limits of the context and group them into those property types most useful in representing important historic trends.

Generally, property types should be defined after the historic context has been defined. Property types in common usage ("Queen Anne House," "mill buildings" or "stratified sites") should not be adopted without first verifying their relevance to the historic contexts being used.

b. Characterize the locational patterns of property types: Generalizations about where particular types of properties are likely to be found can serve as a guide for identification and treatment. Generalizations about the distribution of archeological properties are frequently used. The distribution of other historic properties often can be estimated based on recognizable historical, environmental or cultural factors that determined their location. Locational patterns of property types should be based upon models that have an explicit theoretical or historical basis and can

be tested in the field. The model may be the product of historical research and analysis ("Prior to widespread use of steam power, mills were located on rivers and streams able to produce water power" or "plantation houses in the Mississippi Black Belt were located on sandy clay knolls"), or it may result from sampling techniques. Often the results of statistically valid sample surveys can be used to describe the locational patterns of a representative portion of properties belonging to a particular property type. Other surveys can also provide a basis for suggesting locational patterns if a diversity of historic properties was recorded and a variety of environmental zones was inspected. It is likely that the identification of locational patterns will come from a combination of these sources. Expected or predicted locational patterns of property types should be developed with a provision made for their verification.

c. Characterize the current condition of property types: The expected condition of property types should be evaluated to assist in the development of identification, evaluation and treatment strategies, and to help define physical integrity thresholds for various property types. The following should be assessed for each property type:
    1. Inherent characteristics of a property type that either contribute to or detract from its physical preservation. For example, a property type commonly constructed of fragile materials is more likely to be deteriorated than a property type constructed of durable materials; structures whose historic function or design limits the potential for alternative uses (water towers) are less likely to be reused than structures whose design allows a wider variety of other uses (commercial buildings or warehouses).
    2. Aspects of the social and natural environment that may affect the preservation or visibility of the property type. For example, community values placed on certain types of properties (churches, historic cemeteries) may result in their maintenance while the need to reuse valuable materials may stimulate the disappearance of properties like abandoned houses and barns.
    3. It may be most efficient to estimate the condition of property types based on professional knowledge of existing properties and field test these estimates using a small sample of properties representative of each type.

5. Identify information needs

Filling gaps in information is an important element of the preservation plan designed for each historic context. Statements of the information needed should be as specific as possible, focusing on the information needed, the historic context and property types it applies to, and why the information is needed to perform identification, evaluation, or treatment activities.

Developing Goals for a Historic Context

Developing Goals
A goal is a statement of preferred preservation activities, which is generally stated in terms of property types.
The purpose of establishing preservation goals is to set forth a "best case" version of how properties in the historic context should be identified, evaluated, registered and treated.

Preservation goals should be oriented toward the greatest possible protection of properties in the historic context and should be based on the principle that properties should be preserved in place if possible, through affirmative treatments like rehabilitation, stabilization or restoration. Generally, goals will be specific to the historic context and will often be phrased in terms of property types. Some of these goals will be related to information needs previously identified for the historic context. Collectively, the goals for a historic context should be a coherent statement of program direction covering all aspects of the context.

For each goal, a statement should be prepared identifying:

1. The goal, including the context and property types to which the goal applies and the geographical area in which they are located;
2. The activities required to achieve the goal;
3. The most appropriate methods or strategies for carrying out the activities;
4. A schedule within which the activities should be completed; and
5. The amount of effort required to accomplish the goal, as well as a way to evaluate progress toward its accomplishment.

Setting priorities for goals
Once goals have been developed they need to be ranked in importance. Ranking involves examining each goal in light of a number of factors.

1. General social, economic, political and environmental conditions and trends affecting (positively and negatively) the identification, evaluation, registration and treatment of property types in the historic context.

   Some property types in the historic context may be more directly threatened by deterioration, land development patterns, contemporary use patterns, or public perceptions of their value, and such property types should be given priority consideration.

2. Major cost or technical considerations affecting the identification, evaluation and treatment of property types in the historic context.

   The identification or treatment of some property types may be technically possible but the cost prohibitive; or techniques may not currently be perfected (for example, the identification of submerged sites or objects, or the evaluation of sites containing material for which dating techniques are still being developed).

3. Identification, evaluation, registration and treatment activities previously carried out for property types in the historic context.

   If a number of properties representing one aspect of a historic context have been recorded or preserved, treatment of additional members of that property type may receive lower priority than treatment of a property type for which no examples have yet been recorded or preserved. This approach ensures that the focus of recording or preserving all elements of the historic context is retained, rather than limiting activities to preserving properties representing only some aspects of the context.

   The result of considering the goals in light of these concerns will be a list of refined goals ranked in order of priority.

Integrating Individual Contexts—Creating the Preservation Plan

When historic contexts overlap geographically, competing goals and priorities must be integrated for effective preservation planning. The ranking of goals for each historic context must be reconciled to ensure that recommendations for one context do not contradict those for another. This important step results in an overall set of priorities for several historic contexts and a list of the activities to be performed to achieve the ranked goals. When applied to a specific geographical area, this is the preservation plan for that area.

It is expected that in many instances historic contexts will overlap geographically. Overlapping contexts are likely to occur in two combinations—those that were defined at the same scale (i.e., textile development in Smithtown 1850-1910 and Civil War in Smithtown 1855-1870) and those defined at different scales (i.e., Civil War in Smithtown and Civil War in the Shenandoah Valley). The contexts may share the same property types, although the shared property types will probably have different levels of importance, or they may group the same properties into different property types, reflecting either a different scale of analysis or a different historical perspective. As previously noted, many of the goals that are formulated for a historic context will focus on the property types defined for that context. Thus it is critical that the integration of goals include the explicit consideration of the potential for shared property type membership by individual properties. For example, when the same property types are used by two contexts, reconciling the goals will require weighing the level of importance assigned to each property type. The degree to which integration of historic contexts must involve reconciling property types may be limited by the coordinated development of historic contexts used at various levels.

Integration with Management Frameworks

Preservation goals and priorities are adapted to land units through integration with other planning concerns. This integration must involve the resolution of conflicts that arise when competing resources occupy the same land base. Successful resolution of these conflicts can often be achieved through judicious combination of inventory, evaluation and treatment activities. Since historic properties are irreplaceable, these activities should be heavily weighted to discourage the destruction of significant properties and to be compatible with the primary land use.

Recommended Sources of Technical Information
Current Recommendations

A Planning Companion: A Guide for State Historic Preservation Planning. Susan L. Henry Renaud, 1983 (draft).
Describes an approach to preservation planning that uses fully developed historic contexts as special technical studies necessary to effective planning and decision-making.

Guidelines for Local Surveys: A Basis for Preservation Planning. (formerly National Register Bulletin 24). Anne Derry, H. Ward Jandl, Carol D. Shull, and Jan Thorman; revised by Patricia L. Parker, 1985.

Local Historic Preservation Plans: A Selected Annotated Bibliography. Neil Gagliardi and Stephen Morris, 1993.
Provides an overview of the range of local historic preservation plans from across the country, including information on how a number of communities have addressed various issues in their preservation plans.

The National Historic Landmarks Program Theme Study and Preservation Planning. Robert S. Grumet. Technical Brief 10, Archeology & Ethnography Program, National Park Service, 1990, revised 1992.

National Park Service, 1994, Thematic Framework.
Use of the National Park Service Thematic Framework need not be limited to the federal level, as the conceptualization it provides can equally inform preservation and interpretation at local, state, and regional levels.

Preparing a Historic Preservation Plan. Bradford J. White and Richard J. Roddewig. Planning Advisory Service Report No. 450, 1994.
Describes components that are important in a good preservation plan and explains how several

communities have carried out preservation planning activities. Available from the American Planning Association, 122 South Michigan Avenue, Suite 1600, Chicago, Illinois 60603-6107; (312) 786-6344.

Protecting Archeological Sites on Private Lands. Susan L. Henry, with Geoffrey M. Gyrisco, Thomas H. Veech, Stephen A. Morris, Patricia L. Parker, and Jonathan P. Rak.
Provides useful information on strategies for protecting archaeological sites in local communities.

Reaching Out, Reaching In: A Guide to Creating Effective Public Participation in State Historic Preservation Planning. Barry R. Lawson, Ellen P. Ryan, and Rebecca Bartlett Hutchison, 1993.
Describes an approach for designing public participation programs for State Historic Preservation Office preservation planning, with a mini-case study from the Maryland Historical Trust. May also be applicable in local community preservation planning settings.

Taking Command of Change: A Practical Guide for Applying the Strategic Development Process in State Historic Preservation Offices. Douglas C. Eadie, 1995.
Describes a strategic planning approach designed to provide practical guidance to SHPOs in managing growth and change.

State Historic Preservation Offices (SHPO)
Each SHPO Office has prepared a list of historic context titles, many, if not all, of which may have been developed and might be available. In addition, some SHPO Offices have developed guidelines for preparing historic contexts for their states.

Secretary of the Interior's Standards for Identification

Identification activities are undertaken to gather information about historic properties in an area. The scope of these activities will depend on: existing knowledge about properties; goals for survey activities developed in the planning process; and current management needs.

Standard I. Identification of Historic Properties Is Undertaken to the Degree Required To Make Decisions

Archival research and survey activities should be designed to gather the information necessary to achieve defined preservation goals. The objectives, chosen methods and techniques, and expected results of the identification activities are specified in a research design. These activities may include archival research and other techniques to develop historic contexts, sampling an area to gain a broad understanding of the kinds of properties it contains, or examining every property in an area as a basis for property specific decisions. Where possible, use of quantitative methods is important because it can produce an estimate, whose reliability may be assessed, of the kinds of historic properties that may be present in the studied area. Identification activities should use a search procedure consistent with the management needs for information and the character of the area to be investigated. Careful selection of methods, techniques and level of detail is necessary so that the gathered information will provide a sound basis for making decisions.

Standard II. Results of Identification Activities Are Integrated Into the Preservation Planning Process

Results of identification activities are reviewed for their effects on previous planning data. Archival research or field survey may refine the understanding of one or more historic contexts and may alter the need for additional survey or study of particular property types. Incorporation of the results of these activities into the planning process is necessary to ensure that the planning process is always based on the best available information.

Standard III. Identification Activities Include Explicit Procedures for Record-Keeping and Information Distribution

Information gathered in identification activities is useful in other preservation planning activities only when it is systematically gathered and recorded, and made available to those responsible for preservation planning. The results of identification activities should be reported in a format that summarizes the design and methods of the survey, provides a basis for others to review the results, and states where information on identified properties is maintained. However, sensitive information, like the location of fragile resources, must be safeguarded from general public distribution.

Secretary of the Interior's Guidelines for Identification

Introduction

These Guidelines link the Standards for Identification with more specific guidance and technical information. The Guidelines outline one approach to meet the Standards for Identification. Agencies, organizations and individuals proposing to approach identification differently may wish to review their approaches with the National Park Service.

The Guidelines are organized as follows:
Role of Identification in the Planning Process
Performing Identification
Integrating Identification Results
Reporting Identification Results
Recommended Sources of Technical Information

Role of Identification in the Planning Process

Identification is undertaken for the purpose of locating historic properties and is composed of a number of activities which include, but are not limited to archival research, informant interviews, field survey and analysis. Combinations of these activities may be selected and appropriate levels of effort assigned to produce a flexible series of options. Generally identification activities will have multiple objectives, reflecting complex management needs. Within a comprehensive planning process, identification is normally undertaken to acquire property-specific information needed to refine a particular historic context or to develop any new historic contexts. (See the Guidelines for Preservation Planning for discussion of information gathering to establish plans and develop historic contexts.) The results of identification activities are then integrated into the planning process so that subsequent activities are based on the most up-to-date information. Identification activities are also undertaken in the absence of a comprehensive planning process, most frequently as part of a specific land use or development project. Even lacking a formally developed preservation planning process, the benefits of efficient, goal-directed research may be obtained by the development of localized historic contexts, suitable in scale for the project ares, as part of the background research which customarily occurs before field survey efforts.

Performing Identification

Research Design
Identification activities are essentially research activities for which a statement of objectives or research design should be prepared before work is performed. Within the framework of a comprehensive planning process, the research design provides a vehicle for integrating the various activities performed during the identification process and for linking those activities directly to the goals and the historic context(s) for which those goals were defined. The research design stipulates the logical integration of historic context(s) and field and laboratory methodology. Although these tasks may be performed individually, they will not contribute to the greatest extent possible in increasing information on the historic context unless they relate to the defined goals and to each other. Additionally, the research design provides a focus for the integration of interdisciplinary information. It ensures that the linkages between specialized activities are real, logical and address the defined research questions. Identification activities should be guided by the research design and the results discussed in those terms. (See Reporting Identification Results.)

The research design should include the following:

1. **Objectives** of the identification activities. For example: to characterize the range of historic properties in a region; to identify the number of properties associated with a context; to gather information to determine which properties in an area are significant. The statement of objectives should refer to current knowledge about the historic contexts or property types, based on background research or assessments of previous research. It should clearly define the physical extent of the area to be investigated and the amount and kinds of information to be gathered about properties in the area.

2. **Methods** to be used to obtain the information. For example: archival research or field survey. Research methods should be clearly and specifically related to research problems.

   Archival research or survey methods should be carefully explained so that others using the gathered information can understand how the information was obtained and what its possible limitations or biases are. The methods should be compatible with the past and present environmental character of the geographical area under study and the kinds of properties most likely to be present in the area.

3. **The expected results** and the reason for those expectations. Expectations about the kind, number, location, character and condition of historic properties are generally based on a combination of background research, proposed hypotheses, and analogy to the kinds of properties known to exist in areas of similar environment or history.

Archival Research

Archival or background research is generally undertaken prior to any field survey. Where identification is undertaken as part of a comprehensive planning process, background research may have taken place as part of the development of the historic contexts (see the Guidelines for Preservation Planning). In the absence of previously developed historic contexts, archival research should address specific issues and topics. It should not duplicate previous work. Sources should include, but not be limited to, historical maps, atlases, tax records, photographs, ethnographies, folklife documentation, oral histories and other studies, as well as standard historical reference works, as appropriate for the research problem. (See the Guidelines for Historical Documentation for additional discussion.)

Field Survey
The variety of field survey techniques available, in combination with the varying levels of effort that may be assigned, give great flexibility to implementing field surveys. It is important that the selection of field

survey techniques and level of effort be responsive to the management needs and preservation goals that direct the survey effort.

Survey techniques may be loosely grouped into two categories, according to their results. First are the techniques that result in the characterization of a region's historic properties. Such techniques might include "windshield" or walk-over surveys, with perhaps a limited use of sub-surface survey. For purposes of these Guidelines, this kind of survey is termed a "reconnaissance." The second category of survey techniques is those that permit the identification and description of specific historic properties in an area; this kind of survey effort is termed "intensive." The terms "reconnaissance" and "intensive" are sometimes defined to mean particular survey techniques, generally with regard to prehistoric sites. The use of the terms here is general and is not intended to redefine the terms as they are used elsewhere.

Reconnaissance survey might be most profitably employed when gathering data to refine a developed historic context—such as checking on the presence or absence of expected property types, to define specific property types or to estimate the distribution of historic properties in an area. The results of regional characterization activities provide a general understanding of the historic properties in a particular area and permit management decisions that consider the sensitivity of the area in terms of historic preservation concerns and the resulting implications for future land use planning. The data should allow the formulation of estimates of the necessity, type and cost of further identification work and the setting of priorities for the individual tasks involved. In most cases, areas surveyed in this way will require resurvey if more complete information is needed about specific properties.

A reconnaissance survey should document:

1. The kinds of properties looked for;
2. The boundaries of the area surveyed;
3. The method of survey, including the extent of survey coverage;
4. The kinds of historic properties present in the surveyed area;
5. Specific properties that were identified, and the categories of information collected; and
6. Places examined that did not contain historic properties.

Intensive survey is most useful when it is necessary to know precisely what historic properties exist in a given area or when information sufficient for later evaluation and treatment decisions is needed on individual historic properties. Intensive survey describes the distribution of properties in an area; determines the number, location and condition of properties; determines the types of properties actually present within the area; permits classification of individual properties; and records the physical extent of specific properties. An intensive survey should document:

1. The kinds of properties looked for;
2. The boundaries of the area surveyed;
3. The method of survey, including an estimate of the extent of survey coverage;
4. A record of the precise location of all properties identified; and
5. Information on the appearance, significance, integrity and boundaries of each property sufficient to permit an evaluation of its significance.

Sampling

Reconnaissance or intensive survey methods may be employed according to a sampling procedure to examine less-than-the-total project or planning area.

Sampling can be effective when several locations are being considered for an undertaking or when it is desirable to estimate the cultural resources of an area. In many cases, especially where large land areas are involved, sampling can be done in stages. In this approach, the results of the initial large area survey

are used to structure successively smaller, more detailed surveys. This "nesting" approach is an efficient technique since it enables characterization of both large and small areas with reduced effort. As with all investigative techniques, such procedures should be designed to permit an independent assessment of results.

Various types of sample surveys can be conducted, including, but not limited to: random, stratified and systematic. Selection of sample type should be guided by the problem the survey is expected to solve, the nature of the expected properties and the nature of the area to be surveyed.

Sample surveys may provide data to estimate frequencies of properties and types of properties within a specified area at various confidence levels. Selection of confidence levels should be based upon the nature of the problem the sample survey is designed to address.

Predictive modeling is an application of basic sampling techniques that projects or extrapolates the number, classes and frequencies of properties in unsurveyed areas based on those found in surveyed areas. Predictive modeling can be an effective tool during the early stages of planning an undertaking, for targeting field survey and for other management purposes. However, the accuracy of the model must be verified; predictions should be confirmed through field testing and the model redesigned and retested if necessary.

Special survey techniques. Special survey techniques may be needed in certain situations. Remote sensing techniques may be the most effective way to gather background environmental data, plan more detailed field investigations, discover certain classes of properties, map sites, locate and confirm the presence of predicted sites, and define features within properties. Remote sensing techniques include aerial, subsurface and underwater techniques. Ordinarily the results of remote sensing should be verified through independent field inspection before making any evaluation or statement regarding frequencies or types of properties.

Integrating Identification Results

The results of identification efforts must be integrated into the planning process so that planning decisions are based on the best available information. The new information is first assessed against the objectives of the identification efforts to determine whether the gathered information meets the defined identification goals for the historic context(s); then the goals are adjusted accordingly. In addition, the historic context narrative, the definition of property types and the planning goals for evaluation and treatment are all adjusted as necessary to accommodate the new data.

Reporting Identification Results

Reporting of the results of identification activities should begin with the statement of objectives prepared before undertaking the survey. The report should respond to each of the major points documenting:

1. Objectives;
2. Area researched or surveyed;
3. Research design or statement of objectives;
4. Methods used, including the intensity of coverage. If the methods differ from those outlined in the statement of objectives, the reasons should be explained.
5. Results: how the results met the objectives; result analysis, implications and recommendations; where the compiled information is located.

A summary of the survey results should be available for examination and distribution. Identified properties should then be evaluated for possible inclusion in appropriate inventories.

Protection of information about archeological sites or other properties that may be threatened by dissemination of that information is necessary. These may include fragile archeological properties or properties such as religious sites, structures, or objects, whose cultural value would be compromised by public knowledge of the property's location.

Recommended Sources of Technical Information
Current Recommendations

Archaeological Method and Theory: An Encyclopedia. Linda Ellis, editor. Garland Publishing, Inc., New York, 2000.

Archaeological Prospecting and Remote Sensing. I. Scollar, A. Tabbagh, A. Hesse, and I. Herzog. Cambridge University Press, Cambridge, 1990.

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Distributional Archaeology. James Ebert. University of New Mexico Press, Albuquerque, 1992.

"The Effectiveness of Subsurface Testing: A Simulation Approach." Keith W. Kintigh. *American Antiquity* 53:686-707, 1988.

"The Expanding Role of Surface Assemblages in Archaeological Research*."* Dennis E. Lewarch and Michael J. O'Brien. *Advances in Archaeological Method and Theory*, Vol. 4. M. B. Schiffer, editor. Pp. 297-342. Academic Press, New York, 1981.

Field Methods in Archaeology, 7th edition. Thomas R. Hester, Harry J. Shafer, and Kenneth L. Feder. Mayfield Publishing Company, Mountain View, CA, 1997.

"Geophysical Exploration for Archaeology: An Introduction to Geophysical Exploration." Bruce W. Bevan. *Midwest Archeological Center Special Report No. 1*. Department of the Interior, National Park Service, Midwest Archeological Center, Lincoln, Nebraska, 1998.

Guidelines for Local Surveys: A Basis for Preservation Planning (WordPerfect file or .zip file) Anne Derry, H. Ward Jandl, Carol Shull and Jan Thorman. National Register Division, U.S. Department of the Interior, 1978, revised 1985.

Historical Archaeology. Charles E. Orser, Jr. and Brian M. Fagan. HarperCollins College Publishers, New York, 1995.

Interpreting Space: GIS and Archaeology. Kathleen M. S. Allen, Stanton W. Green, and Ezra B. W. Zubrow, editors. Taylor and Francis, New York, 1990.

Principles of Archaeological Stratigraphy. E.C. Harris. 2nd ed. Academic Press Inc, San Diego, 1989.

"Red Flag Models: The Use of Modelling in Management Contexts." Jeffery H. Altschul. In *Interpreting Space: GIS and Archaeology*. Kathleen M. S. Allen, Stanton W. Green, and Ezra B. W. Zubrow, editors. Pp. 226-238. Taylor and Francis, New York, 1990.

"Regional Surveys in the Eastern United States: The Strengths and Weaknesses of Implementing Subsurface Testing Programs." K. G. Lightfoot. *American Antiquity* 51(3):484-504, 1986.

"Sampling in Archaeological Surveys: A Critique." S. Plog. *American Antiquity* 38(1):280-285, 1978.

"A Shot in the Dark: Shott's Comments on Nance and Ball." Jack D. Nance and Bruce F. Ball. *American Antiquity* 54 (2):405-412, 1989.

"Shovel Test Sampling as a Site Discovery Technique: A Case Study from Michigan." Michael J. Shott. *Journal of Field Archaeology* 12:458-469, 1985.

"Shovel-test Sampling in Archaeological Survey: Comments on Nance and Ball, and Lightfoot." Michael J. Shott. *American Antiquity* 54:396-404, 1989.

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"Surveying and Site Examination, Manual Methods." Francis P. McManamon. In *Archaeological Method and Theory: An Encyclopedia*. Linda Ellis, editor. Pp. 605-609. Garland Publishing, Inc., New York, 2000.

Property Types:

Guidelines for Identifying, Evaluating and Registering Aids to Navigation (WordPerfect file). Department of the Interior, National Park Service, National Register, History and Education, 1990.

Guidelines for Evaluating and Documenting Historic Aviation Properties. Department of the Interior, National Park Service, National Register, History and Education, 1998.

Guidelines for Identifying, Evaluating and Registering America's Historic Battlefields. Department of the Interior, National Park Service, National Register, History and Education, 1992.

Guidelines for Evaluating and Registering Cemeteries and Burial Place. Department of the Interior, National Park Service, National Register, History and Education, 1992.

How to Evaluate and Nominate Designed Historic Landscapes. Department of the Interior, National Park Service, National Register, History and Education, 1990.

Guidelines for Evaluating and Registering Historical Archeological Sites (WordPerfect file or .zip file). Department of the Interior, National Park Service, National Register, History and Education, 1992, revised 1999.

Guidelines for Identifying, Evaluating and Registering Historic Mining Properties. Department of the Interior, National Park Service, National Register, History and Education, 1992, revised 1997, 1999.

How to Apply the National Register Criteria for Post Offices (WordPerfect file). Department of the Interior, National Park Service, National Register, History and Education, 1984, revised 1994.

Guidelines for Evaluating and Nominating Properties that Have Achieved Siginificance in the Past Fifty Years. Department of the Interior, National Park Service, National Register, History and Education, 1979, revised, 1990, 1996, 1998.

Guidelines for Evaluating and Documenting Rural Historic Landscapes. Department of the Interior, National Park Service, National Register, History and Education, 1991, revised 1999.

Guidelines for Evaluating and Documenting Properties Associated with Significant Persons. Department of the Interior, National Park Service, National Register, History and Education, 1989.

Guidelines for Evaluating and Documenting Traditional Cultural Properties. Department of the Interior, National Park Service, National Register, History and Education, 1990, revised 1992, 1998.

Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places. Department of the Interior, National Park Service, National Register, History and Education, 1992.

Secretary of the Interior's Standards for Evaluation

Evaluation is the process of determining whether identified properties meet defined criteria of significance and therefore should be included in an inventory of historic properties determined to meet the criteria. The criteria employed vary depending on the inventory's use in resource management.

Standard I. Evaluation of the Significance of Historic Properties Uses Established Criteria

The evaluation of historic properties employs criteria to determine which properties are significant. Criteria should therefore focus on historical, architectural, archeological, engineering and cultural values, rather

than on treatments. A statement of the minimum information necessary to evaluate properties against the criteria should be provided to direct information gathering activities.

Because the National Register of Historic Places is a major focus of preservation activities on the Federal, State and local levels, the National Register criteria have been widely adopted not only as required for Federal purposes, but for State and local inventories as well. The National Historic Landmark criteria and other criteria used for inclusion of properties in State historic site files are other examples of criteria with different management purposes.

Standard II. Evaluation of Significance Applies the Criteria Within Historic Contexts

Properties are evaluated using a historic context that identifies the significant patterns that properties represent and defines expected property types against which individual properties may be compared. Within this comparative framework, the criteria for evaluation take on particular meaning with regard to individual properties.

Standard III. Evaluation Results in A List or Inventory of Significant Properties That Is Consulted In Assigning Registration and Treatment Priorities

The evaluation process and the subsequent development of an inventory of significant properties is an on-going activity. Evaluation of the significance of a property should be completed before registration is considered and before preservation treatments are selected. The inventory entries should contain sufficient information for subsequent activities such as registration or treatment of properties, including an evaluation statement that makes clear the significance of the property within one or more historic contexts.

Standard IV. Evaluation Results Are Made Available to the Public

Evaluation is the basis of registration and treatment decisions. Information about evaluation decisions should be organized and available for use by the general public and by those who take part in decisions about registration and treatment. Use of appropriate computer-assisted data bases should be a part of the information dissemination effort. Sensitive information, however, must be safeguarded from general public distribution.

Secretary of the Interior's Guidelines for Evaluation

Introduction

These Guidelines link the Standards for Evaluation with more specific guidance and technical information. These Guidelines describe one approach to meeting the Standards for Evaluation. Agencies, organizations, or individuals proposing to approach evaluation differently may wish to review their approach with the National Park Service.

The Guidelines are organized as follows:
The Evaluation Process
Criteria
Application of Criteria within a Historic Context

The Evaluation Process

These Guidelines describe principles for evaluating the significance of one or more historic properties with regard to a given set of criteria.

Groups of related properties should be evaluated at the same time whenever possible; for example, following completion of a theme study or community survey.

Evaluation should not be undertaken using documentation that may be out of date. Prior to proceeding with evaluation the current condition of the property should be determined and previous analyses evaluated in light of any new information.

Evaluation must be performed by persons qualified by education, training and experience in the application of the criteria. Where feasible, evaluation should be performed in consultation with other individuals experienced in applying the relevant criteria in the geographical area under consideration; for example, the State Historic Preservation Officer or local landmarks commission.

Evaluation is completed with a written determination that a property is or is not significant based on provided information. This statement should be part of the record.

Criteria

The purposes of evaluation criteria should be made clear. For example, the criteria may be used "to evaluate properties for inclusion in the county landmarks list," or "to implement the National Register of Historic Places program."

For Federal cultural resource management purposes, criteria used to develop an inventory should be coordinated with the National Register criteria for evaluation as implemented in the approved State comprehensive historic preservation plan.

Content of Criteria: Criteria should be appropriate in scale to the purpose of the evaluation. For example, criteria designed to describe national significance should not be used as the basis for creating a county or State inventory. Criteria should be categorical and not attempt to describe in detail every property likely to qualify. Criteria should outline the disciplines or broad areas of concern (history, archeology, architectural history, engineering and culture, for example) included within the scope of the inventory; explain what kinds of properties, if any, are excluded and the reasons for exclusion; and define how levels of significance are measured, if such levels are incorporated into the criteria. If the criteria are to be used in situations where the National Register criteria are also widely used, it is valuable to include a statement explaining the relationship of the criteria used to the National Register criteria, including how the scope of the inventory differs from that defined by the National Register criteria and how the inventory could be used to identify properties that meet the National Register criteria.

Information Needed to Evaluate Properties: The criteria should be accompanied by a statement defining the minimum information necessary to evaluate properties to insure that this information is collected during identification activities intended to locate specific historic properties. Generally, at least the following will be needed:

1. Adequately developed historic contexts, including identified property types. (See the Guidelines for Preservation Planning for discussion of development of historic contexts.)

2. Sufficient information about the appearance, condition and associative values of the property to be evaluated to:

a. Classify it as to property type;
b. Compare its features or characteristics with those expected for its property type; and
c. Define the physical extent of the property and accurately locate the property.

To facilitate distinguishing between facts and analysis, the information should be divided into categories including identification and description of pertinent historical contexts; description of the property and its significance in the historical context; and analysis of the integrity of the property relative to that needed to represent the context.

Usually documentation need not include such items as a complete title history or biography of every owner of a property, except where that information is important in evaluating its significance. Information on proposed or potential treatments or threats, such as destruction of a property through uncontrollable natural processes, is also not needed for evaluation, unless those effects are likely to occur prior to or during the evaluation, thereby altering the significant characteristic of the property. If archeological testing or structural analysis is needed for evaluation, it should not proceed beyond the point of providing the information necessary for evaluation and should not unnecessarily affect significant features or values of the property.

When more information is needed: Evaluation cannot be conducted unless all necessary information is available. (See Information Needed to Evaluate Properties.) Any missing information or analysis should be identified (e.g. development of context or information on the property) as well as the specific activities required to obtain the information (archival research, field survey and testing, or laboratory testing). When adequate information is not available, it is important to record that fact so that evaluation will not be undertaken until the information can be obtained. In some cases needed information is not obtainable, for example, where historical records have been destroyed or analytical techniques have not been developed to date materials in archeological sites. If an evaluation must be completed in these cases, it is important to acknowledge what information was not obtainable and how that missing information may affect the reliability of the evaluation.

Application of the Criteria within a Historic Context

The first step in evaluation is considering how the criteria apply to the particular historic context. This is done by reviewing the previously developed narrative for the historic context and determining how the criteria would apply to properties in that context, based on the important patterns, events, persons and cultural values identified. (See the discussion of the historic context narrative in the Guidelines for Preservation Planning.) This step includes identification of which criteria each property type might meet and how integrity is to be evaluated for each property type under each criterion. Specific guidelines for evaluating the eligibility of individual properties should be established. These guidelines should outline and justify the specific physical characteristics or data requirements that an individual property must possess to retain integrity for the particular property type; and define the process by which revisions or additions can be made to the evaluation framework.

Consideration of property type and integrity: After considering how the criteria apply to the particular historic context, the evaluation process for a property generally includes the following steps:

1. A property is classified as to the appropriate historic context(s) and property type(s). If no existing property type is appropriate, a new property type is defined, its values identified, and the specific characteristics or data requirements are outlined and justified as an addition to the historic context. If necessary, a new historic context is defined for which values and property types and their integrity requirements are identified and justified.

2. A comparison is made between the existing information about the property and the integrity characteristics or data required for the property type.

a. If the comparison shows that the property possesses these characteristics, then it is evaluated as significant for that historic context. The evaluation includes a determination that the property retains integrity for its type.

b. If the comparison shows that the property does not meet the minimum requirements, one of several conclusions is reached:

1. The property is determined not significant because it does not retain the integrity defined for the property type.
2. The property has characteristics that may make it significant but these differ from those expected for that property type in that context. In this case, the historic context or property types should be reexamined and revised if necessary, based on subsequent research and survey.

The evaluation should state how the particular property meets the integrity requirements for its type. When a property is disqualified for loss of integrity, the evaluation statement should focus on the kinds of integrity expected for the property type, those that are absent for the disqualified property, and the impact of that absence on the property's ability to exemplify architectural, historical or research values within a particular historic context.

The integrity of the property in its current condition, rather than its likely condition after a proposed treatment, should be evaluated. Factors such as structural problems, deterioration, or abandonment should be considered in the evaluation only if they have affected the integrity of the significant features or characteristics of the property.

Inventory

An inventory is a repository of information on specific properties evaluated as significant.

Content: The inventory should include:

1. Summaries of the important historic contexts. These may be in the form of an approved plan or analysis of historic contexts important in the history of the geographical area covered by the inventory.
2. Descriptions of significant property types of these contexts, whether or not any specific properties have been identified.
3. Results of reconnaissance surveys or other identification activities, even if the level of information on specific properties identified as part of those activities is not sufficient to evaluate individual properties.
4. Information on individual properties that was used in evaluation.

    a. Historic contexts are identified by name, with reference to documents describing those contexts, or with a narrative statement about the context(s) where such documents do not exist.
    b. A description of the property. Part of this description may be a photographic record.
    c. A statement that justifies the significance of the property in relation to its context(s). This statement should include an analysis of the integrity of the property.
    d. Boundaries of the property.
    e. A record of when a property was evaluated and included in the inventory, and by whom.

f. Records on demolished or altered properties and properties evaluated as not significant should be retained, along with full description of areas surveyed, for the planning information these records provide about impacts to properties and about the location and character of non-significant properties to prevent redundant identification work at a later time.

Maintenance: Inventory entries should be maintained so that they accurately represent what is known about historic properties in the area covered by the inventory. This will include new information gained from research and survey about the historic contexts, property types, and previously evaluated properties, as well as information about newly evaluated properties. For individual properties, addition of kinds of significance, change in the boundaries, or loss of significance through demolition or alteration should be recorded.

Uses and Availability: An inventory should be managed so that the information is accessible. Its usefulness depends on the organization of information and on its ability to incorporate new information. An inventory should be structured so that entries can be retrieved by locality or by historic context.

The availability of the inventory information should be announced or a summary should be distributed. This may be in the form of a list of properties evaluated as significant or a summary of the historic contexts and the kinds of properties in the inventory. Inventories should be available to managers, planners, and the general public at local, State, regional, and Federal agency levels.

It is necessary to protect information about archeological sites or other properties whose integrity may be damaged by widespread knowledge of their location. It may also be necessary to protect information on the location of properties such as religious sites, structures, or objects whose cultural value would be compromised by public knowledge of the property's location.

Recommended Sources of Technical Information
Current Recommendations

Archaeological Method and Theory: An Encyclopedia. Linda Ellis, editor. Garland Publishing, Inc., New York, 2000.

Cultural Resource Significance Evaluation: Proceedings of a U.S. Army Corps of Engineers Workshop 3-4 October 1994, Vicksburg, Mississippi. Frederick L. Briuer and Clay Mathers, editors. US. Army Corps of Engineers, IWR Report 96-EL-3, 1996.

Defining Boundaries for National Register Properties (WordPerfect file). Department of the Interior, National Park Service, National Register, History and Education, 1995.

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Researching a Historic Property. Department of the Interior, National Park Service, National Register, History and Education, 1991, revised 1998.

Settler Communities in the West: Historic Contexts for Cultural Resource Managers of Department of Defense Lands. Robert Lyon, editor. National Park Service, Rocky Mountain Region, 1994.

*National Park Service, 1994, Thematic Framework***.** Department of the Interior, National Park Service**.**

Trends and Patterns in Cultural Resource Significance: An Historical Perspective and Annotated Bibliography (.pdf file). Frederick L. Briuer and Clay Mathers. U.S. Army Corps of Engineers Water Resources Support Center IWR Report 96-EL-1, 1996.

Property Types:

Guidelines for Identifying, Evaluating and Registering Aids to Navigation (WordPerfect file)*.* Department of the Interior, National Park Service, National Register, History and Education, 1990.

Guidelines for Evaluating and Documenting Historic Aviation Properties. Department of the Interior, National Park Service, National Register, History and Education, 1998.

Guidelines for Identifying, Evaluating and Registering America's Historic Battlefields. Department of the Interior, National Park Service, National Register, History and Education, 1992.

Guidelines for Evaluating and Registering Cemeteries and Burial Place. Department of the Interior, National Park Service, National Register, History and Education, 1992.

How to Evaluate and Nominate Designed Historic Landscapes. Department of the Interior, National Park Service, National Register, History and Education, 1990.

Guidelines for Evaluating and Registering Historical Archeological Sites (WordPerfect file or .zip file). Department of the Interior, National Park Service, National Register, History and Education, 1992, revised 1999.

Guidelines for Identifying, Evaluating and Registering Historic Mining Properties. Department of the Interior, National Park Service, National Register, History and Education, 1992, revised 1997, 1999.

How to Apply the National Register Criteria for Post Offices (WordPerfect file). Department of the Interior, National Park Service, National Register, History and Education, 1984, revised 1994.

Guidelines for Evaluating and Nominating Properties that Have Achieved Siginificance in the Past Fifty Years. Department of the Interior, National Park Service, National Register, History and Education, 1979, revised 1990, 1996, 1998.

Guidelines for Evaluating and Documenting Rural Historic Landscapes. Department of the Interior, National Park Service, National Register, History and Education, 1991, revised 1999.

Guidelines for Evaluating and Documenting Properties Associated with Significant Persons. Department of the Interior, National Park Service, National Register, History and Education, 1989.

Guidelines for Evaluating and Documenting Traditional Cultural Properties. Department of the Interior, National Park Service, National Register, History and Education, 1990, revised 1992, 1998.

Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places. Department of the Interior, National Park Service, National Register, History and Education, 1992.

Secretary of the Interior's Standards For Registration

Registration is the formal recognition of properties evaluated as significant. Preservation benefits provided by various registration programs range from honorific recognition to prohibition of demolition or alteration of included properties. Some registration programs provide recognition and other broad benefits while other programs authorize more specific forms of protection.

Standard I. Registration Is Conducted According To Stated Procedures

Registration of historic properties in the National Register of Historic Places must be done in accordance with the National Register regulations published in the Code of Federal Regulations, 36 CFR 60. Registration for other lists or purposes follow an established process that is understood by the public, particularly by those interests that may be affected by registration.

Standard II. Registration Information Locates, Describes and Justifies the Significance and Physical Integrity of a Historic Property

Registers are used for planning, research and treatment. They must contain adequate information for users to locate a property and understand its significance. Additional information may be appropriate depending on the intended use of the register.

Standard III. Registration Information Is Accessible to the Public

Information should be readily available to the public and to government agencies responsible for the preservation of historic properties and for other planning needs.

Secretary of the Interior's Guidelines for Registration

Introduction

These Guidelines link the Standards for Registration with more specific guidance and technical information. They describe one approach to meeting the Standards for Registration. Agencies, organizations, or individuals proposing to approach registration differently may wish to review their approach with the National Park Service.

The Guidelines are organized as follows:
Purpose of Registration Programs
Registration Procedures
Documentation on Registered Properties
Public Availability
Recommended Sources of Technical Information

Purpose of Registration Programs

Registration of historic properties is the formal recognition of properties that have been evaluated as significant according to written criteria. Registration results in an official inventory or list that serves an

administrative function. A variety of benefits or forms of protection accrue to a registered property, ranging from honorific recognition to prohibition of demolition or alteration.

Some registration programs provide recognition and other broad benefits or entitlement, while other registrations of properties may, in addition, authorize more specific forms of protection. The application of the registration process should be a logical outgrowth of the same planning goals and priorities that guided the identification and evaluation activities. All registration programs should establish priorities for recognition of their authorized range of properties; provide for confidentiality of sensitive information; and establish a means of appealing the registration or non-registration of a property.

Registration Procedures

Explicit procedures are essential because they are the means by which the public can understand and participate in the registration process. Procedures for registration programs should be developed by professionals in the field of historic preservation, in consultation with those who will use or be affected by the program. Prior to taking effect, procedures should be published or circulated for comment at the governmental level at which they will be used. (Procedures for registration of properties in the National Register of Historic Places and the National Historic Landmarks list, for example, are published in the *Federal Register.*)

Any registration program should include:

1. A professional staff to prepare or assess the documentation,
2. A professional review, independent of the nominating source, to provide an impartial evaluation of the documented significance;
3. Adequate notice to property owners, elected officials and the public about proposed registrations and the effects of listing, if any, and
4. A means of public participation.

Professional Review: The registration process should include an independent evaluation of the significance of the property and of the quality and thoroughness of the documentation supporting that significance. Such evaluation ensures that significance is adequately justified and that registration documentation meets the technical requirements of the registration process.

State and local preservation programs, concerned with both public and private properties, generally use a review board, panel or commission. This level of professional review has proven to be effective in assessing the significance of properties considered for registration.

Review boards and other forms of independent review should include professionals in the fields or disciplines included in the criteria; representatives of other fields or disciplines may be desirable to reflect other values or aspects of the register. Key personnel must be qualified by education, training or experience to accomplish their designated duties (See the Professional Qualifications Standards.)

The scope of the independent review should be clearly stated in the registration procedures and should not include issues outside the scope of the applicable criteria for evaluation and other areas specified in the procedures. Generally, independent reviewers should not be involved in any primary research or analysis related to properties under consideration; this information should be gathered and organized prior to review meetings. Documentation presented to the reviewers should be made available to the public prior to review meetings or public hearings. Registration of properties should not take place until review of documentation has been completed.

Public Notice: Adequate notice allows property owners, officials and other interested parties to comment on proposed registrations prior to action by the independent reviewers. The degree of protection and control provided by a registration program may be a factor in determining what constitutes adequate notice. For example, adequate notice of proposed inclusion in honorific registers may be less complex than that for registration that results in local controls on alteration or demolition of registered properties.

Notice to elected officials and the public is necessary to distribute information about potential registrations of concern to planning and development interests.

Adequate notice to property owners may be accomplished through means ranging from individual notification by mail to publication of a public notice, depending on the nature of the registration program and the number and character of the properties involved.

Public notices and owner notification about proposed registrations should include the dates and times of public meetings and review meetings, the kinds of comments that are appropriate, and how comments will be considered in the evaluation process. The notice should also state where information can be obtained about the registration program, the criteria used to evaluate properties for inclusion, and the significance of specific properties under consideration.

The procedures should include a means of public participation in the form of submission of written comments or a review meeting open to the public or a public hearing.

The procedures should state time periods within which reviews, notices, comments, public hearings, review meetings and appeals will occur. The time periods should be short enough to allow for efficient recognition of historic properties but also allow adequate time for public comment and participation by those affected. Time periods may vary depending on whether activities are carried out at the local, State, or national level. These time schedules should be widely circulated so that the process is widely understood.

Appeal Process: A means of appeal should be included in the registration process to allow for reconsideration of a property's inclusion. Reasons for appeal may range from existence of additional information about the property supporting or refuting its significance to administrative or procedural error. An appeal process should specify to whom an appeal may be made and how the information that is provided will be evaluated. The appeal procedures should also state the time limit, if any, on appealing a decision and on consideration of information and issuance of a decision by the appeal authority.

Documentation on Registered Properties

Documentation requirements should be carefully weighed to provide the information actually needed to reach a registration decision and should be made public. It should be made certain that identification and evaluation activities obtain and record the information necessary for registration. Documentation should be prepared in a standardized format and on materials that are archivally stable and easy to store and retrieve.

Location: The precise location of a historic property must be clearly identified.

Street address, town or vicinity, and county should be provided. Properties should also be located on maps; these may be USGS maps, county planning maps or city base maps or real estate maps. A uniform system of noting location, such as UTM grid points or longitude and latitude, should supplement mapping. It is recommended that each registration process standardize the preferred choice of maps appropriate to the scope of the process.

Description: An accurate description of a property includes a description of both the current and historical physical appearance and condition of the property and notes the relevant property type(s) for the applicable historic context(s). Discussion should include alterations, deterioration, relocation and other changes to the property since its period of significance.

Significance: A statement of significance should explain why a property meets the criteria for inclusion in the register to which it has been nominated.

This statement should contain at least 3 elements:

1. Reference to the relevant historic context(s);
2. Identification of relevant property types within the context and their characteristics; and
3. Justification that the property under consideration has the characteristics required to qualify it.

Relevant historic contexts can be identified through reference to the preservation plan or other documents where the contexts have been previously described or can be provided by a narrative discussion of the context. (The development of contexts and their use in evaluating properties are discussed in the Guidelines for Preservation Planning and the Guidelines for Evaluation.) A significant property type and its characteristics are identified either through reference to the historic context(s) or by a narrative in the documentation that describes historic contexts. Justification of a specific property is made by systematic comparison of its characteristics to those required for the property type.

Boundaries: The delineation and justification of boundaries for a registered property are important for future treatment activities. It is especially critical when legal restraints or restrictions may result from the registration of properties. Thus, boundaries should correspond as closely as possible to the actual extent and configuration of the property and should be carefully selected to encompass, but not exceed, the extent of the significant resource(s). The selection of boundaries should reflect the significant aspects of the property.

Arbitrary boundaries should not be chosen for ease of description since this can result in the inclusion of unrelated land or in exclusion of a portion of the historic property. Present property lines should not be chosen as property boundaries without careful analysis of whether they are appropriate to the historic property. A single uniform boundary description and acreage should not be applied to a group or class of properties (antebellum plantations, for example) without examination of the actual extent of each property. The selected boundaries should be justified as appropriate to the historic property.

Boundaries should be clearly and precisely described, using a verbal boundary description, legal description, accurate sketch map, or lines drawn on base maps, or a combination of these where needed to specify the limits of the property being registered. When used, maps should show the location of buildings, structures, sites or objects within the boundary.

Updating Information on Registered Properties: A change in the condition of the significant features of a property may require a change in the official registration record. Alteration of a significant architectural feature, for example, could mean that a property is no longer significant for its architectural design.

Additional significance of registered properties may be identified through development of new historic contexts. Research may reveal that a property is significant in other historic contexts or is significant at a higher level. For example, a property previously recognized as of local significance could be found to be of national significance.

A change in location or condition of a registered property may mean that the property is no longer significant for the reasons for which it was registered and the property should be deleted from the registered list.

Public Availability

Lists of registered properties should be readily available for public use, and information on registered properties should be distributed on a regular basis. Lists of properties registered nationally are distributed through publication in the Federal Register and to Congressional Offices and State Historic Preservation Offices. Comprehensive information should be stored and maintained for public use at designated national, State and local authorities open to the public on a regular basis.

Information should be retrievable by the property name, and location, historic context or property type. The specific location of properties that may be threatened by dissemination of that information must be withheld. These may include fragile archeological properties or properties such as religious sites, structures, or objects whose cultural value would be compromised by public knowledge of the property location.

Recommended Sources of Technical Information
Current Recommendations

How to Complete the National Register Registration Form. Department of the Interior, National Park Service, National Register, History and Education, 1977, revised 1986, 1991, 1997, 1999.

How to Complete the National Register Multiple Property Documentation Form. Department of the Interior, National Park Service, National Register, History and Education, 1991, revised 1998.

How to Prepare National Historic Landmark Nominations (online order form). Department of the Interior, National Park Service, National Register, History and Education, 1999.

Researching a Historic Property. Department of the Interior, National Park Service, National Register, History and Education, 1991, revised 1998.

Defining Boundaries for National Register Properties (WordPerfect file). Department of the Interior, National Park Service, National Register, History and Education, 1995.

How to Improve the Quality of Photographs for National Register Nominations (online order form). Department of the Interior, National Park Service, National Register, History and Education, 1997.

Using the UTM Grid System to Record Historic Sites. Department of the Interior, National Park Service, National Register, History and Education, 1977.

Property Types:

Guidelines for Identifying, Evaluating and Registering Aids to Navigation (WordPerfect file). Department of the Interior, National Park Service, National Register, History and Education, 1990.

Guidelines for Evaluating and Documenting Historic Aviation Properties. Department of the Interior, National Park Service, National Register, History and Education, 1998.

Guidelines for Identifying, Evaluating and Registering America's Historic Battlefields. Department of the Interior, National Park Service, National Register, History and Education, 1992.

Guidelines for Evaluating and Registering Cemeteries and Burial Place. Department of the Interior, National Park Service, National Register, History and Education, 1992.

How to Evaluate and Nominate Designed Historic Landscapes. Department of the Interior, National Park Service, National Register, History and Education, 1990.

Guidelines for Evaluating and Registering Historical Archeological Sites (WordPerfect file or .zip file). Department of the Interior, National Park Service, National Register, History and Education, 1992, revised 1999.

Guidelines for Identifying, Evaluating and Registering Historic Mining Properties. Department of the Interior, National Park Service, National Register, History and Education, 1992, revised 1997, 1999.

How to Apply the National Register Criteria for Post Offices (WordPerfect file). Department of the Interior, National Park Service, National Register, History and Education, 1984, revised 1994.

Guidelines for Evaluating and Nominating Properties that Have Achieved Siginificance in the Past Fifty Years. Department of the Interior, National Park Service, National Register, History and Education, 1979, revised 1990, 1996, 1998.

Guidelines for Evaluating and Documenting Rural Historic Landscapes. Department of the Interior, National Park Service, National Register, History and Education, 1991, revised 1999.

Guidelines for Evaluating and Documenting Properties Associated with Significant Persons. Department of the Interior, National Park Service, National Register, History and Education, 1989.

Guidelines for Evaluating and Documenting Traditional Cultural Properties. Department of the Interior, National Park Service, National Register, History and Education, 1990, revised 1992, 1998.

Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places. Department of the Interior, National Park Service, National Register, History and Education, 1992.

How to Complete the National Register Form. National Register Division, National Park Service, US. Department of the Interior, 1977. Washington, D.C. Available through the Superintendent of Documents, US Government Printing Office, Washington, D.C. 20402. GPO Stock Number 024005- 00666-4. This publication is the standard reference on the documentation requirements of the National Register of Historic Places program.

Note on Documentation and Treatment of Historic Properties

Documentation and treatment of historic properties includes a variety of techniques to preserve or protect properties, or to document their historic values and information. While documentation activities may be applied to any potentially historic property, generally only those properties that first have been evaluated as significant against specified criteria (such as those of the National Register) are treated. Some commonly applied treatments are preservation in place, rehabilitation, restoration and stabilization; there are other types of treatments also. Documentation and treatment may be applied to the same property; for example, archeological historical, and architectural documentation may be prepared before a structure is stabilized or before foundations or chimneys or other lost features are reconstructed.

Alternatives for treatment will usually be available, and care should be applied in choosing among them. Preservation in place is generally preferable to moving a property. Over time, the preferred treatment for a property may change; for example, an archeological site intended for preservation in place may begin to erode so that a combination of archeological documentation and stabilization may be required. If a decision is made that a particular property will not be preserved in place, the need for documentation must then be considered.

The three sets of documentation standards (i.e., the Standards for Historical Documentation, Standards for Architectural and Engineering Documentation, and Standards for Archeological Documentation) as well [the Secretary of the Interior's Standards for the Treatment of Historic Properties (Preservation, Rehabilitation, Restoration, Reconstruction)] describe the techniques of several disciplines to treat historic properties, and to document or preserve information about their historical values. The integration of planning for documentation and treatment with their execution is accomplished in a statement of objectives, or research design. Because both the goals and appropriate methodologies are likely to be interdisciplinary in nature, the relationship among these various activities should be specified in the research design to ensure that the resulting documentation produces a comprehensive record of historic properties in an efficient manner.

Secretary of the Interior's Standards for Historical Documentation

Historic documentation provides important information related to the significance of a property for use by historians, researchers, preservationists, architects, and historical archeologists. Research is used early in planning to gather information needed to identify and evaluate properties. (These activities are discussed in the Standards and Guidelines for Preservation Planning and the Standards and Guidelines for Identification.) Historical documentation is also a treatment that can be applied in several ways to properties previously evaluated as significant; it may be used in conjunction with other treatment activities (as the basis for rehabilitation plans or interpretive programs, for example) or as a final treatment to preserve information in cases of threatened property destruction. These Standards concern the use of research and documentation as a treatment.

Standard I. Historical Documentation Follows a Research Design that Responds to Needs Identified in the Planning Process

Historical documentation is undertaken to make a detailed record of the significance of a property for research and interpretive purposes and for conservation of information in cases of threatened property destruction. Documentation must have defined objectives so that proposed work may be assessed to determine whether the resulting documentation will meet needs identified in the planning process. The research design or statement of objectives is a formal statement of how the needs identified in the plan are to be addressed in a specific documentation project. This is the framework that guides the selection of methods and evaluation of results, and specifies the relationship of the historical documentation efforts to other proposed treatment activities.

Standard II. Historical Documentation Employs an Appropriate Methodology to Obtain the Information Required by The Research Design

Methods and techniques of historical research should be chosen to obtain needed information in the most efficient way. Techniques should be carefully selected and the sources should be recorded so that other researchers can verify or locate information discovered during the research.

Standard III. The Results of Historical Documentation Are Assessed Against the Research Design and Integrated into the Planning Process

Documentation is one product of research; information gathered about the usefulness of the research design itself is another. The research results are assessed against the research design to determine how well they meet the objectives of the research. The results are integrated into the body of current knowledge and reviewed for their implications for the planning process. The research design is reviewed to determine how future research designs might be modified based on the activity conducted.

Standard IV. The Results of Historical Documentation Are Reported and Made Available to the Public

Research results must be accessible to prospective users. Results should be communicated to the professional community and the public in reports summarizing the documentation activity and identifying the repository of additional detailed information. The goal of disseminating information must be balanced, however, with the need to protect sensitive information whose disclosure might result in damage to properties.

Secretary of the Interior's Guidelines for Historical Documentation

Introduction

These Guidelines link; the Standards for Historical Documentation with more specific guidance and technical information. They describe one approach to meeting the Standards for Historical Documentation. Agencies, organizations or individuals proposing to approach historical documentation differently may wish to review their approaches with the National Park service.

The Guidelines are organized as follows:
Historical Documentation Objectives
Research Design
Methods
Integrating Results
Reporting Results
Recommended Sources of Technical Information

Documentation Objectives

Documentation is a detailed record, in the form of a report or other written document, of the historical context(s) and significance of a property. Historical research to create documentation uses archival materials, oral history techniques, ethnohistories, prior research contained in secondary sources and other sources to make a detailed record of previously identified values or to investigate particular questions about the established significance of a property or properties. It is an investigative technique that may be employed to document associative, architectural, cultural or informational values of properties. It may be used as a component of structural recording or archeological investigation, to enable interpretation or to mitigate the anticipated loss of a property through conservation of information about its historical, architectural or archeological significance. Documentation generally results in both greater factual knowledge about the specific property and its values, and in better understanding of the property in its historical context. In addition to increasing factual knowledge about a property and its significance in one historical context, documentation may also serve to link the property to or define its importance in other known or yet-to-be defined historic contexts.

Documentation should incorporate, rather than duplicate, the findings of previous research. Research may be undertaken to identify how a particular property fits into the work of an architect or builder; to analyze the historical relationship among several properties; or to document in greater detail the historical contexts of properties. The kinds of questions investigated will generally depend on what is already known or understood and what information is needed. For example, documentation of a bridge whose technological significance is well understood, but whose role in local transportation history is not, would summarize the information on the former topic and focus research on the associative values of the property. The questions that research seeks to answer through deed, map or archival search, oral history and other techniques may also relate to issues addressed in structural documentation or archeological investigation; for example, the reasons for and history of modification of a building to be the subject of architectural or engineering documentation.

Research Design

Historical documentation is guided by a statement of objectives, research design or task directive prepared before research is performed. The research design is a useful statement of how proposed work will enhance existing archival data and permits comparison of the proposed work with the results. The purpose of the research design is to define the proposed scope of the documentation work and to define a set of expectations based on the information available prior to the research. Generally, the research design also ensures that research methods are commensurate with the type, quality and source of expected information. The research design for a property should identify

1. Evaluated significance of the property(is) to be investigated;
2. Historical, architectural, archeological or cultural issues relevant to the evaluated significance of the property;
3. Previous research on those issues and how the proposed work is related to existing knowledge;
4. The amount and kinds of information required to produce reliable historical analyses;
5. Methods to be used to obtain the information;
6. Types of sources to be investigated; types of personnel required;
7. Expected results or findings based on available knowledge about the property and its context; and
8. Relationship of the proposed historical documentation to other proposed treatment activities; for example, recommendations on the use of documentation in interpretive programs or other aspects of treatment such as anticipated architectural, engineering or archeological documentation.

Research Methods

Research methods should be chosen based on the information needs, be capable of replication and be recorded so that another researcher could follow the same research procedure. Sources should be recorded so that other researchers can locate or verify the information discovered during the search.

Use of Sources: The variety of available written and graphic materials and the number of individuals that can serve as sources, including but not limited to personal records, deed and title books, newspapers, plats, maps, atlases, photographs, vital records, censuses, historical narratives, interviews of individuals and secondary source materials, should be considered in developing the research design. Part of the development of the research design is deciding what kinds of source materials are most likely to contain needed information and at what point in the research process that information will be most valuable. For example, often secondary sources are most valuable for gathering background information, while primary sources are more useful to gather or confirm specific facts. The documentation goals may not require exhaustive investigation of sources, such as deed records or building permits. Research may be kept cost-effective by making careful decisions about when to use particular sources, thereby limiting the use

of time-consuming techniques to when absolutely necessary. Decisions about when to gather information may also affect the quality of information that can be gathered. When dealing with large project areas where loss of many properties is anticipated, it is important to gather information from local archival sources and oral histories before project activities destroy or disperse family or community records and residents.

Analysis of the accuracy and biases of source materials is critical in analyzing the information gathered from these sources. Maps, historical atlases and insurance maps should be assessed like written records for errors, biases and omissions; for example, some map sources may omit structures of a temporary nature or may not fully depict ethnic or minority areas. Likewise, building plans and architectural renderings may not reflect a structure as it was actually built.

Analysis: Analysis should not only focus on the issues defined in the research design, but should also explore major new issues identified during the course of research or analysis. The documentation gathered may raise important issues not previously considered, and further investigation may be important, particularly when contradictory information has been gathered. It is important to examine the implications of these new issues to ensure that they are investigated in a balanced way.

Questions that should be considered in analyzing the information include:

1. Has enough information been gathered to answer the questions that were posed?
2. Do the answers contradict one another? If so, it may be necessary to search for more evidence. If no additional evidence is available, judgments must be based on the available sources, weighing their biases. Conflicts of source materials should be noted.

In general, the more the researcher knows about the general historical period and setting and limitations of the source materials under investigation, the better the individual is prepared to evaluate the information found in the documentary sources investigated. Peer review or consultation with other knowledgeable individuals about the information and the tentative conclusions can be an important part of the analysis.

Integrating Results

The results of documentation must be integrated into the planning process so that planning decisions are based on the best available information. The new information is first assessed against the research design to determine whether the gathered information meets the defined objectives of the research. Then the relevant historic contexts, property types, and treatment goals for those contexts are all adjusted, as necessary, based on the historical documentation results.

Reporting Results

Reports should contain:

1. Summaries of the purpose of the documentation, the research design and methods and techniques of investigation.
2. Sources of facts or analyses so that other researchers can locate the information in its original context. Notation of any conflicts in source materials and how the individual performing the documentation interpreted these conflicts.
3. Sources consulted, including those expected to contain useful information and those that contained no information about the property(ies).
4. Assessment of the accuracy, biases and historical perspective of all sources. This information and that identified in No. 3 may be provided in an annotated bibliography.

5. Discussion of major analyses and results, including conclusions regarding all major research issues identified in the research design, as well as important issues raised in the course of research. The analysis should be summarized in terms of its impact on interpreting the property's significance and expanding or altering the knowledge about the property and its context.
6. Researchers' interpreting of historical events or trends. These interpretations should be clearly identified.

Primary results should be preserved and made accessible in some manner, although they need not necessarily be contained in the report. At minimum, the report should reference the location of notes and analyses.

Results of historic documentation should be made available for use in preservation planning and by the general public. Report formats may vary, depending on the audience and the anticipated uses of the documentation, but professionally accepted rules of report writing should be followed. If reports are of a technical nature, the format of the major scientific journal of the pertinent discipline may be the most appropriate format. Peer review of draft reports is one means of ensuring that state-of-the-art technical reports are produced.

Recommended Sources of Technical Information
Current Recommendations

Ethics and Public History: An Anthology. Theodore J. Karamanski, editor. Robert E. Krieger Publishing Company, Malabar, Florida, 1990.

The Modern Researcher. 5th Edition. Jacques Barzun and Henry F. Graff. Houghton Mifflin Company, Boston, 1992.

The New American History. Eric Foner, editor. Temple University Press, Philadelphia, 1990.

A Shared Authority: Essays on the Craft and Meaning of Oral and Public History. Michael Frisch. State University of New York Press, Albany, 1990.

Telling the Truth About History. Joyce Appleby, Lynn Hunt, and Margaret Jacob. W.W. Norton & Company, New York, 1994.

The Past Before Us: Contemporary Historical Writing in the United States. Michael Kammen, editor. Cornell University Press, Ithaca, New York, 1982.

Nearby History: Exploring the Past Around You. David E. Kyvig and Myron A. Marty. The American Association for State and Local History, Nashville, Tennessee, 1982.

Folklife and Fieldwork A Layman's Introduction to Field Techniques. Peter Bartis. American Forklift Center, Washington, DC, 1979.

The Process of Field Research. Carl Fleischhauer and Charles K. Wolfe. American Folklife Center, Washington, D.C., 1981.

Secretary of the Interior's Standards for Architectural and Engineering Documentation

These standards concern the development of documentation for historic buildings, sites, structures and objects. This documentation, which usually consists of measured drawings, photographs and written data, provides important information on a property's significance for use by scholars, researchers, preservationists, architects, engineers and others interested in preserving and understanding historic properties. Documentation permits accurate repair or reconstruction of parts of a property, records existing conditions for easements, or may present information about a property that is to be demolished.

These Standards are intended for use in developing documentation to be included in the Historic American Building Survey (HABS) and the Historic American Engineering Record (HAER) Collections in the Library of Congress. HABS/HAER, in the National Park Service, have defined specific requirements for meeting these Standards for their collections. The HABS/HAER requirements include information important to development of documentation for other purposes such as State or local archives.

Standard I. Documentation Shall Adequately Explicate and Illustrate What is Significant or Valuable About the Historic Building, Site, Structure or Object Being Documented.

The historic significance of the building, site, structure or object identified in the evaluation process should be conveyed by the drawings, photographs and other materials that comprise documentation. The historical, architectural, engineering or cultural values of the property together with the purpose of the documentation activity determine the level and methods of documentation. Documentation prepared for submission to the Library of Congress must meet the HABS/HAER Guidelines.

Standard II. Documentation Shall be Prepared Accurately From Reliable Sources With Limitations Clearly Stated to Permit Independent Verification of the Information.

The purpose of documentation is to preserve an accurate record of historic properties that can be used in research and other preservation activities. To serve these purposes, the documentation must include information that permits assessment of its reliability.

Standard III. Documentation Shall be Prepared on Materials That are Readily Reproducible, Durable and in Standard Sizes.

The size and quality of documentation materials are important factors in the preservation of information for future use. Selection of materials should be based on the length of time expected for storage, the anticipated frequency of use and a size convenient for storage.

Standard IV. Documentation Shall be Clearly and Concisely Produced.

In order for documentation to be useful for future research, written materials must be legible and understandable, and graphic materials must contain scale information and location references.

Secretary of the Interior's Guidelines for Architectural and Engineering Documentation

Introduction

These Guidelines link the Standards for Architectural and Engineering Documentation with more specific guidance and technical information. They describe one approach to meeting the Standards for Architectural Engineering Documentation. Agencies, organizations or individuals proposing to approach documentation differently may wish to review their approaches with the National Park Service.

The Guidelines are organized as follows:
Definitions
Goal of Documentation
The HABS/HAER Collections
Standard I: Content
Standard II: Quality
Standard III: Materials
Standard IV: Presentation
Architectural and Engineering Documentation Prepared for Other Purposes
Recommended Sources of Technical Information

Definitions

These definitions are used in conjunction with these Guidelines:

Architectural Data Form—a one page HABS form intended to provide identifying information for accompanying HABS documentation.

Documentation—measured drawings, photographs, histories, inventory cards or other media that depict historic buildings, sites, structures or objects.

Field Photography—photography, other than large-format photography, intended for the purpose of producing documentation, usually 35mm.

Field Records—notes of measurements taken, field photographs and other recorded information intended for the purpose of producing documentation.

Inventory Card—a one page form which includes written data, a sketched site plan and a 35mm contact print dry-mounted on the form. The negative, with a separate contact sheet and index should be included with the inventory card.

Large Format Photographs—photographs taken of historic buildings, sites, structures or objects where the negative is a 4 x 5, 5 x 7" or 8 x 10" size and where the photograph is taken with appropriate means to correct perspective distortion.

Measured Drawings—drawings produced on HABS or HAER formats depicting existing conditions or other relevant features of historic buildings, sites, structures or objects. Measured drawings are usually produced in ink on archivally stable material, such as mylar.

Photocopy—A photograph, with large format negative, of a photograph or drawing.

Select Existing Drawings—drawings of historic buildings, sites, structures or objects, whether original construction or later alteration drawings that portray or depict the historic value or significance.

Sketch Plan—a floor plan, generally not to exact scale although often drawn from measurements, where the features are shown improper relation and proportion to one another.

Goal of Documentation

The Historic American Buildings Survey (HABS) and Historic American Engineering Record (HAER) are the national historical architectural and engineering documentation programs of the National Park Service that promote documentation incorporated into the HABS/HAER collections in the Library of Congress. The goal of the collections is to provide architects, engineers, scholars, and interested members of the public with comprehensive documentation of buildings, sites, structures and objects significant in American history and the growth and development of the built environment.

The HABS/HAER Collections

HABS/HAER documentation usually consists of measured drawings, photographs and written data that provide a detailed record which reflects a property's significance. Measured drawings and properly executed photographs act as a form of insurance against fires and natural disasters by permitting the repair and, if necessary, reconstruction of historic structures damaged by such disasters. Documentation is used to provide the basis for enforcing preservation easement. In addition, documentation is often the last means of preservation of a property, when a property is to be demolished, its documentation provides future researchers access to valuable information that otherwise would be lost.

HABS/HAER documentation is developed in a number of ways. First and most usually, the National Park Service employs summer teams of student architects, engineers, historians and architectural historians to develop HABS/HAER documentation under the supervision of National Park Service professionals. Second, the National Park Service produces HABS/HAER documentation, in conjunction with restoration or other preservation treatment, of historic buildings managed by the National Park Service. Third, Federal agencies, pursuant to Section 110(b) of the National Historic Preservation Act, as amended, record those historic properties to be demolished or substantially altered as a result of agency action or assisted action (referred to as mitigation projects). Fourth, individuals and organizations prepare documentation to HABS/HAER standards and donate that documentation to the HABS/HAER collections. For each of these programs, different Documentation Levels will be set.

The Standards describe the fundamental principles of HABS/HAER documentation. They are supplemented by other material describing more specific guidelines, such as line weights for drawings, preferred techniques for architectural photography, and formats for written data. This technical information is found in the HABS/HAER Procedures Manual.

These Guidelines include important information about developing documentation for State or local archives. The State Historic Preservation Officer or the State library should be consulted regarding archival requirements if the documentation will become part of their collections. In establishing archives, the important questions of durability and reproducibility should be considered in relation to the purposes of the collection.

Documentation prepared for the purpose of inclusion in the HABS/HAER collections must meet the requirements below. The HABS/HAER office of the National Park Service retains the right to refuse to accept documentation for inclusion in the HABS/HAER collections when that documentation does not meet HABS/HAER requirements, as specified below.

Standard I: Content

1. Requirement: Documentation shall adequately explicate and illustrate what is significant or valuable about the historic building, site, structure or object being documented.

2. Criteria: Documentation shall meet one of the following documentation levels to be considered adequate for inclusion in the HABS/HAER collections.

a. Documentation Level I;
    1. Drawings: a full set of measured drawings depicting existing or historic conditions.
    2. Photographs: photographs with large-format negatives of exterior and interior views; photocopies with large format negatives of select existing drawings or historic views where available.
    3. Written data: history and description.
b. Documentation Level II;
    1. Drawings: select existing drawings, where available, should be photographed with large-format negatives or photographically reproduced on Mylar.
    2. Photographs: photographs with large-format negatives of exterior and interior views, or historic views, where available.
    3. Written data: history and description.
c. Documentation Level III;
    1. Drawings: sketch plan.
    2. Photographs: photographs with large-format negatives of exterior and interior views.
    3. Written data: architectural data form.
d. Documentation Level IV: HABS/HAER inventory card.

3. Test: Inspection of the documentation by HABS/HAER staff.

4. Commentary: The HABS/HAER office retains the right to refuse to accept any documentation on buildings, sites, structures or objects lacking historical significance. Generally, buildings, sites, structures or objects must be listed in, or eligible for listing in the National Register of Historic Places to be considered for inclusion in the HABS/HAER collections.

The kind and amount of documentation should be appropriate to the nature and significance of the buildings, site, structure or object being documented. For example, Documentation Level I would be inappropriate for a building that is a minor element of a historic district, notable only for streetscape context and scale. A full set of measured drawings for such a minor building would be expensive and would add little, if any, information to the HABS/HAER collections. Large format photography (Documentation Level III) would usually be adequate to record the significance of this type of building.

Similarly, the aspect of the property that is being documented should reflect the nature and significance of the building, site, structure or object being documented. For example, measured drawings of Dankmar Adler and Louis Sullivan's Auditorium Building in Chicago should indicate not only facades, floor plans and sections, but also the innovative structural and mechanical systems that were incorporated in that building. Large-format photography of Gunston Hall in Fairfax County, Virginia, to take another example, should clearly show William Buckland's hand-carved moldings in the Palladian Room, as well as other views.

HABS/HAER documentation is usually in the form of measured drawings, photographs, and written data. While the criteria in this section have addressed only these media, documentation need not be limited to them. Other media, such as films of industrial processes, can and have been used to document historic

buildings, sites, structures or objects. If other media are to be used, the HABS/HAER office should be contacted before recording.

The actual selection of the appropriate documentation level will vary, as discussed above. For mitigation documentation projects, this level will be selected by the National Park Service Regional Office and communicated to the agency responsible for completing the documentation. Generally, Level I documentation is required for nationally significant buildings and structures, defined as National Historic Landmarks and the primary historic units of the National Park Service.

On occasion, factors other than significance will dictate the selection of another level of documentation. For example, if a rehabilitation of a property is planned, the owner may wish to have a full set of as-built drawings, even though the significance may indicate Level II documentation.

HABS Level I measured drawings usually depict existing conditions through the use of a site plan, floor plans, elevations, sections and construction details. HAER Level I measured drawings will frequently depict original conditions where adequate historical material exists, so as to illustrate manufacturing or engineering processes.

Level II documentation differs from Level I by substituting copies of existing drawings, either original or alteration drawings, for recently executed measured drawings. If this is done, the drawings must meet HABS/HAER requirements outlined below. While existing drawings are rarely as suitable as as-built drawings, they are adequate in many cases for documentation purposes. Only when the desirability of having as-built drawings is clear are Level I measured drawings required in addition to existing drawings. If existing drawings are housed in an accessible collection and cared for archivally, their reproduction for HABS/HAER may not be necessary. In other cases, Level I measured drawings are required in the absence of existing drawings.

Level III documentation requires a sketch plan if it helps to explain the structure. The architectural data form should supplement the photographs by explaining what is not readily visible.

Level IV documentation consists of completed HABS/HAER inventory cards. This level of documentation, unlike the other three levels, is rarely considered adequate documentation for the HABS/HAER collections but is undertaken to identify historic resources in a given area **prior** to additional, more comprehensive documentation.

Standard II: Quality

1. Requirement: HABS and HAER documentation shall be prepared accurately from reliable sources with limitations clearly stated to permit independent verification of information.

2. Criteria: For all levels of documentation, the following quality standards shall be met:

a. Measured drawings: Measured drawings shall be produced from recorded, accurate measurements. Portions of the building that were not accessible for measurement should not be drawn on the measured drawings, but dearly labeled as not accessible or drawn from available construction drawings and other sources and so identified. No part of the measured drawings shall be produced from hypothesis or non-measurement related activities. Documentation Level I measured drawings shall be accompanied by a set of field notebooks in which the measurements were first recorded. Other drawings, prepared for Documentation Levels II and III, shall include a statement describing where the original drawings are located.
b. Large format photographs: Large format photographs shall clearly depict the appearance of the property and areas of significance of the recorded building, site, structure or object. Each view shall be perspective-corrected and fully captioned.

c. Written history: Written history and description for Documentation Levels I and II shall be based on primary sources to the greatest extent possible. For Levels III and IV, secondary sources may provide adequate information; if not primary research will be necessary. A frank assessment of the reliability and limitations of sources shall be included. Within the written history, statements shall be footnoted as to their sources, where appropriate. The written data shall include a methodology section specifying name of researcher, date of research, sources searched, and limitations of the project.

3. Test: Inspection of the documentation by HABS/HAER staff.

4. Commentary: The reliability of the HABS/HAER collections depends on documentation of high quality. Quality is not something that can be easily prescribed or quantified, but it derives from a process in which thoroughness and accuracy play a large part. The principle of independent verification of HABS/HAER documentation is critical to the HABS/HAER collections.

Standard III: Materials

1. Requirement: HABS and HAER documentation shall be prepared on materials that are readily reproducible for ease of access; durable for long storage; and in standard sizes for ease of handling.

2. Criteria: For all levels of documentation, the following material standards shall be met:

a. Measured Drawings:
Readily Reproducible: Ink on translucent material
Durable: Ink on archivally stable materials.
Standard Sizes: Two sizes: 19 x 24" or 24 x 36"

b. Large Format Photographs:
Readily Reproducible: Prints shall accompany all negatives.
Durable: Photography must be archivally processed and stored
Negatives are required on safety film only. Resin-coated paper is not accepted. Color photography is not acceptable.
Standard Sizes: Three sizes: 4 x 5", 5 x 7", 8 x 10".

c. Written History and Description:
Readily Reproducible: Clean copy for xeroxing.
Durable: Archival bond required.
Standard Sizes: 8 1/2 x 11"

d. Field Records:
Readily Reproducible: Field notebooks may be xeroxed. Photo identification sheet will accompany 35mm negatives and contact sheets.
Durable: No requirement.
Standard Sizes: Only requirement is that they can be made to fit into a 9 1/2 x 12" archival folding file.

3. Test: Inspection of the documentation by HABS/HAER staff.

4. Commentary: All HABS/HAER records are intended for reproduction; some 20,000 HABS/HAER records are reproduced each year by the Library on Congress. Although field records are not intended for quality reproduction, it is intended that they be used to supplement the formal documentation. The basic durability performance standard for HABS/ HAER records is 500 years. Ink on Mylar is believed to meet this standard, while color photography, for example, does not. Field records do not meet this archival standard, but are maintained in the HABS/HAER collections as a courtesy to the collection user.

Standard IV: Presentation

1. Requirement: HABS and HAER documentation shall be clearly and concisely produced.

2. Criteria: For levels of documentation as indicated below, the following standards for presentation will be used:

a. Measured Drawings: Level I measured drawings will be lettered mechanically (i.e., Leroy or similar) or in a handprinted equivalent style. Adequate dimensions shall be included on all sheets. Level III sketch plans should be neat and orderly.
b. Large format photographs: Level I photographs shall include duplicate photographs that include a scale. Level II and III photographs shall include, at a minimum, at least one photograph with a scale, usually of the principal facade.
c. Written history and description: Data shall be typewritten on bond, following accepted rules of grammar.

3. Test: Inspection of the documentation by HABS/HAER staff.

Architectural and Engineering Documentation Prepared for Other Purposes

Where a preservation planning process is in use, architectural and engineering documentation, like other treatment activities, are undertaken to achieve the goals identified by the preservation planning process. Documentation is deliberately selected as a treatment for properties evaluated as significant, and the development of the documentation program for a property follows from the planning objectives. Documentation efforts focus on the significant characteristics of the property, as defined in the previously completed evaluation. The selection of a level of documentation and the documentation techniques (measured drawings, photography, etc.) is based on the significance of the property and the management needs for which the documentation is being performed. For example, the kind and level of documentation required to record a historic property for easement purposes may be less detailed than that required as mitigation prior to destruction of the property. In the former case, essential documentation might be limited to the portions of the property controlled by the easement, for example, exterior facades; while in the latter case, significant interior architectural features and nonvisible structural details would also be documented.

The principles and content of the HABS/HAER criteria may be used for guidance in creating documentation requirements for other archives. Levels of documentation and the durability and sizes of documentation may vary depending on the intended use and the repository. Accuracy of documentation should be controlled by assessing the reliability of all sourcesand making that assessment available in the archival record; by describing the limitations of the information available from research and physical examination of the property, and by retaining the primary data (field measurements and notebooks) from which the archival record was produced. Usefulness of the documentation products depends on preparing the documentation on durable materials that are able to withstand handling and reproduction, and in sizes that can be stored and reproduced without damage.

Recommended Sources of Technical Information
Current Recommendations

Guidelines for Recording Historic Ships. By Richard K. Anderson, Jr., HABS/HAER, National Park Service, Washington, D.C.

Marks the revival of the Historic American Merchant Marine Survey of the 1930s as part of the HAER program, and provides the definitive guide to maritime recording.

HABS/HAER Photography: Specifications and Guidelines. HABS/HAER, National Park Service, Washington, D.C., Draft 1997.
Provides criteria for the production of large format photographs for acceptance to the HABS/HAER Collections.

HABS Historical Reports. HABS/HAER, National Park Service, Washington, D.C., 1993.
Provides guidelines for producing written data on historic buildings to HABS standards.

HABS/HAER Production Notes

- Field Records
- Large-format photographs
- Measured drawings

Recording Historic Sites and Structures Using Computer-aided Drafting (CAD) (.PDF File). HABS/HAER, National Park Service, Washington, D.C., 2000.
Addresses the application of the Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation to the use of computer-aided drafting (CAD) software in the production of two-dimensional HABS/HAER measured drawings.

Recording Historic Structures. John A. Burns, editor, AIA. The AIA Press, Washington, D.C., 1989.
The definitive guide to recording America's built environment. Since issued in 1989, this publication is in its third printing.

Recording Historic Structures and Sites for the Historic American Engineering Record (.PDF Files). HABS/HAER, National Park Service, Washington, D.C., 1996.
Provides guidelines for documenting historic engineering and industrial sites and structures to HAER standards using measured drawings and written data.

Recording Structures and Sites with HABS Measured Drawings. HABS/HAER, National Park Service, Washington, D.C., 1993.
Provides procedures for producing measured drawings of historic buildings to HABS standards.

Transmitting HABS/HAER Documentation. HABS/HAER, National Park Service, Washington, D.C., 1999.
Provides transmittal procedures and archival requirements of documentation for acceptance to the HABS/HAER Collections.

Secretary of the Interior's Standards for Archeological Documentation

Archeological documentation is a series of actions applied to properties of archeological interest. Documentation of such properties may occur at any or all levels of planning, identification, evaluation or treatment. The nature and level of documentation is dictated by each specific set of circumstances. Archeological documentation consists of activities such as archival research, observation and recording of above-ground remains, and observation (directly, through excavation, or indirectly, through remote sensing) of below-ground remains. Archeological documentation is employed for the purpose of gathering information on individual historic properties or groups of properties. It is guided by a framework of objectives and methods derived from the planning process, and makes use of previous planning

decisions, such as those on evaluation of significance. Archeological documentation may be undertaken as an aid to various treatment activities, including research, interpretation, reconstruction, stabilization and data recovery when mitigating archeological losses resulting from construction. Care should be taken to assure that documentation efforts do not duplicate previous efforts.

Standard I. Archeological Documentation Activities Follow an Explicit Statement of Objectives and Methods That Responds to Needs Identified in the Planning Process

Archeological research and documentation may be undertaken to fulfill a number of needs, such as overviews and background studies for planning interpretation or data recovery to mitigate adverse effects. The planning needs are articulated in a statement of objectives to be accomplished by the archeological documentation activities. The statement of objectives guides the selection of methods and techniques of study and provides a comparative framework for evaluating and deciding the relative efficiency of alternatives. Satisfactory documentation involves the use of archeological and historical sources, as well as those of other disciplines. The statement of objectives usually takes the form of a formal and explicit research design which has evolved from the interrelation of planning needs, current knowledge, resource value and logistics.

Standard II. The Methods and Techniques of Archeological Documentation are Selected To Obtain the Information Required by the Statement of Objectives

The methods and techniques chosen for archeological documentation should be the most effective, least destructive, most efficient and economical means of obtaining the needed information. Methods and techniques should be selected so that the results may be verified if necessary. Non-destructive techniques should be used whenever appropriate. The focus on stated objectives should be maintained throughout the process of study and documentation.

Standard III. The Results of Archeological Documentation are Assessed Against the Statement of Objectives and Integrated into the Planning Process

One product of archeological documentation is the recovered data; another is the information gathered about the usefulness of the statement of objectives itself. The recovered data are assessed against the objectives to determine how they meet the specified planning needs. Information related to archeological site types, distribution and density should be integrated in planning at the level of identification and evaluation. Information and data concerning intra-site structure may be needed for developing mitigation strategies and are appropriately integrated at this level of planning. The results of the data analyses are integrated into the body of current knowledge. The utility of the method of approach and the particular techniques which were used in the investigation (i.e., the research design) should be assessed so that the objectives of future documentation efforts may be modified accordingly.

Standard IV. The Results of Archeological Documentation are Reported and Made Available to the Public

Results must be accessible to a broad range of users including appropriate agencies, the professional community and the general public. Results should be communicated in reports that summarize the objectives, methods, techniques and results of the documentation activity, and identify the repository of the materials and information so that additional detailed information can be obtained, if necessary. The public may also benefit from the knowledge obtained from archeological documentation through pamphlets, brochures, leaflets, displays and exhibits, or by slide, film or multimedia productions. The goal of disseminating information must be balanced, however, with the need to protect sensitive information whose disclosure might result in damage to properties. Curation arrangements sufficient to preserve

artifacts, specimens and records generated by the investigation must be provided for to assure the availability of these materials for future use.

Secretary of the Interior's Guidelines for Archeological Documentation

Introduction

These Guidelines link the Standards for Archeological Documentation with more specific guidance and technical information. They describe one approach to meeting the Standards for Documentation. Agencies, organizations or individuals proposing to approach archeological documentation differently may wish to review their approach with the National Park Service.

The Guidelines are organized as follows:
Archeological Documentation Objectives
Documentation Plan
Methods
Reporting Results
Curation
Recommended Sources of Technical Information

1. Collection of base-line data;

2. Problem-oriented research directed toward particular data gaps recognized in the historic context(s);

3. Preservation or illustration of significance which has been identified for treatment by the planning process; or

4. Testing of new investigative or conservation techniques, such as the effect of different actions such as forms of site burial (aqueous or non-aqueous).

Many properties having archeological components have associative values as well as research values. Examples include Native American sacred areas and historic sites such as battlefields. Archeological documentation may preserve information or data that are linked to the identified values that a particular property possesses. Depending on the property type and the range of values represented by the property, it may be necessary to recover information that relates to an aspect of the property's significance other than the specified research questions. It is possible that conflicts may arise between the optimal realizations of research goals and other issues such as the recognition/protection of other types of associative values. The research design for the archeological documentation should provide for methods and procedures to resolve such conflicts, and for the close coordination of the archeological research with the appropriate ethnographic, social or technological research.

Archeological Documentation Objectives

The term "archeological documentation" is used here to refer specifically to any operation that is performed using archeological techniques as a means to obtain and record evidence about past human activity that is of importance to documenting history and prehistory in the United States. Historic and prehistoric properties may be important for the data they contain, or because of their association with important persons, events, or processes, or because they represent architectural or artistic values, or for other reasons. Archeological documentation may be an appropriate option for application not only to

archeological properties, but to aboveground structures as well, and may be used in collaboration with a wide range of other treatment activities.

If a property contains artifacts, features, and other materials that can be studied using archeological techniques, then archeological documentation may be selected to achieve particular goals of the planning process, such as to address a specified information need, or to illustrate significant associative values. Within the overall goals and priorities established by the planning process, particular methods of investigation are chosen that best suit the types of study to be performed.

Relationship of archeological documentation to other types of documentation or other treatments: Archeological documentation is appropriate for achieving any of various goals, including:

Documentation Plan

Research Design: Archeological documentation can be carried out only after defining explicit goals and a methodology for reaching them. The goals of the documentation effort directly reflect the goals of the preservation plan and the specific needs identified for the relevant historic contexts. In the case of problem oriented archeological research, the plan usually takes the form of a formal research design, and includes, in addition to the items below, explicit statements of the problem to be addressed and the methods or tests to be applied. The purpose of the statement of objectives is to explain the rationale behind the documentation effort; to define the scope of the investigation; to identify the methods, techniques, and procedures to be used; to provide a schedule for the activities; and to permit comparison of the proposed research with the results. The research design for an archeological documentation effort follows the same guidelines as those for identification (see the Guidelines for Identification) but has a more property-specific orientation.

The research design should draw upon the preservation plan to identify:

1. Evaluated significance of the property(ies) to be studied;
2. Research problems or other issues relevant to the significance of the property,
3. Prior research on the topic and property type; and how the proposed documentation objectives are related to previous research and existing knowledge;
4. The amount and kinds of information (data) required to address the documentation objectives and to make reliable statements including at what point information is redundant and documentation efforts have reached a point of diminishing returns;
5. Methods to be used to find the information; and
6. Relationship of the proposed archeological investigation to anticipated historical or structural documentation, or other treatments.

The primary focus of archeological documentation is on the data classes that are required to address the specified documentation objectives. This may mean that other data classes are deliberately neglected. If so, the reasons for such a decision should be carefully justified in terms of the preservation plan.

Archeological investigations seldom are able to collect and record all possible data. It is essential to determine the point at which further data recovery and documentation fail to improve the usefulness of the archeological information being recovered. One purpose of the research design is to estimate those limits in advance and to suggest at what point information becomes duplicative. Investigation strategies should be selected based on these general principles, considering the following factors:

1. Specific data needs;
2. Time and funds available to secure the data; and
3. Relative cost efficiency of various strategies.

Responsiveness to the concerns of local groups (e.g., Native American groups with ties to specific properties) that was built into survey and evaluation phases of the preservation plan, should be maintained in archeological investigation, since such activity usually involve, site disturbance. The research design, in addition to providing for appropriate ethnographic research and consultation, should consider concerns voiced in previous phases. In the absence of previous efforts to coordinate with local or other interested groups, the research design should anticipate the need to initiate appropriate contracts and provide a mechanism for responding to sensitive issues, such as the possible uncovering of human remains or discovery of sacred areas.

The research design facilitates an orderly, goal directed and economical project. However, the research design must be flexible enough to allow for examination of unanticipated but important research opportunities that arise during the investigation.

Documentation Methods

Backgound Review: Archeological documentation usually is preceded by, or integrated with historical research (i.e. that intensive background information gathering including identification of previous archeological work and inspection of museum collections; gathering relevant data on geology, botany, urban geography and other related disciplines; archival research; informant interviews, or recording of oral tradition, etc.).

Depending on the goals of the archeological documentation, the background historical and archeological research may exceed the level of research accomplished for development of the relevant historic contexts or for identification and evaluation, and focuses on the unique aspects of the property to be treated. This assists in directing the investigation and locates a broader base of information than that contained in the property itself for response to the documentation goals. This activity is particularly important for historic archeological properties where information sources other than the property itself may be critical to preserving the significant aspects of the property. (See the *Secretary of the Interior's Standards and Guidelines for Historical Documentation* for discussion of associated research activities.)

Field Studies: The implementation of the research design in the field must be flexible enough to accommodate the discovery of new or unexpected data classes or properties, or changing field conditions. A phased approach may be appropriated when dealing with large complex properties or groups of properties, allowing for changes in emphasis or field strategy, or termination of the program, based on analysis of recovered data at the end of each phase. Such an approach permits the confirmation of assumptions concerning property extent, content or organization which had been made based on data gathered from identification and evaluation efforts, or the adjustment of those expectations and resulting changes in procedure. In some cases a phased approach may be necessary to gather sufficient data to calculate the necessary sample size for a statistically valid sample. A phased documentation program may often be most cost-effective, in allowing for early termination of work if the desired objectives cannot be achieved.

Explicit descriptive statements of and justification for field study techniques are important to provide a means of evaluating results. In some cases, especially those employing a sampling strategy in earlier phases (such as identification or evaluation), it is possible to estimate parameters of certain classes of data in a fairly rigorous statistical manner. It is thus desirable to maintain some consistency in choice of sampling designs throughout multiple phases of work at the same property. Consistency with previously employed area sampling frameworks also improves potential replication in terms of later locating sampled and unsampled areas. It often is desirable to estimate the nature and frequency of data parameters based on existing information or analogy to other similar cases. These estimates may then be tested in field studies.

An important consideration in choosing methods to be used in the field studies should be assuring full, clear, and accurate descriptions of all field operations and observations, including excavation and recording techniques and stratigraphic or inter-site relationships.

To the extent feasible, chosen methodologies and techniques should take into account the possibility that future researchers will need to use the recovered data to address problems not recognized at the time the data were recovered. The field operation may recover data that may not be fully analyzed; this data, as well as the data analyzed, should be recorded and preserved in a way to facilitate future research.

A variety of methodologies may be used. Choices must be explained, including a measure of cost-effectiveness relative to other potential choices. Actual results can then be measured against expectations, and the information applied later in similar cases.

Destructive methods should not be applied to portions or elements of the property if nondestructive methods are practical. If portions or elements of the property being documented are to be preserved in place, the archeological investigation should employ methods that will leave the property as undisturbed as possible. However, in cases where the property will be destroyed by, for example, construction following the investigation, it may be most practical to gather the needed data in the most direct manner, even though that may involve use of destructive techniques.

Logistics in the field, including the deployment of personnel and materials and the execution of sampling strategies, should consider site significant, anticipated location of most important data, cost effectiveness, potential time limitations and possible adverse environmental conditions.

The choice of methods for recording data gathered in the field should be based on the research design. Based on that statement, it is known in advance of field work what kinds of information are needed for analysis; record-keeping techniques should focus on these data. Field records should be maintained in a manner that permits independent interpretation in so far as possible. Record-keeping should be standardized in format and level of detail.

Archeological documentation should be conducted under the supervision of qualified professionals in the disciplines appropriate to the data that are to be recovered. When the general public is directly involved in archeological documentation activities, provision should be made for training and supervision by qualified professionals. (See the Professional Qualifications Standards.)

Analysis: Archeological documentation is not completed with field work; analysis of the collected information is an integral part of the documentation activity, and should be planned for in the research design. Analytical techniques should be selected that are relevant to the objectives of the investigation. Forms of analysis that may be appropriate, depending on the type of data recovered and the objectives of the investigation, include but are not limited to: studying artifact types and distribution; radiometric and other means of age determination; studies of soil stratigraphy, studies of organic matter such as human remains, pollen, animal bones, shells and seeds; study of the composition of soils and study of the natural environment in which the property appears.

Reporting Results

Report Contents: Archeological documentation concludes with written report(s) including minimally the following topics:

1. Description of the study area;
2. Relevant historical documentation/background research;
3. The research design;

4. The field studies as actually implemented, including any deviation from the research design and the reason for the changes;
5. All field observations;
6. Analyses and results, illustrated as appropriate with tables, charts, and graphs;
7. Evaluation of the investigation in terms of the goals and objectives of the investigation, including discussion of how well the needs dictated by the planning process were served;
8. Recommendations for updating the relevant historic contexts and planning goals and priorities, and generation of new or revised information needs;
9. Reference to related on-going or proposed treatment activities, such as structural documentation, stabilization, etc.; and
10. Information on the location of original data in the form of field notes, photographs, and other materials.

Some individual property information, such as specific locational data, may be highly sensitive to disclosure, because of the threat of vandalism. If the objectives of the documentation effort are such that a report containing confidential information such as specific site locations or information on religious practices is necessary, it may be appropriate to prepare a separate report for public distribution. The additional report should summarize that information that is not under restricted access in a format most useful to the expected groups of potential users. Peer review of draft reports is recommended to ensure that state-of-the-art technical reports are produced.

Availability: Results must be made available to the full range of potential users. This can be accomplished through a variety of means including publication of results in monographs and professional journals and distribution of the report to libraries or technical clearinghouses such as the National Technical Information Service in Springfield, Virginia.

Curation

Archeological specimens and records are part of the documentary record of an archeological site. They must be curated for future use in research, interpretation, preservation, and resource management activities. Curation of important archeological specimens and records should be provided for in the development of any archeological program or project.

Archeological specimens and records that should be curated are those that embody the information important to history and prehistory. They include artifacts and their associated documents, photographs, maps, and field notes; materials of an environmental nature such as bones, shells, soil and sediment samples, wood, seeds, pollen, and their associated records; and the products and associated records of laboratory procedures such as thin sections, and sediment fractions that result from the analysis of archeological data.

Satisfactory curation occurs when:

a. Curation facilities have adequate space, facilities, professional personnel,
b. Archeological specimens are maintained so that their information values are not lost through deterioration, and records are maintained to a professional archival standard;
c. Curated collections are accessible to qualified researchers within a reasonable time of having been requested; and
d. Collections are available for interpretive purposes, subject to reasonable security precautions.

Recommended Sources of Technical Information
Current Recommendations

Archaeology, 3rd edition. David Hurst Thomas. Harcourt Brace College Publishers, Forth Worth, 1998.

Archaeology: Theories, Methods, and Practice, 2nd edition. Colin Renfrew and Paul Bahn. Thames and Hudson, London, 1996.

Archeology in the National Historic Landmarks Program. Robert S. Grumet. Technical Brief 3, Archeology & Ethnography Program, National Park Service, 1988.

Archaeological Prospecting and Remote Sensing. I. Scollar, A. Tabbagh, A. Hesse, and I. Herzog. Cambridge University Press, Cambridge, 1990.

Curation of Federally-Owned and Administered Archeological Collections (36 CFR Part 79)

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"The Siteless Survey: A Regional Scale Data Collection Strategy." R. Dunnell and W. Dancey. In *Advances in Archaeological Method and Theory,* Vol. 5. M. B. Schiffer, editor. Pp. 267-287. Academic Press, New York, 1983.

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A web guide to the wide variety of tools available for protecting archeological sites on private lands. It contains information on strategies that are currently being used throughout the country, contact information, and other sources of useful information.

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The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995

Standards for Preservation

1. A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.

2. The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color, and texture.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

Standards for Rehabilitation

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Standards for Restoration

1. A property will be used as it was historically or be given a new use which reflects the property's restoration period.

2. Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period will not be undertaken.

3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

4. Materials, features, spaces, and finishes that characterize other historical periods will be documented prior to their alteration or removal.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.

6. Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials.

7. Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.

8. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

9. Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

10. Designs that were never executed historically will not be constructed.

Standards for Reconstruction

1. Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.

2. Reconstruction of a landscape, building, structure, or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.

3. Reconstruction will include measures to preserve any remaining historic materials, features, and spatial relationships.

4. Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color, and texture.

5. A reconstruction will be clearly identified as a contemporary re-creation.

6. Designs that were never executed historically will not be constructed.

Recommended Sources of Technical Information
Current Recommendations

Understanding Your Work on a Historic Building

Four Approaches to Treatment--What They Are
Designed to assist historic property owners, managers, and maintenance personnel, the essay explains the philosophy behind the various work approaches on historic buildings in The Secretary of the Interior's Standards for the Treatment of Historic Properties. Easy-to-read charts tell the differences between the four treatments.

Telling Historic Preservation Time
This web guidance demonstrates that TIME constitutes the philosophical framework for the four approaches to working on historic buildings--Preservation, Rehabilitation, Restoration and Reconstruction. Uses the idea of four clocks to make key points.

Using the Standards and Guidelines

The Secretary of the Interior's Standards for Rehabilitation with Illustrated Guidelines for Rehabilitating Historic Buildings
The Standards (36 CFR 67) and accompanying illustrated guidelines help property owners, developers, and federal managers apply the Secretary of the Interior's Standards for Rehabilitation during the project planning stage by providing general design and technical recommendations. These are the standards that must be used by federal historic preservation tax credit applicants.

The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings
The Standards (37 CFR 68) and guidelines provide a consistent framework for undertaking any one of four approaches to work, Preservation, Rehabilitation, Restoration, and Reconstruction. They pertain to both exterior and interior work on historic buildings of all sizes, materials, and types. (PDF format)

Planning Your Work on a Historic Building

A Checklist for Rehabilitating Historic Buildings
The rehab checklist suggests a typical process of documenting, evaluating, and assessing a historic building prior to undertaking rehabilitation work.

All Wet & How to Prevent It - Managing Moisture in Your Historic House
This mini-web class can help anyone who cares for, or about, a historic house to better understand how moisture can invade historic materials and what goes wrong when moisture is not adequately managed. It provides a series of simple, common sense tips to combat the problems and a quiz that's fun to take.

The BOILERPLATE "YESs!"
This web guidance focuses on approaches to rehabilitation work that serve to protect historic materials, exterior features, and interior spaces, features, and finishes in the process of making changes for new or continued use.

The BOILERPLATE "NOs!"
This web guidance illustrates what happens when inappropriate approaches to rehabilitation work cause the loss of a historic building's unique character. Includes examples of incompatible new additions--large and small.

Electronic REHAB
This popular web class is useful for historic building owners, historic preservation commissions; architects, contractors, and developers; maintenance personnel; and others involved in the care of historic buildings. Two quizzes are included.

The Walk Through--How to Read a Historic Building
This web class helps anyone identify those tangible elements or features that give historic buildings their unique visual character. Includes a challenging quiz.

Beginning Your Work on a Historic Building

Preservation Briefs 1 - 41
The Briefs are developed to assist owners and developers of historic buildings in recognizing and resolving common preservation and repair problems prior to work.

Preservation Tech Notes
Preservation Tech Notes (PTN) provide innovative solutions to specific problems in preserving cultural resources for architects, contractors, and maintenance personnel, as well as for anyone seeking the tax credit for rehabilitation.

- EXTERIOR WOODWORK NUMBER 4 - Protecting Woodwork Against Decay Using Borate Preservatives
- MASONRY NUMBER 4 - Non-destructive Evaluation Techniques for Masonry Construction
- METALS NUMBER 2 - Restoring Metal Roof Cornices

Professional Qualifications Standards

The following requirements are those used by the National Park Service, and have been previously published in the Code of Federal Regulations, 36 CFR Part 61. The qualifications define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. In the following definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

History
The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historic organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

Archeology
The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

1. At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;
2. At least four months of supervised field and analytic experience in general North American archeology, and
3. Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological

resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

Architectural History
The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

Architecture
The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time experience in architecture; or a State license to practice architecture.

Historic Architecture
The minimum professional qualifications in historic architecture are a professional degree in architecture or a State license to practice architecture, plus one of the following:

1. At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or
2. At least one year of full-time professional experience on historic preservation projects.

Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

Preservation Terminology

Acquisition—the act or process of acquiring fee title or interest other than fee title of real property (including acquisition of development rights or remainder interest).

Comprehensive Historic Preservation Planning—the organization into a logical sequence of preservation information pertaining to identification, evaluation, registration and treatment of historic properties, and setting priorities for accomplishing preservation activities.

Historic Context—a unit created for planning purposes that groups information about historic properties based on a shared theme, specific time period and geographical area.

Historic Property—a district, site, building, structure or object significant in American history, architecture, engineering, archeology or culture at the national, State, or local level.

Integrity—the authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's historic or prehistoric period.

Intensive Survey—a systematic, detailed examination of an area designed to gather information about historic properties sufficient to evaluate them against predetermined criteria of significance within specific historic contexts.

Inventory—a list of historic properties determined to meet specified criteria of significance.

National Register Criteria—the established criteria for evaluating the eligibility of properties for inclusion in the National Register of Historic Places.

Preservation- [Current definition of this treatment standard, as revised in The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995:

Preservation is defined as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

Property Type—a grouping of individual properties based on a set of shared physical or associative characteristics.

Reconnaissance Survey—an examination of all or part of an area accomplished in sufficient detail to make generalizations about the types and distributions of historic properties that may be present.

Reconstruction (treatment [Current definition of this treatment standard, as revised in The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995:

Reconstruction is defined as the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.]

Rehabilitation (treatment)— [Current definition of this treatment standard, as revised in The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995:

Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.]

Research design—a statement of proposed identification, documentation, investigation, or other treatment of a historic property that identifies the project's goals, methods and techniques, expected results, and the relationship of the expected results to other proposed activities or treatments.

Restoration [treatment]— [Current definition of this treatment standard, as revised in The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995:

Restoration is defined as the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other

periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.]

Sample Survey—survey of a representative sample of lands within a given area in order to generate or test predictions about the types and distributions of historic properties in the entire area.

36 CFR 800

36 CFR PART 800 --PROTECTION OF HISTORIC PROPERTIES (incorporating amendments effective August 5, 2004)

Subpart A -- Purposes and Participants

Sec.
800.1 Purposes.
800.2 Participants in the Section 106 process.

Subpart B -- The Section 106 Process

800.3 Initiation of the section 106 process.
800.4 Identification of historic properties.
800.5 Assessment of adverse effects.
800.6 Resolution of adverse effects.
800.7 Failure to resolve adverse effects.
800.8 Coordination with the National Environmental Policy act.
800.9 Council review of Section 106 compliance.
800.10 Special requirements for protecting National Historic Landmarks.
800.11 Documentation standards.
800.12 Emergency situations.
800.13 Post-review discoveries.

Subpart C -- Program Alternatives

800.14 Federal agency program alternatives.
800.15 Tribal, State and Local Program Alternatives. (Reserved)
800.16 Definitions.
Appendix A – Criteria for Council involvement in reviewing individual section 106 cases

Authority: 16 U.S.C. 470s.

Subpart A-Purposes and Participants

§ 800.1 Purposes.
(a) *Purposes of the section 106 process*. Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.
(b) *Relation to other provisions of the act*. Section 106 is related to other provisions of the act designed to further the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the section 106 process. Guidelines, policies and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

(c) *Timing*. The agency official must complete the section 106 process "prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license." This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The agency official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

§ 800.2 Participants in the Section 106 process.

(a) *Agency official*. It is thestatutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) *Professional standards*. Section 112(a)(1)(A) of the act requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) *Lead Federal agency*. If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) *Use of contractors*. Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.
(4) *Consultation*. The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of

Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation. The Council encourages the agency official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) *Council*. The Council issues regulations to implement section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to agency officials on individual undertakings and programs that affect historic properties.

(1) *Council entry into the section 106 process*. When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) *Council assistance*. Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) *Consulting parties*. The following parties have consultative roles in the section 106 process.

(1) *State historic preservation officer*.

(i) The State historic preservation officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taking into consideration at all levels of planning and development.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with § 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to § 800.3(f)(3).

(2) *Indian tribes and Native Hawaiian organizations*.

(i) *Consultation on tribal lands*.

(A) *Tribal historic preservation officer*. For a tribe that has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the tribal historic preservation officer (THPO) appointed or designated in accordance with the act is the official representative for the purposes of section 106. The agency official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(B) *Tribes that have not assumed SHPO functions*. When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the THPOs are given throughout subpart B of this part, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.

(ii) *Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations*. Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(A) The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

(B) The Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies or limits the exercise of any such rights.

(C) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes. The agency official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(D) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(E) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an agency official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The agency official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.

(F) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act may notify the agency official in writing that it is waiving its rights under § 800.6(c)(1) to execute a memorandum of agreement.

(3) *Representatives of local governments*. A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.

(4) *Applicants for Federal assistance, permits, licenses and other approvals*. An applicant for Federal assistance or for a Federal permit, license or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government to government relationships with Indian tribes.

(5) *Additional consulting parties*. Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties 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.

(d) *The public*.

(1) *Nature of involvement*. The views of the public are essential to informed Federal decisionmaking in the section 106 process. The agency official 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 likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) *Providing notice and information*. The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decisionmaking.

(3) *Use of agency procedures*. The agency official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

Subpart B-The section 106 Process

§ 800.3 Initiation of the section 106 process.

(a) *Establish undertaking*. The agency official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) *No potential to cause effects*. If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

(2) *Program alternatives*. If the review of the undertaking is governed by a Federal agency program alternative established under § 800.14 or a programmatic agreement in existence before January 11, 2001, the agency official shall follow the program alternative.

(b) *Coordinate with other reviews*. The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the agency official may use information developed for other reviews under Federal, State or tribal law to meet the requirements of section 106.

(c) *Identify the appropriate SHPO and/or THPO*. As part of its initial planning, the agency official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The agency official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The agency official shall then initiate consultation with the appropriate officer or officers.

(1) *Tribal assumption of SHPO responsibilities*. Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to section 101(d)(2) of the act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe to request the SHPO to participate in the section 106 process in addition to the THPO.

(2) *Undertakings involving more than one State*. If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking

actions that would conclude the section 106 process under this subpart.

(3) *Conducting consultation*. The agency official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties.

(4) *Failure of the SHPO/THPO to respond*. If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the section 106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.

(d) *Consultation on tribal lands*. Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the agency official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting historic properties on tribal lands.

(e) *Plan to involve the public*. In consultation with the SHPO/THPO, the agency official shall plan for involving the public in the section 106 process. The agency official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with § 800.2(d).

(f) *Identify other consulting parties*. In consultation with the SHPO/THPO, the agency official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The agency official may invite others to participate as consulting parties as the section 106 process moves forward.

(1) *Involving local governments and applicants*. The agency official shall invite any local governments or applicants that are entitled to be consulting parties under § 800.2(c).

(2) *Involving Indian tribes and Native Hawaiian organizations*. The agency official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) *Requests to be consulting parties*. The agency official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, determine which should be consulting parties.

(g) *Expediting consultation*. A consultation by the agency official with the SHPO/THPO and other consulting parties may address multiple steps in §§ 800.3 through 800.6 where the agency official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in § 800.2(d).

§ 800.4 Identification of historic properties.

(a) *Determine scope of identification efforts*. In consultation with the SHPO/THPO, the agency official shall:

(1) Determine and document the area of potential effects, as defined in § 800.16(d);

(2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to § 800.11(c).

(b) *Identify historic properties*. Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects.

(1) *Level of effort*. The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's Standards and Guidelines for Identification provide guidance on this subject. The agency official should also consider other applicable professional, State, tribal and local laws, standards and guidelines. The agency official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) *Phased identification and evaluation*. Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts. The agency official may also defer final identification and evaluation of historic properties if it is specifically provided for in a memorandum of agreement executed pursuant to § 800.6, a programmatic agreement executed pursuant to § 800.14 (b), or the documents used by an agency official to comply with the National Environmental Policy Act pursuant to § 800.8. The process should establish the likely presence of historic properties

within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the agency official shall proceed with the identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

(c) *Evaluate historic significance*.

(1) *Apply National Register criteria*. In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's Standards and Guidelines for Evaluation, the agency official shall apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) *Determine whether a property is eligible*. If the agency official determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility.

(d) *Results of identification and evaluation*.

(1) *No historic properties affected*. If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the agency official shall provide documentation of this finding, as set forth in § 800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking.

(i) If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(ii) If the SHPO/THPO objects within 30 days of receipt of an adequately documented finding, the agency official shall either consult with the objecting party to resolve the disagreement, or forward the finding and supporting documentation to the Council and request that the Council review the finding pursuant to paragraphs (d)(1)(iv)(A) through (d)(1)(iv)(C) of this section. When an agency official forwards such requests for review to the Council, the agency official shall concurrently notify all consulting parties that such a request has been made and make the request documentation available to the public.

(iii) During the SHPO/THPO 30 day review period, the Council may object to the finding and provide its opinion regarding the finding to the agency official and, if the Council determines the issue warrants it, the head of the agency. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The agency shall then proceed according to paragraphs (d)(1)(iv)(B) and (d)(1)(iv)(C) of this section.

(iv)(A) Upon receipt of the request under paragraph (d)(1)(ii) of this section, the Council will have 30 days in which to review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the finding. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. If the Council does not respond within 30 days of receipt of the request, the agency official's responsibilities under section 106 are fulfilled.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion before the agency reaches a final decision on the finding.

(C) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall then prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial agency finding of no historic properties affected, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(D) The Council shall retain a record of agency responses to Council opinions on their findings of no historic properties affected. The Council shall make this information available to the public.

(2) *Historic properties affected*. If the agency official finds that there are historic properties which may be affected by the undertaking, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

§ 800.5 Assessment of adverse effects.

(a) *Apply criteria of adverse effect*. In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning

such effects which have been provided by consulting parties and the public.

(1) *Criteria of adverse effect*. An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(2) *Examples of adverse effects*. Adverse effects on historic properties include, but are not limited to:

(i) Physical destruction of or damage to all or part of the property;

(ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines;

(iii) Removal of the property from its historic location;

(iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;

(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;

(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and

(vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

(3) *Phased application of criteria*. Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to § 800.4(b)(2).

(b) *Finding of no adverse effect*. The agency official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (a)(1) of this section or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) *Consulting party review*. If the agency official proposes a finding of no adverse effect, the agency official shall notify all consulting parties of the finding and provide them with the documentation specified in § 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) *Agreement with, or no objection to, finding*. Unless the Council is reviewing the finding pursuant to paragraph (c)(3) of this section, the agency official may proceed after the close of the 30 day review period if the SHPO/THPO has agreed with the finding or has not provided a response, and no consulting party has objected. The agency official shall then carry out the undertaking in accordance with paragraph (d)(1) of this section.

(2) *Disagreement with finding*.

(i) If within the 30 day review period the SHPO/THPO or any consulting party notifies the agency official in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, the agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraphs (c)(3)(i) and (c)(3)(ii) of this section. The agency official shall include with such request the documentation specified in § 800.11(e). The agency official shall also concurrently notify all consulting parties that such a submission has been made and make the submission documentation available to the public.

(ii) If within the 30 day review period the Council provides the agency official and, if the Council determines the issue warrants it, the head of the agency, with a written opinion objecting to the finding, the agency shall then proceed according to paragraph (c)(3)(ii) of this section. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part.

(iii) The agency official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30 day review period specify the reasons for disagreeing with the finding and request the Council to review and object to the finding pursuant to paragraph (c)(2)(ii) of this section.

(3) *Council review of findings*.

(i) When a finding is submitted to the Council pursuant to paragraph (c)(2)(i) of this section, the Council shall review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with its opinion as to whether the adverse effect criteria have been correctly applied. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The Council will provide its opinion within 15 days of receiving the documented finding from the agency official. The Council at its discretion may extend that time period for 15 days, in which case it shall notify the agency of such extension prior to the end of the initial 15 day period. If the Council does not respond within the applicable time period, the agency official's responsibilities under section 106 are fulfilled.

(ii)(A) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the finding.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to

affirm the initial finding of no adverse effect, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(C) The Council shall retain a record of agency responses to Council opinions on their findings of no adverse effects. The Council shall make this information available to the public.

(d) *Results of assessment*.

(1) *No adverse effect*. The agencyofficial shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of § 800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the agency official's responsibilities under section 106 and this part. If the agency official will not conduct the undertaking as proposed in the finding, the agency official shall reopen consultation under paragraph (a) of this section.

(2) *Adverse effect*. If an adverse effect is found, the agency official shall consult further to resolve the adverse effect pursuant to § 800.6.

§ 800.6 Resolution of adverse effects.

(a) *Continue consultation*. The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.

(1) *Notify the Council and determine Council participation*. The agency official shall notify the Council of the adverse effect finding by providing the documentation specified in § 800.11(e).

(i) The notice shall invite the Council to participate in the consultation when:

(A) The agency official wants the Council to participate;

(B) The undertaking has an adverse effect upon a National Historic Landmark; or

(C) A programmatic agreement under § 800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the agency official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the agency official and the consulting parties that its decision to participate meets the criteria set forth in appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process. Consultation with Council participation is conducted in accordance with paragraph (b)(2) of this section.

(iv) If the Council does not join the consultation, the agency official shall proceed with consultation in accordance with paragraph (b)(1) of this section.

(2) *Involve consulting parties*. In addition to the consulting parties identified under § 800.3(f), the agency official, the SHPO/THPO and the Council, if participating, may agree to invite other individuals or organizations to become consulting parties. The agency official shall invite any individual or organization that will assume a specific role or responsibility in a memorandum of agreement to participate as a consulting party.

(3) *Provide documentation*. The agency official shall provide to all consulting parties the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) *Involve the public*. The agency official shall make information available to the public, including the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c). The agency official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The agency official should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking to ensure that the public's views are considered in the consultation. The agency official should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of § 800.2(d) are met.

(5) *Restrictions on disclosure of information*. Section 304 of the act and other authorities may limit the disclosure of information under paragraphs (a)(3) and (a)(4) of this section. If an Indian tribe or Native Hawaiian organization objects to the disclosure of information or if the agency official believes that there are other reasons to withhold information, the agency official shall comply with § 800.11(c) regarding the disclosure of such information.

(b) *Resolve adverse effects*.

(1) *Resolution without the Council*.

(i) The agency official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The agency official may use standard treatments established by the Council under § 800.14(d) as a basis for a memorandum of agreement.

(iii) If the Council decides to join the consultation, the agency official shall follow paragraph (b)(2) of this section.

(iv) If the agency official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement. The agency official must submit a copy of the executed memorandum of agreement, along with the documentation specified in § 800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of section 106 and this subpart.

(v) If the agency official, and the SHPO/THPO fail to agree on the terms of a memorandum of agreement, the agency official shall request the Council to join the consultation and provide the Council with the documentation set forth in § 800.11(g). If the Council decides to join the consultation, the agency official shall proceed in accordance with paragraph (b)(2) of this section. If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with § 800.7(c).

(2) *Resolution with Council participation*. If the Council decides to participate in the consultation, the agency official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under § 800.2(c)(3), to seek ways to avoid, minimize or

mitigate the adverse effects. If the agency official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement.

(c) *Memorandum of agreement*. A memorandum of agreement executed and implemented pursuant to this section evidences the agency official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. The agency official shall ensure that the undertaking is carried out in accordance with the memorandum of agreement.

(1) *Signatories*. The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The agency official and the SHPO/THPO are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(1) of this section.

(ii) The agency official, the SHPO/THPO, and the Council are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(2) of this section.

(iii) The agency official and the Council are signatories to a memorandum of agreement executed pursuant to § 800.7(a)(2).

(2) *Invited signatories*.

(i) The agency official may invite additional parties to be signatories to a memorandum of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories.

(ii) The agency official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties.

(iii) The agency official should invite any party that assumes a responsibility under a memorandum of agreement to be a signatory.

(iv) The refusal of any party invited to become a signatory to a memorandum of agreement pursuant to paragraph (c)(2) of this section does not invalidate the memorandum of agreement.

(3) *Concurrence by others*. The agency official may invite all consulting parties to concur in the memorandum of agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement.

(4) *Reports on implementation*. Where the signatories agree it is appropriate, a memorandum of agreement shall include a provision for monitoring and reporting on its implementation.

(5) *Duration*. A memorandum of agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(6) *Discoveries*. Where the signatories agree it is appropriate, a memorandum of agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

(7) *Amendments*. The signatories to a memorandum of agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the agency official shall file it with the Council.

(8) *Termination*. If any signatory determines that the terms of a memorandum of agreement cannot be or are not being carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The agency official shall either execute a memorandum of agreement with signatories under paragraph (c)(1) of this section or request the comments of the Council under § 800.7(a).

(9) *Copies*. The agency official shall provide each consulting party with a copy of any memorandum of agreement executed pursuant to this subpart.

§ 800.7 Failure to resolve adverse effects.

(a) *Termination of consultation*. After consulting to resolve adverse effects pursuant to § 800.6(b)(2), the agency official, the SHPO/THPO, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the agency official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agencywide responsibilities shall request that the Council comment pursuant to paragraph (c) of this section and shall notify all consulting parties of the request.

(2) If the SHPO terminates consultation, the agency official and the Council may execute a memorandum of agreement without the SHPO's involvement.

(3) If a THPO terminates consultation regarding an undertaking occurring on or affecting historic properties on its tribal lands, the Council shall comment pursuant to paragraph (c) of this section.

(4) If the Council terminates consultation, the Council shall notify the agency official, the agency's Federal preservation officer and all consulting parties of the termination and comment under paragraph (c) of this section. The Council may consult with the agency's Federal preservation officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

(b) *Comments without termination*. The Council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a memorandum of agreement will be executed. The Council shall provide them to the agency official when it executes the memorandum of agreement.

(c) *Comments by the Council*.

(1) *Preparation*. The Council shall provide an opportunity for the agency official, all consulting parties, and the public to provide their views within the time frame for developing its comments. Upon request of the Council, the agency official shall provide additional existing information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) *Timing*. The Council shall transmit its comments within 45 days of receipt of a request under paragraph (a)(1) or (a)(3) of this section or § 800.8(c)(3), or termination by the Council under § 800.6(b)(1)(v) or paragraph (a)(4) of this section, unless otherwise agreed to by the agency official.

(3) *Transmittal*. The Council shall provide its comments to the head of the agency requesting comment with copies to the agency official, the agency's Federal preservation officer, all consulting parties, and others as appropriate.

(4) *Response to Council comment*. The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(l) of the act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

(i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments
and providing it to the Council prior to approval of the undertaking;

(ii) Providing a copy of the summary to all consulting parties; and

(iii) Notifying the public and making the record available for public inspection.

§ 800.8 Coordination With the National Environmental Policy Act.

(a) *General principles*.

(1) *Early coordination*. Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a "major Federal action significantly affecting the quality of the human environment," and therefore requires preparation of an environmental impact statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

(2) *Consulting party roles*. SHPO/THPOs, Indian tribes and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) *Inclusion of historic preservation issues*. Agency officials should ensure that preparation of an environmental assessment (EA) and finding of no significant impact (FONSI) or an EIS and record of decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) A*ctions categorically excluded under NEPA*. If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the agency official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to § 800.3(a). If so, the agency official shall proceed with section 106 review in accordance with the procedures in this subpart.

(c) *Use of the NEPA process for section 106 purposes*. An agency official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in §§ 800.3 through 800.6 if the agency official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) *Standards for developing environmental documents to comply with Section 106*. During preparation of the EA or draft EIS (DEIS) the agency official shall:

(i) Identify consulting parties either pursuant to § 800.3(f) or through the NEPA scoping process with results consistent with § 800.3(f);

(ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§ 800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the agency official's consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;

(iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and

(v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

(2) *Review of environmental documents*.

(i) The agency official shall submit the EA, DEIS or EIS to the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, and other consulting parties prior to or when making the document available for public comment. If the document being prepared is a DEIS or EIS, the agency official shall also submit it to the Council.

(ii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the agency official that preparation of the EA, DEIS or EIS has not met the standards set forth in paragraph (c)(1) of this section or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS or EIS is inadequate. If the agency official receives such an objection, the agency official shall refer the matter to the Council.

(3) *Resolution of objections*. Within 30 days of the agency official's referral of an objection under paragraph (c)(2)(ii) of this section, the Council shall review the objection and notify the agency as to its opinion on the objection.

(i) If the Council agrees with the objection:

(A) The Council shall provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the objection. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the issue of the objection.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion,

and provide it to the Council. The head of the agency may delegate his or her duties under this paragraph to the agency's senior Policy Official. If the agency official's initial decision regarding the matter that is the subject of the objection will be revised, the agency official shall proceed in accordance with the revised decision. If the final decision of the agency is to affirm the initial agency decision, once the summary of the final decision has been sent to the Council, the agency official shall continue its compliance with this section.

(ii) If the Council disagrees with the objection, the Council shall so notify the agency official, in which case the agency official shall continue its compliance with this section.

(iii) If the Council fails to respond to the objection within the 30 day period, the agency official shall continue its compliance with this section.

(4) *Approval of the undertaking*. If the agency official has found, during the preparation of an EA or EIS that the effects of an undertaking on historic properties are adverse, the agency official shall develop measures in the EA, DEIS, or EIS to avoid, minimize, or mitigate such effects in accordance with paragraph (c)(1)(v) of this section. The agency official's responsibilities under section 106 and the procedures in this subpart shall then be satisfied when either:

(i) a binding commitment to such proposed measures is incorporated in

(A) the ROD, if such measures were proposed in a DEIS or EIS; or

(B) an MOA drafted in compliance with § 800.6(c); or

(ii) the Council has commented under § 800.7 and received the agency's response to such comments.

(5) *Modification of the undertaking*. If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the agency official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the binding commitment adopted pursuant to paragraph (c)(4) of this section) are carried out, the agency official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in §§ 800.3 through 800.6 will be followed as necessary.

§ 800.9 Council review of section 106 compliance.

(a) *Assessment of agency official compliance for individual undertakings*. The Council may provide to the agency official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the agency official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiative. The agency official shall consider the views of the Council in reaching a decision on the matter in question.

(b) *Agency foreclosure of the Council's opportunity to comment*. Where an agency official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the agency official and the agency's Federal preservation officer and allow 30 days for the agency official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the agency official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) *Intentional adverse effects by applicants*.

(1) *Agency responsibility*. Section 110(k) of the act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the act governs its implementation.

(2) *Consultation with the Council*. When an agency official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the agency official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the agency official's notification, unless otherwise agreed to by the agency official, the Council shall provide the agency official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The agency official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) *Compliance with Section 106*. If an agency official, after consulting with the Council, determines to grant the assistance, the agency official shall comply with §§ 800.3 through 800.6 to take into account the effects of the undertaking on any historic properties.

(d) *Evaluation of Section 106 operations*. The Council may evaluate the operation of the section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the act.

(1) *Information from participants*. Section 203 of the act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the section 106 process. The agency official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the section 106 process.

(2) *Improving the operation of section 106*. Based upon any evaluation

of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an agency official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the process in this part, the Council may participate in individual case reviews conducted under such process in addition to the SHPO/THPO for such period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation pursuant to section 202(a)(6) of the act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

§ 800.10 Special requirements for protecting National Historic Landmarks.

(a) *Statutory requirement*. Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in §§ 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.

(b) *Resolution of adverse effects*. The agency official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under § 800.6.

(c) *Involvement of the Secretary*. The agency official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the act to assist in the consultation.

(d) *Report of outcome*. When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any memoranda of agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

§ 800.11 Documentation standards.

(a) *Adequacy of documentation*. The agency official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. The agency official shall provide such documentation to the extent permitted by law and within available funds. When an agency official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the agency official and specify the information needed to meet the standard. At the request of the agency official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the agency official and the consulting parties.

(b) *Format*. The agency official may use documentation prepared to comply with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) *Confidentiality*.

(1) *Authority to withhold information*. Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

(2) *Consultation with the Council*. When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the SHPO/THPO, Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) *Other authorities affecting confidentiality*. Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants.

(d) *Finding of no historic properties affected*. Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to § 800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) *Finding of no adverse effect or adverse effect*. Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify historic properties;

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking's effects on historic properties;

(5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) *Memorandum of agreement*. When a memorandum of agreement is filed with the Council, the documentation shall include, any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) *Requests for comment without a memorandum of agreement*. Documentation shall include:

(1) A description and evaluation of any alternatives or mitigation measures that the agency official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies or summaries of any views submitted to the agency official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1).

§ 800.12 Emergency situations.

(a) *Agency procedures*. The agency official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§ 800.3 through 800.6.

(b) *Alternatives to agency procedures*. In the event an agency official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the agency official may comply with section 106 by:

(1) Following a programmatic agreement developed pursuant to § 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the agency official determines that circumstances do not permit seven days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) *Local governments responsible for section 106 compliance*. When a local government official serves as the agency official for section 106 compliance, paragraphs (a) and (b) of this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the agency official shall comply with §§ 800.3 through 800.6.

(d) *Applicability*. This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

§ 800.13 Post-review discoveries.

(a) *Planning for subsequent discoveries*.

(1) *Using a programmatic agreement*. An agency official may develop a programmatic agreement pursuant to § 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) *Using agreement documents*. When the agency official's identification efforts in accordance with § 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no programmatic agreement has been developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official's responsibilities under section 106 and this part.

(b) *Discoveries without prior planning*. If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the agency official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to § 800.6; or

(2) If the agency official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archeological data, the agency official may comply with the Archeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48

hours of the notification. The agency official shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) *Eligibility of properties*. The agency official, in consultation with the SHPO/THPO, may assume a newly discovered property to be eligible for the National Register for purposes of section 106. The agency official shall specify the National Register criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) *Discoveries on tribal lands*. If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the agency official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

Subpart C-Program Alternatives

§ 800.14 Federal agency program alternatives.

(a) *Alternate procedures*. An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) *Development of procedures*. The agency official shall consult with the Council, the National Conference of State Historic Preservation Officers or individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the Federal Register and take other appropriate steps to seek public input during the development of alternate procedures.

(2) *Council review*. The agency official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) *Notice*. The agency official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the Federal Register.

(4) *Legal effect*. Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) *Programmatic agreements*. The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) *Use of programmatic agreements*. A programmatic agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) *Developing programmatic agreements for agency programs*.

(i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the programmatic agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section.

(ii) *Public Participation*. The agency official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The agency official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) *Effect*. The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPOs/THPOs when the programmatic agreement concerns a specific region or the president of NCSHPO when NCSHPO has participated in the consultation. A programmatic agreement shall take effect on tribal lands only when the THPO, Indian tribe or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved programmatic agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the president of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional programmatic agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the act and the SHPO is signatory to programmatic agreement, the THPO assumes the role of a signatory, including the right to terminate a regional programmatic agreement on lands under the jurisdiction of the tribe.

(iv) *Notice*. The agency official shall notify the parties with which it has consulted that a programmatic agreement has been executed under paragraph (b) of this section, provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/THPOs, and the public.

(v) If the Council determines that the terms of a programmatic agreement

are not being carried out, or if such an agreement is terminated, the agency official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) *Developing programmatic agreements for complex or multiple undertakings*. Consultation to develop a programmatic agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow § 800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the agency official shall comply with the provisions of subpart B of this part for each individual undertaking.

(4) *Prototype programmatic agreements*. The Council may designate an agreement document as a prototype programmatic agreement that may be used for the same type of program or undertaking in more than one case or area. When an agency official uses such a prototype programmatic agreement, the agency official may develop and execute the agreement with the appropriate SHPO/THPO and the agreement shall become final without need for Council participation in consultation or Council signature.

(c) *Exempted categories*.

(1) *Criteria for establishing*. The Council or an agency official may propose a program or category of undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as "undertakings" as defined in § 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the act.

(2) *Public participation*. The proponent of the exemption shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The proponent of the exemption shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs*. The proponent of the exemption shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) *Consultation with Indian tribes and Native Hawaiian organizations*. If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council review of proposed exemptions*. The Council shall review an exemption proposal that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the relevant agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the act.

(6) *Legal consequences*. Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) *Termination*. The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) *Notice*. The proponent of the exemption shall publish notice of any approved exemption in the Federal Register.

(d) *Standard treatments*.

(1) *Establishment*. The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the Federal Register.

(2) *Public participation*. The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an agency official has proposed a standard treatment, the Council may request the agency official to arrange for public involvement.

(3) *Consultation with SHPOs/THPOs*. The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations*. If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Termination*. The Council may terminate a standard treatment by publication of a notice in the Federal Register 30 days before the termination takes effect.

(e) *Program comments*. An agency official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under §§ 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) *Agency request*. The agency official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) *Public participation*. The agency official shall arrange for public participation appropriate to the subject

matter and the scope of the category and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs*. The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations*. If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council action*. Unless the Council requests additional documentation, notifies the agency official that it will decline to comment, or obtains the consent of the agency official to extend the period for providing comment, the Council shall comment to the agency official within 45 days of the request.

(i) If the Council comments, the agency official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the Federal Register of the Council's comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the agency official shall continue to comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(6) *Withdrawal of comment*. If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the agency official shall comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(f) *Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives*. Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) *Identifying affected Indian tribes and Native Hawaiian organizations*. If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the agency official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the agency official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them. When a proposed program alternative has nationwide applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda and applicable provisions of law.

(2) *Results of consultation*. The agency official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The agency official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.

§ 800.15 Tribal, State, and local program alternatives. (Reserved)

§ 800.16 Definitions.

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470-470w-6.

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Approval of the expenditure of funds* means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) *Area of potential effects* means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) *Comment* means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) *Consultation* means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

(g) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) *Day* or *days* means calendar days.

(i) *Effect* means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) *Foreclosure* means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

(k) *Head of the agency* means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l)(1) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other

properties that meet the National Register criteria.

(m) *Indian tribe* means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(n) *Local government* means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) *Memorandum of agreement* means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) *National Historic Landmark* means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) *National Register criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s)(1)*Native Hawaiian organization* means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

(2) *Native Hawaiian* means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(t) *Programmatic agreement* means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with § 800.14(b).

(u) *Secretary* means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(v) *State Historic Preservation Officer (SHPO)* means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

(w) *Tribal Historic Preservation Officer (THPO)*means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

(x) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

(z) *Senior policy official* means the senior policy level official designated by the head of the agency pursuant to section 3(e) of Executive Order 13287.

Appendix A to Part 800 -- Criteria for Council Involvement in Reviewing Individual section 106 Cases

(a) *Introduction*. This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

(b) *General policy*. The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

(c) *Specific criteria*. The Council is likely to enter the section 106 process at the steps specified in the regulations in this part when an undertaking:

(1) *Has substantial impacts on important historic properties*. This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) *Presents important questions of policy or interpretation*. This may include questions about how the Council's regulations are being applied or interpreted, including possible foreclosure or anticipatory demolition situations; situations where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) *Has the potential for presenting procedural problems*. This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to § 800.9(d)(2).

(4) *Presents issues of concern to Indian tribes or Native Hawaiian organizations*. This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.

SO 3317
Department of the Interior Policy on Consultation with Indian Tribes

Preamble

The obligation for Federal agencies to engage with Indian Tribes on a government-to-government basis is based on the U.S. Constitution and Federal treaties, statutes, executive orders, and policies. Federal agencies help to meet that obligation through meaningful consultation with Indian Tribes.

The Department of the Interior (Department) is committed to fulfilling its Tribal consultation obligations -- whether directed by statute or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments) or other applicable Secretarial Orders or policies -- by adhering to the consultation framework described in this Policy. Through this Policy, the Department strives to strengthen its government-to-government relationship with Indian Tribes and begin a new era of consultation. This Policy reflects the Secretary's commitment to consultation with Indian Tribes, recognition of Indian Tribes' right to self- governance and Tribal sovereignty.

The Department's Bureaus and Offices shall review their existing practices and revise them as needed to comply with this Policy. All Bureaus and Offices will report to the Secretary, through the designee, on their efforts to comply with this Policy, as described in a companion Secretarial Order.

II. Guiding Principles

This Policy broadly defines provisions for enhancing the Department's consultation processes with Indian Tribes. This Policy shall complement, not supersede, any existing laws, rules, statutes, or regulations that guide consultation processes with Indian Tribes. This Policy requires a government-to-government consultation between appropriate Tribal Officials and Departmental officials. The appropriate Departmental officials are those individuals who are knowledgeable about the matters at hand, are authorized to speak for the Department, and exercise delegated authority in the disposition and implementation of an agency action. Departmental officials will identify appropriate Tribal consulting parties early in the planning process and provide Indian Tribes a meaningful opportunity to participate in the consultation process as described in Section VII of this Policy. Departmental officials will participate in the consultation process in a manner that demonstrates a meaningful commitment and ensures continuity in the process. The Policy thus honors the government-to-government relationship

between the United States and Indian Tribes, and complies with the Presidential Memorandum of November 5, 2009, which affirms this relationship and obligates the Department to meet the spirit and intent of EO 13175.

Consultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making. Consultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility. Communication will be open and transparent without compromising the rights of Indian Tribes or the government-to-government consultation process. Federal consultation conducted in a meaningful and good-faith manner further facilitates effective Department operations and governance practices. To that end, Bureaus and Offices will seek and promote cooperation, participation, and efficiencies between agencies with overlapping jurisdiction, special expertise, or related responsibilities regarding a Departmental Action with Tribal Implications. Efficiencies derived from the inclusion of Indian Tribes in the Department's decision-making processes through Tribal consultation will help ensure that future Federal action is achievable, comprehensive, long-lasting, and reflective of Tribal input.

III. Definitions

Bureau or Office – As defined in the Department Manual.

Collaboration – The Department and Indian Tribes working together to implement this Policy.

Consultation Policies – Those policies established to comply with the procedures described in Section VII.

Departmental Action with Tribal Implications – Any Departmental regulation, rulemaking, policy, guidance, legislative proposal, grant funding formula changes, or operational activity that may have a substantial direct effect on an Indian Tribe on matters including, but not limited to:

1. Tribal cultural practices, lands, resources, or access to traditional areas of cultural or religious importance on federally managed lands;

2. The ability of an Indian Tribe to govern or provide services to its members;

3. An Indian Tribe's formal relationship with the Department; or

4. The consideration of the Department's trust responsibilities to Indian Tribes.

This, however, does not include matters that are in litigation or in settlement negotiations, or matters for which a court order limits the Department's discretion to engage in consultation.

Indian Tribe or Tribe – Any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 479a.

Tribal Governance Officer (TGO) – An individual designated by the Department to carry out responsibilities defined in this Policy.

Tribal Liaison Officer (TLO) – One or more individuals designated by a Bureau or Office to carry out responsibilities defined in this Policy.

Tribal Official – An elected or appointed Tribal leader or official designated in writing by an Indian Tribe to represent the Tribe in government-to-government consultations.

IV. Accountability and Reporting

Methods that ensure accountability and reporting are essential to regular and meaningful consultation. The heads of Bureaus and Offices shall include appropriate performance measures consistent with this Policy in future annual performance plans of their employees.

On an annual basis, Bureaus and Offices shall report to the Secretary the results of their efforts to promote consultation with Indian Tribes. Reporting is intended to be comprehensive and may include, but is not limited to, the scope of consultation efforts, the cost of these efforts, and the effectiveness of consultation activities. As part of its annual report, Bureaus and Offices shall provide a comprehensive listing of the topics on which consultations were held, training, innovations, and the engagement of senior leadership in these efforts. Where possible, such reports shall include feedback from Indian Tribes with whom the Bureau or Office has consulted. Reports should reference the documents and correspondence with Indian Tribes that address the Implementation of the Final Federal Action Stage described in Section VII of this Policy, a description of budget expenditures in the execution of consultation efforts,

narratives describing significant consultation efforts, and forthcoming consultation opportunities.

Based on information received from the Bureaus and Offices, the Secretary will provide an annual report to Indian Tribes on implementation of the Department's Consultation Policy. The Department will use its website to share report information, where appropriate.

V. Training

The Department will design training for Department staff aimed at improving the Department's capacity for promoting collaboration with Indian Tribes and executing the consultation provisions of Section VII of this Policy. The training will:

A. Promote consultation, communication, collaboration, and other interaction with Tribes;

B. Outline and reinforce the Department's duties concerning tribal interests;

C. Describe the legal trust obligation of the Federal-Tribal relationship; and

D. Highlight and provide the knowledge, skills, and tools necessary for collaborative engagement to Tribal and Departmental staff engaged in the consultative process with attention to the unique distinctions within Indian Country.

The Department, through the Department of the Interior University (DOIU), in collaboration with Bureaus, Offices, Tribal colleges and universities, and other entities with Indian expertise, will develop and deliver training to facilitate implementation of this Policy. DOIU will develop required core competencies, which Bureaus and Offices may enhance through other appropriate sources of Tribal expertise. This training will seek to enhance mutual understanding of cultural perspectives and administrative requirements between Tribal and Federal officials and to promote inter-governmental relationships. Tribal representatives will be encouraged to participate in training along with Federal employees.

VI. Innovative and Effective Consultation Practices

The Department's leadership will strive to advance Federal consultation practices and to offer examples for innovation across the Administration. The Department will identify and seek to address impediments, both external and internal, to improving its consultation processes. In

consultation with Indian Tribes, the Secretary will establish a joint Federal-Tribal Team for the purpose of making recommendations on the implementation of this Policy and for ensuring continued improvement of this Policy. The Federal Tribal Team may:

Host regular meetings between the Secretary and Indian Tribes;

Communicate through a regular gathering of Indian Tribes to discuss improving consultation practices and procedures;

Solicit recommendations from Indian Tribes for the initial development of performance measures described in Section IV, and thereafter for the evaluation of consultation practices.

VII. Consultation Guidelines

Consultation guidelines are meant to establish uniform practices and common standards, which all Bureaus and Offices will use except when otherwise agreed to in writing by a Bureau or Office and Indian Tribe, through an individual protocol conforming to the guidelines in this Section. Consultation and individual protocols will provide greater efficiency and transparency in Department practices in order to maximize Indian Tribes' participation. Departmental Actions with Tribal Implications that are regional or impact a limited number of Indian Tribes shall be carried out in a manner consistent with this Policy while allowing discretion to employ only appropriate parts of this Section.

A. *Initiating Consultation.* When considering a Departmental Action with Tribal Implications, a Bureau or Office must notify the appropriate Indian Tribe(s) of the opportunity to consult pursuant to this Policy. The Bureau or Office will strive to ensure that a notice is given at least 30-days prior to scheduling a consultation. If exceptional circumstances prevent notice within 30-days of the consultation, an explanation for the abbreviated notification will be provided in the invitation letter. An Indian Tribe may request an extension for timelines associated with this Policy.

Adequate notice entails providing a description of the topic(s) to be discussed, a timeline of the process, and possible outcomes. Notification of a consultation should include sufficient detail of the topic to be discussed to allow Tribal leaders an opportunity to fully engage in the consultation. The notice should also give Tribal leaders the opportunity to provide feedback prior to the consultation, including any request for technical assistance or request for clarification of how the consultation process conforms to this Policy.

Beginning at the Initial Planning Stage, see Section VII, Part E, Subsection 1, a Bureau or Office will consult with Indian Tribes on a Departmental Action with Tribal Implications.

An Indian Tribe may request that the Department initiate consultation when the Indian Tribe believes that a Bureau or Office is considering a Departmental Action with Tribal Implications. Requests should be made in writing to the Department's TGO and should describe the specific Departmental Action with Tribal Implications. However, in the event that an Indian Tribe may choose not to engage the TGO, a Bureau or Office is not relieved of its obligation to engage in consultation as described by this Policy. If the Bureau or Office initiates consultation with a Tribe but does not receive a response, the Bureau or Office should make reasonable and periodic efforts to repeat the invitation and, whenever feasible, should allow an Indian Tribe to join an ongoing consultation. These efforts of engagement shall be appropriately documented.

B. *Role of Tribal Governance Officer and Tribal Liaison Officer in Consultation Process.*

1. The Secretary shall designate a TGO, who will have access to the Secretary or Deputy Secretary, to carry out the responsibilities defined in this Policy. These responsibilities shall include:

a. Monitoring compliance with this Policy, EO 13175, and other Consultation Policies pertaining to government-to-government consultation;

b. Serving as the Secretary's representative when requested to do so in matters pertaining to consultation;

c. Promoting government-to-government consultation;

d. Communicating and coordinating with TLOs concerning Bureau and Office compliance with this Policy;

e. Encouraging Indian Tribes to request consultation directly with the appropriate Bureau or Office representative or the TLO and helping to ensure the resolution of all requests.

f. Implementing, in coordination with the TLOs, a reporting system to ensure that consultation efforts are documented and reported to the Secretary and to the Department's TGO for EO 13175; and

g. Facilitating a government-to-government relationship that is honored by all parties in Tribal consultations of national significance or involving multiple Bureaus or Offices.

2. Each Bureau or Office shall designate one or more TLOs whose responsibilities shall include:

    a. Working with the Bureau or Office to achieve compliance with this Policy, the Consultation Policies of the Bureau or Office, and any future policies related to EO 13175 or other government-to-government consultation policies;

    b. Promoting and facilitating consultation and collaboration between Indian Tribes and the Bureau or Office;

    c. Advocating opportunities for and consideration of the positions of Indian Tribes, consistent with Bureau or Office mission;

Serving as the principal point of contact for the TGO concerning compliance with this Policy, including the Bureau's and Office's reporting requirements;

Striving to enhance a trusting and on-going relationship with Indian Tribes, consistent with applicable law and executive orders;

Serving as an initial contact for Indian Tribes to request or inquire about consultation when it is unclear whom to contact in the Bureau or Office; and

Carrying out other responsibilities as assigned by Bureau or Office Consultation Policies.

3. Identify TLOs and TGO – Each Bureau or Office shall take appropriate measures to identify and disseminate the name and contact information of the TGO and the TLO(s) to facilitate contacts by Tribal Officials.

C. Guidelines for Response to Request for Consultation. The TGO or appropriate representative will confirm receipt of a request for consultation from a Tribal Official. When the request is directed to the TGO, the request is to be forwarded to the appropriate Bureau or Office. The TGO or appropriate representative will treat an official request for consultation in an expedited fashion and respond in writing that the Department has received the request, using the most expedient methods to communicate to the Indian Tribe.

D. Consultation Process Support. The Office of Collaborative Action and Dispute Resolution can assist in planning and facilitating an effective consultation process, negotiated rulemaking, or other collaborative approach to decision-making. In planning consultation processes as outlined below in Paragraph E, Bureaus and Offices are encouraged to consider best practices for

engagement, including but not limited to, the use of neutral facilitation and other collaborative problem-solving approaches to promote effective dialogue and conflict resolution.

E. Stages of Consultation. Bureaus and Offices shall carry out the consultation stages described below for a Departmental Action with Tribal Implications.

1. Initial Planning Stage.

Each Bureau or Office will consult with Indian Tribes as early as possible when considering a Departmental Action with Tribal Implications. A Bureau or Office may conduct a meeting or other forms of interaction with Indian Tribes in order to receive and evaluate comments received as part of the Initial Planning Stage. Bureaus and Offices will work with each other and with other Federal agencies, where appropriate, to avoid duplicative consultations.

2. Proposal Development Stage.

The Proposal Development Stage begins once the Department discloses the scope of a Departmental Action with Tribal Implications. Indian Tribes should be considered appropriate collaborative partners, particularly where negotiated rulemaking or a Tribal Leader Task Force is created.

The Bureau or Office shall develop a process for the Proposal Development Stage that maximizes the opportunity for timely input by Indian Tribes and is consistent with both Tribal and Bureau or Office schedules. The Bureau or Office will solicit the views of affected Indian Tribes regarding the process timeline to consult on a Departmental Action with Tribal Implications. The Bureau or Office should work with Indian Tribes to structure a process, to the extent feasible, that considers specific Indian Tribal structures, traditional needs, and schedules of the Indian Tribes. The Bureau or Office should make all reasonable efforts to comply with the expressed views of the affected Indian Tribes regarding the process timeline at this Stage, taking into account the level of impact, the scope, and the complexity of the issues involved in the Departmental Action with Tribal Implications, along with the other factors driving the schedule. The process will be open and transparent. The Bureau or Office then may proceed with the expectation that interested Indian Tribes will respond within a reasonable time period.

When the matter under consultation involves confidential or culturally sensitive information, the Bureau or Office will work with the Indian Tribe to develop a

consultation process that addresses the sensitivity of the information to the extent permitted by Federal law. If litigation or legal requirements impact a Bureau's or Office's schedule for conducting consultation, the Bureau or Office shall explain these constraints to the Indian Tribe.

Examples of appropriate processes for the Proposal Development Stage include, but are not limited to, the following:

Negotiated Rulemaking. Where appropriate, the Bureau or Office shall consider using negotiated rulemaking for developing significant regulations or other formal policies in accordance with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act.

Tribal Leader Task Force. A Tribal Leader Task Force may be used, in appropriate circumstances, on regional or issue-specific matters (e.g., timber). In each instance, the composition of the Task Force shall be collaboratively determined by the Indian Tribes, provided that the Task Force shall be a process open to all Indian Tribes and, to the extent possible, represent a cross-section of Tribal interests with respect to the matter at issue. The location and number of meetings to be held will conform to the expressed views of the Indian Tribes, to the extent practicable and permitted by law and in accordance with FACA.

Series of Open Tribal Meetings. The Bureau or Office may provide open invitations for Tribal leaders to attend a series of open meetings. Open meetings can be used for national, regional or subject-matter specific issues.

Single Meetings. The Bureau or Office may host Tribal Officials in a single meeting to discuss a Departmental Action with Tribal Implications under consideration. Single meetings are particularly appropriate for local or regional issues, or a Tribe-specific issue.

If either the Bureau or Office determines that the Administrative Procedure Act or other Federal law or regulation expressly prohibits continued discussion at a specified point in the decision-making process, the Bureau or Office should so inform the Indian Tribes at the earliest opportunity in this Stage in the process.

3. Implementation of Final Federal Action Stage.

A Bureau or Office may consider implementing a post-consultation review process where it is consistent with law, regulations, and EO 13175. The review process shall not limit the Department's deliberative process privilege regarding internal

considerations or any other applicable privilege. The Department may invite feedback from the Indian Tribe of the consultation process at this Stage. The Bureau or Office also will consider the need for training or technical assistance concerning the final Federal action.

F. *Impact of Consultation Guidelines.*

Consultation does not preclude requests or recommendations by Bureaus, Offices, or Indian Tribes to collaborate and foster collaborative relationships between the Department and Indian Tribes outside of the processes described in this Section.

VIII. Supplemental Policies.

Bureaus and Offices, in collaboration with the TGO, shall review existing policies affected by this Policy. All existing policies shall conform to this Policy and, where necessary, a Bureau or Office may develop a new policy in order to conform to this Policy.

Consistent with Federal law, the Department shall develop a policy for consultation with Alaska Native Corporations and other entities as appropriate following the principles set out in this Policy.

Departmental entities that are not Bureaus and Offices may develop policies consistent with this Policy and in coordination with the TGO.

IX. Disclaimer.

Except to the extent already established by law, this Policy is intended only to improve the internal management of the Department, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the Department or any person. The Department also does not waive by virtue of this Policy any applicable privilege that it may hold.

Executive Order No. 13007: Indian Sacred Sites

May 24, 1996

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. *Accommodation of Sacred Sites.* (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

i. "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

ii. "Indian Tribe" means an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian Tribe; and

iii. "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian Tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the Tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Section 2. *Procedures.* (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things:

i. any changes necessary to accommodate access to and ceremonial use of Indian sacred sites;

ii. any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and

iii. procedures implemented or proposed to facilitate consultation with appropriate Indian Tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Section 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedures Act (5 U.S.C.551[13]).

Section 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies officers, or any person.

William J. Clinton

The White House
May 24, 1996

APPENDIX G

Executive Order 13175 of November 6, 2000

Consultation and Coordination With Indian Tribal Governments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian Tribes, and to reduce the imposition of unfunded mandates upon Indian Tribes;

it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) ''Policies that have tribal implications'' refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

(b) ''Indian Tribe'' means an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) ''Agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) ''Tribal officials'' means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. *Fundamental Principles.* In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian Tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian Tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian Tribes to self-government. As domestic dependent nations, Indian Tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian Tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian Tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. *Policymaking Criteria.* In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian Tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian Tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian Tribes.

Sec. 4. *Special Requirements for Legislative Proposals.*

Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. *Consultation.*

(a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the Tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the

agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. *Increasing Flexibility for Indian Tribal Waivers.*

(a) Agencies shall review the processes under which Indian Tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian Tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. ***Accountability.***

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. *Independent Agencies.*

Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. *General Provisions.*

(a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A–19, and the Executive Memorandum of April 29, 1994, on Government to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. *Judicial Review.*

This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

William J. Clinton
THE WHITE HOUSE,
November 6, 2000.

[FR Doc. 00–29003]

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release November 5, 2009

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Tribal Consultation

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian Tribes.

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian Tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship.

My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175. Accordingly, I hereby direct each agency head to submit to the Director of the Office of Management and Budget (OMB), within 90 days after the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. This plan shall be developed after consultation by the agency with Indian Tribes and tribal officials as defined in Executive Order 13175. I also direct each agency head to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

Each agency's plan and subsequent reports shall designate an appropriate official to coordinate implementation of the plan and preparation of progress reports required by this memorandum.

The Assistant to the President for Domestic Policy and the Director of the OMB shall review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

In addition, the Director of the OMB, in coordination with the Assistant to the President for Domestic Policy, shall submit to me, within 1 year from the date of this memorandum, a report on more (OVER) 2 the implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the tribal consultation process more effective, if any, should be included in this report.

The terms "Indian Tribe," "tribal officials," and "policies that have tribal implications" as used in this memorandum are as defined in Executive Order 13175.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

BARACK OBAMA

Executive Order 13604

Improving Performance of Federal Permitting

and

Review of Infrastructure Projects

Federal Register / Vol. 77, No. 60 / Wednesday, March 28, 2012 /

Presidential Documents

Executive Order 13604 of March 22, 2012

Improving Performance of Federal Permitting and Review of Infrastructure Projects

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to significantly reduce the aggregate time required to make decisions in the permitting and review of infrastructure projects by the Federal Government, while improving environmental and community outcomes, it is hereby ordered as follows:

Section 1. Policy.

(a) To maintain our Nation's competitive edge and ensure an economy built to last, the United States must have fast, reliable, resilient, and environmentally sound means of moving people, goods, energy, and information. In a global economy, we will compete for the world's investments based in significant part on the quality of our infrastructure. Investing in the Nation's infrastructure provides immediate and long-term economic benefits for local communities and the Nation as a whole.

The quality of our Nation's infrastructure depends in critical part on Federal permitting and review processes, including planning, approval, and decision-makers and affected communities about the potential benefits and impacts of proposed infrastructure projects, and ensure that projects are designed, built, and maintained in a manner that is consistent with protecting our public health, welfare, safety, national security, and environment. Reviews and approvals of infrastructure projects can be delayed due to many factors beyond the control of the Federal Government, such as poor project design, incomplete applications, uncertain funding, or multiple reviews and approvals by State, local, tribal, or other jurisdictions. Given these factors, it is critical that executive departments and agencies (agencies) take all steps within their authority, consistent

with available resources, to execute Federal permitting and review processes with maximum efficiency and effectiveness, ensuring the health, safety, and security of communities and the environment while supporting vital economic growth.

To achieve that objective, our Federal permitting and review processes must provide a transparent, consistent, and predictable path for both project sponsors and affected communities. They must ensure that agencies set and adhere to timelines and schedules for completion of reviews, set clear permitting performance goals, and track progress against those goals. They must encourage early collaboration among agencies, project sponsors, and affected stakeholders in order to incorporate and address their interests and minimize delays. They must provide for transparency and accountability by utilizing cost-effective information technology to collect and disseminate information about individual projects and agency performance, so that the priorities and concerns of all our citizens are considered. They must rely upon early and active consultation with State, local, and tribal governments to avoid conflicts or duplication of effort, resolve concerns, and allow for concurrent rather than sequential reviews. They must recognize the critical role project sponsors play in assuring the timely and cost-effective review of projects by providing complete information and analysis and by supporting, as appropriate, the costs associated with review. And, they must enable agencies to share priorities, work collaboratively and concurrently to advance reviews and permitting decisions, and facilitate the resolution of disputes at all levels of agency organization.

Each of these elements must be incorporated into routine agency practice to provide demonstrable improvements in the performance of Federal infrastructure permitting and review processes, including lower costs, more timely decisions, and a healthier and cleaner environment. Also, these elements must be integrated into project planning processes so that projects are designed appropriately to avoid, to the extent practicable, adverse impacts on public health, security, historic properties and other Cultural Resources, and the environment, and to minimize or mitigate impacts that may occur. Permitting and review process improvements that have proven effective must be expanded and institutionalized.

(b) In advancing this policy, this order expands upon efforts undertaken pursuant to Executive Order 13580 of July 12, 2011 (Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska), Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), and my memorandum of August 31, 2011 (Speeding Infrastructure Development Through More Efficient and Effective Permitting and Environmental Review), as well as other ongoing efforts.

Sec. 2. Steering Committee on Federal Infrastructure Permitting and Review Process Improvement.

There is established a Steering Committee on Federal Infrastructure Permitting and Review Process Improvement (Steering Committee), to be chaired by the Chief Performance Officer (CPO), in consultation with the Chair of the Council on Environmental Quality (CEQ).

(a) Infrastructure Projects Covered by this Order. The Steering Committee shall facilitate improvements in Federal permitting and review processes for infrastructure projects in sectors including surface transportation, aviation, ports and waterways, water resource projects, renewable energy generation, electricity transmission, broadband, pipelines, and other such sectors as determined by the Steering Committee.

(b) Membership. Each of the following agencies (Member Agencies) shall be represented on the Steering Committee by a Deputy Secretary or equivalent officer of the United States:

(i) the Department of Defense;
(ii) the Department of the Interior;

(iii) the Department of Agriculture;

(iv) the Department of Commerce;

(v) the Department of Transportation;

(vi) the Department of Energy;

(vii) the Department of Homeland Security;

(viii) the Environmental Protection Agency;

(ix) the Advisory Council on Historic Preservation;

(x) the Department of the Army; and

(xi) such other agencies or offices as the CPO may invite to participate.

(c) Projects of National or Regional Significance. In furtherance of the policies of this order, the Member Agencies shall coordinate and consult with each other to select, submit to the CPO by April 30, 2012, and periodically update thereafter, a list of infrastructure projects of national or regional significance that will have their status tracked on the online Federal Infrastructure Projects Dashboard (Dashboard) created pursuant to my memorandum of August 31, 2011.

(d) Responsibilities of the Steering Committee. The Steering Committee shall:

(i) develop a Federal Permitting and Review Performance Plan (Federal Plan), as described in section 3(a) of this order;

(ii) implement the Federal Plan and coordinate resolution of disputes among Member Agencies relating to implementation of the Federal Plan; and

(iii) coordinate and consult with other agencies, offices, and interagency working groups as necessary, including the President's Management Council and Performance Improvement Councils, and, with regard to use and expansion of the Dashboard, the Chief Information Officer (CIO) and Chief Technology Officer to implement this order.

(e) Duties of the CPO. The CPO shall:

(i) in consultation with the Chair of CEQ and Member Agencies, issue guidance on the implementation of this order;

(ii) in consultation with Member Agencies, develop and track performance metrics for evaluating implementation of the Federal Plan and Agency Plans; and

(iii) by January 31, 2013, and annually thereafter, after input from interested agencies, evaluate and report to the President on the implementation of the Federal Plan and Agency Plans, and publish the report on the Dashboard.

(f) No Involvement in Particular Permits or Projects. Neither the Steering Committee, nor the CPO, may direct or coordinate agency decisions with respect to any particular permit or project.

Sec. 3. Plans for Measurable Performance Improvement.

(a) By May 31, 2012, the Steering Committee shall, following coordination with Member Agencies and other interested agencies, develop and publish on the Dashboard a Federal Plan to significantly reduce the aggregate time required to make Federal permitting and review decisions on infrastructure projects while improving outcomes for communities and the environment. The Federal Plan shall include, but not be limited to, the following actions to implement the policies outlined in section 1 of this order, and shall reflect the agreement of any Member Agency with respect to requirements in the Federal Plan affecting such agency:

(i) institutionalizing best practices for: enhancing Federal, State, local, and tribal government coordination on permitting and review processes (such as conducting reviews concurrently rather than sequentially to the extent practicable); avoiding duplicative reviews; and engaging with stakeholders early in the permitting process;

(ii) developing mechanisms to better communicate priorities and resolve disputes among agencies at the national and regional levels;

(iii) institutionalizing use of the Dashboard, working with the CIO to enhance the Dashboard, and utilizing other cost-effective information technology systems to share environmental and project-related information with the public, project sponsors, and permit reviewers; and

(iv) identifying timeframes and Member Agency responsibilities for the implementation of each proposed action.

(b) Each Member Agency shall:

(i) by June 30, 2012, submit to the CPO an Agency Plan identifying those permitting and review processes the Member Agency views as most critical to significantly reducing the aggregate time required to make permitting and review decisions on infrastructure projects while improving outcomes for communities and the environment, and describing specific and measurable actions the agency will take to improve these processes, including:

(1) performance metrics, including timelines or schedules for review;

(2) technological improvements, such as institutionalized use of the Dashboard and other information technology systems;

(3) other practices, such as pre-application procedures, early collaboration with other agencies, project sponsors, and affected stakeholders, and coordination with State, local, and tribal governments; and

(4) steps the Member Agency will take to implement the Federal Plan.

(ii) by July 31, 2012, following coordination with other Member Agencies and interested agencies, publish its Agency Plan on the Dashboard; and

(iii) by December 31, 2012, and every 6 months thereafter, report progress to the CPO on implementing its Agency Plan, as well as specific opportunities for additional improvements to its permitting and review procedures.

Sec. 4. General Provisions.

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order shall be implemented consistent with Executive Order 13175 of November 6, 2000 (Consultation and Coordination with Indian Tribal Governments) and my memorandum of November 5, 2009 (Tribal Consultation).

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(Presidential Sig.)

THE WHITE HOUSE,

March 22, 2012.

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