

**AMENDMENT TO PROGRAMMATIC AGREEMENT AMONG  
THE BUREAU OF LAND MANAGEMENT,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING  
BLM'S COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC  
PRESERVATION ACT**

*Preamble*

WHEREAS, the Bureau of Land Management (BLM), the National Conference of State Historic Preservation Officers (NCSHPO), and the Advisory Council on Historic Preservation (ACHP) executed this Nationwide Programmatic Agreement (Agreement) on February 9, 2012 in accordance with 36 CFR § 800.14(b) to address the manner in which the BLM will meet its responsibilities under the Section 106 of the National Historic Preservation Act (NHPA; 54 U.S.C. 306108); and

WHEREAS, the BLM, NCSHPO, and ACHP executed a two-year extension to the agreement on February 9, 2022, and another extension on February 9, 2024, pursuant to Stipulation 11.f of the 2012 agreement; and

WHEREAS, the BLM, consistent with its authorities and responsibilities under the Federal Land Policy and Management Act (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; and

WHEREAS, the BLM's management of public lands and mineral resources constitute undertakings that have the potential to affect historic properties as defined by the NHPA and require compliance with Section 106; and

WHEREAS, the BLM's historic preservation program (Program) established in response to Section 110(a)(2) of the NHPA (54 U.S.C. 306102) and related authorities provides a systematic basis for: identifying, evaluating, and nominating historic properties under the BLM's jurisdiction or control to the National Register of Historic Places (National Register); managing and maintaining properties listed in or eligible for listing in the National Register in a way that considers the preservation of their archaeological, historical, architectural, and cultural values and the avoidance of adverse effects in consultation with Tribes, local governments, consulting parties, and the interested public; and giving special consideration to the preservation of such values in the case of properties designated as having national significance; and

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

WHEREAS, the BLM's Program also is intended to: ensure that the BLM's compliance with Section 106 of the NHPA meets the current regulations issued by the ACHP pursuant to Section 211 of the NHPA (54 U.S.C. 304108; 36 CFR Part 800, "Protection of Historic

Properties"); provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with SHPOs, Tribes, local governments, consulting parties, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered and resolved; and

WHEREAS, the NCSHPO, representing individual State Historic Preservation Officers (SHPOs), acknowledges that SHPOs—particularly in states with a high percentage of public land under the BLM jurisdiction—have a significant interest in fostering a cooperative relationship with the BLM to enhance the effectiveness and efficiency of the Section 106 consultation process, promote activities of mutual interest, and improve coordination on historic preservation matters; and

WHEREAS, this Agreement, developed in consultation with the NCSHPO and in accordance with 36 CFR § 800.14(b)(2), establishes a program alternative that allows the BLM to meet its Section 106 responsibilities through a streamlined process that strengthens collaboration with SHPOs while ensuring compliance with the NHPA; and

WHEREAS, the BLM consults with Tribes in the identification and management of properties of religious and cultural significance to them and will continue to ensure that its NHPA Section 106 compliance recognizes the interests of Tribes in historic properties potentially affected by BLM decisions and affords Tribes participation in the process leading up to a BLM decision, in accordance with 36 CFR Part 800; and

WHEREAS, the BLM recognizes that Tribal consultation is a significant component of many government actions and is conducted under numerous authorities, not just for those projects identified as undertakings by the NHPA, and that the BLM encourages continued use and training of the BLM 1780 Manual; and

WHEREAS, this Agreement will not apply to proposed BLM undertakings located on or with the potential to affect historic properties on Tribal lands (as defined in 36 CFR 800.16(x)), with respect to which the BLM will comply with the regular Section 106 process under 36 CFR §§ 800.3 through 800.7, the process under 36 CFR § 800.8(c), or another applicable program alternative under 36 CFR § 800.14, and;

WHEREAS, for undertakings not on Tribal lands, the BLM employs the principles of Government-to-Government consultation with Tribes under cultural resources authorities including the NHPA as reflected in this Agreement; and consults with the Tribal representatives designated by the Tribal governments for the purpose of identifying properties of religious and cultural significance that may be eligible for listing on the National Register, assessing effects to historic properties, resolving any adverse effects, and to understand Tribal concerns; and

WHEREAS, the BLM acknowledges, in accordance with 36 CFR § 800.4(c)(1), that Tribes have special expertise in identifying and assessing the eligibility of historic properties of traditional religious and cultural significance to them, which may include cultural landscapes and

traditional cultural places; and

WHEREAS, because of the sovereign status of Tribes, especially those whose Tribal and/or ancestral lands are located in areas where the BLM has surface or subsurface management responsibilities, the BLM determined during consultation of this amended Agreement, that it is appropriate to invite each Tribe or Tribal Historic Preservation Officer (THPO), as defined in Section 101(d)(2) of the NHPA (54 U.S.C. 302702), to enter into formal or informal agreements with the BLM regarding consultation procedures under the NHPA Section 106 and that some Tribes may want to form a cooperative relationship with the BLM in a manner consistent with the purposes of this Agreement to achieve a more effective and efficient Section 106 consultation process, and, hence, no Tribes were asked to be signatories to this amended Agreement; and

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

WHEREAS, the parties recognize the importance of priority-based, advanced identification of historic properties under Section 110 of the NHPA in supporting the BLM's multi-use mission for responsible energy/mineral development, livestock grazing, timber harvesting, outdoor recreation, and conservation through long-term preservation planning, public education and interpretation, and more effective and efficient coordination with SHPOs, the ACHP, and Indian Tribes.

NOW, THEREFORE, in accordance with Stipulation 13.a of the Agreement, the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and the Bureau of Land Management agree that the Agreement shall be amended in its entirety as follows:

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

**1. Applicability**

- a. This Agreement amends the 2012 Agreement. Existing state-specific BLM-SHPO protocols under the 2012 Agreement will remain in effect until the end of the timeframe specified in Stipulation 4.a. of this Agreement. Prior to expiration of existing state protocols, the BLM state directors will meet with their respective SHPO(s) to assess whether their existing protocol still aligns with this Agreement, or if it requires amendment to conform with the stipulations outlined below. No existing informal and formal agreements between the BLM and a Tribe or Tribes will be altered by this Agreement.
- b. The BLM shall follow 36 CFR §§ 800.3 through 800.7, 36 CFR § 800.8(c), or another applicable program alternative in any state that is not operating under a BLM-SHPO protocol pursuant to this Agreement.

- c. The BLM may utilize this Agreement for proposed undertakings on other Federal, State, municipal, or private lands provided that the BLM is designated as lead federal agency for Section 106 purposes and the parties have formally agreed, in writing, to the provisions and implementing protocol(s).

## **2. BLM Consultation Responsibilities under this Agreement**

- a. This agreement requires:
  - i. The BLM to follow the process at 36 CFR §§ 800.3 through 800.7, 36 CFR § 800.8(c), or another applicable program alternative under 36 CFR § 800.14, for undertakings within any state that does not have a BLM-SHPO protocol under this Agreement and for undertakings on or affecting Tribal lands; and
  - ii. The BLM to consult with the relevant SHPO, THPO(s), Tribes, and other consulting parties for all undertakings that may adversely affect properties that are eligible for listing in the National Register, and for the development of any procedures such as project-specific Memoranda of Agreement (MOAs) or Programmatic Agreements (PAs); and
  - iii. The BLM to invite the ACHP to participate in consultation when undertakings meet the thresholds in Stipulation 7 of this Agreement; and
  - iv. The BLM to follow the appropriate process at 36 CFR §§ 800.6(b)(2), 800.8(c)(4)(i)(A), or 800.14(b) to resolve adverse effects whenever the ACHP formally participates in the resolution of adverse effects for an undertaking.
- b. This agreement encourages:
  - i. The BLM and SHPOs to revise, as needed, the mutually-agreed-upon two-party BLM -SHPO protocols governing their relationship and how consultation will take place; and
  - ii. The BLM and SHPOs to establish streamlined (as opposed to case-by-case) consultation on evaluation of cultural resources for National Register eligibility and for no historic properties affected, no adverse effect, and adverse effect findings when BLM and SHPO reach agreement on resolving the adverse effect(s); and
  - iii. The BLM to contact, on a regular basis, Tribes affected by undertakings within their jurisdiction and develop Tribe-specific procedures for Tribal consultation; and
  - iv. The BLM to use phased identification and evaluation as described in 36 CFR § 800.4(b)(2) as a strategy for meeting the BLM's NHPA Section 106

responsibility for programs implemented through a phased decision-making process beginning with land use planning designations that may affect large land areas. A phased compliance process requires that the Bureau demonstrate that it has taken some steps to take into account the effect of the undertaking on potentially eligible sites in each phase, and that until a reasonable effort has been made to identify potentially eligible sites, the Bureau retains the ability to modify the project, if necessary, e.g., through no-surface-occupancy or other stipulations, conditions of approval, specific permit restrictions or covenants.

- v. The BLM to develop processes for notifying the SHPO of nondestructive land use planning efforts. State directors may conduct or authorize nondestructive planning activities before completing compliance with Section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize, or mitigate adverse effects on historic properties (36 CFR § 800.1(c)).

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

- a. The BLM Director will maintain a Preservation Board to advise the BLM Director, deputy directors, assistant directors, state directors, and district and field office managers in the development, implementation, and effectiveness of the BLM's policies and procedures for NHPA implementation.
- b. The Preservation Board will be chaired by the BLM's Federal Preservation Officer (FPO) designated under Section 110(c) of the NHPA (54 U.S.C. 306104) and will include:
  - i. A professionally qualified Deputy Preservation Officer (DPO) from each state office as ex officio members; and
  - ii. The BLM national Tribal Liaison Officer (TLO) as an ex officio member; and
  - iii. At least four line officers representing field management (i.e., officials who are authorized by the Director's or state directors' delegation to make land-use decisions, who also serve as agency officials) as term positions; and
  - iv. Two district or field office cultural resource specialists as term positions; and
  - v. One state TLO as a term position.
- c. The Preservation Board will perform identified high priority work and make recommendations to the BLM Director and state directors concerning consultation responsibilities (Stipulation 2), policies and procedures (Stipulation 4), BLM-wide policy implementation (Stipulation 4), training (Stipulation 9), certification and decertification of state, district, or field offices (Stipulation 11), monitoring of

district and field offices' historic preservation programs (Stipulation 12), and responses to public inquiries (Stipulation 12).

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

#### **4. State BLM-Protocol Procedures**

- a. Each BLM state director or their designee will meet with each relevant SHPO to review the BLM-SHPO protocol for that state Within 36 months of execution of this Agreement, or prior to the protocol's expiration, to ensure it meets the minimum requirements specified in this Stipulation and notify the ACHP of the results of their review. The state director may request ACHP assistance in identifying specific changes needed in the State's BLM-SHPO protocol prior to the state director initiating any changes associated with implementation of this Agreement. States will consult with Tribes as required by 36 CFR § 800.14(f) when making revisions and updates to protocols. This consultation may be conducted in coordination with the requirements of Stipulation 6(c).
- b. The SHPO or BLM state director may ask the NCSHPO, the Preservation Board, and/or the ACHP to assist at any stage in revising BLM-SHPO protocols. The Preservation Board and the ACHP will be kept informed of the progress of protocol review and revision, and the BLM state office will provide the ACHP an opportunity to review and comment on revised protocols before execution. The state director will also provide the Preservation Board, ACHP, and NCSHPO with an information copy of any signed revision and post it on the BLM website for that state.
- c. At a minimum, BLM-SHPO protocols will incorporate the framework outlined in Stipulation 6 of this Agreement and address the following:
  - i. A means for making a reporting schedule of pending undertakings, including land transfers, available to the public and Tribes on a regular basis; and
  - ii. A commitment to fulfill Tribal consultation obligations and to develop and maintain Tribal relations; and
  - iii. The manner in which public participation is addressed for protocol-guided compliance processes; and

- iv. The manner in which the involvement of consulting parties is addressed for protocol-guided compliance processes; and
- v. Data sharing, including information resource management development, support and security—at a minimum annual transmittal of all site forms and project reports; and
- vi. A means for regularly updating data synthesis needs to improve data quality.
- vii. A commitment to public education and community involvement in preservation; and
- viii. Preservation planning; and
- ix. Identification and monitoring of historic properties; and
- x. Cooperative management and stewardship; and
- xi. Agreement as to the types of properties for which the BLM may determine ineligibility without seeking SHPO agreement. Eligibility determinations regarding possible properties of traditional religious and cultural importance to Tribes will continue to require SHPO agreement and consultation with Tribes; and
- xii. Agreement as to types of undertakings and classes of affected properties that will trigger SHPO review, including all undertakings that will have an adverse effect on historic properties, as well as any development of alternative procedures such as project-specific PAs, and how this review will proceed, consistent with Stipulation 6; and
- xiii. Manner in which the BLM will ensure that appropriate professional expertise will be obtained or made available for specific types of undertakings or historic properties; and
- xiv. Provisions for resolving disagreements and amending or terminating the BLM-SHPO protocol; and
- xv. Circumstances under which the BLM and/or SHPO may choose to operate under 36 CFR §§ 800.3 through 800.7 in place of the BLM-SHPO protocol; and
- xvi. The substance and format of supplemental information to the BLM annual report that the state director will prepare in satisfaction of Stipulation 10.b. of this Agreement and the manner in which the report will be made available to

affected Tribes and the public via the state BLM website. Supplemental information shall include information on BLM actions relative to undertakings and classes of affected properties that did not trigger SHPO review; and

- xvii. Training of new managers and archaeologists with Section 106 responsibilities in states that operate under this Agreement within 90 days of their report date according to the procedures outlined in the Agreement and appropriate BLM-SHPO protocol.

## **5. BLM and Tribal Engagement**

- a. The BLM shall consult with Tribes on individual undertakings in the context of an ongoing Government-to-Government relationship sustained through regular periodic meetings supplemented by additional undertaking-specific consultation, meetings, and field visits. Building on the process set forth in the 2012 Agreement, each state director or designee will continue to contact Tribes that are affected by BLM undertakings within his or her jurisdiction on a regular basis for the purpose of furthering discussion about ways in which the BLM and each Tribe can foster better communication. These discussions between the appropriate BLM and Tribal representatives are opportunities to establish effective methods for meeting Tribal consultation requirements as established under BLM Manual 1780 regarding identification and evaluation of historic properties, including properties of traditional and cultural importance to Tribes, and for the resolution of adverse effects of undertakings. This process should be carried out in coordination with other state directors, as appropriate, and should seek to:
  - i. Identify geographic areas, types of historic properties, and undertakings of concern to Tribes; and
  - ii. Identify confidentiality issues; and
  - iii. Answer questions on the existing BLM-SHPO protocol and proposed future revisions or amendments; and
  - iv. Provide a Tribal point of contact for the state office and each district and field office within his or her jurisdiction; and
  - v. Offer Tribes the opportunity to establish a formal ongoing relationship through an agreement for conducting the consultation required under the NHPA Section 106 within the framework of the BLM's Government-to-Government relationship with Tribes and other authorities.
- b. In accordance with Stipulations 2.b.iii. and 6.b., the state director will seek, as appropriate, the active participation of Tribes in BLM land-use planning and associated resource management activities consistent with section 202 of FLPMA,

43 U.S.C. 1712, BLM Manual 1780, and implementing regulations at 43 CFR § 1610.2. This participation will be sought so that historic preservation considerations may influence large-scale decisions and inform the analysis of cumulative effects of more routine decisions, before the BLM makes key commitments and its management options are limited.

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

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

- a. This Stipulation establishes the program alternative framework, which may be used only if a state has an executed BLM-SHPO protocol that includes, at a minimum, the following standards, steps, and requirements. Each state protocol must incorporate these minimum elements to ensure consistency in compliance with Section 106. In the absence of an executed protocol, individual projects utilizing this Agreement must adhere to the standard Section 106 review process as outlined in 36 CFR §§ 800.3 through 800.7, 800.8, or another applicable program alternative under 36 CFR § 800.14.
- b. The BLM agency official (otherwise known as a line officer) shall ensure that consultation with Tribes, the SHPO, and other consulting parties occurs at the outset of land use planning. This consultation is a required step in the identification and management of historic properties. BLM line officers must involve Tribal governments, SHPOs, and other consulting parties early in the planning process to facilitate coordination and consultation at later stages, reducing potential conflicts between BLM-authorized land uses and significant historic properties.
- c. In accordance with BLM land use planning and environmental review processes, as well as the Tribal consultation policies outlined below in Stipulation 6.h., the BLM line officer shall actively seek and document information from Tribes and other consulting parties with knowledge of or concerns about historic properties in the affected area; this effort must include direct outreach, consideration of Indigenous Knowledge, and a clear record of how input is integrated into planning and decision-making; identify properties of religious and cultural significance to Tribes that may be eligible for listing in the National Register of Historic Places (National Register); and understand Tribal and other parties' concerns sufficiently to assess the potential effects that future Federal undertakings might have on eligible properties.
- d. Prior to initiating or authorizing a proposed action that meets the definition of

"undertaking" in 36 CFR § 800.16(y) and is a type of activity that has the potential to cause effects to historic properties (with the assumption that historic properties are present), the responsible BLM line officer shall:

- i. Determine the undertaking's area of potential effects; and
- ii. Review existing information on historic properties potentially affected by the undertaking, including documentation of previous Tribal consultation; and
- iii. Seek information in accordance with BLM land use planning and environmental review processes from Tribes and other parties likely to have knowledge of or concerns with historic properties, particularly properties of traditional religious and cultural significance to Tribes, in the area; and
- iv. Determine the need for further actions, such as field surveys and predictive modeling to identify historic properties in the area; and
- v. Make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking as described in 36 CFR § 800.4(b)(1); and
- vi. Assess whether any properties within the area of potential effects, including properties of traditional religious and cultural significance to a Tribe, meet one or more eligibility criteria specified in 36 CFR § 60.4, while acknowledging that a formal determination of eligibility may be requested from the Keeper of the National Register pursuant to 36 CFR § 800.4(c)(2) and 36 CFR Part 63.
  1. If the BLM line officer determines, consistent with the process in the State's BLM-SHPO protocol, that a property does not meet the eligibility criteria in 36 CFR § 60.4, they will provide documentation to the SHPO according to the reporting schedule in the State's BLM-SHPO protocol, and the property shall be treated as not eligible for listing in the National Register and therefore not subject to further consideration under Section 106 and this Agreement.
  2. If the BLM line officer determines, consistent with the process in the State's BLM-SHPO protocol, that a property meets one or more eligibility criteria in 36 CFR § 60.4, the property shall be considered eligible for listing in the National Register for purposes of complying with Section 106 of the NHPA and this Agreement (i.e., an "historic property").
  3. If a SHPO does not concur or notes concerns with the BLM's assessments of eligibility under Stipulations 6.d.vi.1. or 2. above, they may request a meeting to discuss the BLM's procedures and reasoning for future eligibility determinations.

- e. The responsible BLM line officer shall determine whether National Register-listed or eligible sites may be affected by an undertaking, considering the views of the interested public and any consulting parties, including, but not limited to Tribes.
  - i. If the BLM line officer finds that the undertaking will not affect those characteristics of the property that qualify it for listing in the National Register, the line officer will document this finding, proceed with the undertaking, and provide documentation of "no historic properties affected" to the SHPO in accordance with the reporting schedule specified in the State's BLM-SHPO protocol.
  - ii. If the BLM line officer finds that the undertaking may affect those characteristics of the property that qualify it for listing in the National Register, the line officer will apply the Criteria of Adverse Effect to determine whether the proposed undertaking may alter, directly, indirectly, or cumulatively, those characteristics in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association (36 CFR § 800.5(a)(1)) and will document this finding. If the line officer finds that the effect is not adverse or the undertaking is modified to avoid adverse effects, per 36 CFR § 800.5(b), and does not meet the threshold for case-by-case review in the State's BLM-SHPO protocol or the threshold for ACHP notification, the line officer will document this finding, proceed with the undertaking, and report it to the SHPO according to the BLM-SHPO protocol.
- f. When a proposed agency decision or undertaking meets the threshold for case-by-case review in accordance with the BLM-SHPO protocol and/or the threshold for ACHP notification as specified in this Agreement (Stipulation 7), the BLM line officer shall consult with the SHPO to determine the specific process to be followed in that case including, as appropriate:
  - i. Additional actions necessary to identify historic properties; National Register-listed or eligible historic properties affected by the undertaking; and/or
  - ii. Effects the undertaking would have on National Register-listed or eligible historic properties; and/or
  - iii. Methods for avoiding, minimizing, or mitigating adverse effects.
- g. If the line officer finds the effect to be adverse and decides to proceed with the undertaking, he or she shall make a reasonable and good faith effort to avoid, minimize, or mitigate adverse effects to the most reasonable and fitting extent, in consultation with the SHPO, Tribes, and other consulting parties, considering the nature of the effects and the characteristics and qualities that lend the property its significance. Resolution of adverse effects (including through development and

execution of a MOA or PA) must be completed prior to a NEPA decision.

- h. The special legal status of Tribal governments requires that the BLM's official interactions with them, including consultation, will be carried out in accordance with Government-to-Government procedures to ensure that Tribal participation occurs pursuant to the statutory and regulatory directives in Sections 101(d)(6) and 110(a)(2)(E) of the NHPA (54 U.S.C. 302706 and 306102) and 36 CFR § 800.2(c)(2). Consistent with those directives and Department of the Interior Tribal consultation policy, the BLM will consult with the Tribal government's official designee in accordance with the following policies.
  - i. BLM state directors or their delegates, and district and field office managers, as appropriate and in accordance with BLM Manual 1203, shall represent the United States in Government-to-Government meetings with Tribes.
  - ii. BLM line officers shall establish working relationships with Tribal officials comparable to their working relationships with State and local government officials.
- i. BLM line officers and staffs shall recognize that traditional Tribal practices and beliefs are an important, living part of our Nation's heritage and seek to avoid to the degree possible under existing law and regulation their potential disruption as a consequence of a proposed BLM land use decision.
- j. BLM line officers and staffs shall protect from disclosure to the public sensitive and confidential information about traditional Tribal practices and beliefs, and the locations with which they are associated, to the greatest degree possible under law and regulation. District and field offices shall maintain the confidentiality of sacred sites to the degree possible under existing law and regulation.
- k. BLM line officers and staffs shall consider and consult with Tribes regarding whether a proposed undertaking may inhibit or destroy Tribal access to public lands for the purposes of religious use and other traditional uses, such as gathering natural resources, and, shall, consistent with Executive Order 13007, seek to accommodate access to and ceremonial use of sacred sites, as well as avoid unnecessary interference with or adverse effects to traditional religious and cultural properties.
- l. BLM line officers and staffs shall consult with affected Tribes to identify and consider Tribal interests and concerns related to the identification and management of historic properties in BLM land use planning and decision-making, and shall document all consultation efforts.
- m. BLM line officers and staffs shall ensure that information on Tribal religious and cultural issues receives good faith consideration during decision-making, and that, to the extent consistent with the law, BLM decisions do not substantially burden the

pursuit of traditional religious and cultural practices.

## **7. Thresholds for ACHP Notification**

- a. At a minimum, the BLM will request the ACHP's participation in the following classes of undertakings:
  - i. Nonroutine interstate and/or interagency projects or programs; and
  - ii. Undertakings having substantial impacts to important historic properties (such as National Historic Landmarks or nationally significant historic properties within the administrative boundaries of National Park Units, National Monuments, or National Historic Trails); and
  - iii. Undertakings that the BLM determines to be highly controversial, present important questions of NHPA policy or interpretation, or otherwise have the potential for presenting procedural problems; and
  - iv. Undertakings that will have an adverse effect and with respect to which disputes cannot be resolved through formal agreement between the BLM and a SHPO, such as a Memorandum of Agreement.
- b. The development and approval of program alternatives, including project-specific PAs, will follow the process under 36 CFR § 800.14.
- c. The ACHP reserves the right to participate, on its own initiative or at the request of the SHPO, a Tribe, a local government, an applicant, or other consulting party, in any proceeding taking place in fulfillment of the BLM's Section 106 responsibilities under the regulations, this Agreement, or BLM-SHPO protocols, in a manner consistent with its role under 36 CFR Part 800 and the criteria under Appendix A of 36 CFR Part 800 and will notify the responsible BLM state director, and/or district or field office manager and the Director when it decides to participate.

## **8. Cooperation and Enhanced Communication**

- a. This section establishes how the BLM will implement the alternate process afforded by Stipulation 6 above with respect to potential and/or existing BLM-SHPO protocols. It also establishes how the BLM will develop cooperation and enhanced communication with the States and with Tribes potentially affected by BLM undertakings. The BLM will ensure the following information is available on the national BLM website and will widely publicize this availability:
  - i. Copy of this Agreement; and
  - ii. Reference copy of the existing BLM internal guidance, including Manual

- Sections and Manual Handbooks related to cultural resource management; and
- iii. Copies of existing BLM-SHPO protocols under the current agreement, as they are developed and executed, used by the BLM within an individual state office's jurisdiction; and
- iv. Current list of Preservation Board members; and
- v. List of BLM DPOs and TLOs for each state office; and
- vi. Map of each state showing BLM district and field office boundaries; and
- vii. Annual BLM Headquarters reports; and
- viii. The BLM's Preserve America Section 3 reports.
- b. When potentially relevant to the purposes and terms of this Agreement, the BLM FPO will forward to the ACHP and the NCSHPO, in a manner that allows for consultation at their request, information concerning the following:
  - i. Major policy initiatives; and
  - ii. Proposals for new BLM regulations; and
  - iii. Proposals for organizational change potentially affecting relationships addressed in this Agreement; and
  - iv. The Administration's budget proposal for BLM historic preservation activities, following its submittal to Congress; and
  - v. Relevant training opportunities; and
  - vi. Long range planning and regional planning schedules.

## **9. BLM Staff Training Program**

- a. The BLM will revise and maintain its national internal training program to:
  - i. Instruct BLM line officers and cultural resource specialists on the policies underlying and embodied in this Agreement, including Tribal consultation (specifically on the 1780 Manual), 36 CFR Part 800 regulations and state specific BLM-SHPO protocol implementation; and
  - ii. Enhance skills and knowledge of other BLM personnel involved with cultural resource management activities, including land use planning and resource

management staffs. In cooperation with the ACHP and NCSHPO, the BLM should identify partners, as appropriate, to assist in developing training programs. The BLM is encouraged to seek the active participation of the ACHP, Tribes, National Association of Tribal Historic Preservation Officers, individual SHPOs, and Tribal Historic Preservation Officers in the development and execution of training sessions.

- b. Within 24 months of the execution of this Agreement, the BLM will revise its on-demand training of the Agreement. States are encouraged to outline training programs and initiatives in their revised protocols.

## **10. Professional Development**

- a. The DPOs, in consultation with supervising line managers and cultural resource specialists in their state, will document each district and field office's preservation professional staffing capabilities in their annual report to the SHPO. Documentation will include any recommended limitations on the nature and extent of authorized functions, such as staffing or funding shortages. Where a line officer's immediate staff does not possess the necessary qualifications to perform specialized preservation functions (e.g., historical architecture, historical landscape architecture, ethnography), the line officer will seek specialized expertise from outside the immediate staff.
- b. The DPOs may request that the Preservation Board assist the supervising line manager and the cultural resource specialist in assessing the manager's needs for special skills not presently available on the immediate staff, and the specialist's opportunities for professional development and career enhancement through training, details, part-time graduate education, and other means.

## **11. State, District, or Field Office Certification and Decertification**

- a. The Preservation Board, in coordination with the appropriate DPO, SHPO, and the ACHP, and with consideration of Tribal comments, may choose to review the status of a state, district, or field office's certification to employ BLM-SHPO protocols developed pursuant to this Agreement. Additionally, the BLM line officer, the state director, the ACHP, or the SHPO, with consideration of Tribal comments, may request that the Preservation Board initiate a review of a state, district, or field office's certification.
- b. If a review is being conducted, the FPO, appropriate DPO(s), SHPO(s), the ACHP, and the Preservation Board will participate in the review, and the BLM may consider including other legitimate affected parties as participants in the review, as appropriate.
  - i. If a state, district, or field office is found not to have maintained the basis for

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

- ii. A state director may ask the Director to review the Preservation Board's decertification recommendation, in which case the Director may request the ACHP's participation in the review.
  - iii. The Preservation Board will notify the appropriate SHPO(s), the ACHP, and the review requestor of the findings of the review, including any recommended changes to the certification status of the office.
  - iv. When a state, district, or field office is suspended or decertified, the BLM line officer will follow the procedures of 36 CFR §§ 800.3 through 800.7, or 36 CFR § 800.8(c), or an applicable program alternative under 36 CFR § 800.14, to comply with Section 106.
- c. If the Preservation Board receives a request to perform a review and decides not to conduct the review, it will provide a response to the requester, including the rationale for its decision.

## **12. Accountability Measures**

- a. As a BLM Governance Group, it will be the Preservation Board's duty in accordance with Stipulation 3 above to foster consistency and conformity with BLM policies and procedures. Where problems with implementation are found in one or more states, it will be the Preservation Board's duty to move promptly to recommend corrective actions, in coordination with the appropriate DPO(s).
- b. Each state director will prepare an annual report in consultation with the appropriate SHPO(s), outlining the preservation activities conducted under this Agreement. The annual report will be consistent with the BLM's annual Headquarters reporting requirements and will include supplemental information agreed upon by the BLM and SHPO. The state reports will be made available to the public via the BLM state websites, and the BLM will provide a copy of the report to ACHP via email.
- c. At least annually, each state director that maintains a BLM-SHPO protocol pursuant to this Agreement or their designee will meet with the SHPO to review the implementation of that BLM-SHPO protocol.

- d. The Preservation Board or BLM Headquarters, in consultation with the ACHP and SHPOs, may select one or more certified state, district, or field offices for a detailed field review of this Agreement's implementation. The FPO and the appropriate DPO(s), SHPO(s), and the ACHP will participate in the review and may include other parties as appropriate. Findings and recommendations based on this field review will be provided to the participants, the Director, the state director, and the Preservation Board for appropriate action.
- e. The FPO and DPOs will prepare responses to public inquiries for the signature of the Director or a state director regarding inquiries about the BLM's exercise of its authorities and responsibilities under this Agreement, such as the identification, evaluation, and management of resources. Responses will include establishing the facts of the situation and, where needed, recommendations to the Director or state director for corrections or revisions in a practice or procedure.
- f. Each meeting of the Preservation Board will be documented by a report. The Preservation Board will post a copy of each report on the national BLM website.

### **13. Reviewing and Changing the Agreement**

- a. The signatories to this Agreement may agree to revise or amend it at any time. Changes that would affect the opportunity for public participation or Tribal consultation will be subject to public notice and Tribal consultation. An amendment will go into effect when signed by all the signatories.
- b. Should any signatory to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the BLM shall consult with such party to resolve the objection. If the BLM determines that such an objection cannot be resolved, the BLM will:
  - i. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the other signatories. The signatories shall provide the BLM with their response to the BLM's proposed resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the BLM shall prepare a written response that considers any timely advice or comments regarding the dispute from the signatories and provide them with a copy of this written response. The BLM will then proceed according to its final decision.
  - ii. If the signatories do not provide their advice regarding the dispute within the thirty (30) day period, the BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the BLM shall prepare a written response that considers any timely comments regarding the dispute from the signatories to the agreement and provide them with a copy of such written response.

- iii. The BLM 's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.
- iv. Any signatory to this Agreement may terminate it by providing 90 days' notice to the other signatories, provided that the signatories will meet during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, all state-specific BLM-SHPO protocols developed under the authority of this Agreement and/or the 2012 Agreement will be terminated, and the BLM will comply with Section 106 through the process in 36 CFR §§ 800.3 through 800.7, or 36 CFR § 800.8(c), or an applicable program alternative under 36 CFR § 800.14.
- v. Within one (1) year of the execution of this Agreement and every year thereafter, the signatories to this Agreement will meet at the biannual Preservation Board meetings to review its implementation.
- vi. Specific references to 36 CFR Part 800 are to the regulations that became effective on December 16, 2016. Generic references to 36 CFR Part 800 in this Agreement may be read in the future as referencing the version that is in effect at the time of reading.
- vii. This agreement will be in effect for a period of ten (10) years from the date of execution, with an option for renewal in two (2)-year increments with written agreement of its signatories.

### ***Affirmation***

The signatures below represent the affirmation of the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers that execution and implementation of the Stipulations of this Agreement will satisfy the BLM's obligations under Section 106 for the covered undertakings.

**AMENDMENT TO PROGRAMMATIC AGREEMENT AMONG  
THE BUREAU OF LAND MANAGEMENT,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING  
BLM'S COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC  
PRESERVATION ACT**

**SIGNATORY**

---

Jon Raby

Acting Director, Bureau of Land Management

---

Date

**AMENDMENT TO PROGRAMMATIC AGREEMENT AMONG  
THE BUREAU OF LAND MANAGEMENT,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING  
BLM'S COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC  
PRESERVATION ACT**

**SIGNATORY**

---

*NAME*

Chairman, Advisory Council on Historic Preservation

---

Date

**AMENDMENT TO PROGRAMMATIC AGREEMENT AMONG  
THE BUREAU OF LAND MANAGEMENT,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING  
BLM'S COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC  
PRESERVATION ACT**

**SIGNATORY**

---

Anne B. Raines

President, National Conference of State Historic  
Preservation Officers

---

Date