

STATE PROTOCOL AGREEMENT

between

The Bureau of Land Management, Nevada

and

The Nevada State Historic Preservation Office

for

Implementing the National Historic Preservation Act

Revised January 2012

PREAMBLE

The Bureau of Land Management (BLM) has developed a nationwide Programmatic Agreement (National Programmatic Agreement, or NPA, Appendix J of this Protocol) governing the manner in which the Bureau shall meet its responsibilities under the National Historic Preservation Act (NHPA). This State Protocol Agreement (or Protocol) has been developed pursuant to provisions of the NPA.

In carrying out its responsibilities, the BLM has developed policies and procedures through its Cultural Resources Manual (Sections 8100-8170) to guide planning, decision-making, and activities. The Nevada State Office of the Bureau of Land Management (BLM) has professional Cultural Resource staff to advise the BLM's managers and to implement cultural resource policies. It is the intent of this Protocol to provide a process for consistent compliance with Sections 106, 110 and 112 of the NHPA by the BLM. Where referenced, the provisions of 36 Code of Federal Regulations (CFR) 800 (Protection of Historic Properties), effective August 5, 2004, apply; those regulations are included as Appendix L in this Agreement.

This Protocol prescribes the manner in which the BLM and the Nevada State Historic Preservation Office (SHPO) shall cooperatively implement the NPA in Nevada. It is intended to ensure that the BLM organizes its programs to operate efficiently and effectively in accordance with the intent and requirements of the NHPA and NPA, and that the BLM integrates its cultural resource planning and management decisions with other policy and program requirements. The Protocol streamlines the Section 106 process by eliminating case-by-case consultation with the SHPO on undertakings that culminate in no effect or no adverse effect determinations.

This State Protocol Agreement supersedes in all ways the provisions of State Protocol Agreement between the Nevada State Director of the Bureau of Land Management and the Nevada State Historic Preservation Officer, executed on June 4, 1999, which will terminate and have no further force and effect with the last signature on this Protocol. However, undertaking-specific agreements in force at the time of the execution of this Protocol shall continue to function according to their terms.

PURPOSE

This Protocol defines how the SHPO and the BLM will interact under the NPA for implementing the NHPA. The goal of the NPA and this Protocol is a more meaningful and productive partnership between the SHPO and the BLM (the Parties) to enhance cultural resource management on public lands managed by the BLM in Nevada.

The NPA and this Protocol addresses all work done by BLM under provisions of the NHPA, including Section 106, Section 110 and Section 112 in particular.

PART 1. SECTION 106 ACTIVITIES

I. DEFINING AN UNDERTAKING

BLM activities that are undertakings, as defined below, are subject to compliance with Section 106 of the NHPA and this Protocol.

A. Establishing an Undertaking

A qualified BLM Cultural Resource Specialist (CRS) will determine if a planned action is an undertaking subject to compliance with the NHPA. Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of the BLM. Undertakings also include those carried out by or on behalf of BLM; those carried out with BLM's financial assistance; and those requiring a BLM permit, license or approval, after 36 CFR 800.16(y).

1. If a proposed action is not an undertaking, no notice to SHPO is necessary.
2. If a proposed action is determined to be an undertaking and if it has the potential to cause effects on historic properties, assuming that historic properties are present, then it is subject to the provisions of this protocol.
3. If the undertaking does not have the potential to cause effects on historic properties, assuming such historic properties were present, the BLM has no further obligations under Section 106 of the NHPA.

If a disagreement concerning the definition of an undertaking occurs between the CRS and a District- or Field-level manager (Manager), the determination as to whether a planned action is an undertaking will be referred to the Deputy Preservation Officer (DPO), defined in part 2.b of the NPA signed in 1997. The DPO will first discuss the matter with the Manager to determine whether an undertaking exists and will make a recommendation to the Manager. The DPO may discuss the situation informally with the SHPO. If the DPO and Manager cannot agree, the DPO will convey a recommendation to the Deputy State Director for Resources, Lands and Planning (DSD) for a decision. If the DPO and DSD cannot agree, the BLM will consult with SHPO per terms of this Protocol per terms of XIV.A of this Agreement. The State Director will make the final BLM decision following consultation.

B. SHPO Notification of Proposed Undertakings

In the earliest feasible planning stage for any undertaking, BLM will determine the information needed to identify and evaluate historic properties within the Area of Potential Effect (APE). Such determinations will be based on a file search of the SHPO/BLM cultural resource records, aerial photographs, GLO records, BLM land records, resource management plans, project-specific NEPA documents of the proposed project area, available cultural resource planning models, and on information sought and obtained from the SHPO and from interested persons. As needed BLM will gather the necessary information through appropriate levels of inventory or interviews with appropriate members of the public, professionals, and tribal experts. Sites of religious and cultural significance to Native American tribes must be included in determining inventory needs, based on appropriate notification and consultation, as required per BLM Manual 8120 and BLM Handbook H-8120-1, as well as any additional relevant instruction or guidance.

1. Inventory Needs Assessment Form—Electronic Format. A qualified CRS will prepare an Inventory Needs Assessment form (Attachment 1) establishing the inventory and any other appropriate recommendations for the undertaking. The completed form will be forwarded to the responsible Manager or other responsible agency official for approval.

a. One copy of the form will be included in the case file to document the information gathering decision; and

b. One copy of the form will be sent to the SHPO and one copy to the State Office prior to authorizing the undertaking.

c. The SHPO will have two working days from when the completed written form is electronically transmitted by BLM (e.g., via e-mail, via facsimile transmission) to notify BLM via electronic transmittal or by telephone that either:

(1). the SHPO wants to consult on the undertaking, or

(2). the SHPO may provide recommendations within the same electronic transmittal regarding additional parties that might be consulted or inventory recommendations. These recommendations will not require formal consultation unless the CRS and SHPO cannot agree upon an acceptable inventory strategy or the CRS declines to follow the SHPO's recommendations.

d. If the SHPO has not responded by the Close of Business on the second working day, the BLM will assume that the SHPO does not want to consult and will proceed with the undertaking.

e. As other tracking systems come on line and are agreed to by BLM and SHPO, these will be used for the Inventory Needs assessment and SHPO notification process.

f. The format of the Inventory Needs Assessment form is established by the Nevada State Office. District or Field offices may implement modified formats after approval by the Deputy State Director, Resources, Lands and Planning.

2. When BLM delivers a paper version of the Inventory Needs Assessment Form via standard U.S. surface mail when no electronic notification process is available,

a. The distribution will be the same as for the electronic version, including the case file, SHPO and State Office.

b. The SHPO will be allowed five working days from when the form is received to notify BLM that the SHPO wants to consult on the undertaking. The SHPO's response will be made using electronic transmission or telephone whenever BLM's corresponding systems are operative.

c. If SHPO has not responded by the Close of Business on the fifth working day, the BLM will assume that the SHPO does not want to consult and will proceed with the undertaking.

3. Information in the general project case file is available for public inspection and should provide a clear rationale for determinations of the need for inventory or other action. The case file should also be managed to ensure appropriate confidentiality, including withholding of information from disclosure to the public, as necessary to protect the resource (BLM Manual 8110.55).

4. BLM will provide a new notification to SHPO if BLM determines the previous assessment must be updated to reflect significant changes in project location, the kinds of resources expected (including those that exceed BLM's in-house expertise), or important new information.

5. BLM and SHPO will coordinate in developing standards for the electronic format of submissions.

II. UNDERTAKINGS REQUIRING SHPO CONSULTATION

Under the regulations at 36 CFR 800, undertakings are subject to SHPO consultation on identification, eligibility, effect and treatment prior to authorization. This Protocol modifies the process by developing a set of understandings and standard operating procedures (SOPs) that eliminate the need for SHPO consultation prior to authorization in most, but not all, cases. Specifically, the Protocol streamlines the Section 106 process by eliminating case-by-case consultation with the SHPO on undertakings that culminate in no effect or no adverse effect determinations. A determination of adverse effects requires that BLM consult with SHPO per the regulations at 36 CFR 800, as do certain other conditions or situations stipulated below.

A. Required Consultation with SHPO.

BLM will initiate consultation with SHPO on the categories of undertakings shown in II.A.1 to II.A.9, below. BLM will consult with SHPO on the following categories of undertakings to determine whether SHPO wants to be consulted under 36 CFR 800 or SHPO agrees that BLM can utilize this State Protocol Agreement:

1. that involve interstate or interagency projects or programs for which BLM Nevada is the lead Federal Agency, unless (a) a previous interagency agreement or similar documentation has been approved establishing BLM as project lead and (b) a copy of the interagency agreement is on file with SHPO;
2. that adversely affect National Register listed or eligible properties;
3. that require an Environmental Impact Statement (EIS);
4. that are phased, segmented or would otherwise require a project-specific Programmatic Agreement (PA) (as specified in Section II B) prior to implementation;
5. when the BLM lacks access to appropriate expertise;
6. that are determined by either party to be beyond the scope of this Protocol;
7. that involve land transfers out of Federal management;
8. when 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;

9. where BLM's treatment options for historic properties may be limited due to land status or statutory authority.

B. Undertakings Requiring SHPO Consultation on a Project-Specific Agreement Prior to Authorization

Other agreements may be developed to define project-specific procedures or manage specific undertakings. These include:

1. Multiple Agency and Interstate Undertakings

a. With the agreement of all federal agencies and SHPOs involved, this Protocol will apply when more than one Federal agency is involved in an undertaking and Nevada BLM is the lead agency for NHPA compliance.

(1). Each agency agreeing to follow this Protocol will provide BLM and SHPO with a letter of agreement.

(a) No letter is needed where a separate interagency agreement or similar documentation establishing BLM as project lead has been approved previously and a copy of this agreement is on file with SHPO.

(2). When agencies and/or SHPO cannot agree that a Federal agency will follow the protocol, the affected agency and SHPO will negotiate a separate consultation process.

b. When more than one Federal agency is involved in an undertaking, and the BLM is not the lead agency for NHPA compliance, the BLM may agree that the lead agency's procedures will be followed.

(1) The BLM will provide the lead agency and SHPO with a letter of agreement.

c. When agencies intend to deviate from either this protocol, or the lead agency's procedures, or if the agencies cannot agree on whose procedures to follow, the agencies and SHPO may negotiate a PA prior to initiating work on the undertaking. An involved Federal agency that does not designate a lead Federal agency or does not participate in a PA designating a lead Federal agency will follow 36 CFR 800.

d. Undertakings on lands in other states managed by BLM Nevada may be processed without a project-specific PA when the BLM state office and SHPO from the other state have certified the relevant BLM Nevada personnel (i.e., CRS, managers) to work in that state.

2. Phased or Segmented Undertakings

The BLM may determine that Section 106 compliance accomplished under the SPA for large or complex undertakings, or for undertakings with restricted access to historic properties, should be segmented or phased using an incremental approach to identification, evaluation, and treatment. The SHPO may ask BLM to consult in consideration of an incremental approach under these conditions as well.

a. Undertakings implemented under terms of this SPA that are phased over time or are otherwise segmented require an Agreement document if BLM wishes to defer final identification, evaluation of historic properties or application of the criteria of adverse effect. The BLM may propose to negotiate a Programmatic Agreement (PA) if BLM wishes to develop alternative procedures for any specific project. Any MOA or PA shall be completed and signed prior to BLM's issuance of a decision record for the undertaking.

b. The BLM and SHPO agree that BLM will conduct appropriate identification and evaluation activities to determine the presence of historic properties in an APE prior to authorizing an undertaking.

c. BLM will also take effects into account prior to authorizing an undertaking and will prepare an appropriate treatment plan prior to initiation of the undertaking. The BLM will ensure that the treatment represented in the plan occurs before historic properties are affected by activities associated with an undertaking.

3. Multiple BLM Office Undertakings

a. Undertakings involving more than one Nevada BLM District or Field office will be reported to the DPO by the lead field office, or by all involved field offices if there is no lead. The DPO will recommend to the Deputy State Director, Resources, Lands and Planning, Nevada State Office (DSD) as to the need for a PA or other agreement among the involved BLM offices, the State Office, and the SHPO to define how the undertaking will be managed to comply with the NHPA. This determination will be based on factors such as project magnitude, complexity, and the opportunities to achieve improved project management by means of a PA or other agreement. The DSD will determine the need for a PA or other agreement and will also determine the timing to initiate field work in relation to development of the PA or other agreement.

b. As necessary, the DSD will consult with involved Managers to determine the lead office. When a PA or other agreement has been determined necessary by the Nevada State Office, the lead office will have responsibility for preparation of the agreement.

c. Undertakings involving minor crossings of BLM office boundaries (including, but not limited to seismic surveys, local power lines, small phone lines, and fence lines) and for which one field office is processing the undertaking for all involved field offices and is coordinating cultural resource management decisions among field offices, do not require a project-specific PA or other agreement. However, these projects must also be identified to the DPO.

4. BLM Office Responsibilities during Preparation of Memorandum of Agreement

a. In efforts to avoid, minimize or mitigate adverse effects to historic properties, BLM will negotiate a memorandum of agreement (MOA) with the SHPO and with other parties as appropriate.

C. Undertakings Not Requiring SHPO Consultation prior to Authorization

1. The BLM and SHPO agree that the BLM's professional cultural resources staff may conduct inventory, develop determinations of eligibility and effect and apply exemptions, without involvement of SHPO, except those specified in Section II.A.

a. When professional staff determinations and recommendations, or recommendations of appropriately qualified permittees or BLM contractors are approved by the appropriate BLM Manager, no SHPO consultation is required.

b. If the BLM Manager does not accept the professional determinations or recommendations of the cultural resource specialist, including but not limited to the scope of inventory, determinations of eligibility, findings of effect, and application of exemptions, the BLM Manager may either opt to employ the dispute resolution process in XIV.A of this Agreement, or may initiate consultation with the SHPO under 36 CFR 800.

D. Thresholds for Council Notification

The BLM will request the Advisory Council on Historic Preservation's (Council's) participation in the following classes of undertakings:

1. Nonroutine interstate and/or interagency projects or programs; or
2. Undertakings adversely affecting National Historic Landmarks; or
3. Undertakings the BLM determines to be highly controversial; or
4. Undertakings with adverse effects where BLM and SHPO cannot resolve disputes through formal agreement (e.g., Memorandum of Agreement).

III. NOTIFICATION/REPORTING TIME FRAMES

A. Notification

1. Requirements for providing SHPO with a notification of an undertaking are found in I.B, above.

2. Undertakings Requiring SHPO Consultation Prior to Authorization: Unless otherwise agreed, the SHPO shall have 35 calendar days from receipt of appropriate documentation to respond to any BLM consultation request regarding identification, evaluation, treatment, or effect for undertakings specified in Section II.B.

3. Time frames for Discovery Situations are found in Section VI.

4. If the SHPO does not respond within the designated time limit, the BLM may assume SHPO concurrence and can proceed with the BLM's proposed course of action.

5. If BLM or its consultant discovers buildings or structures over 50 years of age are present, the BLM shall consult with SHPO under provisions of II.A.5.

B. Reporting

For undertakings, BLM will select an appropriate format (i.e., inventory report, testing plan, treatment plan, data recovery plan, treatment report, etc.) to document its actions and decisions made in accordance with Section V of this Agreement. This will also include determination of the APE, the nature and intensity of information gathering efforts, level of public involvement, tribal and other Native American consultation, resource identification activities, National Register status, intensity of effect, and treatment needs for resources potentially affected by an undertaking. If an undertaking is phased, additional appropriate format(s) may provide for the resolution of adverse effects.

Except when working under a project-specific PA, or by other arrangement with SHPO, the reports, site records, and related documentation compiled in accomplishing provisions of Section V of this Agreement will be forwarded to SHPO within 35 days of authorizing the undertaking. Reports not forwarded to SHPO within this time frame or a time frame made by other arrangement with SHPO will be documented as described in Appendix A, including a date for completion and submission.

When working under a project-specific PA, the results of all other NHPA compliance activities shall be documented and reported as specified in the agreement.

C. Reporting Standards

The BLM and the SHPO will collaborate on the development of standards for preparing inventory and treatment reports, and jointly developing isolated artifact, isolated feature, and site forms. The standards in the most recent edition of the BLM Nevada cultural resources inventory guidelines will be in effect.

1. The BLM and SHPO agree that the current edition of the Nevada Intermountain Antiquities Computer System (IMACS) site record forms and accompanying definitions and dictionaries adopted in BLM Nevada's Guidelines and Standards for Archaeological Inventory, or any successor guidelines and standards agreed upon thereafter, comprise the standard for archaeological site documentation and recording, except where the two agencies have made mutually agreed upon modifications or exceptions.

2. Standing buildings and structures will be documented by qualified persons using the SHPO's Historic Resources Inventory Forms, which are referenced in Appendix I. Reporting requirements for standing buildings and structures, also in Appendix I, will be followed.

3. Treatment of standing buildings and structures will be documented according to Appendix G, Documentation Standards for Historical Resources of Local and State Significance.

4. Archaeological resources and standing building or structure resources will be documented in separate reports.

5. During inventory and recording phases, digital photography may be used. Requirements for digital photography during inventory and recording are found in Appendix M.

D. Backlog Reports

This Protocol is predicated in part on the assumption that the parties have need for and access to an automated site and project database that is as up-to-date as possible given circumstances of funding and staffing to aid in management planning, undertaking processing, and resource modeling. The available data from Nevada repositories has been or is being entered in the Nevada Cultural Resource Information System (NVCRIS) maintained by the SHPO, with the goal of creating one consolidated record-keeping system. One way in which NVCRIS can be impaired is by allowing a backlog of basic resource information and reports of identification, evaluation, and treatment to develop in field offices. Therefore, the Parties agree that:

1. Each Field Office will notify SHPO when documentation will take longer than 35 days, or will be completed outside of the time frames in a project-specific PA or cultural resources management plan (testing, treatment, data recovery, interpretation, etc.).

2. Projects initiated prior to the implementation of the Protocol dated June 4, 1999, can be cleared from a BLM office backlog by sending SHPO site records (including completed encoding forms) and maps, with project maps showing project boundary, APE, area inventoried, resource locations and a one page description of the project and how its associated cultural resource data were acquired. Unless a BLM office makes other arrangements directly with SHPO, the backlog in this category will be cleared within one calendar year after this agreement is signed by BLM and SHPO.

3. Projects that are or were cancelled prior to report preparation can be cleared from a field office backlog by sending SHPO site records (including completed encoding forms) and maps. If available, project maps showing project boundary, APE, area inventoried, resource locations and a one page description of the project and how its associated cultural resource data were acquired should also be forwarded to SHPO. Unless a BLM office makes other arrangements directly with SHPO, the backlog in this category will be cleared on or before September 30 of the year in which the project occurred, or within six months of project cancellation.

4. There may be projects which can no longer be reconstructed or retrieved sufficiently to create the minimum necessary records. Examples include projects where the specialist who did the work is no longer available, or there is insufficient information to allow the production of site or project records. These projects need to be identified and cleared from the BLM office backlog by informing the SHPO that they will never be completed and should be eliminated from BLM office files, data repository paper records, and NVCRIS. Unless a BLM office makes other arrangements directly with SHPO, the backlog in this category will be completed within six months after the last signature is applied to this Agreement.

IV. DEFINING THE AREA OF POTENTIAL EFFECTS (APE)

As early as possible in developing or processing an undertaking, the BLM CRS will define an appropriate APE that is sufficient to allow analysis and treatment of potential effects associated with the undertaking. In defining the APE:

A. The APE boundary is not limited by the physical footprint of the undertaking. It should be large enough to encompass all potential direct and indirect effects, including visual effects.

B. Levels of intensity in identification, evaluation, and treatment should be scaled by the scope of the undertaking and the nature of potential effects as follows:

1. Direct Physical Effects: The physical footprint of the undertaking and any other associated areas likely to experience primary physical effects will be inventoried to standards determined appropriate in the Inventory Needs Assessment process, or as defined in appendices to this Agreement; resources also will be evaluated, and effects will be treated as specified in Section V.

2. Indirect Physical Effects: If the undertaking creates or has the potential to create secondary physical effects, such as increased vandalism, erosion, or traffic, the physical footprint of those effects will be inventoried to standards determined appropriate in the Inventory Needs Assessment process, resources will be evaluated, and all effects will be treated as specified in Section V.

3. Effects to Setting: If the undertaking creates direct or indirect effects (i.e., changes that diminish the integrity of location, design, setting, materials, workmanship, feeling, and association that contribute to the property's significance) to an historic property's setting, then the APE will be defined to include appropriate consideration of those effects, using the Inventory Needs Assessment process. This determination may or may not lead to additional Class III inventory; however it will lead to some additional work such as visual simulation of changes, and development and evaluation of possible alternatives intended to reduce the effect on setting, including development of project design and location alternatives.

C. Although an APE is defined early in the identification process, the APE may be modified by BLM during the process when resources are avoided with the Standard Measures in Appendix H. If, in this case, the final APE does not contain historic properties, the BLM can document the lack of historic properties within the redefined APE and proceed with the undertaking using terms of section V.C.

1. Documentation for the undertaking will contain maps of both the original APE and the redefined APE, along with the basis for the redefinition.

2. Documentation will also include site records and maps for all resources located in the initial inventory and subsequently excluded from the APE through redesign (including deletion) as well as all resources within the redefined APE.

V. IDENTIFICATION, EVALUATION, AND TREATMENT OF HISTORIC PROPERTIES

The BLM will ensure that historic properties that may be affected by any undertaking are identified and evaluated in accordance with the procedures established below. The BLM will ensure that undertaking-specific surveys and other efforts to identify and evaluate historic properties are conducted in accordance with appropriate professional standards. These standards are defined in BLM Manual 8110, *Identifying and Evaluating Cultural Resources*, BLM Manual 8140, *Protecting Cultural Resources*, Nevada BLM supplements to this agreement, the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716), and relevant written SHPO guidance.

A. Determining Information Needed

1. Level of Field Inventory: The BLM and SHPO agree that Class III inventory will be the standard level of field inventory required to identify archaeological resources. Therefore, when the APE will be investigated with a Class III inventory, the BLM need not seek SHPO consultation on identification efforts prior to initiating the inventory unless consultation occurs per Section II.A or unless a PA or similar agreement is required or anticipated, per IIB.

a. If the undertaking is subject to SHPO review, and the BLM decides to investigate an APE at less than Class III intensity, BLM will consult with the SHPO on the adequacy of the inventory design prior to initiating the inventory or authorizing the proposed undertaking.

b. If the undertaking is not subject to SHPO review, the BLM will inform the SHPO per Section I.B, using an Inventory Needs Assessment Form, of its intent to deviate from Class III inventory standards prior to initiating the undertaking and allow SHPO to consider initiation of consultation within the time frames found in Section I.B.

c. The basis for the decision to deviate and the nature and coverage of the inventory, as well as the date and means of notifying the SHPO, must be documented in the report on the undertaking.

2. Exemptions from Inventory Requirement: Undertakings exempted from inventory requirements and from Section 106 review are identified in Appendix C. Other classes of exempted undertakings may be added to Appendix C if the BLM and the SHPO agree that such undertakings qualify.

3. The BLM CRS will, after determining information needed to identify and evaluate cultural properties, determine if specific undertakings should appropriately be exempted from further Section 106 review when the undertaking is not located within a historic property unless the specific provisions in Appendix C apply, as follows:

a. Disturbed Areas: If the CRS determines that previous ground disturbance has modified the surface of an APE so that the probability of finding intact cultural properties within the APE is negligible, then the disturbed portion of the APE should be excluded from further inventory and treatment.

b. Previous Adequate Inventory: If the BLM CRS determines that the APE, or any portion of the APE, is included in the area inventoried by an adequate Class III inventory completed within the last 10 years, and was previously reviewed by the SHPO, the BLM may proceed with determining eligibility and effect without additional inventory.

(1) Inventories more than 10 years old will be evaluated by the CRS to determine their adequacy for contemporary identification purposes in locating and evaluating historic properties in relation to land use applications subject to terms of this Protocol. This will include an assessment of need for further consultation with Indian tribes.

(a) BLM will notify SHPO prior to authorizing an undertaking when an inventory more than 10 years old is determined adequate for identification

purposes.

c. Areas with Low Potential for Containing Historic Properties: Areas that have not been inventoried, or appropriately modeled, will be treated as if they contain high sensitivity historic properties, unless the BLM and the SHPO jointly determine that specific areas do not need to be inventoried because current information suggests that the area has little or no potential to contain historic properties. Such determinations may be developed in two ways:

(1). Project-Specific: If the proposed undertaking is not listed in the exemptions found in Appendix C, the BLM will seek the concurrence from the SHPO on project-specific exemptions due to low site probability;

(2). Supplemental Protocol Agreements: Low site probability areas, identified through appropriate models and appropriately validated, may be exempted through a Supplemental Protocol Agreement between the BLM and the SHPO.

4. When properties of religious and cultural importance to Indian tribes are identified, consultation with tribes to comply with the NHPA will be guided by BLM Manual 8120, *Tribal Consultation Under Cultural Resources Authorities*, and BLM Handbook H-8120-1, *Guidelines for Conducting Tribal Consultation*.

5. Reporting: A record listing all undertakings authorized under this section will be documented in the Annual Report in accordance with the information requirements stipulated in Appendix A.

6. Resources Extending Outside the APE: The extent of inventory area outside of an APE, and the extent to which cultural resources outside of the APE are recorded shall be at the discretion of the BLM CRS.

a. BLM's objective is to have site boundaries and characteristics determined completely whenever reasonably possible. Where a site is large in area and extends beyond a project's APE, the extent of recording and collection of information should be sufficient to support evaluation of significance of the resource as a whole, per V.B.2.b, as determined by the BLM CRS.

B. Evaluation for National Register Eligibility

1. Categorical Determinations:

a. Classes of Properties Not Eligible for the National Register: The BLM and the SHPO may jointly determine a class or classes of properties to be not eligible for listing on the National Register (Appendix E).

b. Classes of Properties Eligible for the National Register: The BLM and the SHPO may jointly determine a class or classes of properties to be eligible for listing on the National Register.

2. Evaluation Standards: All resources discovered or rerecorded within the APE during an inventory shall be evaluated for inclusion in the National Register.

BLM evaluations shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Evaluation* (48 FR 44729), BLM Manual 8110, *Identifying and Evaluating Cultural Resources*, Nevada BLM supplements to this agreement, and relevant written SHPO guidance.

a. Resources within the APE: The BLM will ensure that all resources identified within an APE are evaluated in accordance with the provisions of this Protocol.

b. Resources extending outside the APE: Sites located within an APE but extending outside of the APE must be evaluated as a whole. Except for contributing elements that straddle the APE boundary, elements of National Register Districts that are entirely outside of the APE do not have to be recorded or evaluated.

c. Linear features will be evaluated according to Appendix D.

d. Resources outside the APE: Resources completely outside of an APE and that will not be affected by the undertaking do not have to be evaluated.

3. Properties Eligible under Criterion D only: Using the guidelines referenced at Section VII, a professionally qualified BLM CRS can determine eligibility under National Register Criterion D for resources for which they are qualified (i.e., prehistoric and/or historic period archaeological sites) without initiating specific SHPO consultation.

a. Professionally qualified means that the cultural resource specialists have been determined to meet requirements expressed in Section VII.A.

b. A qualified consultant who is making recommendations to BLM will hold a BLM-issued Cultural Resources Use Permit which documents qualifications appropriate to the resources being evaluated.

4. Properties with Associative or Design Value under Criteria A, B, or C: This provision applies to properties significant for their association to events (Criterion A), their association with important persons (Criterion B), or because they are representative of a distinctive design or construction (Criterion C). Excluding property types discussed under V.B.3., the BLM's evaluation of National Register eligibility depends on BLM access to appropriate expertise. BLM's access to such expertise may be provided by a qualified BLM employee, a qualified person working directly for BLM under contract or other arrangement, or by a qualified person working for a BLM permittee or other consulting group.

a. Since BLM does not permit historians, historic architects, or architectural historians, consultants in these areas must meet personnel qualifications listed in Appendix I.

b. If the undertaking is being reviewed by the SHPO pursuant to Section II.A, the BLM will determine eligibility in consultation with the SHPO. If the BLM and the SHPO agree there are no eligible properties identified within an undertaking's APE, BLM may document this conclusion in the case file and proceed with the undertaking without further consultation.

c. If the undertaking is not being reviewed pursuant to Section II.B, and

(1) the BLM has access to professionally qualified consultants, and the BLM CRS agrees with the consultant's eligibility recommendations, the BLM can proceed with the undertaking without specific SHPO consultation on eligibility. Or,

(2) If the BLM cultural resource specialist disagrees with the consultant's recommendations, the BLM must consult with SHPO regarding eligibility before proceeding with the undertaking. Or,

(3) If BLM has professionally qualified staff, the BLM can make eligibility determinations and proceed with the undertaking without specific SHPO consultation.

d. Historic period linear features will be evaluated as specified in Appendix D.

5. Provisions for evaluation extend to properties of religious and cultural significance to Indian tribes. Eligibility determinations are made by the BLM Manager based on consultation with affected Indian tribes and on recommendations made by professionally qualified cultural resources staff. The BLM also acknowledges that Indian tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance. The BLM's consultation process should follow Manual 8120 (*Tribal Consultation Under Cultural Resources Authorities*) and Handbook 8120-1 (*Guidelines for Conducting Tribal Consultation*).

6. Disagreement on Eligibility:

a. The BLM decision regarding eligibility may differ from a consultant's recommendations, in keeping with qualifications of BLM's qualified staff. The BLM will not require the consultant to amend the final report to conform to the BLM's decision. Instead, the BLM's decision, not the consultant's recommendations, will form the basis for Section 106 compliance.

b. When a consulting party, defined in 36 CFR 800.2(c), other than the consultant making the determination, disagrees with BLM eligibility determinations, BLM will request the view of the SHPO on an eligibility determination.

If the SHPO and BLM cannot agree whether the eligibility criteria are met, or if the Council so requests, the BLM will seek a formal determination of eligibility from the Keeper of the National Register pursuant to 36 CFR Part 63.2.

c. If an affected Indian tribe does not agree with a BLM determination that a property of religious and cultural significance is not eligible for the NRHP, the affected tribe may ask the Advisory Council on Historic Preservation to request that the BLM to seek a determination of eligibility from the Keeper of the National Register.

C. No Adverse Effects

1. No Historic Properties Present: If, as a result of an appropriate inventory (as defined in

BLM Manual 8110 and this Protocol), the BLM determines that there are no historic properties within the APE, BLM will report to SHPO as per Section III.B of this Agreement, notify interested persons, if any, and proceed with the undertaking.

2. No Historic Properties Affected: If the BLM determines that identified historic properties will be avoided with the Standard Measures in Appendix H, the BLM can determine that the undertaking will have no effect on historic properties and proceed with the undertaking without SHPO consultation. Documentation for the undertaking will include the basis for this determination.

3. Effect Situations: In determining if an undertaking has an effect on historic properties, the BLM will follow 36 CFR 800 and apply the Criteria of Effect and Adverse Effect.

a. Effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places.

b. An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

4. SHPO Involvement. If the undertaking is being reviewed by the SHPO pursuant to Section II, the BLM will determine effects in consultation with SHPO. Issues relating to BLM's findings of effect or treatment which cannot be resolved between BLM and SHPO shall be referred to the Advisory Council for review.

a. Effects to historic properties located within an APE but extending outside of the APE must be treated as if the property is completely within the APE.

b. In accordance with the Council's *Treatment of Archaeological Properties - A Handbook*, Principles; 36 CFR part 68 (1995); and BLM Manual 8140, avoidance is the preferred strategy for treating potential adverse effects on cultural properties. When an undertaking is planned within or around the boundaries of historic properties, and the BLM treats potential effects to properties potentially affected--including properties eligible or important for reasons other than the information they contain--with the Standard Measures in Appendix H, so that the undertaking will not affect the qualities that contribute to the significance of the properties, the undertaking will be considered to have ~~no~~ adverse effect." In these cases, the BLM need not consult with the SHPO on effect before proceeding with the undertaking.

c. If avoidance is not prudent or feasible, the BLM will consider a range of alternative physical or administrative treatments to minimize potential effects. The BLM may make a determination of effect resulting from implementation of these treatments as described in section V.C.5. The BLM will provide appropriate documentation including a report on identification and evaluation efforts and a treatment plan intended to minimize effects to the

SHPO, in accordance with V.C.5.

5. No Adverse Effect Situations include but are not necessarily limited to:

a. restoring, rehabilitating, stabilizing or otherwise altering a building, structure, or feature using means consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68 and applicable guidelines);

b. transferring, leasing, or selling a historic property with adequate restrictions and legally enforceable restrictions or conditions included in the transfer documents to ensure the long-term preservation of the property's historic significance; or

c. conducting applicable undertakings in accordance with Appendix F, Categorical No Adverse Effect Situations; or,

d. treating visual effects by maintaining the integrity and existing character of the NRHP-eligible historic landscape. Treatment is adequate when the level of change to the characteristic historic landscape can be seen but does not attract attention from the casual observer. Any changes must repeat the basic elements of form, line, color, and texture found in the predominant historic features of the characteristic historic landscape. If this objective cannot be achieved, BLM will consider additional measures to treat visual effects to setting in consultation with SHPO.

D. Adverse Effects. BLM will consult with SHPO for any undertaking resulting in an adverse effect determination. Undertakings resulting in adverse effect determinations are those for which treatment includes some or all of the following:

1. Implementing a data recovery plan for a property that is significant because of the data that it contains, provided the plan reflects the Advisory Council's Guidance on the Recovery of Significant Information from Archaeological Sites (May 18, 1999) and is accomplished using a Memorandum of Agreement or other agreement document involving SHPO and other appropriate parties;

2. Undertakings resulting in an adverse effect determination are those affecting properties of local or state significance and for which treatment can be achieved through the following:

a. documenting, to the standards in Appendix G, the significant architectural, historical, or engineering attributes of an architectural or historic building, structure, or feature; or

b. implementing a treatment plan resulting in interpretation, public education, collection of oral histories, or other methods agreed to by BLM and the SHPO.

c. Adverse effects to properties that are National Historic Landmarks, or otherwise eligible or listed as nationally significant will be determined and treated in consultation with the SHPO and Council, pursuant to Section II.D. As early as possible in the planning process, BLM will notify the SHPO and Council if an undertaking may have an adverse effect on a NHL or other nationally significant property. In these cases, the BLM's determination of effect with supporting documentation can be sent to the Council and SHPO for concurrent

review.

d. An undertaking's potential effects to properties of religious and cultural significance, as defined in BLM Manual 8120, and reasonable treatments for those effects can only be determined in consultation with the people who value the property. For Indian tribes and for Native American individuals, consultation shall be guided by BLM Manual 8120, *Tribal Consultation Under Cultural Resources Authorities* and BLM Handbook H-8120-1, *General Procedural Guidance for Native American Consultation/Guidelines for Conducting Tribal Consultation*. BLM Manual 8120 will also be used as a basis for determining and treating adverse effects to historic properties of religious and cultural significance.

(1) The BLM, with tribal concurrence, may seek the assistance of the SHPO in resolving disputes about effects on properties of religious and cultural significance.

(2) If Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered during an undertaking involving BLM managed lands, the parties will comply with the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations at 43 CFR Part 10, Subpart B. Human remains and associated grave goods on private land will be handled according to the provisions of Nevada statute NRS 383.

e. BLM will prepare a Memorandum of Agreement (MOA) addressing adverse effects when BLM and SHPO agree on the measures to be taken.

(1) The MOA establishes BLM-SHPO concurrence regarding the resolution of project-related adverse effects according to a historic properties treatment plan. The BLM should initiate consultation with SHPO regarding eligibility, effects and resolution of adverse effects with sufficient lead time to allow for development of an MOA on a schedule meeting the undertaking's anticipated decision record. The MOA should be signed by the appropriate parties prior to BLM's issuance of a decision record for the undertaking.

(2) If BLM and SHPO cannot agree on the measures to be taken to address adverse effects from an undertaking, the dispute resolution measures in Section XIV will be implemented.

E. Treatment Limitations

Where BLM's treatment options for historic properties on non-Federal lands may be limited due to land status or statutory authority, appropriate treatment actions will be developed by BLM in consultation with the SHPO. The BLM will inform the SHPO of potential limitations to treatment as early as possible in the planning process. An adverse effect is created when treatment limitations are so severe that BLM and SHPO cannot develop appropriate treatment.

VI. DISCOVERY SITUATIONS

A. Planning For Discoveries

The BLM will require discovery plans for large and complex undertakings and those involving land disturbance in areas known to contain buried sites. If the undertaking is being reviewed by the SHPO

pursuant to Section II, the proposed discovery plan will be forwarded to the SHPO for review along with BLM's determination of effect for the undertaking. With SHPO concurrence, the discovery plan will govern how discoveries will be handled.

B. Unplanned Discoveries

If a Discovery Plan is not 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:

1. Ensure that activities associated with the undertaking within 100 meters of the discovery are halted and the discovery is appropriately protected, until the BLM Authorized Officer issues a Notice to Proceed (NTP).

a. If the undertaking is not being reviewed by the SHPO pursuant to Section II, BLM will determine if an adverse effect exists. If an adverse effect is found, BLM will identify the applicable criteria of significance and will propose actions to resolve the adverse effects. BLM will notify SHPO, the Council, affected tribes and any other identified consulting parties, who will have 48 hours from the initial notification to respond to BLM, which will take any recommendations into account regarding eligibility and proposed treatment, and will then implement appropriate actions. A copy of the resulting report will be provided to consulting parties within 90 days after report completion and acceptance by BLM.

b. Notices to Proceed (NTP) may be issued by the BLM under any of the following conditions:

- (1) evaluation of potentially eligible resource(s) results in a determination that the resource(s) are not eligible; or
- (2) the fieldwork phase of the treatment option has been completed; and
- (3) the BLM has accepted a summary description of the fieldwork performed and a reporting schedule for that work;

2. If the undertaking was approved under the stipulations at Section II, the BLM shall notify the SHPO and consider SHPO's initial comments on the discovery. If the undertaking was approved under the stipulations at Section II.D, the BLM shall notify the SHPO and the Council and consider the SHPO's and Council's initial comments on the discovery.

a. Within two working days of notification to the SHPO, the BLM shall notify the proponent, tribes, and other interested persons as appropriate, of the BLM's decision on eligibility and proposed treatment, if any, and solicit comments on the BLM's proposed course of action;

b. The SHPO, Council, tribes, and other interested persons as appropriate, will be asked to provide BLM with comments within two working days of BLM's notification. Any timely comments offered by the SHPO, Council, Tribes, and other interested persons will be documented, considered in dealing with the discovery, and, subject to confidentiality requirements, be made available for public inspection;

c. The BLM shall notify the SHPO, Council, tribes, and other interested persons of its decision regarding evaluation and treatment and shall ensure that treatment actions, if any, are implemented; and

d. The BLM shall ensure that reports of treatment efforts for discovery situations are completed in a timely manner and conform to the stipulations of this agreement. Final reports on the treatment effort shall be sent to the SHPO, Council, tribes, and other interested persons as appropriate, for informational purposes, within 90 days after BLM has accepted the report.

e. Potential treatment options include archaeological excavation and removal under terms of an approved data recovery plan reflecting the Advisory Council's Guidance on the Recovery of Significant Information from Archaeological Sites (May 18, 1999).

VII. STAFFING AND OBTAINING SPECIALIZED CAPABILITIES

A. Staffing

1. Per the NHPA, Section 112, the BLM will ensure identification and evaluation of cultural resources by specialists who meet the qualifications and are classified in the appropriate professional series by the Office of Personnel Management (e.g., Series 193 for archaeologists). Specialists at, or below, the GS-7 level are considered to be performing duties in a trainee or developmental capacity. Reports prepared by GS-7 or below specialists, District Archaeological Technicians, volunteers or any cultural resource consultant, must be submitted to the SHPO after review by a GS-9 or higher grade cultural resources specialist. Any involved resources will be evaluated by a GS-9 or higher grade cultural resources specialist.

2. When new managers or cultural resources specialists are hired by a BLM office, the BLM will ensure that the new managers or cultural resources specialists receive orientation and training, within 90 days, in BLM Manual procedures and procedures for operating under this Protocol; the BLM and SHPO may agree to an alternative time frame in specific cases. It shall be the responsibility of the BLM DPO to provide appropriate orientation and training to new managers and cultural resource specialists; the DPO will coordinate with SHPO to involve SHPO in training. Training needs will be reviewed during the annual review meeting. As funding is available, BLM may provide assistance to SHPO for purposes of this training. Prior to the orientation, the BLM office will be required to follow the procedures at 36 CFR Part 800 when no trained cultural resource specialists are on staff. Once the orientation and training are completed, the State Director will notify the SHPO and the affected BLM office that new staff may implement the procedures of this Protocol.

a. The SHPO will invite BLM to participate in training of new SHPO review and compliance personnel.

3. The BLM may utilize the services of qualified consultants for purposes of inventory, evaluation, treatment, and management. BLM will ensure that consultants, who may also be represented as permittees or as contractors, either working directly for the BLM or for a land-use proponent, will meet the educational and experience requirements established in the Secretary of the Interior's Historic Preservation Professional Qualification Standards (36 CFR 61, Appendix A [1983]). Persons working in the capacity of a consulting archaeologist must qualify according to standards established in BLM Manual 8150.12B2b and by Nevada BLM, including separate

provisions for qualifications relating to prehistoric archaeology and historic period archaeology.

B. Specialized Capabilities

When the BLM is involved in an undertaking requiring expertise not possessed by available BLM staff (e.g., architectural history), it will obtain that expertise to determine National Register eligibility, effects, and treatment for the cultural properties in question. The BLM may request the assistance of the SHPO staff in such cases or may obtain the necessary expertise through contracts, BLM personnel from other states, or cooperative arrangements with other agencies. Those persons will be qualified per those criteria set forth in VII.A.3, above.

VIII. RELATIONSHIP TO OTHER AGREEMENTS AND OTHER AUTHORITIES

A. In the event the NPA is suspended or terminated, this agreement will remain in effect until a replacement for the NPA is made. Existing project specific agreements remain in effect.

This protocol will be implemented in accordance with provisions of 36 CFR 800 issued August 5, 2004, and in effect at the time of signing.

B. BLM and SHPO may agree, by reference or by incorporation, to use procedures and related appendices of this State Protocol Agreement in other plans, memoranda and agreements, including programmatic agreements. The procedures and related appendices include:

1. notification or consultation with SHPO,
2. definition of an undertaking or the APE,
3. identification and evaluation of cultural resources, including definitions and determinations of resource types which are categorically not eligible (Appendix E),
4. reporting procedures and recording of cultural resources,
5. tribal involvement,
6. public participation,
7. professional qualifications,
8. unplanned discoveries,
9. reporting,
10. documentation standards for historical resources of local and state significance (Appendix G), and
11. avoidance measures.

IX. ADMINISTRATIVE INTERACTION AND REPORTING REQUIREMENTS

The BLM Nevada State Office, with input from the district offices, will prepare a report to the SHPO that describes the implemented actions taken in the previous federal fiscal year. This report will be due to the SHPO in December of each year and will include the information outlined in Appendix A.

X. SHPO INVOLVEMENT IN RESOURCE MANAGEMENT PLANNING

The BLM and SHPO have agreed to limit SHPO involvement in case-by-case undertaking review and to increase SHPO participation in the BLM land-use planning process. In order to allow broad and active participation by SHPO in BLM's planning activities, the BLM and SHPO agree that:

A. Resource Management Planning

Each District Office responsible for preparing or amending a land use plan (Resource Management or Management Framework Plan) or preparing an Activity Plan (such Fire Management Plans, Allotment and Habitat Management Plans, Cultural Resource Management Activity Plans, Travel Planning and Recreation Management Planning) that may affect cultural resources will invite the SHPO to participate, as a cooperating agency, from the beginning of the planning process. The SHPO agrees to provide the BLM with technical assistance in preparing National Register nominations.

B. Project Planning

As early as possible in the scoping/planning process for major undertakings (i.e., large surface disturbing projects, land transfers, rights of way, etc.), the appropriate BLM Manager will contact the SHPO to discuss likely effects to cultural resources. This discussion should focus on facilitating these projects to meet cultural resource preservation goals. Project planning discussions may be by telephone, correspondence, or meetings, as agreed between the parties.

C. Informal Consultation

The SHPO is encouraged to meet with the BLM State Office or a BLM Manager at any time to discuss annual work plans, specific undertakings, outreach efforts, or other issues related to Cultural Resource Management. The BLM will make every effort to arrange such meetings in a timely manner and to provide information requested by the SHPO. The SHPO and BLM personnel may confer informally, at their discretion, on specific undertakings or the BLM Cultural Resource Management Program.

Field Tours: BLM Field Offices will notify the SHPO, in writing, of public field tours relating to land use planning efforts (RMPs and RMP amendments) or to Environmental Impact Statement (EIS) planning efforts that may affect cultural resources. The BLM should also invite SHPO's participation in other projects or activities that may be subject to Environmental Analysis (EA) land use planning efforts and involve very sensitive or controversial cultural resources issues.

PART 2. SECTION 110 AND OTHER ACTIVITIES

XI. COOPERATIVE ACTIVITIES

The BLM and the SHPO recognize the advantages of working together on a wide range of cultural resource preservation activities, pursuant to NHPA sections 110 and 112. Accordingly, BLM and SHPO will cooperatively pursue the following efforts:

A. Data Sharing and Information Management

The BLM and the SHPO will work jointly in regard to Data System Management, to include a statewide automated cultural database which will be accessible from all BLM Offices and available to appropriate persons. The BLM and the SHPO will further collaborate on ways to synthesize and use the automated cultural data to develop Geographic Information System (GIS) capabilities. The BLM and the SHPO will continue to cooperate in this endeavor by providing financial, personnel, hardware, and software resources as funding becomes available. The SHPO agrees to be responsible to maintain this system (currently known as the Nevada Cultural Resources Information System, or NVCRIS), or systems. To the extent allowed by current funding levels, the BLM will support and cooperate with SHPO in developing and maintaining NVCRIS to support BLM's activities, particularly in planning and inventory.

B. State BLM Supplemental Guidance

In addition to the procedures described in Bureau-wide directives and Manuals, Nevada BLM will be guided by procedural supplements (guidelines or handbooks) issued by the Nevada State Office. The BLM will update these supplements as needed to conform to Bureau-wide directives, policies issued by the Nevada State Director, new laws, new regulations, and operational needs. The SHPO will be invited to participate in development and subsequent revisions of all supplements and handbooks. BLM will also be guided by procedural supplements (guidelines or handbooks) issued by the SHPO for historic archaeology and historic architecture. The BLM will be invited to participate in developing any subsequent revisions of all SHPO supplements and handbooks.

BLM field procedures will be detailed in a Nevada BLM Handbook as a supplement to BLM Manual procedures. Until this is done, the standards (but not the processes) in the Statewide Programmatic Agreement, dated July 29, 1990 and the 4th edition of the *BLM Nevada Cultural Resources Inventory General Guidelines* will remain in force. All changes or amendments to the handbook procedures will be made in cooperation with the SHPO.

C. Public Outreach, Site Stewardship, and Heritage Education

The BLM and the SHPO will work cooperatively to promote and enhance public education and outreach in Historic Preservation and Cultural Resources Management through the following programs:

1. Archaeology Awareness and Historic Preservation Month: The BLM and the SHPO will participate in and support financially, as funding permits, *Archaeology Awareness and Historic Preservation Month* activities, including public presentations, field tours and excavations, exhibits, archaeology fairs, posters, brochures, and educational activities.

2. Project Archaeology: The BLM and the SHPO will support *Project Archaeology* as a component of BLM's Heritage Education Program, by encouraging staff archaeologists to be trained and serve as facilitators in the program, with the goal of

integrating the teaching of archaeological concepts and preservation ethics in Nevada schools statewide.

3. Adventures in the Past/Heritage Education: The BLM and the SHPO may, as funding permits, cooperatively work on the interpretation of cultural resources through a variety of media including, but not limited to exhibits, brochures, lectures, radio and television promotions, Internet web pages, and interpretive signs.

4. Nevada Archaeological Association: The BLM and the SHPO are encouraged to work cooperatively with the Nevada Archaeological Association to promote preservation ethics, good science, and professional standards statewide to amateur archaeologists by participating in society meetings, serving as chapter advisors, providing presentations and demonstrations, and providing assistance as appropriate.

5. Professional Organizations: The BLM and SHPO cultural resource specialists are encouraged to participate in and work cooperatively with professional historic preservation organizations to promote preservation ethics, science, history, and professional standards statewide, and open dialogue regarding historic preservation issues.

6. Site Stewardship:

a. The BLM is committed to supporting the SHPO statewide site stewardship program and will:

(1) identify cultural resources locations where BLM desires monitoring to occur and will share related cultural resources data;

(2) provide training support (including accompaniment during an initial site visit) and training opportunities to site stewards, as possible within limitations of funds and staff time. BLM will also support the program by limiting site stewards to those enlisted BLM volunteers that have been appropriately trained in the SHPO program.

(3) where possible, BLM field offices will designate a cultural resources specialist as the point of contact responsible for coordinating site stewardship activities.

b. The SHPO agrees to:

(1) coordinate the statewide program and related documentation,

(2) maintain a roster of appropriately trained stewards

(3) work with BLM to match stewards with resources to be monitored, and

(4) provide reporting data to BLM regarding site steward activities and

accomplishments.

(5) SHPO will coordinate with BLM to ensure that site stewards working on BLM managed lands are enrolled as BLM volunteers prior to working as site stewards.

D. Historic Context and Research Design Development

The BLM and the SHPO will jointly develop standards and guidelines for historic contexts and research designs and will strive to involve other land-managing agencies and the public in this effort. The BLM and the SHPO will jointly develop statewide priorities for historic context or research design needs and develop high priority contexts and designs, as funding permits. Project-specific contexts may be developed as needed.

Historic contexts must be consistent with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716). In accordance with Section 101(b)(3) of the NHPA, the SHPO shall review and provide comments on BLM historic context documents developed as general guidance independent of any particular undertaking. Non-undertaking specific historic contexts that define site eligibility criteria, levels of adequate inventory, site documentation requirements, standards for assessment of effects, or appropriate treatment of historic properties shall require SHPO concurrence prior to implementation.

As supplements to this Protocol, the BLM and SHPO may jointly develop research plans, or treatment approaches, designed to answer specific questions, or deal with recurring treatment issues, in ways that programmatically resolve the issue. Such supplements will include a clear process for resolving the issue and funding commitments to ensure that the issue is resolved in a timely manner.

E. Public Participation

The BLM will seek and consider the views of the public when considering undertakings in compliance with this Protocol through the public participation opportunities mandated by the National Environmental Policy Act (NEPA), and the Federal Land Policy and Management Act (FLPMA), as implemented at 43 CFR Part 1610.3. Interested parties shall be invited to consult early in the review process if they have expressed an interest in a BLM undertaking or action subject to the Protocol, or if they have expressed an interest in a particular class of cultural resources (e.g., historic trails). Such interested parties may include, but are not limited to, local governments; grantees, permittees, or owners of affected lands or land surfaces; Indian Tribes, organizations, and individuals; and those seeking to participate as consulting parties in a particular undertaking. Participation shall be guided by 36 CFR 800 and by BLM Manual 8110.12. American Indian participation shall be guided by the provisions of BLM Manual 8120 and Handbook H-8120-1 and by 36 CFR 800.

F. SHPO Planning

The SHPO will invite BLM to participate in the identification of problems, issues and potential solutions in the SHPO's State Historic Preservation Plan (SHPP). The BLM will reflect those components of the SHPP in its planning process, as appropriate.

PART 3. PROGRAM REVIEW AND MONITORING

XII. PROGRAM REVIEW

The NPA assigns duties to the Preservation Board to ensure that the cultural resources policies and procedures are being followed appropriately by the BLM offices. Further, where problems are identified, the Preservation Board is assigned the responsibility for movement to correct the matter.

The Preservation Board may choose to review an office's certification status to operate under terms of the NPA and state protocol agreement. The State Director, a BLM manager, the ACHP, or the SHPO may request that the Preservation Board initiate a review.

This Protocol establishes an internal process of program review in order to ensure that Nevada offices are operating in conformance with policies and procedures laid out in the NPA and this Protocol, prior to invoking assistance from the Preservation Board.

A. Review. Professional review of field office programs is a component of certification. Such reviews are intended to improve operations at individual BLM offices having responsibilities under this Protocol as well as the cultural resource program statewide. The DPO will ensure that reviews take place. Reviews may involve any aspect of a program's function including, but not limited to, documentation, findings and recommendations, record keeping and curation, security, and professional contributions.

1. If the SHPO documents a pattern of failure to comply with the terms of this Protocol, the SHPO may ask the State Director for a program review of a district or field office's status and its capability for carrying out the terms of the NPA and this Protocol.
2. A district or field office manager or the BLM State Director may request reviews that would be organized or led by the DPO.

B. Levels of DPO Review. Three levels of review are available to the DPO: annual review, technical review and program review. Findings of reviews shall be relevant for purposes of assessing certification status of the BLM's 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 the NPA and this Protocol.

1. Annual Review. The DPO shall assess annually each office's ability to implement the provisions of the Protocol. The Annual Review will be based primarily on information and data submitted for the Annual Report required in Appendix A of this Protocol; however, other data also may be considered.

2. Technical Review. The DPO shall determine whether BLM offices are maintaining an appropriate level of technical capability and performance in particular program elements such as documentation of protocol actions, Section 110 actions, curation, inventory documentation, determinations and findings from Annual Reviews.

3. Program Review. The DPO shall determine whether BLM offices' Cultural Resource programs are fully functional in their ability to implement the Protocol. Program reviews are broad-based reviews, some of which take place at the district or field office. Review teams will consist of the DPO, representation from the Nevada State Historic Preservation Office and any other BLM staff the Nevada State Office deems appropriate. A review team shall have the ability to interview cultural

resource staff, other resource staff and managers, have access to Cultural Resources Management records and maps, NEPA files, and other appropriate documentation. The team would be responsible for developing findings and generating a set of recommendations to be reviewed by the State Director. When the State Director accepts the report, the report will be sent to the appropriate district or field office manager. Reporting will occur per terms of XII.B.4.

4. Reporting. The DPO shall document the findings of the review and following acceptance by the State Director, forward the findings with the report to the SHPO. When recommendations to correct deficiencies receive SHPO concurrence and are accepted by the State Director, implementation of such recommendations shall become the responsibility of the BLM Manager to initiate corrective actions within sixty (60) days from the date the recommendations are accepted by the State Director. Depending on the nature of the identified deficiencies, the State Director may elect to place a Field Office in provisional status according to the procedures describes in Stipulation XIII of this Protocol.

XIII. DECERTIFICATION FOR CAUSE

A. Action Plans

The State Director shall be informed if review by the DPO determines that there are compliance problems with a district or field office. The BLM State Director may ask the DPO to prepare an action plan, in consultation with the SHPO, that when implemented would bring that office into compliance with this Protocol. The DPO, in consultation with the SHPO, may also recommend that the State Director place a district or field office on a provisional status based on findings from any of the reviews specified in Stipulation XII of this Protocol.

The BLM State Director may request a review and recommendations from appropriate staff and/or the Preservation Board.

B. Provisional Status

A BLM office is under Provisional status when the State Director has directed the office to implement an Action Plan. The involved BLM office will continue to operate under terms of the Protocol until deficiencies are corrected within the terms and time limits set under the Action Plan. While on provisional status, a district or field office will have the opportunity to correct deficiencies under the Action Plan at any time. If all parties agree that the problems have been corrected, the State Director will issue a memorandum to the affected district or field office manager and SHPO that the district or field office is once again in compliance and restored to certified status.

1. If not corrected beforehand, upon expiration of the provisional status term, the parties to this Protocol shall convene to determine whether identified deficiencies have been satisfactorily corrected. Their findings shall be conveyed to the State Director. Should the State Director determine that such deficiencies remain uncorrected, or should new deficiencies that the parties deem significant be identified, the decertification process shall be initiated.

C. Decertification for Cause

If the 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 from

operating under this Protocol will comply with the regulations at 36 CFR Part 800 until it is reinstated.

The State Director, in consultation with the SHPO, shall develop an action plan to bring any decertified office into compliance with this Protocol. After the subject BLM office believes that it has completed the actions specified in the plan, it will notify the State Director through the BLM DPO.

The District or Field Office Manager, the DPO or the SHPO may request that the Preservation Board review a district or field office's certification status. The Preservation Board will respond under the terms of the NPA at Component Eight. If the Preservation Board finds that a BLM office does not maintain the basis for its certification (e.g., the professional capability needed to carry out these policies and procedures is no longer available, or the office is not in conformance with this Protocol), and the BLM Manager has not voluntarily suspended participation under this Protocol, the Preservation Board will recommend that the State Director decertify the district or office, per the NPA.

1. A district or field office manager may ask the State Director to review the Preservation Board's decertification recommendation, in which case the State Director may ask the Director to review the Preservation Board's decertification, in which case the Director will request the Advisory Council's participation in the review, per the NPA.

2. The Preservation Board will notify the Nevada SHPO and the Advisory Council if the status of a certified office changes. In consultation with the SHPO, and at the direction of the State Director, the DPO will prepare a Plan of Action to address the identified deficiencies. The DPO may consult with the Preservation Board in preparing a Plan of Action.

3. When a district or field office is suspended or decertified, the responsible manager shall follow the procedures of the most current version of 36 CFR 800 to comply with Section 106.

4. If a suspended or decertified district or field office is found to have restored the basis for certification, the Preservation Board will recommend that the State Director recertify the office.

XIV. BLM-SHPO DISPUTE RESOLUTION

The NPA requires this Protocol to contain provisions for resolving disagreements. This section addresses that requirement in relation to BLM-SHPO disagreements and also establishes measures for dispute resolution involving members of the public and Indian tribes, for use when this Protocol is applied, referenced or included as part of another agreement.

A. Disputes Involving BLM and SHPO

1. The BLM or the SHPO may object to an action proposed or taken by the other pursuant to this Protocol. When informal resolution is not effective or satisfactory, the objecting party shall notify the other party in writing of the objection. Within seven (7) calendar days following receipt of notification, the parties shall initiate a formal 30 calendar day consultation period 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.

2. If the objection is not resolved within this time frame, and the parties have not agreed to extend the consultation period, the DPO shall refer the objection to the Preservation Board, which will

provide the State Director with its recommendations, per Component 2 of the NPA. If the State Director accepts the Board's recommendations, the State Director shall promptly notify the SHPO of such acceptance, provide a copy of the Board's recommendations, and afford the SHPO 30 calendar days following receipt of the notification to comment on the recommendations. If the SHPO concurs in the Board's recommendations within this time frame, the State Director and the SHPO shall proceed in accordance with the Board's recommendations to resolve the objection.

3. If either the State Director or the SHPO rejects the Board's recommendations after a period of consideration not to exceed 30 days, the 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 on Historic Preservation for comment in accordance with Component 4 of the NPA. Within 30 calendar days following receipt of any Council comments, the State Director shall make a final decision regarding resolution of the objection and in writing notify the Board, the SHPO and the Council of that decision. The objection shall thereupon be resolved. In reaching a final decision regarding the objection, the State Director shall take into account any comments received from the Board, the SHPO, and the Council pursuant to this stipulation.

B. Disputes by a Member of the Public or a Federally-recognized Indian tribe or individual

1. If a Member of the Public or a Federally-recognized Indian tribe objects at any time in writing to the manner in which this Protocol is being implemented, the BLM shall consult with the objecting party for a period not to exceed 30 days and, if the objecting party requests, with the SHPO, to resolve the objection. If the objecting party and the BLM resolve the objection within 30 days, the BLM shall proceed in accordance with the terms of that resolution. The BLM should inform SHPO of any objections and the outcome of attempts at resolution within 10 days after period of resolution has expired.

2. If the objection cannot be resolved, and if the objecting party has not requested review by the Council under II.D.3 of this Agreement, the DPO shall refer the objection to the Preservation Board, which will provide the State Director and the objecting party with its recommendations for resolving the objection. If the State Director and the objecting party accept the Preservation Board's recommendations, the State Director shall proceed in accordance with these recommendations to resolve the objection.

3. If either the State Director or the objecting party rejects the Preservation Board's recommendations for resolving the objection, the State Director shall refer the objection to the Council in accordance with Component 4 of the NPA. The 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 Council of that decision. The objection shall thereby be resolved. In reaching a final decision regarding the objection, the State Director shall take into account any comments received from the Board, the objecting party, the SHPO, and the 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.

XV. AMENDMENTS AND TERMINATION OF THE PROTOCOL

A. The BLM or the SHPO may propose amendment of this Protocol at any time, whereupon the parties shall consult to consider such amendment. "Amendment" refers to the process of adding

supplemental procedures or modifying current procedures for specific BLM programs when parties to the Protocol wish those procedures to be made explicit. The amendment process culminates in the issuance of Protocol Amendments, which are administratively appended to the Protocol on their effective date. Amendments to the Protocol will only become effective upon signature of both parties. Protocol Amendments shall be housed in an appropriate and designated part of this Protocol.

B. The BLM or SHPO may terminate this Protocol or any Protocol Amendment. The party proposing termination shall in writing notify the other party of intent to terminate and explain the reasons for proposing termination. Within seven calendar days following receipt of such notification, the parties shall initiate a 90 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.

C. In the event of termination of this Protocol, the BLM shall comply with the provisions of the latest version of 36 CFR 800 for undertakings covered by this Protocol. In the event a Protocol Amendment is terminated, BLM shall comply with the latest version of 36 CFR 800 for the program or practices subsumed under the Protocol Amendment except insofar as SHPO and the BLM in writing agree to subsume such program or practices under this Protocol.

D. This Protocol shall terminate automatically on the fifth anniversary of its execution and have no further force or effect, unless it is extended by written agreement of the parties. Should the Protocol not be extended and should no successor agreement document be in place at the time of automatic termination, BLM shall comply with the latest version of 36 CFR 800, except with regard to those activities addressed in Protocol Amendments which the parties in writing agree shall remain in full force and effect.

XVI. APPENDICES

- A. Report Contents and Scheduling
- B. Special Situations
- C. Categorical Exemptions
- D. Recordation and Evaluation of Historic Linear Resources and Districts
- E. Resource Types Categorically Not Eligible
- F. Categorical No Adverse Effect Situations
- G. Documentation Standards for Historical Resources of Local and State Significance
- H. Avoiding Properties
- I. Architectural Resources
- J. National Programmatic Agreement

XVII. APPROVALS

BUREAU OF LAND MANAGEMENT

[signed by Amy L. Lueders]
State Director, Nevada

February 1, 2012

Date

STATE HISTORIC PRESERVATION OFFICE

[signed by Ronald M. James]
Nevada State Historic Preservation Officer

February 3, 2012

Date

APPENDIX A: REPORT CONTENTS AND SCHEDULING

A. Annual Report Contents

1. State whether Inventory Needs Assessment documentation was prepared per Section I.B.1.b and sent to the SHPO.
2. A list of eligible properties including property type and the criteria under which each is eligible,
 - a. Criteria are defined using the relevant Secretary of the Interior's significance criteria a, b, c and d, per 36 CFR 60.4;
 - b. Acceptable property types include archaeological, architectural, and those of cultural and religious importance.
 - (1) Eligible archaeological resources shall be categorized by prehistoric and historic site types;
 - (2) Eligible architectural resources shall be listed separately;
 - (3) Properties of cultural and religious importance will be listed separately.
3. A list of properties determined ineligible, categorized by historic and prehistoric sites;
 - a. Site types include archaeological, architectural, and properties of cultural and religious importance.
 - (1) Non-eligible archaeological resources shall be categorized by prehistoric and historic site types;
 - (2) Non-eligible architectural resources shall be listed separately;
 - (3) Properties of cultural and religious importance will be listed separately.
4. A list by Field Office of reports not submitted and a schedule for their completion and submission;
5. A list of proactive cultural resources projects and activities (i.e., Section 110 responsibilities), their nature, purpose and general location, and
6. The BLM federal fiscal year Annual Report on Cultural Resources.

B. Annual Report Schedule

The Annual Report for a federal fiscal year shall be due to SHPO on December 31 following the end of that fiscal year.

C. Field Office Visits

1. Each year the BLM and SHPO may conduct joint on-site visits to Field Offices to determine if:

- (a) the Office has access to qualified professional staff;
- (b) undertakings are receiving appropriate cultural resource consideration;
- (c) project documentation is completed and sent to SHPO in a timely manner;
- (d) cultural resources staff are making appropriate accurate professional judgments;
- (e) cultural resource identification, evaluation and treatment has occurred before undertakings proceed; and
- (f) follow-up monitoring, where required by avoidance stipulations, MOA or treatment plan specifications, is being completed.

2. The BLM/SHPO team will prepare a joint report for each field visit, within 60 days of the visit, and submit the report to the State Director.

APPENDIX B: SPECIAL SITUATIONS

A. Emergency Situations

1. Emergency situations are undertakings implemented within 30 days after a disaster or emergency has been formally declared by the appropriate authority, unless that time frame has been modified based on BLM's request to the Council to extend the period.

2. Unless BLM has:

(a) approved procedures in place at the time the emergency situation is declared for taking historic properties into account, based on consultation with SHPO/THPO, affected tribes and the Council, or has

(b) developed a PA to resolve adverse affects from undertakings relating to the emergency situation, then

(c) the BLM shall afford SHPO and/or affected THPO, and any Indian tribes that may attach religious and cultural significance to historic properties likely to be affected, seven days prior notification of the pending undertaking.

3. If BLM determines that circumstances do not permit seven days for comment, the BLM shall notify the Council, the SHPO and/or affected THPO, and any affected Indian tribes and invite comments within the time available.

B. Lands Actions

1. Transfers

a. Transfers to Federal Agencies: Where BLM proposes to transfer or withdraw land to another federal agency that must comply with Section 106 of the NHPA, BLM need not conduct a field inventory of the lands to be transferred. Upon transfer the BLM will provide a copy of pertinent cultural resource data to the agency receiving such land.

Data identified as proprietary by Native Americans will not be transferred to the recipient agency without the written permission of the Native American group identifying the data as proprietary. BLM will notify the agency receiving the lands that there are specific Native American concerns regarding the lands and identify a point of contact for dealing with the concerns.

b. Transfers to Other Entities: Where lands are considered for conveyance to other entities, the BLM will:

(1) review its cultural resource data base to determine if conveyance may affect known cultural resources or areas where undiscovered cultural resources are likely to occur;

(2) discourage selection of lands where such effects are likely, unless BLM determines after compliance with Stipulation V.D., that the conveyance is in the public

interest; and

- (3) comply with this protocol if it decides to proceed with the conveyance.

2. Restrictive Covenants

Restrictive covenants should be used only when bonding for the necessary data recovery or treatment is not appropriate and BLM assumes responsibility for funding and completing the treatment or data recovery. Covenants should not contain an automatic sunset clause, and should remain in effect no longer than is necessary to complete the field portion of the data recovery or treatment.

3. Retention of Significant Resources

The BLM may elect to retain lands identified for disposal when the cost of treatment or data recovery outweighs public benefits which might be gained by the exchange. The BLM may also elect to retain lands when it is not feasible to adequately treat the expected effects on scientific, public, traditional or conservation values.

C. BLM Responsibilities on Non-Federal Lands

1. The intent of the National Historic Preservation Act is to consider the effects of federal decision making on historic properties regardless of the land status involved. Therefore, the BLM will assure that its actions and authorization are considered in terms of their effects on cultural resources located on non-federal as well as federal lands.
2. The determination of the extent of BLM's responsibility for identifying and treating adverse effects to non-federal historic properties is based on the independent evaluation of the following factors:
 - a. Would the project remain viable if the federal authorization were not provided?
 - b. How likely are historic properties in the area of potential impact?
 - c. The degree to which BLM authorizations affect the location of surface disturbing activities on non-Federal lands.
3. The BLM will conduct, or cause to be conducted, an inventory and evaluation of cultural resources on non-federal lands within the area potentially impacted by proposed land uses, whether the undertaking was initiated by BLM, or in response to a land use application.
4. The BLM will consider the effects of its decision-making upon historic properties. It will either treat, or cause to be treated, adverse effects to non-federal historic properties that would result from land uses carried out by or authorized by BLM, or will consult with the SHPO and the Council on the basis of an adverse effect determination.
5. When treatment involves data recovery, adequate time will be allocated for the analysis of the artifacts, samples, and collections recovered from non-federal lands and for report preparation. The

artifacts, samples, and collections recovered from non-federal lands remain the property of the non-federal landowner unless donated to the federal government, a state facility, or are otherwise subject to state law. The BLM must receive complete and true copies of field notes, maps, records of analyses, photographs, other data, and reports for treatment work conducted on behalf of the federal government. Reports resulting from work on non-federal land will be made available to the land owner.

6. Identification and/or treatment of adverse effects may be required as a condition of a lease, permit, or license issued by BLM, whether federal or non-federal lands are involved.

D. Travel Management

1. Introduction: As part of its land use planning process, BLM is required to designate off-highway vehicle (OHV) routes and areas on public lands as open, limited or closed (see 43 CFR 8342 and 43 CFR 8340.0-5). These designations must be included in the Records of Decision for Resource Management Plans (RMPs), Travel Management Plans (TMPs); and any other plans that designate OHV routes or areas.

In some cases, route designations, such as continued use with no change in use, will allow the continuation of a longstanding use of the public lands and will create minimum new impacts to cultural resources. Other designations will benefit cultural resource protection by reducing the proliferation of OHV routes and providing clearer enforcement authority to reduce impacts to public lands. Still others will increase impacts to cultural resources by opening new areas or concentrating previously dispersed use.

Given the nature and anticipated effects of BLM decisions made to designate OHV routes or areas in land use plans and travel management plans, the parties agree that these decisions are undertakings subject to compliance with Section 106 of the NHPA. Section 106 compliance for these undertakings will be handled as follows:

2. Planning: Evaluations of routes or areas to be designated as closed to protect cultural resources should be based on existing inventory information and not postponed until additional information is acquired.

Available cultural resource information must be used to take into account potential impacts on cultural resources when making route or area designations. This includes areas where use is introduced, expanded or intensified through OHV designation. It also includes any changes that result in expansion or deepening of an existing route, or creating a new route.

Each land use plan or travel management plan should include a process for prioritizing route or area inventory and monitoring efforts, and the implementation of treatment measures.

SHPO will be given the opportunity to be a cooperating agency in travel management planning efforts being analyzed by means of an EIS.

3. Area of Potential Effect (APE): The APE should include both the areas in which direct and indirect impacts are likely. If route designation is expected to affect only the area previously impacted along the route, the APE can be limited to the area previously impacted. If route designation would increase the APE by authorizing, or allowing, use outside of the area previously impacted, then the new APE should be inventoried and impacts treated prior to implementing the travel plan. Designated use areas adjacent to existing and future designated routes where various activities, including parking vehicles and camping, are authorized or allowed, should be included in the APE.

4. Inventory: The decision to inventory should be based on the nature of the use authorized by the designations and the likelihood that cultural resources will be affected by the designations. Inventory efforts should focus on proposed route designations that change OHV use or travel patterns in ways that could adversely affect cultural resources. The decision relating to inventory must be documented using the Needs Assessment process.

Route or area closures need not be inventoried to Class III standard unless there is a reasonable expectation that the closure will shift OHV in ways that result in adverse effects on cultural resources. Areas expected to receive additional use that could adversely affect cultural resources should be inventoried to Class III standards.

Class III inventories are not required when designations would allow OHV use to continue on routes that have been effectively open or limited in use. Class III is necessary when the route or right-of-way is expanded in ways that could impact cultural resources

Class III inventories are required prior to designating new routes or new areas not previously open for OHV use.

Class III inventories are not required for routes in areas (1) where there is a low probability of finding cultural resources, or (2) where cultural resources are not likely to be affected by OHV use.

5. SHPO Consultation: If the SHPO elects to become a cooperating agency in the plan, then SHPO consultation will occur during plan developments. If not then SHPO should be consulted prior to initiating a land use or travel management planning effort to ensure that appropriate identification, monitoring, and treatment options are developed and implemented during or after the effort.

6. Coordination with Tribal Governments: The planning team should coordinate with tribal governments prior to initiating a land use or travel management planning effort to ensure that appropriate identification and treatment options are developed and implemented during or after the effort. SHPO will be informed to the tribal heritage resource identification effort and consulted on evaluations and effect determinations as specified in this protocol.

7. Treatment/Monitoring: A cultural resource specialist shall be included in the team for monitoring the effects of OHV use and route or area designation actions. Specific projects undertaken to improve, or rehabilitate, routes or areas are subject to Section 106 review and may require Class III inventory and SHPO consultation.

When monitoring is proposed as mitigation for potential effects from route or area designation, the decision record should make it clear: (1) when the results of monitoring will automatically initiate treatment actions; (2) what actions should be taken; and (3) the conditions under which travel can be resumed. This should obviate the need for further environmental analysis or a plan amendment prior to the emergency closure.

Route or areas in which monitoring reveals adverse effects to cultural resources will be protected through an emergency closure action and remain closed until the effects can be appropriately treated.

8. Plan Modification: A cultural resource specialist should be included on any team working on periodic plan maintenance or on a plan amendment.

Cultural resource monitoring and inventory information, gathered after a plan is approved, maintained, or

amended, shall be used to review and update the route network as necessary in any plan maintenance or plan amendment process.

9. Emergencies: Each travel management plan shall follow the process described in 43 CFR 8342 for closing routes or areas to avoid emergent impacts to cultural resources.

APPENDIX C: CATEGORICAL EXEMPTIONS

1. Reintroducing endemic or native species into their historical habitats in ways that do not involve surface disturbance.
2. Maintaining, replacing or modifying existing projects, facilities, routes, or programs that do not disturb additional surface area, or historic properties; or where the ground has been previously disturbed to the extent that historic properties could not exist; or where the facility itself is not a historic property.
3. Conducting, or approving permits for, non-archaeological data collection and monitoring activities, not associated with proposed undertakings, which involve new surface disturbance less than 1 square meter. Such activities could include forage trend monitoring, stream gauges, weather gauges, research geophysical sensors, photoplots, traffic counters, animal traps, or other similar devices.
4. Classifying lands as to their cultural resource use, mineral character, vehicle use, waterpower and water storage values where the classification itself does not directly entail surface disturbance.
5. Issuing withdrawal continuations, modifications, extensions, terminations, or revocations where there would be no change in use or surface disturbance.
6. Issuing withdrawal terminations, modifications or revocations and classification cancellations and opening orders where the land would be opened to discretionary land laws and where each discretionary action would be subject to the NHPA Section 106 process.
7. Renewing existing rights-of-ways characterized by complete surface disturbance (roads, pipelines, power lines, communication sites, etc.) when no new surface disturbance is authorized.
8. Continuing Recreation and Public Purpose Act lands, small tract lands, or other land disposal classifications where the continuation conveys no additional rights.
9. Assigning land use authorization where the assignment conveys no additional rights and the assignee agrees to abide by any cultural resource stipulations in the original authorization.
10. Issuing permits and rights-of-way where no additional surface disturbance is authorized.
11. Issuing rights-of-way for overhead lines with no pole, tower, or other surface disturbance.
12. BLM easement acquisitions.
13. Installing facilities, such as, recreational, special designation, regulatory, or information signs, visitor registers, kiosks, cattle guards, gates, temporary corrals, or portable sanitation devices in previously disturbed areas outside of known historic properties.
14. Issuing or modifying regulations, orders, standards, notices, and field rules where no new surface disturbance is authorized or is not subject to NHPA review.
15. Decisions and enforcement actions (that do not involve cultural resources) to ensure compliance with laws, regulations, orders, lease stipulations, and all other requirements imposed as conditions of

approval, when the original approval was subject to the NHPA Section 106 process.

16. Approving non-surface disturbing operations pursuant to 43 CFR 3000 to 43 CFR 3299 (Oil & Geothermal).
17. Conducting minerals exploration that conforms to casual use (43 CFR 3802.1-2 and 43 CFR 3809.5(1)).
18. Approval of modifications to, or variances from, activities authorized in an approved mine or exploration plan of operations that do not involve additional surface disturbance or affect cultural resources.
19. Dispersed non-permitted recreation activities, such as rock hounding, that do not involve new surface disturbance.
20. Issuing recreation permits authorizing:
 - a. use on rivers and trails or in other specified areas where use is similar to previous permits for which environmental documents addressing cultural resource concerns have been prepared and which will not affect cultural properties;
 - b. Off Highway Vehicle (OHV) events over courses where Section 106 consultation has already been completed and no changes in the course, spectator areas, pit areas, or other surface disturbing activities is allowed; and
 - c. long-term visitor use that does not involve surface disturbance and does not increase the probability of vandalism of cultural resources.
21. Authorizing OHV events that are limited to previously disturbed or non-historic routes and routes with no historic properties that are highly visible from the course. Previously disturbed and non-historic routes include: developed roads, roads and trails where use has created surface disturbance at least 2 meters wide, roads less than 50 years old, and active washes (washes with recent loose sandy/gravelly/silty in the non-vegetated bottoms of drainage) that are subject to annual water action.
22. Continued use of high explosives, designated target areas within the Training Ranges that have been used historically for this purpose and are highly disturbed, as shown in Appendix K, Figure 1.

APPENDIX D: RECORDING AND EVALUATING HISTORIC LINEAR FEATURES OR DISTRICTS

Many of the most important and prominent cultural resources in Nevada are linear features from the historic period. These include trails, roads, highways, railroads, canals, telegraph lines, fences, and other similar features. Some historic linear features have an excellent documentary record showing when they were created, who was involved in their creation, where they are located, and what has happened to them during their existence. However, problems arise in determining how much to record, how to evaluate, and thresholds of integrity. As a result, a consistent method of providing the information required to record, evaluate, and manage linear features is provided in this appendix.

The evaluation of a linear resource is more challenging than that of a non-linear resource with manageable boundaries. The linear resource may possess varying states of preservation and integrity, and may pass through federal, state, county, and private lands, causing recordation and evaluation to be complex tasks. Surveys of linear resources should attempt to ascertain or reconstruct the nature, extent, and chronology of the resource, and the historical context to which it belongs. Recording linear features is problematical because the full extent of the resource usually extends beyond the APE. It should be agreed upon in advance whether the project should involve the recordation and evaluation of the entire resource or a portion of it. The investigator should prepare a historical context to evaluate the entire linear feature unless BLM and SHPO agree otherwise.

A. Conducting Research for Historic Linear Features or Districts

Pre-field research may indicate the presence of historic linear features. They may be present on GLO plat maps and USGS topographical maps. Secondary sources of history may also provide information about their presence.

When linear features are encountered, the investigator needs to assess whether a linear resource is historic in origin. The following three criteria should be applied to make such a determination:

1. Is the general alignment present on historic maps, such as GLO plats or USGS maps?
2. Does the resource possess artifacts of the period?
3. Does the resource possess physical characteristics similar to other identified linear resources?

Fieldwork must be supplemented by historical research to locate historic photographs, maps, and plans, or engineering drawings of the resource.

To evaluate the feature, the BLM will prepare a historic context using information found in records such as GLO records, State Board of Control/Engineers records, Highway Department records, Army Topographical Corps reports, USGS topographical maps, aerial photographs, and county records. General histories of Nevada and the region should be consulted to determine if the project or the individuals involved are historically significant. Newspapers may be checked to see if the construction event was widely reported at the time or if the feature was considered important in engineering or design, and local histories should be consulted to determine if the event or individuals were considered important by the local population. The investigator should also consult the transportation chapter of the *Nevada Comprehensive Preservation Plan* (1991) and any Certified Local Governments within the APE. References should be cited in the

documentation, whether they yielded pertinent information or not. The results of the records search should be incorporated into the report and onto the *Nevada Cultural Properties Form* to evaluate the linear resource.

B. Documenting Historic Linear Resources

Some specific considerations for documenting linear resources are:

1. Location and Boundaries--on a map (or maps) of appropriate scale indicate the location of the known extent of the resource and identify the portion(s) being documented, as well as any feature associated with the linear resource.

a. Linear resources may intersect and exceed limits of an APE. Unless otherwise specified by the BLM's cultural resource specialist handling the project, recording of linear features exceeding the APE will extend 100 meters beyond the APE boundaries.

2. Description--provide information on the construction techniques, configuration of, and materials used to construct the linear feature. Describe any features and/or artifacts that may be associated with it. Describe in detail each cultural feature associated with the linear resource. Features of a linear resource generally consist of components integral to the functioning of the resource. Feature descriptions should include information about its construction details, dimensions, and any brand names or patent information recorded on machinery. Plans, cross-sections, and elevations of associated features should be included in the engineering documentation section of the report. Examples of features associated with linear resources include:

a. Roads: retaining walls, culverts, borrow pits, road beds and grades, fences, bridges, and tunnels;

b. Ditches/Water Systems: siphons, flumes, spill gates, gate valves, dams, headgates, sluices, canals, pipes, ditch/flume tenders' cabins, and reservoirs;

c. Trails: blazes, cairns, retaining walls, and paving;

d. Railroad Grades: through cuts, sidings, retaining walls, culverts, spurs, signals, switch stations, depot remains, fences, bridges, tunnels, and trestles;

e. Telegraph/Power Lines: poles, access roads.

3. Setting--Describe in detail the natural or physical environment through which the linear resource passes. Such information would include descriptions of natural features, landscape characteristics, slope, vegetation, etc. Provide an estimate of the proportion of the resource that has been destroyed or modified, where possible.

4. Dimensions--describe the dimensions of the entire linear feature or the portion being documented in the following manner:

a. Top Width--measure the linear feature at its highest point. For water systems such as ditches and canals, the top width should be measured at the crest of the berm(s) or wall(s). Record more than one width or range of widths, if appropriate. For example, a single water

delivery system may be composed of a flume, earthen ditch, and concrete canal with different top widths. Clearly identify the elements being measured and the locations where measurements were taken.

b. Bottom Width--provide a width for the base of the feature, or provide a range of widths, as appropriate.

c. Height or Depth--provide the maximum depth or height of the resource, as applicable, or indicate the variation in that dimension along the length of the linear feature, or the segment being documented. Note any changes to this measurement, such as siltation in a ditch.

d. Length--provide the overall length of the linear feature and the segment being documented, if applicable.

C. Evaluating Historic Linear Resources: National Register Criteria and Integrity Issues

Evaluating the significance and National Register eligibility of a linear resource is as problematical as documenting it, because it may be significant under one or more of the four National Register eligibility criteria, and it most likely will display varying states of preservation and integrity. An investigator must identify the criteria under which the linear resource may be eligible for inclusion in the National Register before considering integrity issues. However, integrity, and thereby eligibility may be determined on a segment-by-segment basis.

The National Register defines integrity as the ability of a resource to convey its significance. The evaluation of integrity must always be grounded in an understanding of a resource's physical features and how they relate to its significance. To retain historic integrity a resource will possess at least several of the seven aspects of integrity. These aspects of integrity are: location, design, setting, materials, workmanship, feeling, and association.

Setting is an important factor in demonstrating integrity of a linear resource. The setting must reflect the character of the historic period with minimal intrusive elements. The National Register has been liberal in the evaluation of numerous linear resources in Nevada by determining eligibility on the basis that there has been little change in the landscape since the historic period. For example, a railroad grade may lack ties and tracks, but if little of its historical appearance has changed, it may still be eligible for the National Register under Criterion A. Because of the importance of setting to a linear resource, viewsheds may become a major consideration in determining project effects. However, setting may be less important in evaluating a water conveyance feature because the feature may be most significant for its engineering, and its design and workmanship become most important in determining integrity.

Some linear resources possess structural and/or engineering features (e.g., the Marlette Lake Water System), and some possess none (e.g., the Old Spanish Trail). Therefore, assessing integrity of design and workmanship may have limited applicability, or it may be highly significant. Some considerations regarding design and workmanship might be to determine if the linear feature has distinctive engineering features such as rock retaining walls, trestles, or culvert. If so, determine whether these elements exhibit structural integrity. If the resource retains some degree of its original fabric and workmanship, ascertain if it is sufficient to demonstrate the feature's significance. Significance might then be viewed in terms of distinction as a representative of a type or style. It

would also be important to determine if there are any other associated resources present and in sufficient numbers to convey an understanding of the linear resource.

On-going maintenance and continued use of a linear resource may or may not affect the resource's integrity. Maintenance and use that has been conducted consistent with methods employed when the resource was developed do not compromise the historic integrity of the resource. These resource activities include canals, the use of roads along the canal, and cleaning silt from the canal; for railroads, the in-kind replacement of ties, rails and switching facilities; and for roads, in-kind repairing, grading, and cleaning of roads. Maintenance and use that is not consistent with historic use compromise the integrity of a historic resource. Such actions would include changing headgate or siphon design for canals, lining earthen ditches with concrete, changing the ballast type, rail type, or other structures for railroads, and changing the surface material and grade of roads. Modification of the route of any linear feature may also compromise its integrity.

Feeling and association may be important facets of integrity for trails (Oregon-California Emigrant Trail), but their retention alone is never sufficient to support eligibility of a property for the National Register.

APPENDIX E: RESOURCE TYPES CATEGORICALLY NOT ELIGIBLE

A. Isolate artifact

A single artifact or pieces from a single artifact, i.e., 10 pieces of glass from a single bottle. An isolate artifact is considered single and unassociated when separated by 30 meters or more from any other artifact. For example, two flakes of the same or different raw material separated by 29 meters would be documented as a site. Ten pieces of glass from a single bottle spread across 31 meters would be an isolate. Isolates are not recorded on a site form, but are listed in a table designated by number, description, and location.

B. Isolated or Unassociated feature

A single feature unassociated with other features or artifact scatters that are undateable; e.g. a prospect pit, a claim marker, an audit, or a shaft. An isolated or unassociated feature is considered single and unassociated when separated by 30 meters or more from any other feature or artifact. If these features are elements to a historic district, they are not isolated or unassociated. In addition, if an isolated feature is unique because of its construction (elaborate stonework claim marker) or distinctive qualities, the feature has to be evaluated for eligibility. Isolated features that have potential data (fire hearth) need to be evaluated for eligibility. Isolated or unassociated features need not be recorded on a site form, but are listed in a table designated by number, description, and location.

C. Post-1960 Cultural Resources

Cultural resource sites that post-date 1960 (or contain a majority of artifacts that post-date 1960) are not considered eligible for the purposes of Section 106 compliance unless the site is of exceptional significance as defined in National Register B Bulletin 22, entitled *How to Evaluate and Nominate Potential National Register Properties That Have Achieved Significance Within the Last 50 Years*.

D. Unassociated Historic Artifact Scatters

This site type is categorically not eligible when it cannot be definitively associated with a specific historic theme as defined in the *Nevada Comprehensive Preservation Plan* (1991). One example of this site type is a single episode roadside refuse deposit.

Unassociated artifact scatters will be considered categorically ineligible with the submission of the following information:

1. A minimal level of archival research does not reveal a possible association. The feature or site in question may not be depicted on the following documents:

- a. General Land Office map (provide date);
- b. Land Status map;
- c. Mineral Survey records;
- d. Nevada State Museum records;
- e. State Water Engineer's records;

f. 15 minute Quadrangle (provide date); or

g. Local city and county records.

2. A brief justification for this determination will be included in the eligibility section of the report and will address the following topics:

a. location and type of nearest recorded site; and

b. location of the nearest known town, community, or historical development.

E. Linear Resources

Linear resources in isolation from other linear resources, archeological deposits, and buildings/structures are discussed below in this framework for categorical exemptions. Artifacts directly associated with that linear resource, such as an insulator for a telecommunication line is considered inclusive to that linear resource. If only a segment of the linear resource is present within the project area, and is determined ineligible (non-contributing), the remaining portions of the linear resource are considered unevaluated for the purposes of Section 106 compliance.

1. **Roads/Trails:** If a road or trail is undateable, cannot be historically associated with a historic theme, lacks engineered features associated with the road or trail, and has been bladed, then that segment is considered not eligible under all criteria.

2. **Water Conveyance:** If a water conveyance system is undateable, cannot be historically associated with a historic theme, and lacks engineered features associated with the water conveyance feature, then that segment considered as not eligible under all criteria.

3. **Fences:** If a fence is undateable, lacks unique construction features, is constructed of metal T-posts and barbed wire, then that segment of the fence is considered not eligible under all criteria.

4. **Telecommunication lines (telegraph, telephone, power transmission):** If a telecommunication line is undateable, lacks unique engineered features associated with that segment of the telecommunication line, then that segment is considered not eligible under all criteria.

APPENDIX F: CATEGORICAL NO ADVERSE EFFECT SITUATIONS

A. Single Pass Geophysical Exploration

Single pass geophysical exploration can be a categorically determined to have no adverse effect where:

1. All traffic associated with exploration must follow routes that avoid cultural resources. Company flagging crews will identify and flag anticipated detours on the route, so that potential detours can be inventoried along with the main route.
2. The following may be excluded from cultural inventory requirements:
 - a. vibroseis and conventional truck-mounted shothole drill routes and operations located on constructed roads or well-defined existing roads and trails;
 - b. pedestrian routes and placement sites for hand-carried geophone, cables, or similar equipment;
 - c. cross-country operations of seismic trucks and support vehicles on bare frozen ground or over sufficient snow depth (vehicle traffic does not reveal the ground) so as to prevent surface disturbance;
 - d. one time (single pass) routes of wheeled vehicles under 10,000 lbs GVW;
 - e. above ground seismic blasting (Poulter method);
 - f. helicopter-supported activities, including shothole drilling and above ground seismic blasting (Poulter method) in most areas, that do not require helicopter staging area preparation and vehicle use off of roads and trails; and
 - g. exploration activities defined as casual use in 43 CFR 3150.
3. Other geophysical exploration activities that require blade work or other surface disturbing activities. These activities also involve additional direct and indirect effects for vehicle traffic. Consequently, the following situations will usually necessitate cultural inventory as determined by the Field Manager on a case-by-case basis:
 - a. cross-country vibroseis and conventional truck or OHV mounted shothole drilling operations;
 - b. surface disturbing activities associated with any geophysical technique such as blading access routes or helicopter staging areas, or disc-and-drill seeding for rehabilitation;
 - c. portions of jug truck and OHV routes, —backpack" shothole drilling, helicopter-supported activities including shothole drilling, and above ground seismic blasting (Poulter method) in areas with potential for significant fragile surface or subsurface cultural resources (dune fields, antelope traps, standing structures, etc.).

4. This exemption does not apply to 3D seismic exploration projects or to any other types of multiple pass projects.

B. Hazards Abatement

1. Hazards abatement where cultural resources are not involved.

2. Authorizing or installing devices to protect human or animal life that do not involve new surface disturbance.

3. Abandoned Mine Hazard Abatement. Nevada Department of Minerals (NDOM), in cooperation with the BLM, identifies and abates mine hazards on Public Lands in Nevada. Some of these mine hazards are over 50 years in age. When the BLM and NDOM find it necessary to close or barricade mine workings that present immediate health and safety concerns, the BLM will ensure that the following measures are implemented:

a. Temporary Closures: When a temporary fence is installed to limit public access to the hazard, the BLM will:

(1) prior to installing a temporary fence, ensure inspection of the fence location by cultural resources staff or a DAT, and the fence moved, if necessary, to avoid effects on cultural resources.

(2) inform the SHPO of all temporary closures. This will include for each closure the nature of the hazard, UTM coordinates established using an appropriate global positioning system unit, a map showing the location of the fence in relation to cultural resources, and a brief description of the cultural resources involved.

b. Permanent closure of abandoned mines over 50 years old, identified on a BLM list of proposed closures for a given fiscal year, can be done without prior BLM/SHPO consultation if:

(1) Prior to any ground-disturbing activity, a qualified historical archaeologist:

(a) prepares a resource assessment of the individual mine site(s) targeted for permanent closure. The assessment must record the shafts/adits to be closed and define the historical attributes of these shafts/adits.

(b) records and conducts Class III inventory in areas from which fill will be taken and define and document the cultural attributes of this areas; and

(c) Takes 5 x 7 inch black and white photographs of the shafts/adits before and after closure. The pictures must sufficiently illustrate the construction/engineering features of each shaft/adit, artifact concentrations, as well as an overview depicting its setting within the landscape. Each photograph will be accompanied by a photo point number, a corresponding UTM location, and photo direction; and

(d) by means of a 7.5' USGS topographic map as well as global positioning system to determine and record UTM coordinates, locates and maps each

shaft/adit as well as corners of all inventory areas from which fill removal is proposed; and

(e) produces an archival copy of the resource assessment, photographs, and maps within 60 days of finishing the permanent closure. Each BLM office will provide a report to the Nevada SHPO on the basis of the federal fiscal year.

(f) A “qualified historical archaeologist” is defined as someone who meets qualifications for inclusion on a Nevada BLM cultural resources use permit in the capacity of Principal Investigator or Crew Chief as a historic period archaeologist.

(2) During closure, either a qualified historical archaeologist or an appropriately trained DAT will:

(a) monitor placement of fill into each shaft/adit to ensure that significant historical archaeological features are not damaged by the activities;

(b) take 5 x 7 inch black and white photographs of the shafts/adits after closure and of any fill/borrow areas after removal or use, including overviews depicting setting within the landscape;

(c) file a final monitoring report with the BLM and SHPO that outlines field procedures employed to ensure compliance with this item;

(d) ensure that fill is taken only from areas previously inventoried by a qualified archaeologist and is not part of another archaeological/ historic site;

(e) ensure that the landscape is restored to the no adverse effect standard defined in Section IV.B. 3. within the historic landscape; and

(f) files a final monitoring report with BLM and SHPO that outlines field procedures employed to ensure compliance with this item.

(g) Appropriately trained DATs are those persons who have successfully completed a regimen of instruction provided by Nevada BLM in the identification of archaeological remains (particularly those of the historic period), map reading, site record interpretation, photography, and use of GPS locating devices.

C. Trespass Abatement

Removing non-significant structures, machines, or materials that are less than 45 years old, such as, abandoned vehicles, trash dumps, trespass buildings, ranches, and mines, and other similar items.

The site from which these materials are removed may be reclaimed, without additional SHPO consultation, as long as the reclamation does not expand previous surface disturbance.

D. Fences

1. Exclosure Fences

a. Exclosure fences can be categorically determined to have no adverse effect where cultural resources within the proposed exclosure have been sufficiently inventoried and evaluated so that the fence will not divide an historic property and place a portion of it outside of the fence and there will be no historic properties within 10 meters of the fence. An exception is possible where the fence can run through a historic property by following the edge of an existing road that is on the outside of the exclosure, and the fence is kept on the edge of the road disturbance;

b. the fence is placed so that it does not call attention to historic properties;

c. the fence is constructed with methods that minimize surface disturbance; and

d. there will be no livestock grazing within the exclosure.

2. Other Fences

Other fences can be categorically determined to have no adverse effect where:

a. it is possible to run the fence through a historic property by following an existing road, or similar surface disturbance, and the fence, and associated trailing is kept within the road disturbance;

b. the fence and associated trailing can be placed so that it avoids all cultural resources in the manner specified in Appendix H.

E. Spring Development Pipelines

Spring development pipelines can be placed across historic properties within previously disturbed areas and categorically determined to have no adverse effect if:

1. the pipeline is either installed on or above the surface or placed below the surface by excavating a trench with hand tools or a mechanical trenching device (e.g., Ditchwitch™) that is no more than 8" wide and 18" deep;

2. the spring itself is not a cultural resource and therefore the spring development, separate from the pipeline, will not affect an historic property;

3. the pipeline impacts no more than 5% of the surface exposure of the site and is located by an archaeologist in an area of low artifact density with no features;

4. an archaeologist monitors the trenching and sample fill from the trench to detect subsurface cultural deposits and the project will be halted if the archaeologist determines that the installation is having unexpected effects; and

5. the trench will be backfilled using hand tools.

F. Sale of Subsurface Mineral Estate

The BLM can convey the subsurface mineral estate to the surface owner, without field inventory and SHPO consultation, if it finds that the parcel has no potential for containing mineral deposits. The SHPO will be notified of the transfer and sent an informational map showing the lands affected and a list of any known cultural resources within the transfer area.

G. Rejuvenating Existing Seedings

Undertakings to rejuvenate existing seedings can be considered as categorically having no adverse effect if:

1. the original seeding was plowed;
 2. the proposed rejuvenation does not extend beyond the boundaries of the original seeding;
- and
3. rejuvenation activities will not impact more than the top 10 cm of the plowed surface.

H. Roads and Trails

1. New undertakings that involve road construction, reconstruction, and improvement projects that may affect cultural resources will be considered using the procedures in this Protocol.

2. If an historic property is traversed by facilities or improvements created within the last 50 years, these existing facilities or improvements may be used for a project so long as their use is consistent with the function for which they were created and that use does not further affect cultural resources (e.g., the use of existing access roads that use or traverse linear sites such as railroad grades). Such continued use shall be considered to have no effect on historic properties.

3. Continued use or reuse of a road or trail will not affect a property and no case-by case consultation with the SHPO is necessary under the following circumstances:

- a. when a physical barrier along the traveled way (fences, boulder barriers, existing pavement) prevents further damage to cultural resources;
- b. where the roadway or railway was cut through or is situated below a property (e.g., archaeological deposit) through which it passes. The absence of a property (e.g., cultural deposit) may be documented by field work in the form of surface observations and/or subsurface test excavation. These excavations may include shovel test, excavation units, or auger bores.

I. Fire Management

1. Wildland Fire Management. As defined by the National Wildland Coordinating Group, a wildland fire is any non-structure fire that occurs in the wildland. Wildland fires are categorized as either (1) wildfires or (2) prescribed fires.

a. Wildfires are unplanned ignitions or prescribed fires that are declared wildfires. A wildland fire may be concurrently managed for one or more objectives (or uses) and objectives can change as the fire spreads across the landscape. Objectives are affected by changes in fuels, weather, topography; varying social understanding and tolerance; and involvement of other governmental jurisdictions having different missions and objectives.

(1) Wildland fire will be used to protect, maintain, and enhance resources and, as nearly as possible, be allowed to function in its natural ecological role. Use of fire will be based on Land Use and Resource Management Plan and associated Fire Management Plans and will follow specific prescriptions contained in operational plans.

b. Prescribed Fire is any fire ignited by management actions to meet specific objectives. A written, approved prescribed fire plan must exist, and NEPA requirements (where applicable) must be met, prior to ignition.

2. Wildland Fires: Wildfires will be suppressed in accordance with Guidance for Implementation of Federal Wildland Fire Management Policy February 2009 replacing the Federal Wildland Fire Management Policy (June 2003). In these emergency situations there is no need to consult with the SHPO prior to suppressing the fire. Fire rehabilitation will be done in accordance with Appendix F, Section J.

Response to wildland fires will be based on ecological, social and legal consequences of the fire. The circumstances in which a fire occurs, and the likely consequences on firefighter and public safety and welfare, natural and cultural resources, and values to be protected, dictate the appropriate response to the fire.

a. Use of Fire. Use of fire refers to the management of wildland fire for one or more objectives (or ~~uses~~), including to allow fire to function in its natural ecological role. The decision support process for protection of cultural resources during use of wildland fire may be accomplished without prior SHPO consultation when a manager implements a decision support process to guide and document wildfire management decisions which meets the following conditions. The process will also provide situational assessment, analyze hazards and risk, define implementation actions, and document decisions and rationale for those decisions.

(1) A Cultural Resource Specialist with concurrence by the appropriate BLM Manager determines that there is a low probability of discovering vulnerable archaeological sites within the proposed fire area; and

(2) There is written documentation that the area has burned within the last 50 years at a sufficient intensity so that there is a low probability that vulnerable resources in the use area could have survived the fire; or

(3) The use area has been previously inventoried and no historic properties were identified; or

(4) The use area will be managed within prescription limits outlined in a fire management plan (FMP) that has been reviewed by SHPO.

b. If archaeological sites or historic properties are found within the fire areas, these resources or areas will be protected to ensure that fire temperatures do not exceed 600 degrees (F) in the vicinity of the historic property by means such as hand-constructed fire lines, foam wetting agents, or fire shelter fabric outlined in the approved FMP.

3. Prescribed Fires (Rx): The BLM agrees that prescribed burns have the potential to affect historic properties. Properties at high risk from prescribed burns include, but are not limited to historic buildings, structures and artifacts, prehistoric and ethnohistoric wooden structures (houses, wing traps, ramadas), ethnohistoric pinion processing equipment, rock art, and sites, such as rock shelters and habitation areas, with flammable organic deposits. Prescribed Fire Plans will be developed in accordance with the Interagency Prescribed Fire Planning and Implementation Procedures Reference Guide and BLM Supplement in order to allow for SHPO consultation as defined in this Protocol. Prescribed Fire Areas may be ignited by BLM without SHPO consultation if:

a. A Cultural Resource Specialist with concurrence by the appropriate Field Manager determines that there is a low probability of discovering vulnerable archaeological sites within the proposed fire area; and

b. There is written documentation that the proposed fire area has burned within the last 50 years at a sufficient intensity so that there is a low probability that vulnerable resources could have survived the fire; or

c. The proposed prescribed fire area has been previously inventoried and no historic properties were identified; or

d. The proposed prescribed fire area will be managed within the prescription limits (that protect historic properties from fire areas by hand-constructed fire lines, foam wetting agents, or fire shelter fabric) outlined in the approved prescribed fire plan that has been reviewed by the SHPO.

4. Avoidance Measures: Identified cultural resources that may incur damage from fire shall be excluded from Rx fire areas and protected by appropriate means to ensure that fire temperatures do not exceed 600 degrees (F) in the vicinity of the historic property. Avoidance measures may include, but may not be limited to hand-constructed fire lines, foam wetting agents, or fire shelter fabric. New fire line construction routes (e.g., dozer lines) shall be surveyed and fire lines reconfigured to avoid historic properties.

5. Tribal Consultation: Native American consultation, as appropriate, should be completed at the Resource Management Plan level as well as at the Fire Management Plan level to identify concerns regarding the burning of resources or resource areas of religious or cultural importance.

J. Fire Stabilization/Rehabilitation

1. Any fire stabilization/rehabilitation activities (such as aerial seeding, most hand planting, temporary fences on steep slopes, and etc.) that do not involve mechanized surface disturbance, will not be inventoried or treated for Section 106 purposes. Rehabilitation activities involving more than 10 cm depth of mechanized surface disturbance will be handled to Class III standard. When determined appropriate in the Inventory Needs assessment process giving consideration to factors such as the number and types of expected cultural resources properties and their sensitivity, proposed

rehabilitation methods and anticipated impacts, rehabilitation activities such as rangeland drilling involving no more than 10 cm depth of mechanical surface disturbance will be handled with the procedures specified here.

2. Prior to initiating survey, the BLM will complete a records and literature search, as specified in the BLM General Guidelines, to identify known resources and areas with a high probability of containing resources in primary context.

3. When determined appropriate in the Inventory Needs assessment process, fire stabilization/rehabilitation activities that involve mechanized surface disturbance less than 10 cm depth will have the Area of Potential Effect surveyed based on the records search to identify areas that are likely to contain archaeological resources in primary context. In general, 100 meter transect surveys, with deviations to inspect high probability areas will be used. The BLM and the SHPO can agree, through informal discussions, to other survey approaches appropriate to individual rehabilitation undertakings.

4. All archaeological resources discovered or relocated, will be plotted on maps and recorded on the BLM Nevada IMACS short form. Resources, except those previously determined not eligible, by BLM and the SHPO, or that have been previously treated, will be flagged for avoidance and avoided during rehabilitation activities.

5. Flagging will be placed to minimize the potential for looting and vandalism and removed as soon as possible after re-seeding is completed. Sites will be hand seeded for camouflage as appropriate.

6. All areas inventoried in this manner will not be considered to have been inventoried for any other purposes and any subsequent undertakings in these areas will be inventoried to Class III standards.

7. The BLM will not consult with the SHPO prior to authorizing fire stabilization/rehabilitation activities conducted under these provisions. The BLM will provide the SHPO with an informational copy of a map showing the APE, area surveyed, and an informational copy of the short form(s) for any archaeological resources within it.

K. Grazing Management: The BLM recognizes the potential for grazing to affect historic properties through: (1) the concentration of livestock on cultural resources; (2) construction and maintenance of grazing facilities; and (3) other grazing operations in the immediate vicinity of historic properties. Therefore, grazing shall be administered as follows:

1. Issuing Grazing Permits:

a. as a permit comes up for renewal, the range staff and the cultural staff will discuss the potential impacts to cultural resources from grazing. Using archaeological site maps and use pattern maps, areas of high grazing use and known concentrations of cultural resources, or areas of high potential for significant resources, will be identified;

b. when there are known grazing conflicts with cultural resources, these will be mitigated or eliminated by amending grazing practices authorized in the permit;

c. when there is a high probability of grazing conflicts, the range and cultural staff should visit the area to see if there are, in fact, ongoing impacts from the grazing practices authorized in the permit. If there are, the permit will be amended to eliminate or mitigate these impacts;

d. the permittee and BLM staff will be made aware that the standard stipulations in the permit give BLM the ability to expeditiously mitigate or eliminate impacts to cultural resources discovered after the permit is approved;

e. prior to the start of each fiscal year, each Field Office will prepare a general letter to Tribes informing them of plans and schedules for permit renewals in the upcoming fiscal year and inviting them to share their concerns, if any, with issuing or renewing the grazing permit identified in the letter. There is no need to consult with tribes on each renewal, but only on renewals in areas where they express an interest or that you know that they have an interest;

f. if the permit application is being considered as a Determination of NEPA Adequacy (DNA) under NEPA, and the process above is followed, there is no need to consult with the SHPO before renewing each permit. The SHPO will be provided with an information copy of the memorandum to the permit file documenting the analysis used in authorizing the permit; a map showing known resource conflict areas; and a description of the measures used to mitigate impacts;

g. if the permit application is being considered in an EA or EIS, it will be analyzed through the standard Section 106 and Native American consultation processes outlined in this Protocol.

2. Range Improvements and Projects: After a permit has been issued or renewed, range improvements, surface disturbing projects, and changes in grazing practices (that will concentrate grazing and could create impacts) will be approved through the standard Section 106 and Native American consultation processes outlined in this Protocol.

L. Mechanical, Chemical and Manual Vegetation Fuels Management Activities

1. Project Planning

a. Fuels management projects include methods for mechanical, chemical, or manual vegetation manipulation that have the potential to adversely affect historic properties. Fire management activities involving wildland fire use or prescribed fires are addressed in the SPA, Appendix F.I and are not considered further here.

b. Mechanical, chemical, and manual vegetation fuels management proposals shall conform to approve Fire Management Plans which are subject to concurrence with the SHPO, per section X of the SPA.

c. A qualified Cultural Resources Specialist (CRS) will assist the Field Manager to establish the Area of Potential Effects (APE) for a fuels management project. The APE will include all areas where a proposed treatment may be purposefully or inadvertently applied and any buffer zones included in the project plan. The CRS is responsible for completing a cultural resources

Needs Assessment form as part of project planning and having it approved prior to project implementation.

2. Definitions

a. High sensitivity cultural resources are those for which the proposed fuels management project, if implemented, could result in loss of, or damage to, those qualities that may qualify the site for listing on the National Register of Historic Places (NRHP). Cultural resource specialists will determine this sensitivity.

(1) Resources listed on or eligible for the NRHP (also known as ~~historic properties~~) as well as known but unevaluated resources will be treated as if they are high sensitivity properties.

(2) Properties with high sensitivity to mechanical or manual treatments have surface or near-surface features or areas with patterns of distribution or relationships that may contain information important to understanding history or prehistory. Examples include, but are not necessarily limited to hearths; rock rings; a complex of ground stone implements; areas of discrete, single episode flaked stone reduction; remnants of historic structures or structural complexes; historic debris concentrations, rare or unusual features such as game drive traps.

(3) Examples of properties with high sensitivity to chemical treatments include, but are not necessarily limited to, those where chemical applications may:

(a) Alter the integrity or appearance of artifact assemblages, buildings or features in such a manner as to diminish or eliminate the potential for interpretation or alter those qualities that may qualify the site for listing on the NRHP; or

(b) Affect the utility of samples or artifacts for analysis, such as the contamination or alteration of radiocarbon samples through use of chemical treatments.

3. Inventory Requirements

a. Inventory requirements for mechanical, chemical and manual vegetation or fuels management activities will be determined in the Inventory Needs assessment process found at Section V.A.

b. Areas known or expected to contain high sensitivity resources should be subject to Class III inventory.

c. When deemed appropriate in the needs assessment process, areas of a fuels management APE involving no mechanized surface disturbance (such as through aerial seeding, hand clearing up to 10 cm in depth, installing temporary fences on steep slopes, non-organic chemical treatments, etc.) and that are expected to have no effect on high sensitivity resources need not be inventoried. High sensitivity sites will be avoided or effects treated prior to initiating the proposed action. As determined during the needs assessment analysis, staging areas, access routes, and other support facilities will be inventoried to Class III standards and

redesigned to avoid impacts, unless alternative strategies are developed per section 6a.

(1) When deemed appropriate in the needs assessment process, the area of a non-mechanized “top and scatter” hand-thinning project will be considered a non-ground disturbing activity provided no activity results in disturbance over 10 cm below surface.

(2) If removed or displaced fuels are to be burned, staging and burn areas will be inventoried to Class III standards for a distance of 30 meters beyond the exterior margins of the proposed burn area, unless established otherwise through the needs assessment analysis or unless alternative strategies are developed per Appendix F.L.6.

d. Those portions of a fuels management APE involving more than 10 cm depth of surface disturbance will be inventoried to Class III standards and effects appropriately treated, unless alternative strategies are developed.

e. When deemed appropriate in the needs assessment process, fuels management activities involving less than 10 cm depth of mechanized surface disturbance, and for which the surface will not be removed, will be handled with the procedures specified here.

(1) The APE will be examined to re-locate known historic properties and unevaluated sites and to examine areas likely to contain high sensitivity cultural resources. In general, field examinations could be accomplished using 100 meter transect separation, with deviations accomplished through reconnaissance inventory to re-locate known resources or to inspect high probability areas. An APE with ground cover restricting visibility may require closer intervals as determined by the CRS.

(2) All archaeological resources discovered or re-located by means other than Class III inventory will be plotted on 7.5-minute US Geological Survey topographic maps and recorded on the BLM Nevada IMACS short form, unless alternative strategies are developed per section 6a of this amendment. Class III inventory site documentation and reporting will be as per the SPA.

(3) Site boundaries will be determined in all cases. In instances where surface fuel density precludes adequate surface visibility, a minimum buffer of 50-meters will be established beyond the known site perimeter where avoidance is proposed during project implementation.

(4) Class III inventory along margins of historic roads or trails (i.e., those known or likely to be more than 50 years old) generally will be done for 100 meters on each side of the physical traces of the road or trail identified in the field and within the project area.

4. Treatment

a. Appropriate steps for avoidance or treatment of effects to historic properties shall be implemented prior to initiating the undertaking.

b. Resources for which eligibility determinations are deferred shall be treated as if

they are historic properties.

c. High sensitivity resources will be flagged and avoided during management activities, except for those previously determined not eligible, by BLM and the SHPO, or that have been previously treated in relation to those qualities that would be affected by the proposed fuels management project.

(1) Standard avoidance measures found in Appendix F.L.6 will apply.

(2) Where vegetation removal or reduction may pose a threat to site integrity through post-treatment effects such as erosion or vandalism, sites will be hand-seeded or otherwise treated (e.g., camouflage, mitigation) as appropriate.

5. Special Considerations

a. Rejuvenation of Existing Seeded Areas. When deemed appropriate in the needs assessment process, the APE for a project to rejuvenate an existing seeding need not be inventoried if:

(1) The project is done with the same methods as the original seeding; and

(2) The project APE does not extend beyond the boundaries of the original seeding; and

(3) Rejuvenation activities will not impact more than the top 10 cm of the plowed surface; and

(4) Known historic properties and unevaluated sites will be avoided; and staging areas, access routes, and other support facilities will be inventoried to Class III standards and redesigned to avoid impacts, based on determinations in the needs assessment analysis. The use of vegetation mosaics to camouflage cultural resources should be considered.

Or,

(5) Past seeding projects may have resulted in disturbance to depths exceeding 10 cm below surface. If the needs assessment analysis indicates that this prior disturbance precludes affecting known or potential historic properties using methods proposed for a mechanical, chemical or manual fuels management project, no cultural resources inventory is required, per the SPA, Appendix C.

6. Avoidance Measures

a. Avoidance measures may include retention of existing vegetation as buffer zones to ensure adequate avoidance or to obscure the exact location of a sensitive cultural resource.

b. The design of vegetation mosaics may incorporate cultural resource areas but should not be limited to them, in order to avoid creation of inadvertent signals for the presence of sites that could lead to vandalism. Vegetation mosaics should include buffer zones extending

beyond actual site boundaries.

c. Temporary markers used to identify outer boundaries of avoidance areas shall be distinctive from other project markers to minimize the potential for confusion and inadvertent damage to sites. Markers around cultural resources or their buffer zones must be removed after completion of the project or project phase. The use of monitors (e.g., Project Inspector) to ensure successful resource avoidance is recommended.

7. Compliance

a. The BLM and the SHPO can agree, through informal discussions or formal consultations, to other inventory and treatments appropriate to individual fuels management projects.

b. The BLM need not consult with the SHPO prior to authorizing fuels management activities conducted under these provisions, except as noted. Nothing alters the BLM's agreement to request SHPO review for undertakings meeting threshold criteria expressed in the SPA, IIA-B.

c. For field reconnaissance conducted at less than Class III intensity, the BLM will provide the SHPO with project documentation consisting of (a) a copy of the approved Needs Assessment form, (b) a map showing the APE, area surveyed and survey method (e.g., reconnaissance, Class II), and (c) an informational copy of the short form(s) for any archaeological resources within it. Reporting requirements for all Class III inventory efforts remain as per the SPA.

(1) The site record for any NRHP-eligible (historic property) or unevaluated site that is not avoided by the proposed action shall include a specific statement of sensitivity and rationale for why no adverse effect will occur, unless this information appears in the Needs Assessment form.

d. Inventory accomplished at less than Class III intensity will not suffice for purposes of Section 106 compliance under other non-fuels management circumstances unless the inventory strategy was implemented based on project-specific consultation with the SHPO.

M. Fire Suppression Activity Damage

BLM policy requires that fire suppression activity damage repair actions be planned and performed primarily by the suppression incident organization as soon as possible prior to demobilization and that Fire Damage Assessment Reports be prepared. Fire suppression activity damage repair actions are documented by the fire suppression incident management team when possible, including both accomplished actions and those still needed to ensure that all planned actions are completed. In some cases, actions may be conducted by other units following containment of the wildland fire and demobilization of the incident management team.

Fire suppression activity damage repair must consider the extent and nature of ground-disturbing suppression-related activities including (but not limited to) dozer lines, temporary fire camps, and actions such as dozer line rehabilitation. Providing accurate locations to the cultural resource specialist, including GIS shape files derived from GPS mapping, may enhance the efficiency and

accuracy of determinations of the need for inventory. Where possible, cultural resources inventory should precede rehabilitation efforts in order to avoid the possibility of increased damage to sites. Accomplishment of any necessary cultural resources inventory should not delay implementation of rehabilitation actions by incident equipment where such equipment must be removed for emergency actions.

For cultural resources, determinations of the need for and extent of inventory are made by a qualified cultural resource specialist and are documented using the needs assessment process in Section II.A of this agreement, based on known or expected site densities, modeling, sensitive areas, historical documentation, reconnaissance or observation during or after the fire, etc. To be implemented, this needs assessment form must be approved by the appropriate official of the incident management team, field office or agency.

Charges for cultural resources inventory and related activities are funded by the appropriate fire suppression account (fire number) but may not be charged to the Emergency Stabilization or Rehabilitation subactivity accounts.

Reporting requirements for such inventories will follow the Statewide Protocol Agreement with the Nevada State Historic Preservation Office. Results of inventory will be summarized for inclusion in a separate confidential appendix to the Fire Damage Assessment Report.

Measures necessary to evaluate sites affected by suppression-related activities for eligibility to the National Register of Historic Places, or to treat effects from suppression-related activities will be discussed in consultation with SHPO, per terms of this Protocol.

Measures necessary to evaluate sites affected by suppression-related activities for eligibility to the National Register of Historic Places, or to treat effects from suppression-related activities, are charged to the appropriate fire suppression account. These procedures and accounting practices for suppression-related effects to cultural resources apply equally to Federal and non-Federal property.

In instances where qualified persons accompanied mechanized equipment during fire suppression for the purpose of avoiding cultural resource damage, the reporting information includes identification of personnel and any results (such as descriptions and locations of sites avoided). Location maps of disturbance and avoidance areas should be provided as part of the report.

**APPENDIX G:
DOCUMENTATION STANDARDS FOR HISTORICAL RESOURCES OF
LOCAL AND STATE SIGNIFICANCE**

This appendix deals with treatment of historic, not prehistoric, resources and provides standards for historic resources eligible for inclusion in the National Register at a state or local level of significance, not at a national level of significance. Should the BLM propose to affect historic resources significant at the state or local level, the agency may propose treatment to mitigate the effect. In the past, BLM not only consulted with the SHPO but sought advice from the National Park Service (NPS) on the kinds of treatment that would be required. NPS no longer requires HABS/HAER documentation on properties of local or state significance, instead, requesting that SHPOs create their own state standards. Seeking advice from NPS is now unnecessary unless the resource is of national significance.

To assist in preparing a treatment plan and in estimating costs, this appendix provides standards for treatment of historic resources as agreed upon by the BLM and the SHPO.

A. Levels of Significance

Within the framework of the National Register, the level of significance is defined as the geographic magnitude or scope of a property's historical significance and can be national, state, or local. Local significance is defined as the importance of a property to the history of its community, such as a town, city, or county. Likewise, state significance refers to the importance of a resource to the history of the state in which it is located. The following documentation standards are specific to historic resources eligible to the National Register at the local or state level of significance.

B. Resource Categories

For the purposes of this document, a historic resource is defined as a historic district, building, site, structure, or object; specifically, any such resource that is listed or eligible for listing in the National Register of Historic Places. The following is a partial listing of historic resource types that might be subjected to the level of documentation described herein:

1. District--a geographically-definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development; may also comprise individual elements separated geographically but linked by association or history. Examples of historic districts are mining sites with multiple resources, including buildings and equipment; farms and ranches; and various linear resources, such as water systems and railroads.

2. Building--a structure enclosing a space and providing protection from the elements and that shelters some form of human activity; typically includes walls, a roof, and other components. Commercial buildings may include banks, breweries, casinos, factories, foundries, garages, hangers, laundries, mortuaries, office buildings, railroad stations, blacksmith's shops, stores, theaters, and warehouses; residential types may be single family dwellings, duplexes, apartment buildings, barracks, dormitories, hotels, bunkhouses, quarters, shacks, and shanties; institutional buildings may be academies, amphitheaters, armories, arsenals, asylums, aviaries, Capitols and other governmental buildings, churches, courthouses, fortifications, hospitals, jails, libraries, museums, post offices, and schools; agricultural and rural buildings may be barns, blinds, cellars, kennels, pole structures, Quonset huts, sheds, stables, smokehouses, and storehouses.

3. Site--location of a significant event, a historic occupation or activity, or building or structure, whether standing, ruined, or vanished, where the location itself possesses significance independent of the value of any existing structure at the location. Examples of such a resource include a battlefield, a farm, or a ranch.

4. Structure--any kind of human construction; often used to refer to an engineering work, as opposed to a building, constructed for purposes other than to provide shelter. Examples of structures include aqueducts, blast furnaces, bridges, cisterns, canals, dams, fences, fortifications, flumes, railroad turntables, reservoirs, root cellars, silos, snow sheds, spring houses, stamp mills and other mining equipment, water tanks, viaducts, wellheads, and windmills.

5. Object--a material thing of functional, aesthetic, cultural, historical, or scientific value; typically primarily artistic in nature or relatively small in scale and simply constructed; may be, by nature or design, movable yet related to a specific setting or environment. Examples include airplanes, boats, boundary markers, head stones, mile posts, monuments, railroad engines, sculptures, statuary, or steam engines.

6. Linear Features--are long, narrow works of human construction, which may be classified by the National Register as structures, districts, or sites. Examples of linear features include canals, ditches, fences, flumes, roads and trails, railroad tracks or roadbeds, walls, or water systems.

7. Properties Suffering Loss of Integrity--where there is an impaired authenticity of a property's historic identity. Examples of properties that have lost integrity, but nevertheless warrant documentation include structures moved, reconstructed, or altered; portions of linear features of which other portions remain intact; minor elements of a complex, unless architecturally distinctive; ruins, collapsed structures, or shells of structures, which may be eligible for the National Register because of their historical importance or associations, but that have little structural/architectural interest and/or integrity.

C. Documentation Standards

The following documentation standards apply to the classes of historical properties defined above. In order to satisfy the documentation requirements for historic properties eligible for the National Register at the local or state level of significance, a report detailing the historical context and significance of the property, and architectural and engineering documentation, including plans and photographs of the property, must be submitted. The requirements for these elements are as follows:

Historical Documentation--is a detailed record of the historical context and significance of a property presented in a report format. Historical documentation will employ appropriate methodology to obtain the desired information. Methods and techniques of historical research should be chosen to obtain needed information in the most efficient manner. Sources will be recorded so that other researchers can verify or locate information discovered during research. Historical research to create documentation uses secondary source materials, archival materials, and primary sources, such as personal records, deed and title books, newspapers, plats, maps, atlases, photographs, vital records, censuses, historical narratives, and interviews with individuals. The historical documentation section should include the following elements:

1. Title Page--should include the title of the report, including the nature and location of the project, the author of the report, the sponsoring institution, association or agency, and the date the

report was prepared.

2. Table of Contents--should list report chapters and all subdivisions, including study unit sections. Pagination must be shown in the table of contents.

3. Introduction--should summarize the purpose of the documentation, the eligibility criteria used to evaluate the resource, the level of significance the resource possesses, the reason for the treatment (i.e., impending threat to the resource), objectives for conducting the historical documentation, the scope of the project, and the agencies involved. A map showing the location of the project must be included.

4. Documentation Methodology--should include an explanation of the procedures used to execute the documentation, including the name of the researcher, date of the research, sources searched, and limitations of the project.

5. Historical Narrative--should provide a full description of the resource(s), a historical context against which significance is assessed, and a comprehensive history of the resource. The following elements should be included in this section:

a. Historical Context--including early settlement, historical overview, and physical development of the project area. The historical context should be guided by the thematic study units identified in the *Nevada Comprehensive Preservation Plan* (1991).

b. Designers, Engineers, and Builders--including biographical information on architects, landscape architects, engineers, builders and contractors, and other designers who practiced in the project area.

c. Notable People--including biographical information on major figures in the community's history and in the history of the resource being documented.

6. Bibliography--references to secondary sources should indicate author, title, and date of publication. Primary sources should be identified by name, collection identifier, and location. Interviews should be noted including the date and location of the interview, names of both parties.

Architectural and Engineering Documentation--the historic significance of the building, site, structure, or object will be conveyed through drawings, photographs, and other materials that comprise documentation. The appropriate level of documentation for properties eligible for the National Register at a local, regional, or state level of significance must include:

1. Photographs with 35mm black-and-white negatives of exterior and interior views of the resource. The exterior should be documented by at least 6 views including a) the front and one side; b) the rear and one side; c) the front elevation; d) environmental view showing the building as part of its larger landscape; e) major elements of the building, including doors, windows, additions, etc.; and f) details, such as materials and hardware. Interior photographs should yield information about the floor plan. Three or four views should be sufficient to document the significant elements of the interior, unless the resource is large or complex;

2. Reproductions of historic photographs, if available. Provide negatives and 4-x-6 black-

and-white photographs with submission;

3. Photocopies of existing drawings or plans (including scale), if available. If permission is required to reproduce historic photographs, plans, maps, or other materials, it is the responsibility of the researcher to obtain proper authorizations. Copies of permission forms must be submitted with the report.

4. Drawings, site plan, and sketch plan. The site plan must include the resource's orientation in its natural landscape and include the scale and a north arrow. The sketch plan will show the layout and floor plan of the resource, including all associated features. The sketch plan need not be a "measured drawing," but an approximate scale should be included.

5. All photographs, photocopies, and drawings will be labeled on the back in pencil identifying the name of the property, the date rendered, the name of the photographer or renderer, orientation of the photograph or drawing. Photographs should not be pasted, glued, or otherwise adhered to the pages of the report. Please place them in properly-labeled archival jackets.

D. Submission Requirements

The documentation submission must include two copies sent to the State Historic Preservation Office (SHPO). Three copies will be required if the resource is located within the boundaries of a Certified Local Government (CLG), i.e., City of Reno, Carson City Historic District, City of Las Vegas, or the Comstock Historic District. The SHPO will distribute the copies to the appropriate repository (see below) and CLG. The repository's copy must include:

1. The narrative report of the resource's historical context and significance;
2. one full set of negatives;
3. one full set of black-and-white, 4-x-6 photographs in archival jackets; and
4. one copy each of drawings, plans, site plans, sketch plans, etc.

The SHPO's and CLG's copies must include all of the above except the negatives, which will be retained by the repository.

Upon receipt, the SHPO will review the documentation for completeness within 30 days. The SHPO will send its comments to the preparer for action, if needed. Any required changes should be submitted to the SHPO in duplicate (or triplicate, in the case of a CLG). The SHPO will insert the changed sections and forward the final documents to the appropriate repository.

E. Records Storage--Repositories

One copy of each treatment report will be added to the State's architectural resources inventory and will be available for public inspection at SHPO, 100 N. Stewart Street, Carson City, NV 89701, subject to BLM's prior determination whether to withhold information from the public about the location, character, or ownership.

One copy, which will include the original negatives, will be sent to one of the following repositories,

depending on the location of the resource being documented subject to BLM's determination whether to withhold information from the public about the location, character, or ownership. The following five repositories will receive one copy of treatment documentation:

1. The Nevada Historical Society, Reno
2. The Nevada State Museum and Historical Society, Las Vegas
3. The Northeastern Nevada Historical Society, Elko
4. The North Central Nevada Historical Society, Winnemucca
5. The Central Nevada Historical Society, Tonopah

There are four Certified Local Governments (CLGs) in the State of Nevada, which will receive one copy of the treatment documentation for any resources within their boundaries. The four CLGs are represented by the following organizations:

1. The Historical Resources Commission, City of Reno
2. The Historical Architecture Review Commission, Carson City Historic District
3. The Las Vegas Historical Commission, City of Las Vegas
4. The Comstock Historic District Commission, Virginia City

APPENDIX H: AVOIDING PROPERTIES

A. Avoiding through Standard Measures

The following protection measures shall be implemented as appropriate for all undertakings managed under this Protocol. At a minimum, historic properties shall be excluded from areas where activities associated with an undertaking will occur as follows:

1. All proposed activities, facilities, improvements, and disturbances shall avoid historic properties. Avoidance means that no activities, unless specifically identified in this PA, associated with an undertaking that may affect historic properties shall occur within a site's identified site boundaries, including any defined buffer zones. Portions of undertakings may need to be modified, redesigned, or eliminated to properly avoid historic properties.
 - a. For historic properties eligible or important only for the information they contain, the physical demarcation of historic properties, and their exclusion from an undertaking's proposed activity areas is a minimum requirement.
 - b. Physical demarcation and avoidance during the implementation of an undertaking is also required for properties eligible under other criteria. But minimum protection requirements will also include the use of buffer zones to extend the protection area around properties where setting is an important attribute, and the proposed activity may have an effect on the setting's quality.
2. All historic properties within an APE shall be clearly delineated prior to implementing any associated activities that have the potential to effect historic properties.
 - a. Historic property boundaries shall be delineated with coded flagging and/or other effective marking. Activities within historic property boundaries will be prohibited except for travel on developed roads when the Cultural Resource Specialist recommends that such use is consistent with the terms and purposes of this agreement. Flagging and other markings will be removed as soon as possible to avoid calling undue attention to cultural resources.
 - b. Historic property location and boundary marking information shall be conveyed to appropriate BLM administrators or employees responsible for implementation so pertinent information can be incorporated into planning and implementation documents, and contracts (e.g., clauses or stipulations in permits).
3. Buffer zones may be established to ensure added protection where the Cultural Resource Specialist or other professional archaeologist determines that they are necessary. The use of buffer zones in conjunction with other avoidance measures are particularly applicable where setting contributes to the property's eligibility, or where it may be an important attribute of some types of historic properties (e.g., historic buildings or structures; properties important to Native Americans). The size of buffer zones needs to be determined by the professional archaeologist on a case-by-case basis. Landscape architects may be consulted to determine appropriate view sheds for historic resources. Knowledgeable Native Americans will be consulted when the use or size of protective buffers for Native American traditional or cultural properties needs to be determined.
4. When any changes in proposed activities are necessary to avoid historic properties (e.g.,

project modifications, redesign, or elimination; removing old or confusing project markings or engineering stakes within site boundaries; or revising maps or changing specifications), these changes shall be completed prior to initiating any activities.

5. Monitoring may be used to enhance the effectiveness of protection measures in conjunction with other measures.

B. Avoiding through Non-Standard Measures

1. Scope

a. **Appropriate Undertakings:** This exemption applies to, but is not limited to, undertakings, such as small projects, fences, minerals exploration drilling, OHV events on developed roads, rights-of-way, wild horse gathers, wildlife guzzlers, interpretive and regulatory signs, materials pits, and fire rehabilitation seedings that are relatively easy to redesign or move to avoid cultural resources or for which effects are relatively temporary or ephemeral. It does not apply to undertakings that do not meet these requirements or where there may be visual or other effects to setting that cannot be avoided. It will not be used for major federal actions (requiring an Environmental Impact Statement or major Environmental Assessment).

b. **Appropriate Measures:** Undertaking redesign or relocation is the most appropriate avoidance measure under this exemption. Temporary physical barriers are probably the next most effective. Active monitoring should be considered as a last resort and only used in limited circumstances or highly sensitive situations.

2. Procedures

a. The APE will be determined prior to inventory and inventoried to Class III standards.

b. All cultural resources in the APE will be recorded in conformance with the format and content requirements in the BLM Handbook.

c. The BLM will determine appropriate administrative or physical measures to avoid effects to all cultural resources, excluding isolates, within the APE and include these measures as stipulations in environmental documentation and the decision record for the undertaking. The proponent of the undertaking will be required to agree to these stipulations prior to authorization.

d. Once the avoidance measures have been developed, stipulated, and accepted by the proponent the undertaking can be authorized without specific consultation with the SHPO.

e. The eligibility of cultural resources should be determined during initial inventory. If determining the eligibility of a cultural resource involves subsurface testing, extensive archival research or other extensive additional data gathering, then eligibility can be deferred as long as the resource is treated as if it is eligible.

APPENDIX I. ARCHITECTURAL RESOURCES

A. Personnel Qualifications. Architectural resources must be inventoried by persons meeting the *Secretary of Interior's Historic Preservation Professional Qualification Standards* (36CFR61, Appendix A [1983]). Non-professionals may assist with certain aspects of the survey, but all work must be under the direction of a qualified professional. In general, the required professional qualifications to oversee an architectural inventory include:

1. A graduate degree in American history, architectural history, historic preservation, or related field;
2. Demonstrated expertise in historic site surveying;
3. A working knowledge of architectural styles and local adaptations, building types, methods of construction, and settlement patterns;
4. Good research and organizational skills.

The BLM is responsible to ensure that qualified persons complete the necessary inventory and evaluation of architectural resources, or conduct other related work for purposes of Section 106 compliance or Section 110 activities. Nevada BLM seldom has cultural resources staff meeting these qualifications and relies instead on other BLM or federal personnel, on Nevada SHPO assistance, or on third party contractors. While Nevada BLM utilizes a permitting system to manage archaeological investigations by qualified personnel, there is no authorized BLM permitting process for persons conducting architectural analyses. Permitted archaeologists should not be assumed to possess the qualifications listed above for documenting or describing architectural resources. Prior to authorizing architectural studies, the appropriate BLM office should initiate informal discussion with SHPO regarding the qualifications of persons proposing to conduct investigations of architectural resources to ensure that requirements of education and experience are met.

B. Reporting Requirements. Architectural resources identified during inventory must be described in a report format including all components such as project description (e.g., proponent, APE, etc.), location, background research, research design, historic context, methods, results, evaluations of eligibility for the NRHP, recommendations, maps, references, etc.

Architectural resources are documented using the Nevada SHPO's Historic Resources Inventory Form, or HRIF. Recording forms and guidance, as well as reporting standards and guidelines, are available at the SHPO's website at <http://nevadaculture.org/docs/shpo/siguidelines/guide.htm>. An architectural resource requiring HRIF documentation is one for which roof composition and the locations of any windows can be determined.

As determined by the BLM cultural resources specialist, the report submitted to BLM for its internal use may consist of one volume incorporating results of all inventory efforts (e.g., both archaeological and architectural), or two or more volumes (e.g., separate volumes for archaeological resources and for architectural resources).

In addition, a separate, stand-alone report on identified architectural resources must accompany any inventory report involving architectural resources that is submitted to BLM; this stand-alone report will be provided by BLM to SHPO for purposes of the latter's internal review and filing. The BLM may also choose to require the separate stand-alone report for its own files.

APPENDIX J. NATIONAL PROGRAMMATIC AGREEMENT

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

Preamble

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

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

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

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

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

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

of those policies and programs with the policies and programs carried out under [NHPA]" under Section 202(a)(6) of the NHPA.

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

Basis for Agreement

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

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

WHEREAS, among other things, the BLM's program established in response to Section 110(a)(2) and related authorities provides a systematic basis for identifying, evaluating, and nominating to the National Register historic properties under the bureau's jurisdiction or control; for managing and maintaining properties listed in or eligible for the National Register in a way that considers the preservation of their archaeological, historical, architectural, and cultural values and the avoidance of adverse effects in light of the views of local communities, Indian tribes, interested persons, and the general public; and that gives special consideration to the preservation of such values in the case of properties designated as having National significance; and

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

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

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

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

WHEREAS the BLM's program, the elements of which were defined in the BLM Manual between 1988 and 1994, does not incorporate some recent changes in legal, regulatory, and Executive Order authorities and recent changes in the nature and direction of historic preservation relationships, rendering the program directives in need of

updating, and this need is recognized by the BLM, the Council, and the NCSHPO as an opportunity to work jointly and cooperatively among themselves and with other parties, as appropriate, to enhance the BLM's historic preservation program; and

WHEREAS the States, particularly those containing a high percentage of public land under the BLM's jurisdiction and control, have a strong incentive in forming a cooperative relationship with the BLM to facilitate and promote activities of mutual interest, including direction and conduct of a comprehensive statewide survey and inventory of historic properties, identification and nomination of eligible properties to the National Register of Historic Places, preparation and implementation of comprehensive historic preservation plans, and development and dissemination of public information, education and training, and technical assistance in historic preservation, and

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

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

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

other responsibilities for land-use planning and resource management under FLPMA, other statutory authorities, and executive orders and policies.

Components Of Agreement

1. Applicability

The Council's regulations (36 CFR Part 800) and existing State programmatic agreements will continue to apply to BLM undertakings under a State Director's jurisdiction until the Director and State Directors, with the advice of the Preservation Board, assisted by the Council, the NCSHPO, the SHPOS, and other participating parties, as appropriate, have updated and revised national BLM policies and procedures; developed State-specific BLM/SHPO operating protocols; and trained all field managers and their cultural heritage staffs in the operation of the policies, procedures, and protocols. Field offices under a State Director's jurisdiction (including those under the jurisdiction of the Eastern States Director) will not begin to employ the streamlined procedures developed pursuant to this agreement until the Director has certified that the State Director's organization is appropriately qualified to do so.

2. Establishment of Preservation Board

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

b. The Preservation Board will be chaired by the BLM's Preservation Officer designated under Section 110(c)

of the NHPA, and will include a professionally qualified DEPUTY PRESERVATION OFFICER from each State Office. The field management organization will be represented by at least three line managers (i.e., officials who are authorized by the Director's or State Directors' delegation to make land-use decisions).

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

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

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

3. Revision of "Cultural Resource Management" Procedures

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

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

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

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

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

preservation process will be incorporated in BLM/SHPO protocols under 5. below.

e. The BLM will provide Indian tribes and other Native American groups with appropriate opportunities for involvement. Consultation with tribes pursuant to Sections 101(d)(6) and 110(a)(2)(E) of the NHPA will follow government-to-government conventions. Procedures to ensure timely and adequate Native American participation will follow the direction in Sections 101(d)(6) and 110(a)(2)(E) of the NHPA, and BLM Manual Section 8160 and Manual Handbook H-8160-1, as revised pursuant to a. and b. above. Revisions to the 8160 Manual Section and Manual Handbook will treat the cited NHPA direction as the minimum standard for Indian tribes' and other Native American groups' opportunities to be involved. Provisions for Native American participation in BLM's procedures for historic property identification, evaluation, and consideration of adverse effects will be incorporated in BLM/SHPO protocols under 5. below. For Indian tribes with historic preservation programs approved by the Secretary under Section 101(d)(2) of the NHPA, Tribal Preservation Officers will be involved in place of SHPOs when tribal land would be affected. Such involvement will occur under the Council's and/or the Tribe's procedures in all cases, not under this programmatic agreement.

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

4. Thresholds for Council Review

a. The BLM procedures will identify circumstances calling for the Council's review.

b. At a minimum, the BLM will request the Council's review in the following classes of undertakings:

- (1) nonroutine interstate and/or interagency projects or programs;
- (2) undertakings directly and adversely affecting National Historic Landmarks or National Register eligible properties of national significance;
- (3) highly controversial undertakings, when Council review is requested by the BLM, an SHPO, an Indian tribe, a local government, or an applicant for a BLM authorization.

5. Cooperation and Enhanced Communication

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

- (1) a reference copy of the existing BLM Manual Sections and Manual Handbooks related to —Cultural Resource Management;
- (2) a copy of any Handbook, Manual Supplement, or other standard procedure for —Cultural Resource Management” used by the BLM within an individual State Office's jurisdiction
- (3) a list of Preservation Board members;
- (4) a list of BLM cultural heritage personnel within each State Office's jurisdiction;
- (5) a map of the State showing BLM field office boundaries and responsibilities;
- (6) the best available map of the State showing tribal lands, ceded lands, and ancestral use areas; and

(7) a brief summary of land holdings, major ongoing development projects or permitted uses, proposed major undertakings such as land exchanges or withdrawals, and particularly significant historic properties on BLM lands within each State Office's jurisdiction.

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

At a minimum, protocols will address the following:

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

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

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

e. Relevant streamlining provisions of BLM Statewide programmatic agreements currently in force in Arizona,

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

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

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

6. Training Program

In cooperation with the Council and the NCSHPO, and with the active participation of individual SHPOs, the Preservation Board will develop and implement a training program to (a) instruct BLM line managers and cultural heritage program personnel on the policies underlying and embodied in this agreement, as well as specific measures that must be met prior to its implementation, and (b) enhance skills and knowledge of other BLM personnel involved with —Cltural Resource Management” activities, including land use planning and resource management staffs. Training sessions will be open to Indian tribes, cultural resource consultants, and other parties who may be involved in the implementation of this agreement. The BLM may, where feasible and appropriate, reimburse the Council for assistance in developing training programs.

7. Professional Development

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

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

8. State Office Certification and Decertification

a. The Preservation Board, in consultation with the appropriate SHPO and the Council, will certify each BLM State Office to operate under this agreement upon determining that (1) managers and specialists have completed the training referred to in 7. above, (2) professional capability to carry out these policies and procedures is available

through each field office's immediate staff or through other means, (3) each supervising line manager within the State has assigned and delimited cultural heritage specialists' duties, and (4) the State Director and the SHPO have signed a protocol outlining BLM/SHPO interaction in accordance with 5. above.

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

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

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

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

9. Accountability Measures

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

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

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

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

10. Reviewing and Changing the Agreement

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

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

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

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

Affirmation

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

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

**BUREAU OF LAND MANAGEMENT
CHARTER FOR THE
PRESERVATION BOARD**

The Preservation Board is established to assist the Directorate, the State Directors, and Field Office managers in meeting their responsibilities under the National Historic Preservation Act. The Board serves in a professional staff function, assuring that Bureauwide quality standards are observed and maintained, and recommending adjustments in policy, procedures, and practice when needed. The Board coordinates with the Advisory Council on Historic Preservation (Council), the National Conference of State Historic Preservation Officers (NCSHPO), and individual State Historic Preservation Officers (SHPO), and responds to inquiries from the public, according to provisions of the National Programmatic Agreement, dated March 26, 1997, executed by the Director, the Chairman of the Council, and the President of the National Conference of SHPO's.

This Charter will be reviewed during the third quarter 1999, in conjunction with the scheduled review of the National Programmatic Agreement's implementation, and afterward will continue to be reviewed on the same schedule as reviews of the National Programmatic Agreement.

I. Membership

A. Ex officio members:

1. The BLM's Preservation Officer, designated under Section 110(c) of the National Historic Preservation Act (Chair)
2. A professionally qualified Deputy Preservation Officer representing each State Director (State Office Cultural Heritage Program Lead)

B. Rotating-term members, recommended by the Board and appointed by the Director:

1. An Associate State Director (two-year term)
2. Two Field Office managers (two-year term)
3. A Field Office Cultural Heritage staff specialist (one-year term)
4. Additional line or staff manager(s) as appropriate (two-year term)

II. Roles

The Preservation Board's roles are:

To perform primary staff work and make recommendations to the Director and State Directors concerning:

- historic preservation policy and procedures
- bureauwide program consistency
- training
- certification and decertification of Field Offices
- monitoring of Field Offices' historic preservation activities, and
- responses to public inquiries;

To confer regularly with the NCSHPO and the Council and with parties who have identified themselves to the Board as interested parties, including SHPO's, Tribal Preservation Officers (TPO's), trade and professional associations, and authorized users of the public lands:

- to promote consistency with State, regional, and national historic preservation practice, and
- to identify recurrent problems or concerns.

III. Scope and Responsibilities

The scope of the Preservation Board's staff and advisory functions is consistent with the scope of responsibilities that come to the Director (as ~~head~~ of [a] Federal agency") under the National Historic Preservation Act, whether those responsibilities are met at Field Office, State, inter-State, or Bureau-wide levels. Where they bear on the BLM's capability to meet the Director's legal responsibilities, funding, staffing, and other budgetary aspects of program management may be included in the Board's advisory scope.

A. Bureau-wide Historic Preservation Policy and Procedures

The Preservation Board will review and make recommendations to the Directorate on Manual Sections, Manual Handbooks, and temporary directives addressing historic preservation.

B. Bureau-wide Historic Preservation Practice

The Preservation Board will monitor Field Office performance under Bureau-wide historic preservation policy and procedures and State-level protocols developed with SHPO's, and will recommend adjustments where needed to correct problems.

IV. Board Support and Ad-hoc Board Assignments

The Preservation Board may call on the host office for space, normally available equipment, and clerical or other staff support needed to facilitate its meetings. The Cultural Heritage, Wilderness, Special Areas and Paleontology Group in the Washington Office will maintain file copies of Board reports and recommendations.

The Preservation Board may identify special ad-hoc advisors or advisory teams to provide technical support, subject to assignment by the responsible manager(s).

V. Meetings

The Preservation Board will meet at least twice each year. Schedules and locations will be determined by the Board. Other meetings involving all Board members or a representative special committee may be held as needed to examine special issues. The Board will develop procedures for conducting its meetings. Each meeting of the Board or a Board committee will be documented by a report, a copy of which will be provided to the NCSHPO and Council for their information.

Recommended by:	/s/ John G. Douglas	9/18/97
	_____	Date
	Preservation Officer	
Reviewed and	/s/ Marilyn W. Nickels	9/18/97
concurrent in by:	_____	Date
	Group Manager, Cultural Heritage, Wilderness, Special Areas and Paleontology	

/s/ Tom Walker

9/18/97

for

Assistant Director, Renewable Resources
and Planning

Date

/s/ Pat Shea

10/1/9

Approved by:

Director

Date

BUREAU OF LAND MANAGEMENT

**CHARTER FOR THE
PRESERVATION BOARD**

REVISION

The following changes revise the Preservation Board charter of October 1, 1997.

From Section I, Membership, remove the existing paragraph B:

B. Rotating-term members, recommended by the Board and appointed by the Director:

1. An Associate State Director (two-year term)
2. Two Field Office managers (two-year term)
3. A Field Office Cultural Heritage staff specialist (one-year term)
4. Additional line or staff manager(s) as appropriate (two-year term)

and replace with a new paragraph B:

B. Rotating-term members with overlapping terms of 2 years each, recommended by the Board and appointed by the Director:

1. Four line managers representing the tiers of the Field organization
2. Two Field Office cultural heritage staff specialists

Recommended:

/s/ John G Douglas 1/15/99

Preservation Officer on behalf of the Date
Preservation Board

Approved:

/s/ Tom Fry 12/1/99

APPENDIX K:

Navy Withdrawn Lands, Carson City District Office

A. This section addresses the Congressionally-mandated joint management area of the BLM and the Naval Air Station Fallon known collectively as ‘Navy withdrawn lands’ (Public Law 106-65, National Defense Authorization Act for Fiscal Year 2000, Military Lands Withdrawal Act [MWLA] of 1999). In 2004, BLM and SHPO agreed to an amendment to the State Protocol Agreement affecting the means by which consultation would occur on projects in areas where this joint management situation exists; that agreement is incorporated here.

B. The Navy withdrawn lands described in the MWLA are:

- (1) training ranges B-16, B-17, B-19, and B-20;
- (2) the Dixie Valley Training Area; and
- (3) proposed and existing withdrawn lands comprising approximately 204, 953 acres in Churchill County, as shown in Map K-1.

C. Under the Protocol the BLM must consult with SHPO for those projects or programs involving another federal agency (Section II.A.1). Presently all Navy projects in the Navy withdrawn lands trigger the interagency consultation clause. The BLM and SHPO agree to suspend the review clause for those Navy projects on Navy withdrawn lands.

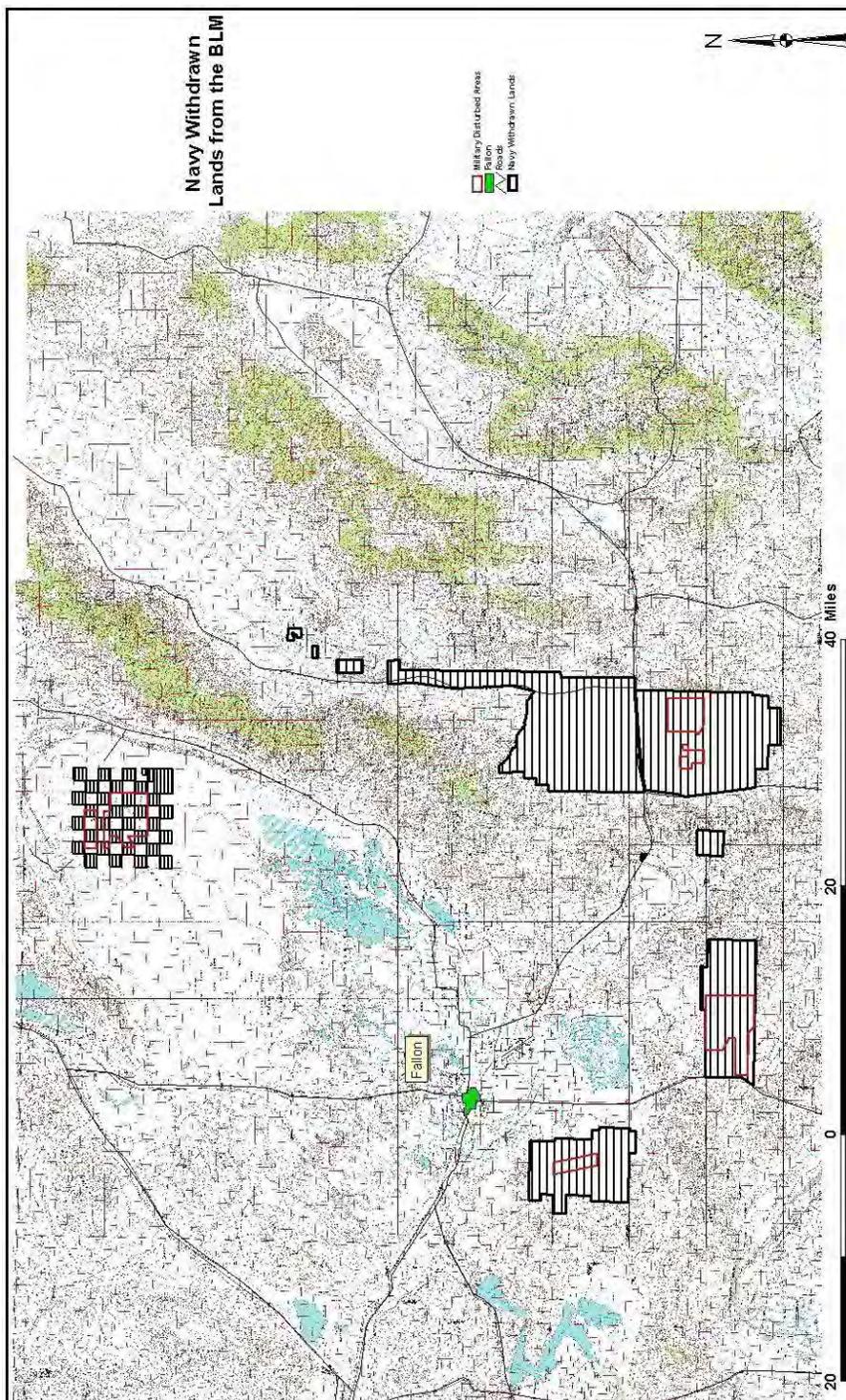
D. BLM and SHPO concur that the B-20 Range is an area of low potential for containing historical properties and that no additional inventory efforts are necessary to identify historic properties at this location.

E. All Navy projects on Navy withdrawn lands will be incorporated into the BLM project system including assembling the annual report. Consultation for Navy projects on Navy withdrawn lands that exceed the review thresholds (II.A) will be conducted by the BLM.

F. The Naval Air Station Fallon Programmatic Agreement (1996) is suspended only for the Navy withdrawn lands for the duration of the MWLA. Navy projects that occur on BLM lands outside of the withdrawn lands require SHPO review pursuant to part II.A.1 of the SPA.

G. Navy projects wholly within the withdrawn lands will be coordinated by the BLM/Navy Liaison. The Liaison can be reached at the BLM Carson City District Office.

Map K-1



APPENDIX L:
36 CFR Part 800
Protection of Historic
Properties

36 CFR PART 800 -- PROTECTION
OF HISTORIC PROPERTIES
(incorporating amendments
effective August 5, 2004)

Subpart A -- Purposes and
Participants

Sec.
800.1 Purposes.
800.2 Participants in the Section 106
process.

Subpart B -- The Section 106
Process

800.3 Initiation of the section 106

- process.
- 800.4 Identification of historic properties.
- 800.5 Assessment of adverse effects.
- 800.6 Resolution of adverse effects.
- 800.7 Failure to resolve adverse effects.
- 800.8 Coordination with the National Environmental Policy act.
- 800.9 Council review of Section 106 compliance.
- 800.10 Special requirements for protecting National Historic Landmarks.
- 800.11 Documentation standards.
- 800.12 Emergency situations.
- 800.13 Post-review discoveries.

Subpart C -- Program Alternatives

- 800.14 Federal agency program alternatives.
- 800.15 Tribal, State and Local Program Alternatives. (Reserved)
- 800.16 Definitions.
- Appendix A – Criteria for Council involvement in reviewing individual section 106 cases

Authority: 16 U.S.C. 470s.

Subpart A-Purposes and Participants

§ 800.1 Purposes.

(a) *Purposes of the section 106 process.* Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

(b) *Relation to other provisions of the act.* Section 106 is related to other provisions of the act designed to further

the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the section 106 process. Guidelines, policies and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

(c) *Timing.* The agency official must **complete the section 106 process “prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license.” This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking’s adverse effects on historic properties.** The agency official shall ensure that the section 106 process is initiated early in the undertaking’s planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

§ 800.2 Participants in the Section 106 process.

(a) *Agency official.* It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) *Professional standards.* Section 112(a)(1)(A) of the act requires each

Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) *Lead Federal agency.* If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section

106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) *Use of contractors.* Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) *Consultation.* The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation. The Council encourages the agency official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) *Council.* The Council issues regulations to implement section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to agency

officials on individual undertakings and programs that affect historic properties.

(1) **Council entry into the section 106 process.** When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) **Council assistance.** Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) **Consulting parties.** The following parties have consultative roles in the section 106 process.

(1) **State historic preservation officer.**

(i) The State historic preservation officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taking into consideration at all levels of planning and development.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with § 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to § 800.3(f)(3).

(2) **Indian tribes and Native Hawaiian organizations.**

(i) **Consultation on tribal lands.**

(A) **Tribal historic preservation officer.** For a tribe that has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the tribal historic preservation officer (THPO) appointed or designated in accordance with the act is the official representative for the purposes of section 106. The agency official shall consult with the THPO in

lieu of the SHPO regarding undertakings

occurring on or affecting historic properties on tribal lands.

(B) **Tribes that have not assumed SHPO functions.** When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the THPOs are given throughout subpart B of this part, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.

(ii) **Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.**

Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party. (A) The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

(B) The Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets or modifies

tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies or limits the exercise of any such rights.

(C) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes. The agency official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(D) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(E) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an agency official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The agency official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.

(F) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act may notify the agency official in writing that it is waiving its rights under § 800.6(c)(1) to execute a memorandum of agreement.

(3) **Representatives of local governments.** A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under

other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.

(4) **Applicants for Federal assistance, permits, licenses and other approvals.** An applicant for Federal assistance or for a Federal permit, license or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government to government relationships with Indian tribes.

(5) **Additional consulting parties.** Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

(d) **The public.**

(1) **Nature of involvement.** The views of the public are essential to informed Federal decision-making in the section 106 process. The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) **Providing notice and information.** The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decision-making.

(3) **Use of agency procedures.** The agency official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of

public involvement requirements in

subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

Subpart B-The section 106 Process

§ 800.3 Initiation of the section 106 process.

(a) **Establish undertaking.** The agency official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) **No potential to cause effects.** If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

(2) **Program alternatives.** If the review of the undertaking is governed by a Federal agency program alternative established under § 800.14 or a programmatic agreement in existence before January 11, 2001, the agency official shall follow the program alternative.

(b) **Coordinate with other reviews.** The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the agency official may use information developed for other reviews under Federal, State or tribal law to meet the requirements of section 106.

(c) **Identify the appropriate SHPO and/or THPO.** As part of its initial planning, the agency official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The agency official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The agency official shall then initiate consultation with the appropriate officer or officers.

(1) **Tribal assumption of SHPO responsibilities.** Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal

lands pursuant to section 101(d)(2) of the act, consultation for undertakings

occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe to request the SHPO to participate in the section 106 process in addition to the THPO.

(2) **Undertakings involving more than one State.** If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking actions that would conclude the section 106 process under this subpart.

(3) **Conducting consultation.** The agency official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties.

(4) **Failure of the SHPO/THPO to respond.** If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the section 106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.

(d) **Consultation on tribal lands.** Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the agency official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting historic properties on tribal lands.

(e) **Plan to involve the public.** In consultation with the SHPO/THPO, the agency official shall plan for involving the public in the section 106 process. The agency official shall identify the appropriate points for seeking public

input and for notifying the public of proposed actions, consistent with § 800.2(d).

(f) **Identify other consulting parties.** In consultation with the SHPO/THPO, the agency official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The agency official may invite others to participate as consulting parties as the section 106 process moves forward.

(1) **Involving local governments and applicants.** The agency official shall invite any local governments or applicants that are entitled to be consulting parties under § 800.2(c).

(2) **Involving Indian tribes and Native Hawaiian organizations.** The agency official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) **Requests to be consulting parties.** The agency official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, determine which should be consulting parties.

(g) **Expediting consultation.** A consultation by the agency official with the SHPO/THPO and other consulting parties may address multiple steps in §§

800.3 through 800.6 where the agency official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in § 800.2(d).

§ 800.4 Identification of historic properties.

(a) **Determine scope of identification efforts.** In consultation with the SHPO/THPO, the agency official shall:

(1) Determine and document the area of potential effects, as defined in § 800.16(d);

(2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with,

historic properties in the area, and

identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to § 800.11(c).

(b) **Identify historic properties.** Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects.

(1) **Level of effort.** The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's Standards and Guidelines for Identification provide guidance on this subject. The agency official should also consider other applicable professional, State, tribal and local laws, standards and guidelines. The agency official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) **Phased identification and evaluation.** Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts. The agency official may also defer final identification and evaluation of historic properties if it is specifically provided for in a memorandum of agreement executed pursuant to § 800.6,

a programmatic agreement executed pursuant to § 800.14 (b), or the documents used by an agency official to comply with the National Environmental Policy Act pursuant to § 800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the agency official shall proceed with the identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

(c) **Evaluate historic significance.**

(1) **Apply National Register criteria.** In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's Standards and Guidelines for Evaluation, the agency official shall apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) **Determine whether a property is eligible.** If the agency official determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the

agency official to obtain a determination of eligibility.

(d) Results of identification and evaluation.

(1) **No historic properties affected.** If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the agency official shall provide documentation of this finding, as set forth in § 800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking.

(i) If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(ii) If the SHPO/THPO objects within 30 days of receipt of an adequately documented finding, the agency official shall either consult with the objecting party to resolve the disagreement, or forward the finding and supporting documentation to the Council and request that the Council review the finding pursuant to paragraphs (d)(1)(iv)(A) through (d)(1)(iv)(C) of this section. When an agency official forwards such requests for review to the Council, the agency official shall concurrently notify all consulting parties that such a request has been made and make the request documentation available to the public.

(iii) During the SHPO/THPO 30 day review period, the Council may object to the finding and provide its opinion regarding the finding to the agency official and, if the Council determines the issue warrants it, the head of the agency. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The agency shall then proceed according to paragraphs (d)(1)(iv)(B) and (d)(1)(iv)(C) of this section.

(iv)(A) Upon receipt of the request under paragraph (d)(1)(ii) of this section, the Council will have 30 days in which to review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the finding. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. If the Council does not respond within 30 days of receipt of the request, the agency official's responsibilities under section

106 are fulfilled.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion before the agency reaches a final decision on the finding.

(C) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall then prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial agency finding of no historic properties affected, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(D) The Council shall retain a record of agency responses to Council opinions on their findings of no historic properties affected. The Council shall make this information available to the public.

(2) **Historic properties affected.** If the agency official finds that there are historic properties which may be affected by the undertaking, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

§ 800.5 Assessment of adverse effects.

(a) **Apply criteria of adverse effect.** In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(1) **Criteria of adverse effect.** An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials,

workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(2) **Examples of adverse effects.** Adverse effects on historic properties include, but are not limited to:

(i) Physical destruction of or damage to all or part of the property;

(ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines;

(iii) Removal of the property from its historic location;

(iv) Change of the character of the property's use or of physical features within the property's setting that contributes to its historic significance;

(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;

(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and

(vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

(3) **Phased application of criteria.** Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to § 800.4(b)(2).

(b) **Finding of no adverse effect.** The agency official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (a)(1) of this section or the

undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the **Secretary's Standards for the Treatment of Historic Properties** (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) **Consulting party review.** If the agency official proposes a finding of no adverse effect, the agency official shall notify all consulting parties of the finding and provide them with the documentation specified in § 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) **Agreement with, or no objection to, finding.** Unless the Council is reviewing the finding pursuant to paragraph (c)(3) of this section, the agency official may proceed after the close of the 30 day review period if the SHPO/THPO has agreed with the finding or has not provided a response, and no consulting party has objected. The agency official shall then carry out the undertaking in accordance with paragraph (d)(1) of this section.

(2) **Disagreement with finding.**

(i) If within the 30 day review period the SHPO/THPO or any consulting party notifies the agency official in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, the agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraphs (c)(3)(i) and (c)(3)(ii) of this section. The agency official shall include with such request the documentation specified in § 800.11(e). The agency official shall also concurrently notify all consulting parties that such a submission has been made and make the submission documentation available to the public.

(ii) If within the 30 day review period the Council provides the agency official and, if the Council determines the issue warrants it, the head of the agency, with a written opinion objecting to the finding, the agency shall then proceed according to paragraph (c)(3)(ii) of this section. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part.

(iii) The agency official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30 day review period specify the reasons for disagreeing with the finding and request

the Council to review and object to the finding pursuant to paragraph (c)(2)(ii) of this section.

(3) **Council review of findings.**

(i) When a finding is submitted to the Council pursuant to paragraph (c)(2)(i) of this section, the Council shall review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with its opinion as to whether the adverse effect criteria have been correctly applied. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The Council will provide its opinion within 15 days of receiving the documented finding from the agency official. The Council at its discretion may extend that time period for 15 days, in which case it shall notify the agency of such extension prior to the end of the initial 15 day period. If the Council does not respond within the applicable time period, the agency official's responsibilities under section 106 are fulfilled. (ii)(A) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the finding. (B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial finding of no adverse effect, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(C) The Council shall retain a record of agency responses to Council opinions on their findings of no adverse effects. The Council shall make this information available to the public.

(d) **Results of assessment.**

(1) **No adverse effect.** The agency official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of § 800.11(c).

Implementation of the undertaking in accordance with the finding as documented fulfills the agency official's responsibilities under section 106 and

this part. If the agency official will not conduct the undertaking as proposed in the finding, the agency official shall reopen consultation under paragraph (a) of this section.

(2) **Adverse effect.** If an adverse effect is found, the agency official shall consult further to resolve the adverse effect pursuant to § 800.6.

§ 800.6 Resolution of adverse effects.

(a) **Continue consultation.** The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.

(1) **Notify the Council and determine Council participation.** The agency official shall notify the Council of the adverse effect finding by providing the documentation specified in § 800.11(e).

(i) The notice shall invite the Council to participate in the consultation when:

(A) The agency official wants the Council to participate;

(B) The undertaking has an adverse effect upon a National Historic Landmark; or
(C) A programmatic agreement under § 800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the agency official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the agency official and the consulting parties that its decision to participate meets the criteria set forth in appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process. Consultation with Council participation is conducted in accordance with paragraph (b)(2) of this section.

(iv) If the Council does not join the consultation, the agency official shall proceed with consultation in accordance with paragraph (b)(1) of this section.

(2) **Involve consulting parties.** In addition to the consulting parties identified under § 800.3(f), the agency official, the SHPO/THPO and the Council, if participating, may agree to

invite other individuals or organizations to become consulting parties. The agency official shall invite any individual or organization that will assume a specific role or responsibility in a memorandum of agreement to participate as a consulting party.

(3) **Provide documentation.** The agency official shall provide to all consulting parties the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) **Involve the public.** The agency official shall make information available to the public, including the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c). The agency official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The agency official should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking to ensure that the public's views are considered in the consultation. The agency official should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of § 800.2(d) are met.

(5) **Restrictions on disclosure of information.** Section 304 of the act and other authorities may limit the disclosure of information under paragraphs (a)(3) and (a)(4) of this section. If an Indian tribe or Native Hawaiian organization objects to the disclosure of information or if the agency official believes that there are other reasons to withhold information, the agency official shall comply with § 800.11(c) regarding the disclosure of such information.

(b) **Resolve adverse effects.**

(1) **Resolution without the Council.**

(i) The agency official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The agency official may use standard treatments established by the Council under § 800.14(d) as a basis for a memorandum of agreement.

(iii) If the Council decides to join the consultation, the agency official shall follow paragraph (b)(2) of this section.

(iv) If the agency official and the

SHPO/THPO agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement. The agency official must submit a copy of the executed memorandum of agreement, along with the documentation specified in § 800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of section 106 and this subpart.

(v) If the agency official, and the SHPO/THPO fail to agree on the terms of a memorandum of agreement, the agency official shall request the Council to join the consultation and provide the Council with the documentation set forth in § 800.11(g). If the Council decides to join the consultation, the agency official shall proceed in accordance with paragraph (b)(2) of this section. If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with § 800.7(c).

(2) **Resolution with Council participation.**

If the Council decides to participate in the consultation, the agency official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under § 800.2(c)(3), to seek ways to avoid, minimize or mitigate the adverse effects. If the agency official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement.

(c) **Memorandum of agreement.** A memorandum of agreement executed and implemented pursuant to this section evidences the agency official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. The agency official shall ensure that the undertaking is carried out in accordance with the memorandum of agreement.

(1) **Signatories.** The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The agency official and the SHPO/THPO are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(1) of this section.

(ii) The agency official, the SHPO/THPO, and the Council are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(2) of this section.

(iii) The agency official and the Council are signatories to a memorandum of agreement executed pursuant to § 800.7(a)(2).

(2) **Invited signatories.**

(i) The agency official may invite

additional parties to be signatories to a memorandum of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories.

(ii) The agency official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties.

(iii) The agency official should invite any party that assumes a responsibility under a memorandum of agreement to be a signatory.

(iv) The refusal of any party invited to become a signatory to a memorandum of agreement pursuant to paragraph (c)(2) of this section does not invalidate the memorandum of agreement.

(3) **Concurrence by others.** The agency official may invite all consulting parties to concur in the memorandum of agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement.

(4) **Reports on implementation.** Where the signatories agree it is appropriate, a memorandum of agreement shall include a provision for monitoring and reporting on its implementation.

(5) **Duration.** A memorandum of agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(6) **Discoveries.** Where the signatories agree it is appropriate, a memorandum of agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

(7) **Amendments.** The signatories to a memorandum of agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the agency official shall file it with the Council.

(8) **Termination.** If any signatory determines that the terms of a memorandum of agreement cannot be or are not being carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The agency official shall either execute

a memorandum of agreement with signatories under paragraph (c)(1) of this section or request the comments of the Council under § 800.7(a).

(9) **Copies.** The agency official shall provide each consulting party with a copy of any memorandum of agreement executed pursuant to this subpart.

§ 800.7 Failure to resolve adverse effects.

(a) **Termination of consultation.** After consulting to resolve adverse effects pursuant to § 800.6(b)(2), the agency official, the SHPO/THPO, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the agency official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request that the Council comment pursuant to paragraph (c) of this section and shall notify all consulting parties of the request.

(2) If the SHPO terminates consultation, the agency official and the Council may execute a memorandum of agreement **without the SHPO's involvement.**

(3) If a THPO terminates consultation regarding an undertaking occurring on or affecting historic properties on its tribal lands, the Council shall comment pursuant to paragraph (c) of this section.

(4) If the Council terminates consultation, the Council shall notify the agency official, the agency's Federal preservation officer and all consulting parties of the termination and comment under paragraph (c) of this section. The Council may consult with the agency's Federal preservation officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

(b) **Comments without termination.** The Council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a memorandum of agreement will be executed. The Council shall provide them to the agency official when it executes the memorandum of agreement.

(c) **Comments by the Council.**

(1) **Preparation.** The Council shall provide an opportunity for the agency official, all consulting parties, and the public to provide their views within the

time frame for developing its comments. Upon request of the Council, the agency official shall provide additional existing

information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) **Timing.** The Council shall transmit its comments within 45 days of receipt of a request under paragraph (a)(1) or (a)(3) of this section or § 800.8(c)(3), or termination by the Council under § 800.6(b)(1)(v) or paragraph (a)(4) of this section, unless otherwise agreed to by the agency official.

(3) **Transmittal.** The Council shall provide its comments to the head of the agency requesting comment with copies to the agency official, the agency's Federal preservation officer, all consulting parties, and others as appropriate.

(4) **Response to Council comment.** The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(l) of the act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

(i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments and providing it to the Council prior to approval of the undertaking;

(ii) Providing a copy of the summary to all consulting parties; and

(iii) Notifying the public and making the record available for public inspection.

§ 800.8 Coordination With the National Environmental Policy Act.

(a) **General principles.**

(1) **Early coordination.** Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA).

Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a "major Federal action significantly affecting the quality of the human environment," and therefore requires preparation of an environmental impact statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily

require an EIS under NEPA.

(2) **Consulting party roles.**

SHPO/THPOs, Indian tribes and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) **Inclusion of historic preservation issues.** Agency officials should ensure that preparation of an environmental assessment (EA) and finding of no significant impact (FONSI) or an EIS and record of decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) **Actions categorically excluded under NEPA.** If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the agency official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to § 800.3(a). If so, the agency official shall proceed with section 106 review in accordance with the procedures in this subpart.

(c) **Use of the NEPA process for section 106 purposes.** An agency official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in §§ 800.3 through 800.6 if the agency official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) **Standards for developing environmental documents to comply with Section 106.** During preparation of the EA or draft EIS (DEIS) the agency official shall:

(i) Identify consulting parties either pursuant to § 800.3(f) or through the NEPA scoping process with results consistent with § 800.3(f);

(ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§

800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the agency official's consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;

(iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and

(v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

(2) Review of environmental documents.

(i) The agency official shall submit the EA, DEIS or EIS to the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, and other consulting parties prior to or when making the document available for public comment. If the document being prepared is a DEIS or EIS, the agency official shall also submit it to the Council.

(ii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the agency official that preparation of the EA, DEIS or EIS has not met the standards set forth in paragraph (c)(1) of this section or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS or EIS is inadequate. If the agency official receives such an objection, the agency official shall refer the matter to the Council.

(3) Resolution of objections. Within 30 days of the agency official's referral of an objection under paragraph (c)(2)(ii) of this section, the Council shall review the objection and notify the agency as to its opinion on the objection.

(i) If the Council agrees with the objection:

(A) The Council shall provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the objection. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The person to whom the Council addresses its opinion (the agency official

or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the issue of the objection.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council. The head of the agency may delegate his or her duties under this paragraph to the agency's senior Policy Official. If the agency official's initial decision regarding the matter that is the subject of the objection will be revised, the agency official shall proceed in accordance with the revised decision. If the final decision of the agency is to affirm the initial agency decision, once the summary of the final decision has been sent to the Council, the agency official shall continue its compliance with this section.

(ii) If the Council disagrees with the objection, the Council shall so notify the agency official, in which case the agency official shall continue its compliance with this section.

(iii) If the Council fails to respond to the objection within the 30 day period, the agency official shall continue its compliance with this section.

(4) Approval of the undertaking. If the agency official has found, during the preparation of an EA or EIS that the effects of an undertaking on historic properties are adverse, the agency official shall develop measures in the EA, DEIS, or EIS to avoid, minimize, or mitigate such effects in accordance with paragraph (c)(1)(v) of this section. The agency official's responsibilities under section 106 and the procedures in this subpart shall then be satisfied when either:

(i) a binding commitment to such proposed measures is incorporated in

(A) the ROD, if such measures were proposed in a DEIS or EIS; or

(B) an MOA drafted in compliance with § 800.6(c); or

(ii) the Council has commented under § 800.7 and received the agency's response to such comments.

(5) Modification of the undertaking. If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the agency official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the binding commitment adopted pursuant to paragraph (c)(4) of this section) are carried out, the agency official shall

notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the

procedures in §§ 800.3 through 800.6 will be followed as necessary.

§ 800.9 Council review of section 106 compliance.

(a) Assessment of agency official compliance for individual undertakings.

The Council may provide to the agency official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the agency official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiative. The agency official shall consider the views of the Council in reaching a decision on the matter in question.

(b) Agency foreclosure of the Council's opportunity to comment. Where an agency official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the agency official and the agency's Federal preservation officer and allow 30 days for the agency official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the agency official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) Intentional adverse effects by applicants.

(1) Agency responsibility. Section 110(k) of the act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the act governs its implementation.

(2) **Consultation with the Council.** When an agency official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the agency official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the agency official's notification, unless otherwise agreed to by the agency official, the Council shall provide the agency official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The agency official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) **Compliance with Section 106.** If an agency official, after consulting with the Council, determines to grant the assistance, the agency official shall comply with §§ 800.3 through 800.6 to take into account the effects of the undertaking on any historic properties.

(d) **Evaluation of Section 106 operations.** The Council may evaluate the operation of the section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the act.

(1) **Information from participants.** Section 203 of the act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the section 106 process. The agency official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the section 106 process.

(2) **Improving the operation of section 106.** Based upon any evaluation of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to

improve the efficiency and effectiveness of the process. Where the Council determines that an agency official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the process in this part, the Council may participate in individual case reviews conducted under such process in addition to the SHPO/THPO for such period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation pursuant to section 202(a)(6) of the act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

§ 800.10 Special requirements for protecting National Historic Landmarks.

(a) **Statutory requirement.** Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in §§ 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.

(b) **Resolution of adverse effects.** The agency official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under §

(c) **Involvement of the Secretary.** The agency official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the act to assist in the consultation.

(d) **Report of outcome.** When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any memoranda of agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

800.6.

§ 800.11 Documentation standards.

(a) **Adequacy of documentation.** The

agency official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. The agency official shall provide such documentation to the extent permitted by law and within available funds. When an agency official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the agency official and specify the information needed to meet the standard. At the request of the agency official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the agency official and the consulting parties.

(b) **Format.** The agency official may use documentation prepared to comply with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) **Confidentiality.**

(1) **Authority to withhold information.** Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

(2) **Consultation with the Council.** When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the SHPO/THPO,

Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) **Other authorities affecting confidentiality.** Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants.

(d) **Finding of no historic properties affected.** Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to § 800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) **Finding of no adverse effect or adverse effect.** Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify historic properties;

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking's effects on historic properties;

(5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) **Memorandum of agreement.** When a memorandum of agreement is filed with the Council, the documentation shall include, any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) **Requests for comment without a memorandum of agreement.**

Documentation shall include:

(1) A description and evaluation of any alternatives or mitigation measures that the agency official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies or summaries of any views submitted to the agency official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1).

§ 800.12 Emergency situations.

(a) **Agency procedures.** The agency official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§ 800.3 through 800.6.

(b) **Alternatives to agency procedures.** In the event an agency official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the agency official may comply with section 106 by:

(1) Following a programmatic agreement developed pursuant to § 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the agency official determines that circumstances do not permit seven days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) **Local governments responsible for section 106 compliance.** When a local government official serves as the agency official for section 106 compliance, paragraphs (a) and (b) of this section also apply to an imminent threat to public health or safety as a result of a natural disaster or

emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the agency official shall comply with §§ 800.3 through 800.6.

(d) **Applicability.** This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

§ 800.13 Post-review discoveries.

(a) **Planning for subsequent discoveries.**

(1) **Using a programmatic agreement.** An agency official may develop a programmatic agreement pursuant to § 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) **Using agreement documents.** When the agency official's identification efforts in accordance with § 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no programmatic agreement has been developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official's responsibilities under section 106 and this part.

(b) **Discoveries without prior planning.** If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the agency official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to § 800.6; or

(2) If the agency official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archeological data, the agency official may comply with the Archeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) **Eligibility of properties.** The agency official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section

106. The agency official shall specify the National Register criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) **Discoveries on tribal lands.** If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the agency official shall comply with applicable tribal

regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

Subpart C-Program Alternatives

§ 800.14 Federal agency program alternatives.

(a) **Alternate procedures.** An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) **Development of procedures.** The agency official shall consult with the Council, the National Conference of State Historic Preservation Officers or individual SHPO/THPOs as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the Federal Register and take other appropriate steps to seek public input during the development of alternate procedures.

(2) **Council review.** The agency official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) **Notice.** The agency official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the Federal Register.

(4) **Legal effect.** Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) **Programmatic agreements.** The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) **Use of programmatic agreements.** A programmatic agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decision-making responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) **Developing programmatic agreements for agency programs.**

(i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the programmatic agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section.

(ii) **Public Participation.** The agency official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The agency official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) **Effect.** The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPOs/THPOs when the programmatic agreement concerns a specific region or the president of NCSHPO when NCSHPO has participated in the consultation. A programmatic agreement shall take effect on tribal lands only when the THPO, Indian tribe or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved programmatic agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the president of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional programmatic

agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the act and the SHPO is signatory to programmatic agreement, the THPO assumes the role of a signatory, including the right to terminate a regional programmatic agreement on lands under the jurisdiction of the tribe.

(iv) **Notice.** The agency official shall notify the parties with which it has consulted that a programmatic agreement has been executed under paragraph (b) of this section, provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/THPOs, and the public.

(v) If the Council determines that the terms of a programmatic agreement are not being carried out, or if such an agreement is terminated, the agency official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) **Developing programmatic agreements for complex or multiple undertakings.** Consultation to develop a programmatic agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow § 800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the agency official shall comply with the provisions of subpart B of this part for each individual undertaking.

(4) **Prototype programmatic agreements.** The Council may designate an agreement document as a prototype programmatic agreement that may be used for the same type of program or undertaking in more than one case or area. When an agency official uses such a prototype programmatic agreement, the agency official may develop and execute the agreement with the appropriate SHPO/THPO and the agreement shall become final without need for Council participation in consultation or Council signature.

(c) **Exempted categories.**

(1) **Criteria for establishing.** The Council or an agency official may propose a program or category of undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as "undertakings" as defined in § 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are

foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the act.

(2) **Public participation.** The proponent of the exemption shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The proponent of the exemption shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) **Consultation with SHPOs/THPOs.** The proponent of the exemption shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) **Consultation with Indian tribes and Native Hawaiian organizations.** If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) **Council review of proposed exemptions.** The Council shall review an exemption proposal that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the relevant agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the act.

(6) **Legal consequences.** Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) **Termination.** The Council may terminate an exemption at the request of the agency official or when the Council

determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) **Notice.** The proponent of the exemption shall publish notice of any approved exemption in the Federal Register.

(d) **Standard treatments.**

(1) **Establishment.** The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the Federal Register.

(2) **Public participation.** The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an agency official has proposed a standard treatment, the Council may request the agency official to arrange for public involvement.

(3) **Consultation with SHPOs/THPOs.** The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) **Consultation with Indian tribes and Native Hawaiian organizations.** If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) **Termination.** The Council may terminate a standard treatment by publication of a notice in the Federal Register 30 days before the termination takes effect.

(e) **Program comments.** An agency official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews

under §§ 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) **Agency request.** The agency official shall identify the category of undertakings, specify the likely effects on historic properties and the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) **Public participation.** The agency official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) **Consultation with SHPOs/THPOs.** The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) **Consultation with Indian tribes and Native Hawaiian organizations.** If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) **Council action.** Unless the Council requests additional documentation, notifies the agency official that it will decline to comment, or obtains the consent of the agency official to extend the period for providing comment, the Council shall comment to the agency official within 45 days of the request.

(i) If the Council comments, the agency official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the Federal Register of the Council's comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the agency official shall continue to comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(6) **Withdrawal of comment.** If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the agency official shall comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(f) **Consultation with Indian tribes and**

Native Hawaiian organizations when developing program alternatives.

Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) **Identifying affected Indian tribes and Native Hawaiian organizations.** If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the agency official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the agency official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them. When a proposed program alternative has nationwide applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda and applicable provisions of law.

(2) **Results of consultation.** The agency official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The agency official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.

§ 800.15 Tribal, State, and local program alternatives. (Reserved)

§ 800.16 Definitions.

(a) **Act** means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470-470w-6.

(b) **Agency** means agency as defined in 5 U.S.C. 551.

(c) **Approval of the expenditure of funds** means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) **Area of potential effects** means the

geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) **Comment** means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) **Consultation** means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section **106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act"** provide further guidance on consultation.

(g) **Council** means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) **Day or days** means calendar days.

(i) **Effect** means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) **Foreclosure** means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

(k) **Head of the agency** means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l)(1) **Historic property** means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term **eligible for inclusion in the National Register** includes both

properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) **Indian tribe** means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(n) **Local government** means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) **Memorandum of agreement** means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) **National Historic Landmark** means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) **National Register** means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) **National Register criteria** means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s)(1) **Native Hawaiian organization** means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

(2) **Native Hawaiian** means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(t) **Programmatic agreement** means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with § 800.14(b).

(u) **Secretary** means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(v) **State Historic Preservation Officer (SHPO)** means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program

or a representative designated to act for the State historic preservation officer.

(w) **Tribal Historic Preservation Officer (THPO)** means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

(x) **Tribal lands** means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) **Undertaking** means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

(z) **Senior policy official** means the senior policy level official designated by the head of the agency pursuant to section 3(e) of Executive Order 13287.

Appendix A to Part 800 -- Criteria for Council Involvement in Reviewing Individual section 106 Cases

(a) **Introduction.** This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

(b) **General policy.** The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

(c) **Specific criteria.** The Council is likely to enter the section 106 process at the steps specified in the regulations in this part when an undertaking:

(1) **Has substantial impacts on important historic properties.** This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) **Presents important questions of policy or interpretation.** This may include questions about how the Council's regulations are being applied or interpreted, including possible foreclosure or anticipatory demolition situations; situations where the outcome will set a precedent affecting Council

policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) **Has the potential for presenting procedural problems.** This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to § 800.9(d)(2).

(4) **Presents issues of concern to Indian tribes or Native Hawaiian organizations.** This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.

**APPENDIX M:
Standards for Digital Photography
During Inventory and Recording**

BLM expects that high quality digital color images will be submitted with reports to record heritage resources (including buildings and structures), artifacts, settings, landscapes and related subjects found during inventory and evaluation phases. The BLM should be consulted separately for the means and standards of photo documentation for use in National Register nominations and in mitigation (e.g., Appendix G), as different and higher standards may apply or be developed.

Inventory-level Digital Image Recording and Submission Standards

1. High-quality digital images are required.
 - a. Individual image files must be a minimum of 1200-x-1600 pixels (approximately 1.9 megapixels) each.
 - b. These images must allow for printing a high-quality image in either color or black-and-white with a minimum of 300 x 300 dots per inch (dpi) or higher.
2. Images are required in digital format, and may also be required in print format, or both digital and print formats.
 - a. Each BLM office should be consulted to determine whether print copies will be required by BLM or for submittal to SHPO.
 - b. Reports or records involving submittal of SHPO's Historic Resources Inventory Forms must be accompanied by color or black-and-white prints on 8.5 x 11 inch white paper.
 - c. Images submitted with reports must measure no less than 4-x-6 inches and may be printed on either standard-sized paper (8.5 x 11 inch) or as individual 4-x-6 print images on photographic paper, as determined by the BLM office.
 - d. Each image must be accompanied by a caption/label minimally including BLM and/or NSM site number, date photograph was taken, direction of photo, subject, and project. If persons are present in the image, they should be identified by first and last name.
 - e. BLM offices should be consulted ahead of time to determine if other documentation is required, such as UTM location of photographer for each image.

3. Digital images will be submitted in an acceptable electronic format (e.g., compact disk).
 - a. Individual BLM offices should be consulted to determine the acceptable means of storing digital images.
 - b. Image file formats must be compatible with BLM software; JPEG is acceptable.
 - c. Storage media must be labeled individually with the project name, BLM project number or other BLM assignment, month and year, and source or provider (e.g., permittee company name).
4. A standard metric or metric/English scale must accompany artifact photos or other images where scale is needed to convey essential information.

ATTACHMENT 1: INVENTORY NEEDS ASSESSMENT FORM

Bureau of Land Management Nevada State Office
Cultural Resources Inventory Needs Assessment

REQUIRED:

BLM Office:

To be completed by Project Manager/Lead:

Project Name/No.:

Project Description/Scope (who, what, when, where, why, how, and how much [acreage]):

Legal Description:

Attached Copy of 7.5-minute Map with Map Reference showing Project Location:

To be completed Cultural Resource Specialist (CR):

Area of Potential Effect:

APE Acreage:

Records Check:

Records Examined:

Results:

Inventory Type Needed:

None

Categorical Exemption (Number ___)

Reconnaissance

Class I

Class II

Class III

Architectural

Rationale for Inventory Type determination:

Tribal Notification/Consultation Needs:

Rationale:

Tribe(s) to be contacted:

Public Notification Needs:

Rationale:

Person(s), group(s) to be contacted:

CRS Approval: /s/

Date:

Field or other appropriate Manager Concurrence: /s/

Date:

ADDITIONAL:

Field offices may add categories appropriate to their internal procedures.