

STATE PROTOCOL AGREEMENT

BETWEEN

THE BUREAU OF LAND MANAGEMENT, ARIZONA

AND

THE ARIZONA STATE HISTORIC PRESERVATION OFFICE

REGARDING THE MANNER IN WHICH

THE BUREAU OF LAND MANAGEMENT, ARIZONA

WILL MEET ITS RESPONSIBILITIES UNDER

THE NATIONAL HISTORIC PRESERVATION ACT

AND

THE NATIONAL PROGRAMMATIC AGREEMENT

AMONG

THE BUREAU OF LAND MANAGEMENT,

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND

THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

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1. PURPOSE

The Bureau of Land Management (BLM) executed a national Programmatic Agreement (National PA) in 1997, as amended on February 9, 2012, with the Advisory Council on Historic Preservation and the National Council of State Historic Preservation Officers to help guide the BLM's planning and decision making as it affects historic properties as defined in the National Historic Preservation Act (NHPA). Successful execution of the components of the National PA will satisfy the BLM's obligations under Section 106 and serve as partial satisfaction of the BLM's obligations under Sections 110(f) and 111(a) of the NHPA.

As set forth in component 2(a) of the National PA, each BLM State Director is tasked with developing a mutually agreed upon State Protocol Agreement (Protocol) with the respective State Historic Preservation Officer (SHPO). This two-party protocol serves to formalize the BLM-SHPO relationship and structure the consultation process by encouraging streamlined consultations on evaluations of cultural resources for eligibility for listing in the National Register of Historic Places and for findings of No Historic Properties Affected, No Adverse Effect, and Adverse Effect in those cases when the BLM and the SHPO reach agreement on how to resolve the adverse effects. This Protocol also guides the BLM planning and decision making as it pertains to historic properties and historic preservation.

The Arizona Protocol has been developed pursuant to the provisions of the National PA. As per components 2(b)(2) and 6(b)(1) through (4) of the National PA, the BLM will consult with the SHPO/THPO, the public, Indian tribes, and other consulting parties for all undertakings that will adversely affect properties that are eligible for listing in, or are listed on, the National Register of Historic Places, and for the development of any other procedures such as a project-specific memorandum of agreement (MOA) or programmatic agreement (PA). It is the intent of this Protocol to provide BLM Arizona with a substitution for the standard procedures associated with Section 106 of the NHPA as well as a process for consistent compliance with these procedures. Where referenced, the provisions of 36 Code of Federal Regulations (CFR) Part 800, "Protection of Historic Properties," incorporating amendments effective August 5, 2004, will apply.

2. RELATIONSHIP TO AGREEMENTS AND OTHER AUTHORITIES

NOTE: This Protocol supersedes the provisions of the previous Protocol between the BLM Arizona State Director and the Arizona SHPO, which was executed on November 9, 1997. The previous Protocol will terminate and have no further force and effect upon the date of the last signature on this revised Protocol. Any undertaking-specific agreements in force at the time of the execution of this Protocol shall continue to function according to the terms of the 1997 Protocol.

The BLM and the SHPO may agree, by reference or by incorporation, to use any specific procedures mentioned in this Protocol in cultural resource management plans, memoranda of agreement, and programmatic agreements. These procedures include, but are not limited to, notification and consultation with the SHPO; definition of an undertaking and the area of potential effects; identification and evaluation of cultural resources; recordation of cultural

resources; reporting procedures; tribal involvement; public participation; professional qualifications; inadvertent discoveries; monitoring; and, avoidance measures.

As agreed upon between the BLM State Director and the SHPO, individual agreements may be developed to define project-specific procedures or manage Section 106 compliance for specific types of undertakings as set forth in 36 CFR 800.14, “Federal Agency Program Alternatives.”

3. ROLES AND RESPONSIBILITIES OF FEDERAL AND STATE AGENCY PERSONNEL

The BLM State Director shall designate a Deputy Preservation Officer to represent Arizona on the BLM Preservation Board and advise BLM Managers in the development and implementation of BLM policies and procedures for compliance with the NHPA. The Deputy Preservation Officer shall oversee the implementation of this Protocol by providing technical oversight and training to Managers and Cultural Resource Specialists. The Deputy Preservation Officer will also submit an annual report to the SHPO and organize an annual meeting with the Managers, Cultural Resource Specialists and the SHPO. If funding levels preclude meeting in person, the annual meeting may be facilitated through video teleconferencing. The Deputy Preservation Officer will provide the SHPO with other information concerning the implementation of this Protocol, as requested.

The BLM State Director may delegate the authority and responsibility for compliance with Section 106 to BLM District Managers who may, in turn, delegate to BLM Field Managers provided each Manager has received training in the use and application of the Protocol. The Managers are authorized to speak for the BLM and have delegated project-level decision-making authority. The Cultural Resource Specialists shall, without formal SHPO consultation, advise their Managers on the following: the appropriate level of effort required to identify historic properties that may be affected by an undertaking including properties of cultural and/or religious significance to Indian tribes; determinations of the area of potential effects including the potential for direct, indirect, and cumulative effects to historic properties; determinations of eligibility to the National Register of Historic Places; and, findings of No Historic Properties Affected and/or No Adverse Effect. The Cultural Resource Specialists shall also advise the Managers on when consultation with the SHPO is required and when undertakings are outside the scope of this Protocol.

In coordination with their respective Cultural Resource Specialists, the Managers shall represent the United States in government-to-government consultation with Indian tribes and establish working relationships with tribal officials comparable to the BLM’s relationships with State and local government officials. Managers shall engage in open and ongoing consultation and ensure the documentation of tribal consultation is maintained and complete. All consultation letters sent to the SHPO shall include a summary of the relevant tribal consultation efforts including any substantive comments and how these comments were addressed. The information may also be submitted in table format.

The SHPO has responsibilities under Section 101(b)(3) of the NHPA including to “advise and assist as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities,” and to “consult with the appropriate Federal agencies in accordance with the NHPA on Federal undertakings that may affect historic properties, and the

content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties.” For Federal undertakings that are proposed to cross tribal lands, if the tribe has a designated Tribal Historic Preservation Officer (THPO), then the THPO will perform the functions mentioned above in lieu of the SHPO. This Protocol will not apply on tribal lands.

4. UNDERTAKINGS NOT REQUIRING SHPO CONSULTATION

Under the regulations at 36 CFR 800, undertakings are subject to SHPO consultation on identification efforts, determinations of eligibility, project effect, and treatment prior to authorization; however, this Protocol modifies the process by developing a set of understandings and standard operating procedures that eliminate the need for SHPO consultation prior to project authorization for those projects that will not cause adverse effects to historic properties. Within the limits defined herewith, the BLM Manager may act **without** consulting the SHPO on BLM administered lands on those undertakings that culminate in No Historic Properties Affected or No Adverse Effect findings. The BLM Manager will initiate consultation with the SHPO on the types of undertakings referenced in section 5 (Thresholds for SHPO Consultation) and **must consult** under the 36 CFR 800 regulations on the categories of undertakings referenced in section 6 (Undertakings Outside the Scope of this Protocol).

5. THRESHOLDS FOR SHPO CONSULTATION

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

Unless BLM and the SHPO **both** agree that the undertaking can continue under this Protocol, these categories of undertakings shall require formal consultation:

- A. Undertakings that may have **adverse effects** as defined by 36 CFR 800.5(a)(1) to properties listed in or eligible for listing in the National Register
- B. Undertakings that adversely affect National Historic Landmarks;
- C. Undertakings that involve interstate or interagency projects or programs regardless of lead federal agency;
- D. Undertakings that require an Environmental Impact Statement;
- E. Undertakings that are phased, segmented, or would otherwise require a project-specific Programmatic Agreement prior to implementation;
- F. When the BLM lacks access to the appropriate professional expertise (e.g., a historical architect or architectural historian);
- G. Undertakings that are determined by either the BLM or the SHPO to be outside the scope of this Protocol;
- H. Undertakings that involve a transfer, lease, or sale of public lands out of BLM administration;

- I. When the SHPO agrees to consult on an undertaking because SHPO review has been requested by a tribal government, a local government, an applicant for a BLM authorization, a member of the public, or other interested person;
- J. Where treatment options for historic properties may be limited due to land status or statutory authority (i.e., private or non-federal lands);
- K. Undertakings initiated or authorized by the BLM that involve lands administered by the State, county, or municipal agencies; State-funded projects that require authorization by the BLM; and/or State-funded grants for projects on BLM-administered lands;
- L. Undertakings that involve Mining Plans of Operation;
- M. When the proposed undertaking may be controversial or becomes controversial during the initial stages of the project (Controversy in this context does not mean opposition to the proposed undertaking.); and
- N. For State or non-federally funded undertakings proposed on BLM-lands that are administered through Recreation and Public Purpose (R&PP) leases: If Section 106 compliance was not completed prior to the issuance of the R&PP lease, and unless the stipulations in the lease state otherwise, then the BLM retains responsibility for complying with Section 106 and conducting appropriate SHPO and tribal consultation.

6. UNDERTAKINGS OUTSIDE THE SCOPE OF THIS PROTOCOL

This Protocol is not applicable to certain categories of undertakings that shall instead be processed under the regulations at 36 CFR 800. Most large scale renewable energy projects including solar, wind, and geothermal energy production and associated transmission facilities shall not be processed under this Protocol. Several other types of projects are excluded from the Protocol. These involve major infrastructure projects designated by the BLM Washington Renewable Energy Office as having national interest; projects that have the potential for presenting procedural problems; cases with substantial public controversy related to historic preservation issues; cases with disputes among or about consulting parties which the Advisory Council may be invited to help resolve; and cases that are involved or likely to be involved in litigation on the basis of Section 106 as per Appendix A of 36 CFR 800.

Anytime the threshold is reached for the Advisory Council to participate (refer to section 8), the BLM must operate under the regulations at 36 CFR 800. In addition, the development and approval of program alternatives, including project-specific memoranda of agreement or programmatic agreements, will follow the process under 36 CFR 800.14.

7. SHPO REVIEW OF BLM RESOURCE MANAGEMENT PLANS

As per component 6(d) of the National PA, the BLM State Director will seek, as appropriate, the active participation of the SHPO, the Indian tribes, and the interested public in BLM land-use planning and associated resource management activities consistent with section 202 of Federal Land Policy and Management Act (FLPMA), 43 USC 1712, and the 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 become limited.

Planning Efforts. Each BLM office responsible for preparing or amending a land use plan or preparing any activity plan (e.g., travel management, fuels reduction, etc.) at the regional or local level will, when beginning planning efforts, invite the SHPO to participate. As part of the process for the National Environmental Policy Act (NEPA) analysis, draft land use plans shall be submitted to the SHPO for review and comment for a minimum of ninety (90) calendar days per 43 CFR 1610.2(e).

Use Allocations. The BLM shall invite the SHPO to comment on any proposed cultural resource use allocations whether these are made in regional, local, or project plans. The BLM shall allocate cultural resources in a planning area whether or not these resources have already been recorded or are projected to occur on the basis of existing data. Resources can be designated to one or more of the following uses according to their nature and relative preservation value: Scientific Use, Conservation for Future Use, Traditional Use, Public Use, Experimental Use, or Discharge from Management.

8. CONSULTATION

When the BLM has established that an undertaking may have the potential to adversely affect historic properties, then the BLM will initiate consultation. Appropriate consulting parties include the SHPO, the THPO, the Indian tribes, other federal agencies, the Advisory Council, proponents or applicants, State or local governments, advocacy or friends groups, historic trail associations, and others.

Individuals and organizations with a demonstrated interest in the undertaking may participate in the Section 106 process as consulting parties due to the nature of their legal or economic relationship to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties. Members of the public must be kept aware of Section 106 consultations and provided the opportunity to comment.

The SHPO. Under the regulations at 36 CFR 800, undertakings are subject to SHPO consultation; however, this Protocol modifies the process by developing standard operating procedures that allow the BLM to consolidate the process by including the definition of the area of potential effects, results of identification efforts, determinations of eligibility to the National Register of Historic Places, and findings of project effect in one consultation letter. As per 36 CFR 800.3(c)(4), if the SHPO fails to respond within thirty (30) calendar days of receiving a request for review of a finding or determination, the BLM Manager shall communicate with the SHPO by phone or email before proceeding to the next step in the process based on the finding or determination or consult with the Advisory Council in lieu of the SHPO.

The THPO. If a tribe has assumed the responsibilities of the SHPO on tribal lands, then the THPO is the official representative for the purposes of Section 106 consultations on tribal lands, defined as all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities, consistent with 36 CFR 800.16(x). The Manager shall consult with the THPO (in lieu of the SHPO) regarding undertakings occurring on or affecting historic properties on tribal lands. If an Indian tribe does not have a THPO, then the Manager will consult with a

representative designated by the tribe in addition to the SHPO regarding proposed BLM undertakings occurring on or affecting historic properties on tribal lands.

The BLM National PA and this Protocol do not apply to tribal lands; therefore, compliance on tribal lands must be carried out according to the procedures of 36 CFR 800 unless there is an agreement with a tribe and the SHPO (if there is no THPO) specifying alternative procedures for compliance with the NHPA. For undertakings resulting in an Adverse Effect finding, an MOA or PA will specify how the THPO will be consulted throughout the Section 106 consultation process for the given undertaking.

Tribal Consultation. Consultation must recognize the government-to-government relationship between the Federal Government and Indian tribes. Federally recognized tribes have the status of independent domestic nations and will be treated accordingly. In most cases it is appropriate for the Managers and their Cultural Resource Specialists to meet face-to-face with the elected representatives of a tribal government on operational matters such as review of BLM management plans and potential effects on properties of traditional religious or cultural importance. Tribes shall be consulted early and often in the process.

As per component 6(e) of the National PA, if it is deemed helpful and appropriate by an individual tribe and the BLM, then the BLM will seek to establish agreements and/or other formalized working arrangements with the tribe relative to identifying undertakings, identifying properties, evaluating properties, determining effects, and protecting historic properties. An individual tribe may wish to enter into a Memorandum of Understanding (MOU) with the BLM to delineate procedures for consultation efforts. Such memoranda have been successful in Arizona. For undertakings resulting in an Adverse Effect finding, an MOA or PA will specify how Indian tribes will be consulted throughout the Section 106 consultation process for the given undertaking.

The Advisory Council. When specific circumstances and conditions are met as defined in Appendix A of 36 CFR 800, then the BLM must notify the Advisory Council. At a minimum, the BLM will notify and request the Advisory Council's participation in the following classes of undertakings:

- A. Non-routine interstate and/or interagency projects or programs;
- B. Undertakings adversely affecting National Historic Landmarks;
- C. Undertakings that the BLM determines to be highly controversial (i.e., may generate substantial public controversy related to historic preservation issues); and
- D. Undertakings that will have an adverse effect and with respect to which disputes cannot be resolved through a formal agreement between the BLM and the SHPO such as a memorandum of agreement.

The Advisory Council reserves the right to participate, on its own initiative or at the request of the SHPO/THPO, an Indian 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, the National PA, or BLM-SHPO protocols, in a manner consistent with its role under 36 CFR 800 and the criteria under Appendix A of 36 CFR 800 and will notify the responsible

BLM State Director, and/or District or Field Office Manager and the Director of BLM when it decides to participate.

The Public. Members of the public are essential to making informed decisions in the Section 106 process. The Manager will seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties. The public shall be invited to consult early in the process if they have expressed an interest in an undertaking or action subject to this Protocol, or if they have expressed an interest in a particular historic property or a class of cultural resources (e.g., historic trails). All proposed undertakings will be posted for review on the BLM's ePlanning NEPA Register website. The public may submit comments by following the instructions provided on the project webpage in the NEPA Project Summary for each undertaking.

Before the project review is completed the information regarding the proposed finding of effect will be made available for public inspection and comment for a recommended seven (7) calendar days for Categorical Exclusions and Determinations of NEPA Adequacy. For Environmental Assessments the information will be available for a minimum of fifteen (15) calendar days and usually for thirty (30) calendar days. Environmental Impact Statements will be available as per the Council of Environmental Quality regulations and BLM policy for a minimum of forty-five (45) calendar days. The BLM Manager shall take into consideration any comments received before proceeding.

Federal and State Agencies. When the BLM is the lead agency for an undertaking that involves lands administered by other Federal or State agencies, this Protocol will not apply and BLM will follow the regulations at 36 CFR 800. Typically, a programmatic agreement is developed for complex or multiple undertakings as per 36 CFR 800.14. A programmatic agreement substitutes for Subpart B of 36 CFR 800 and specifies how each federal agency will meet its Section 106 responsibilities.

Determinations of eligibility and findings of project effect for cultural resources located outside BLM-administered lands must be made in consultation with the appropriate state and/or federal land managing agencies. In formal correspondence with the SHPO, the BLM shall note that it has made its determinations in consultation with the other agencies. The BLM shall provide the SHPO with a copy of the written/e-mailed response from the land managing agencies indicating their concurrence with the BLM's determinations of eligibility for cultural resources on lands managed by other federal or non-federal agencies.

In addition, as it is the intent of the NHPA to consider the effects of federal decision-making on historic properties regardless of the land status involved, the BLM will ensure that its actions and authorizations are considered in terms of the effects on cultural resources located on non-federal (including county, municipal, and private) lands.

9. MONITORING AND DISCOVERY SITUATIONS

Monitoring. In conjunction with the development of a memorandum of agreement to resolve adverse effects or a programmatic agreement, the BLM may require monitoring during construction or project implementation to ensure that there are no adverse impacts to known

historic properties and to report any inadvertent discoveries. Monitoring and Discovery Plans will be developed in consultation with the SHPO/THPO, Indian tribes, and other consulting parties. Archaeological monitoring shall be performed by qualified cultural resource professionals meeting the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. In specific situations, tribal monitors may be appropriate, for example, monitoring of Traditional Cultural Properties. When monitoring activities are complete for an undertaking, a final report summarizing the results will be submitted to the BLM, who will then send it to the SHPO, THPO, Indian tribes, and other consulting parties for their information.

Discovery Situations. Cultural resources that are discovered after the successful completion of the Section 106 process are categorized as either anticipated (planned for) or unanticipated (unplanned) discoveries, in accordance with 36 CFR 800.13. The procedures for evaluating the National Register eligibility and project effect(s) on these discoveries are presented below.

Anticipated Discoveries. For undertakings that involve land disturbance in areas suspected of containing subsurface deposits, the BLM will require a Monitoring and Discovery Plan prepared in advance of construction. At a minimum, the Monitoring and Discovery Plan will include: the number of monitors required and when monitors must be present on-site; the name and/or position of the individual(s) with the authority to suspend construction; the specific procedures to follow if human remains are encountered; an education plan and sensitivity training for construction workers; and, the procedures the workers must follow if discoveries are made. The proposed Monitoring and Discovery Plan will be forwarded to the SHPO/THPO, Indian tribes, and other consulting parties for review and comment along with the Historic Properties Treatment Plan, if a treatment plan is required. With concurrence from the SHPO, the Monitoring and Discovery Plan will govern how discoveries will be handled as part of the mitigation of adverse effects.

With an approved Historic Properties Treatment Plan and/or Monitoring and Discovery Plan in place, the Manager can meet the requirements of Section 106, the National PA, and any other applicable laws by following the plan when cultural resources are discovered during implementation of an undertaking. The Manager will take prudent and feasible steps to ensure that any activities associated with the undertaking are halted within 30 meters (100 feet) of the discovery; the discovery will be protected until a Cultural Resource Specialist has advised the Manager on the eligibility of the property, and the Manager has consulted with the SHPO on the determination of eligibility.

If the property is determined eligible, then the Cultural Resource Specialist shall advise the Manager if an adverse effect exists. If an adverse effect is found, then the BLM Manager will notify the SHPO/THPO, Indian tribes, and other consulting parties, and consult with them on appropriate treatment measures. If the threshold for consultation with the Advisory Council is met (as per Appendix A to 36 CFR 800), then the BLM shall notify the Advisory Council and consider the Advisory Council's comments on the discovery. The consulting parties will have two working days from the initial notification to review and comment on the BLM's proposed mitigation strategy. The BLM will take any recommendations into account and will then implement appropriate actions.

If evaluation of the discovered cultural resource results in a determination that the resource is not eligible, then the BLM will notify the SHPO/THPO, Indian tribes, and other consulting parties. The consulting parties will have two working days from the initial notification to review and comment, and then the BLM may issue a Notice to Proceed.

Unanticipated Discoveries. If a Monitoring and Discovery Plan has not been developed and the BLM determines, after completion of the review process outlined in this Protocol, that an undertaking may affect or has affected a previously unidentified property that may be eligible for the National Register, the BLM will ensure that activities associated with the undertaking are halted within 30 meters (100 feet) of the discovery and the discovery is appropriately protected, until the BLM Cultural Resource Specialist has advised the Manager on the eligibility of the discovered property, and the Manager has consulted with the SHPO on the determination of eligibility.

If the property is determined eligible, then the Cultural Resource Specialist shall advise the Manager if an adverse effect exists. If an adverse effect is found, then the BLM Manager will notify the SHPO, Indian tribes, and other consulting parties, and consult with them on appropriate treatment measures. If the threshold for consultation with the Advisory Council is met (as per Appendix A to 36 CFR 800), then the BLM shall notify the Advisory Council and consider the Advisory Council's comments on the discovery. The consulting parties will have two working days from the initial notification to review and comment on the BLM's proposed mitigation strategy. The BLM will take any recommendations into account and will then implement appropriate actions.

Native American Graves Protection and Repatriation Act (NAGPRA) Situations. During initial identification efforts, the Cultural Resource Specialists should advise the Manager on the likelihood that Native American cultural items including human remains, funerary objects, sacred objects, and objects of cultural patrimony will be discovered during the implementation of an undertaking. Prior to initiating or authorizing the undertaking, if the inadvertent discovery of human remains is likely, then a Plan of Action should be developed for the treatment of such items including consultation requirements and compliance with NAGPRA and applicable state laws (i.e., ARS 41-844 and 41-865). Developing a NAGPRA written Plan of Action is an integral part of the consultation process whenever there is activity affecting or likely to affect Native American human remains, funerary objects, sacred objects and objects of cultural patrimony on Federal or tribal lands. The responsibility to comply with NAGPRA lies with the Federal agency administering the land where the cultural items are discovered, even if this agency is not the lead federal agency for the undertaking.

Human Remains, Funerary Objects, Sacred Ceremonial Objects or Objects of National or Tribal Patrimony on Arizona State or Private Lands. Arizona Revised Statutes § 41-844 and § 41-865, outline the discovery and consultation process for the discovery of human remains, funerary objects, sacred ceremonial objects or objects of national or tribal patrimony on Arizona State or private lands. Prior to initiating or authorizing the undertaking, if the inadvertent discovery of human remains is likely, then the BLM will encourage the project proponent to initiate a burial agreement with Arizona State Museum.

10. EMERGENCY SITUATIONS

As per 36 CFR 800.12, the BLM Manager in consultation with the SHPO/THPO, Indian tribes, and the Advisory Council is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency as declared by the President, a tribal government, or the Governor, or which respond to other immediate threats to life or property. If approved by the Advisory Council, these procedures shall govern the BLM's historic preservation responsibilities during any disaster or emergency in lieu of 36 CFR 800.3 through 800.6.

In the event the BLM proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor or another immediate threat to life or property, and the BLM has not previously developed procedures, then the Manager shall comply with Section 106 by following a programmatic agreement or memorandum of agreement developed pursuant to 36 CFR 800.14(b) that contains specific provisions for dealing with historic properties in the emergency situation or notify the Advisory Council, the SHPO/THPO, and any Indian tribe(s) that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and afford them an opportunity to comment within seven (7) calendar days of notification. If the Manager determines that circumstances do not permit seven (7) calendar days for comment on the proposed emergency undertaking, then the Manager shall notify the Advisory Council, the SHPO/THPO, and the Indian tribe(s) and invite any comments within the time available.

11. INTEGRATING NEPA AND NHPA

In-depth guidance on integrating NEPA and NHPA is provided by *NEPA and NHPA: A Handbook for Integrating NEPA and Section 106* compiled by the Council on Environmental Quality (CEQ), the Executive Office of the President, and the Advisory Council. To gain efficiencies in the environmental review process, the BLM is tasked with coordinating procedures to the fullest extent possible for compliance with NEPA and Section 106 of the NHPA, and in meeting the BLM's tribal consultation responsibilities. If an action is categorically excluded from NEPA review, the BLM Manager shall determine if it still qualifies as an undertaking requiring review under Section 106 as per 36 CFR 800.8(b).

The BLM shall begin early when integrating the NEPA and NHPA processes. NEPA documents will be used to facilitate Section 106 consultations, and the results of the Section 106 process will inform the development and selection of alternatives in the NEPA documents. In situations where an Environmental Impact Statement is being prepared, the BLM shall coordinate the NEPA and Section 106 reviews by referencing both authorities when publishing a Notice of Intent (NOI) or Notice of Availability (NOA) in the *Federal Register* and notices of public meetings in newspapers or other media. Referencing both statutory processes informs the public of their opportunity to bring forward any Section 106-related concerns, as well as any broader environmental issues that will inform the NEPA process. In addition, the BLM shall use public scoping, tribal consultation, and Section 106 consultations to identify historic properties and key issues, especially landscape level concerns.

Under the authority of Section 304 of the NHPA and consistent with Section 9 of the Archaeological Resources Protection Act (ARPA), public disclosure of the location and character of cultural resources may put these resources at risk; therefore, sensitive cultural resource information or locational data under the control of the BLM, regardless of ownership of the resource, shall not be disclosed to the general public. Such information shall not be stored in documents open to the general public. For the purposes of analysis under NEPA, however, the BLM may sufficiently characterize cultural resources in writing while withholding sensitive and locational data.

Synchronizing the timing of NEPA and Section 106 reviews enhances the BLM's ability to develop and ultimately select alternatives that minimize or avoid potential adverse effects. The BLM shall coordinate the Section 106 and NEPA processes, including tribal consultation and public involvement, into an overall project schedule that includes and tracks milestones. In addition, an integrated strategy to complete studies to fill any data gaps will be formulated. Prior to issuing the final decision, the Section 106 process must be completed.

Integrating the Section 106 process with NEPA analysis allows the BLM to use the procedures and documentation required for the NEPA analysis to comply with Section 106 in lieu of the procedures set forth in 36 CFR 800.3 through 800.6; however, the BLM **must notify** the SHPO/THPO and the Advisory Council **in advance in writing** that it intends to do so as per 36 CFR 800.8(c). Managers shall include language in the notification of scoping, including the Notice of Intent, stating the NEPA review will be used to comply with Section 106 as an alternative to the process set in 36 CFR 800.3 to 800.6. In addition, the BLM must include this language in the Notices of Availability and other public notices.

The BLM will review the comments received through the NEPA process to identify any unresolved cultural, historic, and/or tribal issues, and will continue to consult with Indian tribes by keeping them informed about the project and the proposed scheduling for NEPA review periods. The BLM will also continue to keep the public informed of the status of the NEPA and Section 106 reviews. When appropriate to resolve adverse effects, the BLM will describe the mitigation commitments in the NEPA decision document and include the final signed programmatic agreement or memorandum of agreement in the final NEPA document.

If during the preparation of the NEPA document, the BLM determines that the effects of an undertaking on historic properties would be adverse, then the BLM in consultation with the SHPO/THPO, Indian tribes, and other consulting parties shall develop measures to avoid, minimize, or mitigate such effects. The BLM's responsibilities under Section 106 will be satisfied when a binding commitment to the proposed measures is incorporated in the right-of-way grant stipulation or Plan of Development, in the NEPA decision document, and a PA or an MOA is executed with the appropriate consulting parties in compliance with 36 CFR 800.6(c).

12. PROGRAM REVIEW AND OVERSIGHT

The Deputy Preservation Officer, in consultation with Managers and Cultural Resource Specialists, shall document each District and Field Office's professional staffing capabilities in the annual report to the SHPO. Documentation will include any recommended limitations on the

nature and extent of authorized functions. When a Manager's immediate staff does not possess the necessary qualifications to perform specialized preservation functions (e.g., historical architecture, historical landscape architecture, or ethnography), the Manager will seek specialized expertise from outside the immediate staff.

The BLM is committed to employing professional Cultural Resource Specialists. In hiring new staff, the BLM shall follow Section 112(a)(1)(B) of the National Historic Preservation Act and select candidates that meet the Secretary of the Interior's Professional Qualifications Standards or the education and experience standards called for by the U.S. Office of Personnel Management. Managers in Field Offices that do not have the services of a professional Cultural Resources Specialist, either on staff or through arrangement with another BLM office, shall consult with the SHPO on all undertakings.

The BLM student training programs may be used to recruit new staff to assist the Cultural Resource Specialists but the trainees shall not perform professional duties without appropriate direct oversight by qualified professional Cultural Resource Specialists. The BLM may also employ individuals who do not meet the Secretary of the Interior's standards for professional Cultural Resource Specialists (i.e., student interns working towards a degree). In these instances individuals who do not meet these standards shall work under the direct technical supervision of BLM professional Cultural Resource Specialists and may not substitute for Cultural Resource Specialists in making recommendations regarding efforts to identify and evaluate resources, determinations of eligibility, or findings of project effect.

Components 9 and 10 of the National PA assign duties to the Preservation Board to ensure that cultural resource policies and procedures are being followed appropriately by BLM offices. When a problem is identified, the Preservation Board is responsible for working to correct the matter. The Preservation Board may also review an office's status to operate under terms of the National PA and this Protocol. The BLM State Director, Managers, the Advisory Council, or the SHPO may also request the Preservation Board initiate a review.

This Protocol establishes the internal process of program review and also provides a process for the SHPO to review and comment on the BLM Arizona Annual Review:

Levels of Deputy Preservation Officer Review. There are three levels of review for the Deputy Preservation Officer: the Annual Review, Technical Review, and Program Review. These reviews are relevant for the purposes of assessing certification status of BLM offices. The SHPO or a BLM Manager may also request a review of a BLM office's status and its capability for carrying out the terms of this Protocol.

Annual Review. The Deputy Preservation Officer will assess each Field Office's ability to implement the provisions of this Protocol and provide the SHPO with an annual report that contains summary information on the activities conducted under the Protocol. The report will detail by Field Office the number of acres surveyed; the number of cultural properties recorded and the eligibility determinations of those properties; and the number of undertakings with determinations of No Historic Properties Affected, No Adverse Effects, and Adverse Effects. The report will also reference any new properties listed in the National Register or any

nominations being prepared, discuss successful preservation efforts, and share any preservation issues or needs.

The information in the SHPO annual report will be excerpted from the annual report provided to the BLM's Washington Office (WO) and will be submitted to the SHPO by December 31. The SHPO will have thirty (30) calendar days in which to provide the Deputy Preservation Officer with any comments and/or questions. The Deputy Preservation Officer in consultation with the appropriate Field Office will provide a written response to the SHPO's comments within ninety (90) calendar days of receipt of the SHPO's comments.

The Deputy Preservation Officer will set up a meeting between the Field Office Cultural Resource Specialists and the SHPO, after the SHPO has had an opportunity to review and comment on the annual report, and after the Deputy Preservation Officer has had an opportunity to review the SHPO's comments. This meeting can occur prior to the ninety (90) calendar days in which BLM has to respond to SHPO's comments on the annual report; timing of the meeting during this period could help the BLM and the SHPO resolve the SHPO's comments/questions prior to BLM's written response.

Technical Review. The Deputy Preservation Officer is responsible for determining whether BLM offices are maintaining an appropriate level of technical capability and performance specifically in particular program elements such as documentation of Protocol actions; Section 110 actions; curation; inventory documentation; determinations of eligibility; findings of project effect; and the information gathered in support of the Annual Reviews. The Deputy Preservation Officer will also monitor the Field Office Cultural Resource Specialists to ensure that consultations with SHPO occur when required under this Protocol when the threshold for consulting with the SHPO is met.

Program Review. The Deputy Preservation Officer is responsible for determining whether BLM offices are fully functional in their ability to implement this Protocol. Program reviews are broad-based, some of which take place at the District or Field Office level. As determined necessary, review teams will consist of the Deputy Preservation Officer, representation from the Arizona SHPO, and any other BLM staff the State Director deems appropriate. The review team shall have the ability to interview Cultural Resource Specialists, other resource staff and managers, and have access to cultural resource records and maps, NEPA files, and other relevant documentation. The team will be responsible for presenting their findings and generating a set of recommendations in a report to the BLM State Director. After the BLM State Director reviews and accepts the report, it will be sent to the appropriate District or Field Manager and forwarded to the SHPO.

Action Plan for Compliance Problems. When specific recommendations to correct deficiencies receive SHPO concurrence and are acknowledged by the BLM State Director, it shall become the responsibility of the Manager to initiate corrective actions within sixty (60) calendar days from the date the recommendations are acknowledged by the BLM State Director. Deficiencies may include a BLM office that lacks professional expertise yet continues to use the Protocol; or an office that proceeds in violation of or in opposition to this Protocol, for example, an office that uses the Protocol in situations where the regulations at 36 CFR 800 should be followed. The

BLM State Director may ask the Deputy Preservation Officer to prepare an action plan in consultation with the SHPO that, when implemented, would bring that office into compliance with this Protocol. In the first deficiency cited above, a corrective action might be for the problem office to share qualified help from another office.

Depending on the nature of the identified deficiencies, the BLM State Director may elect to place a Field Office in provisional status according to the procedures described in this Protocol, or the Deputy Preservation Officer in consultation with the SHPO may recommend that the BLM State Director place a District or Field Office on a provisional status based on findings from any of the reviews described in this Protocol. The SHPO will be notified within seven (7) calendar days of any change in status of a District or Field Office.

Provisional Status. While in provisional status, a District or Field Office will have the opportunity to correct deficiencies within eight (8) months while continuing to operate under the terms of the Protocol. The SHPO and the Deputy Preservation Officer shall convene sixty (60) calendar days before the term of the provisional status expires to determine whether sufficient progress has been made in correcting identified deficiencies. The findings shall be conveyed to the BLM State Director. If the SHPO and the Deputy Preservation Officer agree that sufficient progress has been made to correct the problems, the BLM State Director will issue a memorandum to the affected district or field office manager, the Deputy Preservation Officer, and SHPO that the District or Field Office is once again in compliance and restored to certified status. Should the SHPO and the Deputy Preservation Officer determine that such deficiencies remain uncorrected, or should new deficiencies be identified that the parties deem significant, the BLM State Director shall initiate the decertification process.

Decertification for Cause. If a BLM office has not maintained the basis for its certification (e.g., lacks the professional capability to carry out policies and procedures or is proceeding in violation of or in opposition to this Protocol or BLM internal guidance) and the Manager has not voluntarily suspended use of this Protocol, then the Preservation Board will recommend that the BLM State Director decertify the office. If the BLM State Director determines that a BLM office remains out of compliance, he or she may decertify a Field Office from operating under the terms of this Protocol. A BLM office that is decertified will follow the procedures at 36 CFR 800.3 through 800.7 until it is recertified. The BLM State Director, in consultation with the Deputy Preservation Officer and the SHPO, shall develop an action plan to bring any decertified office into compliance. When the decertified office confirms that it has successfully completed the actions specified in the plan, it will notify the BLM State Director through the BLM Deputy Preservation Officer.

The BLM State Director, a Manager, the Deputy Preservation Officer, or the SHPO may request that the Preservation Board review a District or Field Office's certification status. As per the National PA, components 9(a) and 10(d), the Preservation Board may also choose to review a District or Field Office's certification. The Preservation Board will respond under the terms of the National PA. If the Board finds that a BLM office does not maintain the basis for its certification (e.g., the professional capability is no longer available to carry out these policies and procedures, or the office is not in conformance with this Protocol), and the BLM Manager has not voluntarily suspended participation under this Protocol, then the Preservation Board will

recommend that the BLM State Director decertify the district or office, per the National PA. A Manager may ask the BLM State Director to review the Preservation Board's decertification recommendation. In turn, the BLM State Director may ask the BLM Director to review the Preservation Board's decertification, in which case the BLM Director will request the Advisory Council's participation in the review, per the National PA.

BLM Staff Training Program. Within ninety (90) calendar days of their report date, new Cultural Resource Specialists and Managers with Section 106 responsibilities will be trained in the procedures outlined in this Protocol and in the National PA, which provides the foundation for this Protocol. In cooperation with the Advisory Council and National Conference of SHPOs, the BLM may identify outside partners as appropriate to assist in developing and implementing or conducting training programs. The BLM may also seek the active participation of Indian tribes and the SHPO in training sessions.

The Deputy Preservation Officer may request that the Preservation Board assist the Managers and Cultural Resource Specialists in assessing the need for special skills not presently available on the immediate staff and also opportunities for professional development and career enhancement through training, detail assignments, part-time graduate education, and other means. The BLM may request the assistance of the SHPO in such cases or may obtain the necessary expertise through contracts, BLM Cultural Resource Specialists from other administrative units, or arrangements with other agencies.

13. COOPERATIVE ACTIVITIES

In this Protocol, pursuant to component 6(b)5-9 in the National PA, the BLM will address data sharing and synthesis and how data backlogs will be reduced; public education and community involvement in preservation efforts; cooperative stewardship; and proactive work including preservation planning.

Data Sharing and Synthesis. The BLM and the SHPO recognize the advantages of working together to share and facilitate the use of data. Each Field Office will ensure that any records, including electronic copies of final reports, for cultural properties under its jurisdiction are entered into the statewide automated cultural resource database, or AZSITE, within ninety (90) calendar days of project completion. The BLM and the SHPO will continue working together on interagency cooperative data sharing and provide funding, as available, to further develop the AZSITE database to better serve the needs of agencies, academia, and the private sector.

Public Education and Community Involvement. The BLM and the SHPO will work together on the following:

- *Arizona Archaeology and Heritage Awareness Month.* The BLM will participate in activities including the Arizona Archaeology Expo, public presentations, field tours, and exhibits.
- *Avocational Societies.* Cultural Resource Specialists may participate as advisors to avocational archaeological society members, encouraging members' interest in learning about the archaeology of Arizona and the use of professional standards in fieldwork.

- *Cooperative Stewardship.* The BLM and the SHPO will continue their strong partnership in the Arizona Site Steward Program. The BLM will support the Program financially as funding is available and through participation as land managers' representatives. In some cases, BLM personnel may serve as regional coordinators to further the goals of the Program. Under the supervision and guidance of the appropriate Field Office Cultural Resource Specialists, trained Site Stewards may provide important and beneficial contributions through long-term monitoring of cultural sites.

Proactive Work. As considered in the National PA, greater efficiencies in the Section 106 process realized through the use of this Protocol will enable the BLM and SHPO staff to devote a larger percentage of their time and energy to proactive work including (1) analysis and synthesis of data accumulated through decades of Section 106 work; (2) historic property identification where information is needed, not just in reaction to proposed undertakings; (3) long-term preservation planning; (4) National Register nominations; (5) planning- and priority-based historic resource management; (6) creative public education and interpretation; (7) more efficient and effective BLM, SHPO, tribal, and Advisory Council coordination including program monitoring and dispute resolution; and, (8) other activities that will contribute to readily recognizable tribal and public benefits.

14. DISPUTE RESOLUTION PROCESS

Component 6(b)(13) of the National PA requires provisions be included in this Protocol for resolving disagreements:

Disputes Involving BLM and SHPO. The BLM or the SHPO may object to an action proposed or taken pursuant to this Protocol. When informal resolution at the District or Field Office level is not effective or satisfactory, the objecting party shall notify the other parties and the Deputy Preservation Officer in writing. Within seven (7) calendar days following receipt of notification, the Deputy Preservation Officer shall initiate a formal thirty (30) calendar day consultation period with the District/Field Office and the SHPO to resolve the objection. If the objection is resolved within this time frame, the parties shall proceed in accordance with the terms of that resolution.

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

If either the BLM State Director or the SHPO rejects the Board's recommendations after a period of consideration not to exceed thirty (30) calendar days, the BLM State Director shall promptly notify the Board in writing of the rejection, and immediately thereafter submit the objection, including copies of all pertinent documentation, to the Advisory Council for comment. Within

thirty (30) calendar days following receipt of any Advisory Council comments, the BLM State Director shall make a final decision regarding resolution of the objection and in writing notify the Board, the SHPO, and the Advisory Council of that decision. The objection shall thereupon be resolved. In reaching a final decision regarding the objection, the BLM State Director shall respond in writing to any comments received from the Board, the SHPO, and the Advisory Council pursuant to this stipulation.

Disputes by a Member of the Public or a Federally-Recognized Indian Tribe or Individual. If a member of the public or a Federally-recognized tribe or individual objects in writing at any time to the manner in which this Protocol is being implemented, the BLM shall consult with the objecting party for a period not to exceed thirty (30) calendar days. If the objecting party requests, the BLM will also consult with the SHPO to resolve the objection. If the objecting party and the BLM resolve the objection within thirty (30) calendar days, the BLM shall proceed in accordance with the terms of that resolution. The BLM should inform the SHPO of any objections and the outcome of attempts at resolution within ten (10) calendar days after the period of resolution has expired.

If the objection cannot be resolved, and if neither the objecting party nor the BLM has requested review by either the SHPO or the Advisory Council, then the Deputy Preservation Officer shall refer the objection to the Preservation Board, which will provide the BLM State Director and the objecting party with its recommendations for resolving the objection. If the BLM State Director and the objecting party accept the Preservation Board's recommendations, then the BLM State Director shall proceed in accordance with these recommendations to resolve the objection, and shall notify the SHPO of the procedures to be followed to fulfill the Preservation Board's recommendations.

If either the BLM State Director or the objecting party rejects the Preservation Board's recommendations for resolving the objection, the BLM State Director shall refer the objection to the Advisory Council. Once the BLM State Director has received the Advisory Council's recommendations for resolving the objection, the BLM State Director shall make a final decision regarding the resolution of the objection and shall in writing notify the Board, the objecting party, the SHPO, and the Advisory Council. The objection shall thereby be resolved. In reaching a final decision regarding the objection, the BLM State Director shall take into account any comments received from the Board, the objecting party, the SHPO, and the Advisory Council pursuant to this paragraph. Any objection filed pursuant to this paragraph shall not prevent the BLM from proceeding with project planning; however, project implementation shall be deferred until the objection is resolved pursuant to the terms of this paragraph.

15. AMENDING AND TERMINATING THE PROTOCOL

Amending the Protocol. Amendment refers to the process of adding supplemental guidance or modifying current procedures when the BLM or the SHPO wish those procedures to be made explicit. Either the BLM or the SHPO may propose amending this Protocol at any time, whereupon the parties shall initiate a ninety (90) calendar day consultation period to consider such amendment. The amendment process shall include opportunities for the public and tribes to comment on the proposed amendments and will culminate in the issuance of Protocol

Amendments, which are administratively appended in an appropriate and designated part of the Protocol. Protocol Amendments become effective upon the signature of both parties.

Terminating the Protocol. The BLM or the SHPO may choose to terminate this Protocol or any Protocol Amendment. The party proposing termination shall notify the other party in writing of the intent to terminate and explain the reasons for proposing termination. Within seven (7) calendar days following receipt of such a notification, the parties shall initiate a ninety (90) calendar day consultation period to seek alternatives to termination. Should such consultation result in agreement on an alternative to termination, the parties shall proceed in accordance with the terms of that agreement. Should such consultation fail, the party proposing termination may terminate this Protocol or any Protocol Amendment by providing the other party with written notice of such termination. Termination shall render this Protocol or any affected Protocol Amendment to have no further force or effect, as appropriate.

NOTE: In the event of termination of this Protocol, the BLM shall comply with the provisions of the latest version of 36 CFR 800 for all undertakings previously covered by this Protocol.

Automatic Termination of the Protocol. This Protocol will automatically terminate or “sunset” on the tenth anniversary of its execution and have no further force or effect, unless it is extended by written agreement of the parties. The BLM shall notify the SHPO ninety (90) calendar days prior to this sunset date so that the SHPO can provide the BLM with its comments on whether or not the existing Protocol should be extended, or if a revised or amended Protocol should be developed, as per the Amendment stipulation. The BLM shall also solicit and consider public and tribal comments concerning any issues related to the Protocol and any Protocol Amendments during the previous ten years.

16. SIGNATURES OF APPROVAL

BUREAU OF LAND MANAGEMENT

/S/ Raymond Suazo

12/10/2014

Raymond Suazo
State Director, Arizona

Date

STATE HISTORIC PRESERVATION OFFICE

/S/ James W. Garrison

12/14/14

James W. Garrison
Arizona State Historic Preservation Officer

Date