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Instruction Memorandum

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To: AFO's

From: Director

Subject: Guidelines for Considering the Acquisition and Disposal of Cultural Resources During Land Exchanges

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“The head of any Federal agency having . . . jurisdiction over a proposed Federal or federally assisted undertaking . . . shall . . . take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. . . .”

--National Historic Preservation Act (NHPA), Section 106 (16 U.S.C. 470f)

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## Introduction

These Guidelines are the product of a task group composed of members of the Preservation Board and the Washington Office lands staff. The task group, formed in October 1998, has developed a strategy that promotes the identification and consideration of cultural resources both on the lands proposed for acquisition and on those proposed to leave Federal administration. Generally in historic preservation practice, only resources proposed to leave public ownership are identified and considered. The task group believes that this half view results in an incomplete and misleadingly negative assessment.

The reciprocity model outlined in these Guidelines is a strategy intended to provide managers and their professional cultural heritage specialists with a refined tool for identifying and evaluating the effects of land exchanges on the reserve of cultural resources in public ownership. Under appropriate circumstances and in consultation with State Historic Preservation Officers (SHPO), the guidance may provide managers with an alternative way to achieve mitigation.

## I. Purpose

There are elementary differences between land exchanges and *all other* BLM or BLM-assisted undertakings: First, when non-Federal and Federal land parcels are exchanged, acreage enters as well as leaves public administration. Second, probability suggests that a parcel coming into public status is as likely to contain *some* cultural resources as is a parcel leaving public status. Third, the cultural resources acquired through exchange should compensate, to a degree, for the cultural resources released from public ownership. Finally, the balance between resources gained and resources lost ought to be measured as an essential part of weighing the historic-preservation effects of the undertaking. In fact, the nature of the undertaking is every bit as much *receiving* cultural resources as it is releasing cultural resources.

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The purposes of developing an alternative strategy for considering cultural resources during the processing of proposed land exchanges are:

- to improve the representation of significant cultural resources in public ownership by evaluating both cultural resources to be acquired and cultural resources to be transferred out of public ownership;
- to add a new alternative to the range of acceptable mitigation options for historic properties affected by land exchanges; and,
- to increase timely coordination among cultural heritage and realty and planning specialists to assist the manager in making better land management decisions.

The task group recognizes that these Guidelines may be used only in concert with the BLM-SHPO protocols and where data on both the disposal and acquired parcels are adequate. They apply best to large land exchanges and may not be suitable for land-pool or scattered- or sliver-parcel exchanges. To ensure success, realty specialists and cultural heritage specialists and planners must coordinate early, before a feasibility report is completed.

## **II. Relationship to Land Use Planning**

As part of the preparation of land use plans and based on existing information, BLM Field Offices identify parcels of public lands which may be suitable for disposal through exchange. Under Section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA), this process involves opportunities for input from tribal, State, and local governments and the general public, as well as consideration of multiple resource values, including cultural resources. Consultation with Indian tribes must be conducted no later than the public participation phase of land use planning (see BLM Manual Section 8120.5 and Handbook H-8160-1).

Under Section 206 of FLPMA, a tract of public land may be exchanged if it has been determined suitable for disposal through land use planning, the values to be conveyed are not greater than the values that would be acquired, and the public objectives are served.

Locations known through existing information to include unusually significant cultural resources, unusually high site densities, and areas of extraordinary traditional importance (for example) should generally not be available for exchange and should not be classified as “suitable for disposal” in a land use plan. However, a particular parcel’s cultural resource content may not be known in advance. If environmental field work or tribal consultation in response to an exchange proposal reveals that a parcel’s classification as “suitable” is inappropriate because of the presence of previously unknown cultural resources that possess high retention value, the BLM may drop the parcel (or part of it) from exchange consideration.

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## III. Evaluative Processes

As the first step in identifying the potential effects of a land exchange on cultural resources, the Field Office manager and cultural heritage specialist will identify a cultural resource study area, based on geographic and cultural boundaries, incorporating the lands identified for acquisition (when known) as well as those identified for disposal. Study areas will form the basis for the preparation of data syntheses. More than one study area may be defined for a given land exchange depending upon the distribution of the parcels involved.

**A. Compile Existing Information.** For each study area (including lands identified both for disposal and for acquisition), the Field Office manager and cultural heritage specialist, in consultation with the State Historic Preservation Officer (SHPO) according to the State's BLM-SHPO Protocol, will prepare a data synthesis and research approach tiered to a Class I Regional Overview (see BLM Manual Section 8110.21A). The scope and level of detail for data syntheses will be commensurate with the size of the study area, its environmental and cultural complexity, and the nature and extent of available cultural resource data.

**B. Synthesize Data.** The data synthesis, comprising a compilation and analysis of existing information from appropriate disciplines such as archaeology, ethnography and history, should also incorporate geographical information pertinent to the human use and occupation of the study area. In addition to the applicable Class I Regional Overview, the synthesis should take into account any State Historic Preservation Plan and historic contexts which have been developed for the area and should consider Native American issues and concerns. If the study area is in a location for which adequate existing data inventories have already been completed, the synthesis may incorporate this information by reference and need not include an additional overview.

The quality and limitations of existing data will be evaluated. Stated or implied biases and assumptions in research orientations, observations and descriptions will be identified.

The data synthesis will identify previous research questions and evaluate their current relevance. It will also define new research questions which may be addressed in the study area and identify gaps in the existing data which are important for answering these questions.

To the extent the data allow, the synthesis will describe (1) the nature, distribution and density of known cultural properties in the study area, and (2) the nature, distribution and density of cultural properties that are likely to occur based on previous research. The synthesis will serve as a framework for making decisions on identification, evaluation and treatment of cultural resources. It will summarize the factual basis for these decisions, and it will describe how these decisions will be carried out according to established schedules. The synthesis will include appropriate maps, tables and other graphics needed to support the narrative and provide locational information.

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## C. Design Inventory Plan.

1. The Field Office manager and cultural heritage specialist may determine that there is a low probability of National Register listed or eligible properties on the lands proposed for disposal or acquisition and that no further consideration of the subject lands will be necessary. (For example, the parcels could occur in a heavily disturbed zone with little probability of significant properties, or adequate previous research may already have been conducted.) This determination must be justified based on information contained in the data synthesis.

2. The Field Office manager and cultural heritage specialist may determine that National Register listed or eligible properties are known or are expected to occur on lands proposed for disposal or acquisition within the study area, but that no additional inventory is needed because existing inventory information is adequate. Known properties will then be evaluated in accordance with BLM Manual Section 8110.3 and 8110.4. The known or expected occurrence of listed or eligible properties on public lands proposed for exchange may provide a basis for retaining the lands involved.

3. The Field Office manager and cultural heritage specialist may determine that there is a reasonable probability for the occurrence of undiscovered cultural properties which may be eligible for the National Register on lands proposed for disposal or acquisition within the study area. The Field Office manager and cultural heritage specialist will then determine the appropriate level of field inventory needed, if any, and design an inventory strategy according to the guidelines in Section V, below.

4. The Field Office manager and cultural heritage specialist will document the determination of inventory needs and make this documentation available to the SHPO pursuant to each State's BLM-SHPO Protocol.

5. A complete (Class III) inventory should be considered (1) when sampling methods are not appropriate, e.g., when the lands involved consist of small and/or fragmented parcels; (2) when existing information indicates that highly significant cultural properties and/or high densities of cultural properties are likely to occur throughout the lands involved; or (3) when parcels are so widely scattered across diverse environmental zones that sampling would not adequately characterize the cultural resource base.

6. In designing the inventory strategy a combination of inventory levels and techniques should be considered, including Class III, Class II, reconnaissance survey, and random, systematic or transect sampling.

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**D. Conduct Inventory.** After the plan has been reviewed and is ready to implement, innovative approaches may be explored to improve the effectiveness and efficiency of the proposed inventory, evaluation and treatment.

1. Field inventory strategies should be tailored to each situation and should include lands proposed for disposal as well as acquisition. The level of effort and field methods used should be appropriate for the number and kinds of cultural properties known or expected, and should be suited to the area's environmental conditions.
2. Field inventory need not be conducted when existing data are adequate to assess the cultural resource potential of the lands proposed for acquisition and disposal. Depending upon what information is needed to supplement the data synthesis, the nature and extent of the inventory may differ between lands proposed for disposal and those proposed for acquisition.
3. Reconnaissance survey should be considered: (a) to gather preliminary information on the study area where little or no previous inventory data exist, (b) when existing data are sufficient to indicate areas where cultural properties are likely to occur; (c) when there is a need to complement sample inventory to ensure the identification of rare or unusual cultural properties; and/or (d) when ground-truthing is necessary to verify outdated records and provide missing information required to evaluate cultural properties.

## **IV. Evaluate, Assess Effects and Consider Treatment**

The Field Office manager and cultural heritage specialist will evaluate cultural properties according to the National Register criteria, and judge their management potential in terms of scientific, public, traditional, conservation, and related uses.

Field Office managers and their cultural heritage and realty staffs, with the advice of the SHPO, may target exchanges explicitly to benefit cultural resource holdings, where exceptional or under represented properties may be brought into public ownership in trade for properties of lesser significance. Comparative significance may be based on National Register and other public or scientific criteria, but should focus primarily on larger issues of representativeness in the publicly owned resource base.

Toward this end, cultural heritage specialists should work proactively with realty specialists to identify non-Federal cultural resources or resource types, the acquisition of which would improve public holdings and enlarge public benefit. Each Field Office should maintain a current list of desirable acquisition properties and property types.

The Field Office manager may elect to retain lands identified for disposal when the cost of recovering cultural resource data outweighs public benefits which might be gained by

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the exchange. The Field Office manager may also elect to retain lands when it is not feasible to mitigate the expected loss of scientific, public, traditional or conservation values. Retaining small, isolated parcels, however, is problematic. Such parcels are difficult to manage, and retaining them is usually not in the best interests of the public, the BLM, and the resources involved.

The replacement of properties with others of equal or greater public and heritage significance should result in a “finding of no effect” (or its equivalent under the State's BLM-SHPO protocol). Replacement may be considered to be adequate and appropriate mitigation or treatment.

## **V. Assessing Results**

The Field Office manager will document the results of each land exchange, assessing the nature, extent, and public significance of cultural resources brought into and released from public ownership. The documentation will contribute to a Bureauwide cumulative record assessing short-term and, eventually, long-term changes to the BLM’s cultural resource base as a result of exchanges. The documentation should discuss whether and how the exchange affected (positively or negatively) the resource base and the BLM's ability to address important research questions, meet public needs, enable traditional uses, and conserve important cultural resources for the future. The Field Office manager will provide the documentation to the State’s Deputy Preservation Officer.

[Reviewers: Please provide comments on what should be included on a form to standardize and simplify this documentation.]