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MANUAL TRANSMITTAL SHEET

Subject

8140 - PROTECTING CULTURAL RESOURCES (Public)

1. Explanation of Material Transmitted: This release completely revises BLM Manual Section 8140, 8141, 8142 and 8143.
2. Reports Required: None.
3. Material Superseded: Manual pages superseded by this release are listed under REMOVE below. No other directives are superseded.
4. Filing Instructions: File as directed below.

REMOVE

All of 8140 (Rel. 8-44)
All of 8141 (Rel. 8-45)
All of 8142 (Rel. 8-46)
All of 8143 (Rel. 8-47; 8-57)

INSERT

8140

(Total: 22 Sheets)

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.01 Purpose. This Manual Section provides general guidance for protecting cultural resources from natural or human-caused deterioration; for making decisions about recovering significant cultural resource data when it is impossible or impractical to maintain cultural resources in a nondeteriorating condition; for protecting cultural resources from inadvertent adverse effects associated with BLM land use decisions, pursuant to the National Historic Preservation Act, the National Environmental Policy Act, Executive Order 11593, and the national Programmatic Agreement; and for controlling unauthorized uses of cultural resources.

.02 Objectives. The protection component of the cultural resource management program is aimed toward protecting the significance of cultural resources by ensuring that they are managed in a manner suited to the characteristics, attributes, and uses that contribute to their public importance; toward giving adequate consideration to the effects of BLM land use decisions on cultural properties; toward meeting legal and regulatory obligations through a system of compliance fitted to BLM's management systems; and toward ensuring that cultural resources on public land are safeguarded from improper use and responsibly maintained in the public interest.

.03 Authority. (See BLM Manual Section 8100.03.)

.04 Responsibility. (See BLM Manual Section 8100.04.)

.05 References.

A. National Programmatic Agreement of March 26, 1997 (see Appendix 1).

B. "Protection of Historic and Cultural Properties," 36 CFR Part 800.

C. "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation," published by the National Park Service at 48 FR 44716, September 29, 1983.

D. "Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act" published by the National Park Service at 63 FR 20496, April 24, 1998.

E. "Treatment of Archeological Properties: A Handbook," available from the Advisory Council on Historic Preservation. See also 45 FR 78808, November 26, 1980.

F. "The Secretary of the Interior's Standards for the Treatment of Historic Properties," 36 CFR Part 68. These standards for preservation, rehabilitation, restoration, and reconstruction are regulatory only in regard to grant-in-aid development projects assisted through the National Historic Preservation Fund.

G. Glossary of Terms, BLM Manual Section 8100.

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.06 Policy.

A. The Field Office manager ensures that their land use decisions will not have an inadvertent adverse effect on the qualities that qualify cultural properties for the National Register or on the use(s) determined appropriate through the BLM evaluation process (see BLM Manual Section 8110). The Field Office manager protects cultural properties by the means and to the degree necessary to safeguard the appropriate use(s) and/or the qualities that qualify the properties for the National Register.

B. To determine whether proposed land use decisions would have effects on National Register-listed or eligible properties and to take effects into account, the Field Office manager consults with the SHPO and the Advisory Council on Historic Preservation (Council) according to the procedures set out in the national Programmatic Agreement and the State's BLM-SHPO Protocol implementing the Agreement, or according to 36 CFR 800, as applicable.

C. The Field Office manager's first choice shall be to avoid National Register listed and eligible properties that would otherwise be affected by a proposed land use, if it is reasonable and feasible to do so. In part, reasonableness is a measure of proportion and prudence. For example, avoidance would not represent reasonable balance and should not be chosen if the redesign or relocation efforts that would be incurred by the BLM or an authorized land user would be out of proportion to the cultural property's evaluated significance, data potential, or preservation value.

D. The BLM's responsibility for inventory, evaluation, and protection of cultural properties on lands outside BLM administrative jurisdiction is limited according to the degree to which the Field Office manager's decisions determine or control the location of surface-disturbing activities on those lands.

1. Where the location of potential surface disturbance is dependent on, integrally related to, or directly associated with a BLM decision, so that the BLM decision would foreclose alternatives for locating surface-disturbing activities beyond the boundaries of the public lands, the Field Office manager shall take into account potential effects to cultural properties on lands clearly affected by the decision.

2. Where alternative locations for potential surface disturbance are left open by a BLM decision, the Field Office manager shall take into account only those potential effects to cultural properties off the public lands that are reasonably attributable to their decision.

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3. Where BLM has been assigned to act as lead agency in the environmental review of a proposed land use that would affect lands under other jurisdiction or ownership, BLM's accountability may be determined to extend to the entire project, and the Field Office manager's responsibility may be found not to be limited as described in .06D through .06D2.

4. Where BLM-administered public lands are involved in a proposed land use for which the environmental review lead rests with another Federal agency, the BLM Field Office manager is responsible for decisions about assessing effects and treating effects to properties on the public lands.

E. Whenever possible, the Field Office manager shall integrate the actions necessary to carry out the provisions of this Manual Section with the environmental reviews and analyses conducted to fulfill the requirements for the National Environmental Policy Act (see BLM Manual Handbook H-1790-1).

F. The Field Office manager selects the methods and extent of physical and administrative protection, and the techniques and completeness of data recovery, to fit the characteristics that define affected cultural properties' appropriate uses and the qualities that qualify them for the National Register.

G. The Field Office manager may elect to apply data recovery (such as excavation and/or removal or detailed recordation, and including curation of recovered materials and related documents) to cultural properties undergoing or threatened with deterioration, where they determine that protection by physical or administrative protection measures is not appropriate. The Field Office manager makes data recovery decisions in consultation with the SHPO, as set forth in the State's BLM-SHPO Protocol or according to 36 CFR 800, as applicable. The Field Office manager's data recovery decisions may also be subject to Native American notification pursuant to Section 4(c) of the Archaeological Resources Protection Act and 43 CFR 7.7 (see BLM Manual Section 8150.13).

H. It is generally not appropriate to their jobs or logistically possible for BLM cultural resource specialists to carry out data recovery operations. Properly qualified specialists (see BLM Manual Section 8110.2) may conduct minor data recovery projects only when adequate time and support are provided for conducting field work, analyzing recovered materials, and preparing a full report, and when appropriate arrangements are made for permanent and proper curation of all artifacts, samples, collections, and copies of records, data, photographs, reports, and other documents resulting from the work (see 43 CFR 7.8(a)(7)).

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I. Field Office managers shall ensure that federally owned artifacts, samples, collections, and copies of records, data, photographs, reports, and other documents resulting from data recovery operations or other cultural resource work ("museum property"; see 410 DM) are housed in an appropriate curatorial facility. Normal BLM office space is not an appropriate curatorial facility. Collections may be temporarily housed in BLM offices for reference or exhibit purposes after they have been processed and recorded by a cooperating curatorial facility and are borrowed under a loan agreement for a definite, limited time, provided that storage conditions in the BLM office, including security, are deemed adequate (see BLM Manual Section 8160.1). Otherwise, collections of museum property should not be in a BLM office.

J. Field Office managers shall treat Native American human remains recovered from public lands in strict accordance with the requirements of the Native American Graves Protection and Repatriation Act and 43 CFR Part 10 (see BLM Manual Section 8160, "Preserving Collections of Cultural Resources").

.07 File and Records Maintenance. See .51A4. Filing requirements are found in the GRS/BLM Combined Records Schedule (Schedule 4).

.08 Roles in the Section 106 Review Process. Although roles and responsibilities in 36 CFR Part 800 change somewhat under the national Programmatic Agreement, the primary participants in Section 106 compliance continue to be the responsible Field Office manager (the "Agency Official"), the SHPO, and the Council. The SHPO's and Council's roles are adequately defined in 36 CFR Part 800. The Field Office manager's role relative to prospective land users and their cultural resource consultants is further defined below.

A. Compliance with Section 106 is a Federal agency responsibility that cannot be delegated or transferred to a non-Federal party.

B. In the terminology of 36 CFR Part 800, the Field Office manager who is authorized to make a land use decision that could affect properties included in or eligible for the National Register is the "Agency Official" responsible for initiating and carrying out the Section 106 review and consultation.

C. The responsible Field Office manager may invite land use applicants and their cultural resource consultants to participate in the Section 106 review process, as appropriate.

1. Land use applicants and their cultural resource consultants may not take BLM's place or represent BLM in consultations with the SHPO or Council without the responsible Field Office manager's explicit and specific authorization.

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2. A cultural resource consultant's ideas about how project inventory should be done, or opinions about eligibility or effect, or suggested treatment of adverse effects must not be discussed with the SHPO or Council as if they were BLM's proposals, unless the responsible Field Office manager has concurred and has authorized the consultant to speak on BLM's behalf.

3. A cultural resource consultant's documents prepared for BLM to use for Section 106 compliance (e.g., survey reports including recommendations) must not be distributed directly to the SHPO or Council without BLM review and evidence of the responsible manager's approval. A consultant's documents should be used as support for BLM's conclusions, not as BLM's conclusions.

4. The responsible Field Office manager should sign a cover letter to the SHPO and/or Council, abstracting the pertinent points in a consultant's document and relating them to the specific steps of the Section 106 process, whether under 36 CFR Part 800 or under the State's BLM-SHPO Protocol.

5. State Directors should advise the SHPO and Council not to treat consultants' products as Section 106 documents unless they are accompanied by a BLM cover letter requesting Section 106 review.

6. For purposes of paragraphs .08C1-5, State agencies conducting Section 106 compliance work on BLM-administered lands, such as State highway departments acting on behalf of the Federal Highway Administration, have the same role as third-party consultants unless a formal agreement with BLM gives the State agency a larger role.

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.1 Physical and Administrative Conservation Measures. Field Office managers employ the following physical and administration conservation measures as management tools to protect historic properties as required by the National Historic Preservation Act, related Secretary of Interior Standards and Guidelines, and Executive Order 13287.

.11 Physical Conservation Measures. Physical conservation measures may be applied directly to the cultural property, as in stabilization, or indirectly to the general area, such as in signing, fencing or patrolling.

A. Indirect Methods. These methods refer to physical conservation measures that do not modify the resource. For this reason, they are often preferable to direct methods.

1. Signing. Under conditions of active or potential vandalism, cultural properties should be adequately signed, identifying the protection afforded by law. Signs should be placed so as not to intrude upon the property or to draw unwanted attention to it. Interpretive signs may also be appropriate for some properties and may protect them by promoting conservation ethics.

2. Fencing/Gating. Fences, barriers, and gates of various materials can be used alone or in combination with other methods to restrict access. The selection of designs and materials must avoid unwarranted intrusion on the property. Maintenance and safety requirements must also be considered in the design.

3. Patrol/Surveillance. Patrol and surveillance are determined by and scheduled according to the nature of the resource, degree of threat present, and the uses appropriate for the cultural resources involved. Irregularly scheduled patrols are among the best means of deterring looting, vandalism and other unauthorized uses. Besides staking out a site, surveillance can be accomplished through detection systems; however, installation of surveillance equipment should not impair or compromise the integrity of the cultural resources.

4. Erosion Control (off-site). Cultural resources are frequently threatened by various types of erosion. Flooding, seepage, major runoff areas, movement of soils by wind action, and other potential erosion problems can be monitored and controlled. Erosion control performed off-site can generally be accomplished at lower cost, with less disturbance to the resource, than on-site erosion control. Recontouring to improve drainage, construction of catch basins, diversion or check dams, revegetation, windbreaks, and other protection measures can reduce erosion.

5. Fire Control (off-site). An active fire protection program for cultural resources should include pre-suppression, suppression, and post-suppression activities. Periodic inspections may be undertaken to determine potential fire hazards. Pre-suppression measures include fire retardant treatments, reduction of fuel, construction of fuel breaks, and site-specific fire action plans. When implementing fire control measures, care should be taken to preserve the cultural resource's visual and environmental setting. Post-suppression analysis should consider physical conservation measures needed to restore the setting and rehabilitate the cultural resource damaged by fire and suppression activities.

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B. Direct Methods. These methods refer to physical conservation measures that modify the resource.

1. Stabilization. Structural and material stabilization techniques introduce chemical, mechanical, or structural elements to retard the deterioration of a variety of cultural resources. For example, chemical measures include the application of polymers to protect rock art; structural measures include the replacement of mortar; mechanical measures include the jacking of floors. Detailed specifications for stabilization work should include individual fieldwork tasks required, specific locations requiring stabilization, methods and materials used, and types of expertise required. Maps, scale drawings and photos should be used liberally to illustrate work requirements. All stabilization work must be accurately and adequately documented to provide a clear “before and after” record of the property.

2. Erosion Control (on-site). When erosion control is necessary within the physical boundaries of a cultural property, the effects of the control measures on resource values should be carefully limited. Standard engineering construction practices must be modified to allow the proper recovery and recording of information that would be disturbed by the implementation of the erosion control measures. Examples of on-site erosion control measures include recontouring the site surface to promote better drainage, and backfilling illegally excavated areas.

3. Fire Control (on-site). Effective on-site fire control is limited primarily to preventive measures. For example, wooden structures can be treated with fire retardant, trash and litter can be reduced, and in areas of public use, restrictions can be placed on campfires in the immediate vicinity of cultural resources. Fire arrest equipment can be provided inside structures for visitor safety and protection of the resource. Fire suppression handlines and bulldozer lines should be located to protect cultural properties.

4. Detailed Recording. The intent of detailed recording is to document those aspects of a cultural property that contribute to historical or scientific studies without substantially modifying the resource. This non-destructive technique may include the use of detailed mapping using surveying equipment, photogrammetry, aerial and standard photography, use of electronic equipment such as magnetometers or metal detectors, and narrative descriptions.

5. Relocation. Some cultural resources can be relocated with minimal impact to their inherent significance. This alternative is largely limited to structures and to some forms of rock art, such as boulders containing petroglyphs. Relocation of structures usually is expensive and requires special skills and equipment. Efforts to relocate properties should be carefully planned after full consideration of alternative conservation methods.

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6. Adaptive Reuse of Structures. The adaptive reuse of historic structures should be considered before selecting some more potentially destructive methods (such as relocation). After rehabilitating a structure consistent with its historic character, it may be usable in its original location.

7. Archaeological Data Recovery Techniques. Archaeological data recovery includes those techniques that maximize controlled collection and/or excavation of cultural materials and data analysis. Excavation should be attempted only when other protection alternatives are not adequate or feasible to protect the scientific information contained in the property. Appropriate data recovery techniques are based on a formal research design carried out by qualified, trained specialists. Resulting collections and records should be curated at a qualified repository within the geographic region.

12. Administrative Conservation Measures

A. Withdrawal. Protective withdrawal of lands (see 43 CFR 2300-2370; BLM Manual Section 2321.6) means withholding an area from settlement, sale, location or entry under the general land laws and mining laws. Withdrawals usually do not cover discretionary actions such as those taken under the mineral leasing laws or the Recreation and Public Purposes Act. Administrative withdrawal allows transfer of jurisdiction to other Federal agencies.

B. Closure to Public Access and Off-Highway Vehicles. Areas may be temporarily closed to public use and travel (43 CFR 8364 and 8340) to facilitate special cultural uses or to protect scientific studies. Public lands may also be designated as indefinitely limited or closed to the use of off-highway vehicles.

C. Special Designations. Individual cultural properties or districts may be nominated to and listed on the National Register of Historic Places to recognize and reinforce their special management status (36 CFR 60 and 65; BLM Manual Section 1613). Limited protection through national recognition is also afforded when a property is listed as a National Historic Landmark. Areas of Critical Environmental Concern (ACEC) may also be designated to address special management needs for cultural resources.

D. Land Acquisition. State-owned or privately owned portions of Federal cultural properties or adjacent State or private lands may be acquired through exchange, purchase or deed to maintain site integrity or to provide buffer areas (43 CFR 2200).

E. Recreation and Public Purposes Act. This Act allows transfer of land to State or local government agencies or other entities (such as historical societies, conservation groups) under a conditional lease or patent (43 CFR 2740). This tool can be used to allow other entities to protect and develop cultural properties for public use when it is impractical or infeasible for BLM to do so.

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F. Easements. Easements are authorizations for non-possessory, non-exclusive use of lands. BLM may acquire an easement to ensure administrative access to a cultural property (such as for patrolling) or to install physical conservation measures (such as fences or dikes) on non-Federal lands to protect BLM-administered cultural properties (BLM Manual Section 2130).

G. Public Information and Education (See BLM Manual Section 8170). Efforts to inform and educate the public about local cultural resource significance and conservation ethics may help decrease vandalism and ensure compliance with use restrictions.

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.2 Considering Effects of Proposed Actions. As required by the National Historic Preservation Act Section 106 process and the BLM national Programmatic Agreement (Appendix 1), the field Office manager, with the assistance of qualified professional staff, identifies, evaluates, and assesses effects of proposed actions on cultural properties as follows:

.21 Determining If Cultural Properties May Be Affected. Prior to initiating or authorizing a proposed action that meets the definition of undertaking in Section 301(7) of the National Historic Preservation Act, as amended, the responsible Field Office manager shall:

A. Determine the undertaking's area of potential effects, i.e., the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

B. Review existing information on cultural properties potentially affected by the action, including any data concerning the likelihood that unidentified cultural properties exist in the area of potential effects.

C. 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 cultural properties in the area.

D. Determine the need for further actions, such as field surveys and predictive modeling, to identify cultural properties (see BLM Manual Section 8110.2).

E. Make a reasonable and good faith effort to identify cultural properties that may be affected by the undertaking, consider their most appropriate use(s), and evaluate the eligibility of these properties for the National Register of Historic Places (see BLM Manual Section 8110.3).

F. Determine if a cultural property meets one or more eligibility criteria specified in 36 CFR 60.4 (see also BLM Manual Section 8110.32), applied according to the State's BLM-SHPO Protocol.

1. If the Field Office manager determines, consistent with the State's BLM-SHPO Protocol, that a cultural property meets one or more eligibility criteria, the property shall be considered eligible for the National Register for purposes of complying with Section 106 of the National Historic Preservation Act and the national Programmatic Agreement (Appendix 1).

2. If the Field Office manager determines, consistent with the State's BLM SHPO Protocol, that a cultural property does not meet the eligibility criteria, the property shall be considered not eligible for the National Register and therefore not subject to compliance with Section 106 and the national Programmatic Agreement.

G. Provide documentation to the State Historic Preservation Officer (SHPO), if the Field Office manager determines that no National Register listed or eligible cultural properties exist in the undertaking's area of potential effects, according to the reporting schedule specified in the State's BLM-SHPO protocol.

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.22 Assessing Effects on Listed or Eligible Properties. The Field Office manager, upon determining that National Register listed or eligible cultural properties may be affected by an undertaking, shall apply the Criteria of Effect in Appendix 3 to the cultural properties, giving consideration to the views, if any, of any persons who have contributed to identification of the properties.

A. No Effect Found. If no effect is found to those characteristics of the property that qualify it for the National Register, document this finding and proceed with the undertaking. Provide the documentation of “no effect” to the SHPO in accordance with the reporting schedule specified in that State’s Protocol.

B. Effect Found. If an effect is found to those characteristics of the property that qualify it for the National Register, apply the Criteria of Adverse Effect in 36 CFR 800, to determine whether the effect of the undertaking should be considered adverse (see Appendix 3).

1. Effect is Not Adverse. If the effect is found not to be adverse or the property is of value only for its potential contribution to archaeological, historical, or architectural research, and such value can be substantially preserved through the conduct of appropriate research, document this finding, provide for any data recovery, rehabilitation, or other protective actions necessary to meet the "not adverse" conditions in 36 CFR 800.9c, and proceed with the undertaking.

2. Effect is Adverse. If the effect is found to be adverse, document this finding. If the Field Office manager decides to proceed with the undertaking, they shall make a reasonable and good faith effort to avoid or reduce adverse effects to the most reasonable and fitting extent, considering the nature of the effects and the characteristics and qualities that lend the property its significance. Consultation with the SHPO and/or Advisory Council on Historic Preservation may be necessary on undertakings involving adverse effects as specified in the national Programmatic Agreement and the State's BLM-SHPO Protocol, as applicable. If not, provide documentation of the finding to the SHPO in accordance with the reporting schedule specified in the Protocol.

.23 Case Review Under the Programmatic Agreement. When a proposed agency decision or action meets thresholds for case review specified in the national Programmatic Agreement (see Appendix 1) or the State's BLM-SHPO Protocol, the Field Office manager shall consult with the SHPO to determine the following, as appropriate:

- A. Actions necessary to identify cultural properties.
- B. National Register eligibility of cultural properties affected by the undertaking.
- C. Effects the undertaking would have on National Register-listed or -eligible cultural properties.
- D. Methods for avoiding or reducing adverse effects.

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.24 Determining Appropriate Treatment. If a proposed action or an existing land use has the potential for affecting the characteristics which contribute to the uses(s) determined appropriate for a cultural property, or the qualities which qualify a property for the National Register, the Field Office manager, with the assistance of qualified professional staff, shall ensure that appropriate conservation measures are carried out. The preferred strategy for treating potential adverse effects on listed or eligible properties is avoidance. If avoidance is imprudent or infeasible, a range of alternative physical and administrative conservation measures should be considered. Physical conservation measures include data recovery, stabilization, monitoring, protective barriers and signs, relocation, and adaptive reuse. Administrative conservation measures include withdrawing lands from under the general land laws and mining laws, transfer of jurisdiction to other federal agencies, closure to public access and off-highway vehicles, Area of Critical Environmental Concern designation, land and easement acquisition, leasing or transferring lands to State or local governments under the Recreation and Public Purposes Act, and efforts to inform and educate the public. Commonly used physical and administrative conservation measures are discussed in 8140.1.

A. Considerations for Physical Conservation

1. Physical conservation measures that maintain cultural resource integrity are usually preferable to relocation and data recovery techniques.

2. Where physical measures are intended to conserve scientific data in place, the measures and methods should be carefully selected to fit the nature of the property and the data being protected, to be reasonably reversible, and directly and indirectly to disturb the least practical amount of the data.

3. The cost and feasibility of long-term maintenance should be considered in project planning, and the effectiveness of implemented conservation measures should be routinely monitored.

4. When cultural properties that are scientifically significant cannot be preserved in place, the loss of research potential can sometimes be reduced through various data recovery techniques. Data recovery plans should define study topics and discuss data collection priorities related to the uses(s) and/or significant qualities of specific cultural properties or types of cultural properties. The proposed work, including field methods and analysis techniques, should be justified in terms of research objectives. Proposals must provide for the proper conservation and curation of any materials collected (see BLM Manual Section 8130.2).

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B. Considerations for Administrative Conservation

1. Implementation of administrative conservation measures often requires considerable lead-time and support from other resource specialists.
2. The physical environment should be protected from incompatible visual and structural intrusions by consideration of an appropriate buffer area. The immediate setting of the property should be managed in a manner consistent with the protection objectives.
3. Periodic review of administrative conservation measures is needed to evaluate their effectiveness.

.25 Scope of Treatment. Treatment will be commensurate with the nature, significance of the cultural resources involved and the extent of possible impacts. Treatment will be cost-effective and realistic and will consider project requirements and limitations. Treatment recommendations must be BLM-approved or BLM-formulated.

.26 Data Recovery. If treatment includes data recovery, data recovery plans should be prepared. For archaeological properties, these should be consistent with the *Secretary of the Interior's Standards and Guidelines for Archeological Documentation* (48 FR 44734-37), and take into account the Advisory Council on Historic Preservation's *Treatment of Archeological Properties*. For historic buildings and structures, these should be consistent with the *Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation* (48 FR 44730-34). Data recovery plans should include, at a minimum, the following:

- A. The property, properties, or portions of properties where data recovery will be carried out.
- B. Any property, properties, or portions of properties that will be destroyed or altered without data recovery.
- C. The research questions to be addressed through data recovery, with an explanation of their relevance and importance.
- D. The field and laboratory analysis methods to be used with an explanation of their relevance to the research questions.
- E. The methods to be used in data management and dissemination of data, including a schedule.
- F. The proposed disposition of recovered materials and records.
- G. A proposed schedule for the submission of progress reports.

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H. Proposed methods by which Indian tribes and local governments will be kept informed of the work and afforded the opportunity to comment, as appropriate.

I. The methods to be used for evaluating and treating cultural properties that may be discovered during construction of the project.

.27 Data Recovery Reports. The results of data recovery efforts shall be documented in a report meeting prevailing professional standards. Reports should include:

A. Brief summary of the project background and scientific context of work conducted.

B. Description of fieldwork, analysis techniques, and results.

C. Interpretation of data and conclusions.

D. Suggestions for future evaluation and treatment of similar cultural properties.

E. Recommendations for future research directions.

F. Appendices, as appropriate, on special studies or analyses, site maps, charts, drawings, profiles, photographs, and other graphics, plus certification of the curation of recovered materials.

.28 Previously Undiscovered Properties. The Field Office manager, during the identification efforts described in .21A, should consider the likelihood that cultural properties will be discovered during implementation of an undertaking. If discovery is likely, a plan should be developed for the treatment of such properties, including consultation requirements and compliance with other laws, such as the Native American Graves Protection and Repatriation Act and applicable state laws, in the case of inadvertent discovery of human remains, prior to initiating or authorizing the undertaking.

A. Discovery Plan Developed. If a discovery plan has been developed, the Field Office manager can meet the requirements of Section 106 and the national Programmatic Agreement, and any other applicable laws by following the plan when cultural properties are discovered during implementation of an undertaking. The Field Office manager shall take prudent and feasible steps to ensure that the undertaking does not harm the property until treatment is completed in accordance with the discovery plan.

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B. Discovery Plan Not Developed. If a discovery plan has not been developed prior to implementing an undertaking, the Field Office manager shall make reasonable efforts to avoid or minimize harm to a discovered property until (1) the property has been assessed in terms of National Register eligibility and appropriate use(s), and (2) treatment measures have been carried out consistent with any treatment plan developed for the undertaking as a whole. In the absence of a treatment plan for the undertaking, measures will be carried out consistent with the Field Office's professional assessment of the property's research, traditional use, interpretation, or conservation significance and compliance requirements under any other laws that apply (see Manual Section 8140.28).

.29 Treatment Plan Review. Where a BLM Field Office is operating under the national Programmatic Agreement, the SHPO and Council will normally not be asked to review routine treatment plans for BLM undertakings. Circumstances under which case-by-case review will occur are described in the PA and the State's BLM-SHPO Protocol.

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.3 Preventing Loss and Destruction From Illegal Activities.

.31 Prohibited Acts. Unauthorized use includes but is not limited to the following:

A. Archaeological Resources. Any act prohibited under the Archaeological Resources Protection Act (ARPA; 16 U.S.C. 470ee), as implemented by regulations pursuant thereto and set out in 43 CFR Part 7. These acts, or the attempt to commit them, include excavation, removal, and damaging or otherwise altering or defacing archaeological resources, as defined, on public lands, as defined, unless such activity is pursuant to the terms of a permit issued under the provisions of ARPA or its implementing regulations; and the sale purchase, exchange, transport, or receipt of any illegally removed archaeological resource.

B. Native American Human Remains and Cultural Items. Any act prohibited under the Native American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C. 3002(c)) and/or in violation of 43 CFR Part 10, including the excavation, removal, possession, sale, purchase, use for profit, or transport for sale or profit of human remains or cultural items of Native American origin without the right of possession to those remains or cultural items as provided in NAGPRA.

C. Cultural Resource Use Permit. Any activity by the holder of a BLM cultural resource use permit, issued under the authority of ARPA, the Antiquities Act, and/or FLPMA (see BLM Manual Section 8130), which was conducted without written authorization or is contrary to or in excess of written authorization.

D. Other Federal and State Regulations and Statutes. Any activity in violation of Federal or State law or regulation that affects cultural properties on public lands including the theft of artifactal materials from a federally owned cultural property. For example, ARPA excludes from its criminal penalties the removal of arrowheads located on the surface of the ground (16 U.S.C. 470ee(g)); however, arrowheads are an archaeological resource by definition, i.e., weapon projectiles (16 U.S.C. 470bb(1)). Although the removal of arrowheads on the ground surface are not subject to ARPA penalties, such removal of an arrowhead, which is an archaeological resource, is prohibited by 43 CFR 8365.1-5(a)(1), and is a violation of FLPMA (43 U.S.C. 1733(a)) and the Antiquities Act (16 U.S.C. 432, 433) and subject to the criminal penalties provided by those acts.

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.32 Prevention by Physical and Administrative Protection. Physical and administrative protection measures (see 8140.1) may be employed to prevent unauthorized uses of cultural properties. Physical protection measures may include signing, fencing/gating, patrol/surveillance, erosion control, fire control, stabilization, recordation, relocation, and archaeological data recovery. Administrative protection measures may include withdrawal, closure to public access and off-road-vehicles, special designations, land acquisitions, transfer, easements, public information and education programs, supplementary rules (43 CFR 8365.1-6), injunctions, and other appropriate court orders.

.33 Detection Measures and Procedures. Unauthorized use can be detected during routine fieldwork or as a result of specifically designed patrols. Detection measures can include inspection of cultural properties to document changes in site condition due to vandalism and to observe and note other types of unauthorized uses. These inspections should be systematic and repetitive to maximize detection capability. Coordination with law enforcement will increase efficiency of detection measures and procedures.

.34 Investigation and Examination. The scene of a suspected unauthorized use of cultural resources should be immediately secured, to the extent possible, and access thereto limited to the responding law enforcement personnel with jurisdiction, preferably BLM law enforcement personnel. The scene should not be altered in any way until examined by the appropriate law enforcement personnel. Evidence collection procedures should be observed and technical personnel shall follow the instructions of law enforcement personnel during onsite collection of physical evidence. The investigation and examination should additionally result in an assessment of the damage resulting from an unauthorized use and a treatment plan to protect and prevent any additional deterioration to the damaged portions of the site.

.35 Criminal Prosecutions.

A. Criminal Penalties. "Prohibited Acts and Criminal Penalties" are set out in ARPA, at 16 U.S.C. 470ee. The statute includes numerous criminal acts including excavating, removing, transporting, selling, trafficking over State lines when obtained in violation of State or local law, and many other acts. Penalties for knowing violation are also set out. Criminal acts and penalties for a knowing violation of NAGPRA are set out in 18 U.S.C. 1170. All criminal prosecutions under these laws should be handled in conjunction with BLM law enforcement personnel.

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1. Penalties under ARPA.

a. If the commercial or archaeological value of archaeological resources and cost of restoration and repair does not exceed \$500.00, a convicted individual shall be fined not more than \$10,000.00 or imprisoned not more than 1 year, or both.

b. If the commercial value or archaeological value of archaeological resources and cost of restoration and repair exceed \$ 500.00, a convicted person shall be fined not more than \$20,000.00 or imprisoned not more than 2 years, or both.

c. Upon additional convictions, such person shall be fined not more than \$100,000.00 or imprisoned not more than 5 years, or both.

2. Penalties under NAGPRA.

a. A person convicted of illegal trafficking of Native American human remains shall be fined in accordance with title 18 U.S.C. (see 18 U.S.C. 3571), or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with title 18 U.S.C. (see 18 U.S.C. 3571), or imprisoned not more than 5 years, or both.

b. If convicted of illegal trafficking of Native American cultural items such person shall be fined in accordance with title 18 U.S.C. (see 18 U.S.C. 3571), or imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with title 18 U.S.C. (see 18 U.S.C. 3571), imprisoned not more than 5 years, or both.

3. Penalties under other Federal Statutes. Determination of penalties under other statutes shall be made in accordance with regulations promulgated under those Acts.

.36 Civil Proceedings.

A. Determination of Civil Penalties. The assessment of penalties and damage claims against individuals under the Archaeological Resources Protection Act shall be guided by provisions in the Act and its implementing regulations, 43 CFR Part 7.

1. Under 43 CFR 7.15 the Federal land manager may assess a civil penalty against any person who has violated any prohibition contained in 43 CFR 7.4 or who has violated any term or condition included in a permit issued in accordance with ARPA and 43 CFR Part 7.

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2. Before civil penalties are assessed the Federal land manager should ensure that such assessments do not interfere or jeopardize any criminal investigation or prosecution. In the event that a criminal investigation is initiated, no civil penalties may be issued without the consent of the Special Agent-in-Charge.

3. The amount of civil penalties shall take into account the archaeological or commercial value of the resource, the cost of restoration and repair of the resource, and whether the case represents a second or subsequent conviction by an individual subject to the penalty.

B. Violations under other Statutes. The measure of damages and reimbursements shall be made in accordance with regulations promulgated under those Acts.

.37 Rewards

A. Provision for Awards. As provided by the Archaeological Resources Protection Act (16 U.S.C. 470gg) and 43 CFR 7.17(b), the Federal land manager may certify to the Secretary of the Treasury that a person is eligible to receive an amount equal to one-half the penalty assessed under either the criminal or civil provisions of the Act, but not to exceed \$500.00, for furnishing information leading to the finding of a civil violation, or the conviction of criminal violation under the Act.

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.4 Treasure Hunting on Public Lands

.41 Metal Detector Use. Metal detectors may be used on public lands. They must be used, however, for lawful purposes. Any act with a metal detector that violates the proscriptions of ARPA or any other law is prosecutable thereunder.

.42 "Treasure Trove" Contracts. The BLM does not honor requests for contracts to recover abandoned historic property ("treasure trove"). There are no exceptions. The General Services Administration administers a salvage-authorizing program loosely based on an 1870 abandoned property statute, 40 U.S.C. 310, through which salvors contract to turn over a portion of their finds to the Government. None of the cases that have ever come to BLM has resulted in a contract. Alleged materials that are the subject of such discussions, if they were to exist (none has ever been verified), would generally be archaeological resources legally unsuitable for conversion to private property.

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.5 Coordinating With Outside Parties

.51 Consulting Native Americans. Within the framework of a government-to-government dialogue, and consistent with BLM Manual Section 8120, Manual Handbook H-8120-1, and Manual Section 8130.15A) the Field Office manager will determine how consultation with Native Americans should proceed when considering protection for cultural properties.

A. Consultation on Land Use Actions. When considering a specific land use action, efforts to meet the consultation requirements of NHPA, NAGPRA, ARPA, AIRFA and NEPA should be coordinated as much as possible and may be met through a single consultation process. The Field Office manager can meet the BLM's consultation responsibilities under these laws as follows:

1. Review what is known from previous consultations about Native Americans' concerns pertaining to the area affected by the proposed action, including review of any agreements with Indian tribes about when they should be consulted concerning particular areas or particular kinds of undertaking.

2. As appropriate, based on information reviewed in .51A1, consult with the chief governing authority of any tribe potentially concerned by the proposed action. This should be done at the earliest opportunity after receiving a land use application or at the earliest stages of project planning and should provide as much information as possible regarding the location and nature of the proposal. The BLM should invite the tribe's comments on the proposed action, including:

a. Concerns the tribe might have with the proposed action in general, and how to resolve any issues that might affect the tribe.

b. How to resolve adverse effects on cultural properties identified in the cultural resource inventory.

c. Whether there are places of traditional religious or cultural importance that were not identified in the cultural resource inventory, and if so, how to resolve adverse effects on them.

d. How to treat human remains and "cultural items" as defined in NAGPRA (if excavation of these remains and items is anticipated).

e. Whether there are any traditional cultural leaders or religious practitioners who should also be contacted. If the Field Office is aware of such leaders or practitioners, or if the tribe has cultural resource representatives who are designated to act as liaison with Federal agencies, the letter should state that the BLM will be contacting those individuals, as well.

3. Complete a cultural resource inventory of the area affected by the proposed action, if needed. Results of the inventory may be shared with the tribe if requested during the consultation.

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4. Document consultation efforts carefully. Comments gathered as a result of these efforts must be considered in making decisions on the proposed action, in developing treatment plans for cultural properties, and in complying with Section 106 of the NHPA in accordance with the national Programmatic Agreement. The comment period allowed for tribes should conform to existing protocols. In the absence of established protocols, tribes should be given at least 30 days to comment after being informed of a proposed action. Persons consulted should be notified of BLM's final decision.

5. Consult with tribes during the project planning stage, before conducting a cultural resource field inventory. This is particularly important when the project area is likely to change as a result of tribal concerns or public comment. A tribe may request separate consultation after the field survey is completed, to discuss the cultural resources located by the survey. The Field Office manager and the tribe may wish to establish mutually agreed upon criteria for when it is appropriate not to consult, such as for minor or routine land use actions or for actions in certain areas, in oral or written agreements, as appropriate.

B. Standard of Sufficiency. The required level of effort is the same for consulting on proposed land use actions as for consulting on land use plans (see Manual Section 8130.23 C.5). However, while all land use plans will require consultation with Indian tribes, some proposed land use actions might not. Consultation is necessary whenever the Field Office manager determines, in conformance with existing agreed-upon arrangements with the tribe, that the nature and/or the location of a proposed land use could have effects that are subject to consultation.

.52 Consulting Other Groups and Individuals. The Field Office manager may consult the Advisory Council on Historic Preservation, State and local governments and interested private organizations and individuals when determining strategies for protecting cultural resources, as appropriate and consistent with the national Programmatic Agreement's thresholds for Council participation, State BLM-SHPO Protocols developed pursuant to the Programmatic Agreement, and any existing MOUs with local governments or organizations.

A. Interested Groups and Individuals May Identify Themselves. National, regional, State, or local organizations or individuals interested in participating in historic preservation decision making may identify themselves to the Field Office manager.

B. Groups' and Individuals' Interests Should be Accommodated Appropriately. The Field Office manager should document when and under what circumstances groups and individuals wish to be notified and given an opportunity to participate in the decision making process. Documentation may be achieved by a letter, a memorandum of understanding, or other appropriate means.

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

Preamble

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

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

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

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

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

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

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

Basis for Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Components Of Agreement

1. Applicability

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

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

2. Establishment of Preservation Board

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

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

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

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

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

3. Revision of "Cultural Resource Management" Procedures

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

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

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

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

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

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

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

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

4. Thresholds for Council Review

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

5. Cooperation and Enhanced Communication

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

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

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- a copy of any Handbook, Manual Supplement, or other standard procedure for "Cultural Resource Management" used by the BLM within an individual State Office's jurisdiction
- a list of Preservation Board members;
- a list of BLM cultural heritage personnel within each State Office's jurisdiction;
- a map of the State showing BLM field office boundaries and responsibilities;
- the best available map of the State showing tribal lands, ceded lands, and ancestral use areas; and
- a brief summary of land holdings, major ongoing development projects or permitted uses, proposed major undertakings such as land exchanges or withdrawals, and particularly significant historic properties on BLM lands within each State Office's jurisdiction.

b. Within 6 months after revised policies and procedures become available, each State Director will meet with each pertinent SHPO to develop a protocol specifying how they will operate and interact under this agreement. Where a State Director has few interactions with an SHPO due to minimal public land holdings, protocols need not be pursued and historic preservation consideration will continue to be carried out under the procedures of 36 CFR Part 800. Adoption of protocols, as formalized by the State Director's and SHPO's signatures, will be a prerequisite for the certification described in 8. The Preservation Board and the Council will be kept informed of the progress of protocol development, and will receive an information copy of any signed BLM/SHPO protocol. The SHPO and State Director may ask the NCSHPO, the Preservation Board, and the Council to assist at any stage in developing protocols.

At a minimum, protocols will address the following:

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

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

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

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

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

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

6. Training Program

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

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

7. Professional Development

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

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

8. State Office Certification and Decertification

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

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

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

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

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

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

9. Accountability Measures

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

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

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

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

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10. Reviewing and Changing the Agreement

a. The parties to this agreement may agree to revise or amend it at any time. Changes that would affect the opportunity for public participation or Native American consultation will be subject to notice and consultation, consistent with 3.e. above.

b. Should any party to this agreement object to any matter related to its implementation, the parties will meet to resolve the objection.

c. Any party to this agreement may terminate it by providing 90 days notice to the other parties, provided that the parties will meet during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the BLM will comply with 36 CFR Part 800, including any relevant suspended State programmatic agreements (see 5.e. above).

d. Not later than the third quarter of FY 1999, and every two years thereafter, the parties to this agreement will meet to review its implementation.

Affirmation

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

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

Programmatic Agreement Authority

The material quoted below is from the version of “Protection of Historic and Cultural Properties,” 36 CFR Part 800, that was published September 2, 1986 (51 FR 31118). These were the regulations in effect at the time the national Programmatic Agreement (Appendix 1) was executed in March 1997. References to 36 CFR 800 in the national Programmatic Agreement are to the 1986 version of the regulations. The quoted provisions authorize Programmatic Agreements and specify that an approved Programmatic Agreement satisfies the Agency's section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until it expires or is terminated. That is to say, an approved Programmatic Agreement has equivalent legal effect to, and stands in the place of, the Advisory Council's regulations.

Section 800.13 Programmatic Agreements

(a) **Application.** An Agency Official may elect to fulfill an agency's section 106 responsibilities for a particular program, a large or complex project, or a class of undertakings that would otherwise require numerous individual requests for comments through a Programmatic Agreement. Programmatic Agreements are appropriate for programs or projects:

- (1) When effects on historic properties are similar and repetitive or are multi-State or national in scope;
- (2) When effects on historic properties cannot be fully determined prior to approval;
- (3) When non-Federal parties are delegated major decision making responsibilities;
- (4) That involve development of regional or land-management plans; or
- (5) That involve routine management activities at Federal installations.

(b) **Consultation process.** The Council and the Agency Official shall consult to develop a Programmatic Agreement. When a particular State is affected, the appropriate State Historic Preservation Officer shall be a consulting party. When the agreement involves issues national in scope, the President of the National Conference of State Historic Preservation Officers or a designated representative shall be invited to be a consulting party by the Council. The Council and the Agency Official may agree to invite other Federal agencies or others to be consulting parties or to participate, as appropriate.

(c) **Public involvement.** The Council, with the assistance of the Agency Official, shall arrange for public notice and involvement appropriate to the subject matter and the scope of the program. Views from affected units of State and local government, Indian tribes, industries, and organizations will be invited.

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(d) **Execution of the Programmatic Agreement.** After consideration of any comments received and reaching final agreement, the Council and the Agency Official shall execute the agreement. Other consulting parties may sign the Programmatic Agreement as appropriate.

(e) **Effect of the Programmatic Agreement.** An approved Programmatic Agreement satisfies the Agency's section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until it expires or is terminated.

(f) **Notice.** The Council shall publish notice of an approved Programmatic Agreement in the Federal Register and make copies readily available to the public.

(g) **Failure to carry out a Programmatic Agreement.** If the terms of a Programmatic Agreement are not carried out or if such an agreement is terminated, the Agency Official shall comply with Sections 800.4 through 800.6 with regard to individual undertakings covered by the agreement.

Criteria of Effect and Adverse Effect

The criteria below are quoted from the September 2, 1986 (51 FR 31118) version of 36 CFR Part 800, "Protection of Historic and Cultural Properties." These were the regulations in effect when the national Programmatic Agreement (Appendix 1) was executed in March 1997. Accordingly, wherever 36 CFR 800 is referred to in the Programmatic Agreement, the reference is to the 1986 version of the regulations. The 1986 criteria are in no way less protective of significant cultural properties than the current version. Achieving an effect that is "not adverse" through the application of avoidance or mitigation measures is functionally equivalent to "resolution of effect" in the current regulations.

Section 800.9 Criteria of effect and adverse effect

(a) An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of a property's location, setting, or use may be relevant depending on a property's significant characteristics and should be considered.

(b) An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but are not limited to:

(1) Physical destruction, damage, or alteration of all or part of the property;

(2) Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction; and

(5) Transfer, lease, or sale of the property.

(c) Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of these regulations:

(1) When the historic property is of value only for its potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

(2) When the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings", or

(3) When the undertaking is limited to the transfer, lease, or sale of a historic property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.