

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

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.01 Purpose. This Manual Section is intended as a reference source to provide BLM managers with basic information and general summary guidance for managing cultural resources. More detailed information, policy direction, and operating procedures are found in the subsidiary Manual Sections and Handbooks in this series (see .05). The purpose of the Manual series is to establish a uniform BLM process for meeting the spirit and requirements of the cultural resource authorities (see .03) in a dynamic multiple use environment.

.02 Objectives. Managing cultural resources in BLM is viewed as an integrated system of identifying and evaluating cultural resources, deciding on their appropriate uses, and administering them accordingly, both on public lands and on other lands where BLM decisions could affect cultural resources. The objectives of this integrated management system are to:

A. Respond in a legally sufficient and professional manner to (1) the legal authorities concerning historic preservation and cultural resource protection, and (2) the principles of multiple use.

B. Recognize the potential public and scientific uses of, and the values attributed to, cultural resources on the public lands, and manage the lands and cultural resources so that these uses and values are appropriately protected.

C. Contribute to land use planning and the multiple use management of the public lands in ways that make optimum use of the thousands of years of land use history inherent in cultural resource information, and that safeguard opportunities for achieving appropriate uses of cultural resources.

D. Protect and preserve in place representative examples of the full array of cultural resources on public lands for the benefit of scientific and public use by present and future generations.

E. Ensure that proposed land uses avoid inadvertent damage to Federal and non-Federal cultural resources.

F. Further the goals of the Department's and the BLM's Strategic Plan and the Government Performance and Results Act.

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.03 Authority.

A. "An Act for the Preservation of American Antiquities," also known as the Antiquities Act of 1906 (P.L. 59-209; 34 Stat. 225; 16 U.S.C. 432, 433), is chronologically and philosophically the basic legislation for the protection and preservation of cultural properties (archaeological and historic, without regard to minimum age) on Federal lands. It provides for permits to authorize scholarly use of properties, for misdemeanor-level penalties to control unauthorized use, and for presidential designation of outstanding properties as national monuments for long-term preservation. The act is implemented by uniform regulations at 43 CFR Part 3. Both broader in scope than and superseded in part by the Archaeological Resources Protection Act (see .O3J), it remains a fully active statutory authority. (See Appendix 1.)

B. Recreation and Public Purposes Act of 1926 (P.L. 69-386; 44 Stat. 741; 43 U.S.C. 869) authorizes the lease or sale of historic properties under certain conditions. (See 43 CFR Subpart 2741 and BLM Manual Section 2740.)

C. Historic Sites Act of 1935 (P.L. 74-292; 49 Stat. 666; 16 U.S.C. 461) declares national policy to identify and preserve "historic sites, buildings, objects and antiquities" of national significance, authorizing the National Historic Landmarks program of the National Park Service and providing a foundation for the later National Register of Historic Places (see .O3E). Regulations implementing the Landmarks program are at 36 CFR Part 65. (See Appendix 2.)

D. Reservoir Salvage Act of 1960, as amended by Archeological and Historic Preservation Act of 1974 (P.L. 86-523; 74 Stat. 220, 221; 16 U.S.C. 469; P.L. 93-291; 88 Stat. 174; 16 U.S.C. 469) provides for the preservation of historical and archaeological data that might otherwise be lost as the result of a Federal construction project or a federally licensed or assisted project, activity, or program having an effect on cultural resources. Although amended and broadened after 1966, the act makes no distinction regarding National Register eligibility (see .O3E). The act provides that up to one percent of funds the Congress authorizes to be appropriated for a project may be spent to recover, preserve, and protect archaeological and historical data. Because BLM projects are rarely subject to line item authorization and appropriation, this provision generally does not apply to BLM. (See Appendices 3 and 4.)

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E. National Historic Preservation Act of 1966 (P.L. 89-665; 80 Stat. 915; 16 U.S.C. 470), as amended, extends the policy in the Historic Sites Act to include State and local as well as national significance, expands the National Register of Historic Places, and establishes the Advisory Council on Historic Preservation, State Historic Preservation Officers, Tribal Preservation Officers, and a preservation grants-in-aid program. Section 106 directs all Federal agencies to take into account effects of their undertakings (actions and authorizations) on properties included in or eligible for the National Register of Historic Places, and Section 110 sets inventory, nomination, protection, and preservation responsibilities for federally owned cultural properties. Section 110(c) requires each Federal agency to designate a Preservation Officer to coordinate activities under the act. Section 106 of the act is implemented by regulations of the Advisory Council on Historic Preservation, 36 CFR Part 800. (See Appendix 5.) The 10 Western BLM States and Alaska comply with Section 106 of the Act according to a national Programmatic Agreement dated March 26, 1997. (See Appendix 13.)

F. National Environmental Policy Act of 1969 (P.L. 91-190; 83 Stat. 852; 42 U.S.C. 4321) establishes national policy for the protection and enhancement of the environment. Part of the function of the Federal Government in protecting the environment is to "preserve important historic, cultural, and natural aspects of our national heritage." Cultural resources need not be determined eligible for the National Register of Historic Places (as in the National Historic Preservation Act) to receive consideration under the National Environmental Policy Act. The act is implemented by regulations of the Council on Environmental Quality, 40 CFR 1500-1508. A procedural statute, the act provides for public participation in the consideration of cultural resource issues, among others, during agency decisionmaking.

G. Executive Order 11593 ("Protection and Enhancement of the Cultural Environment," 36 F.R. 8921, May 13, 1971) directs Federal agencies to inventory cultural properties under their jurisdiction, to nominate to the National Register of Historic Places all federally owned properties that meet the criteria, to use due caution until the inventory and nomination processes are completed, and also to assure that Federal plans and programs contribute to preservation and enhancement of nonfederally owned properties. Some of the provisions of the Executive Order are also found in Section 110 of the National Historic Preservation Act. (See Appendix 6.)

H. Federal Land Policy and Management Act of 1976 (P.L. 94-579; 90 Stat. 2743; 43 U.S.C. 1701; "FLPMA") directs the Bureau of Land Management to manage public lands on the basis of multiple use, in a manner that "recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands" and that will "protect the quality of . . . historical . . . resources, and archeological values." Cultural resources need not be determined eligible for the National Register of Historic Places (as in the National Historic Preservation Act) to receive consideration under the FLPMA. The act provides for the periodic inventory of public lands and resources, for long-range, comprehensive land use planning, for permits to regulate use of the public lands, and for the enforcement of public land laws and regulations. FLPMA provides the broadest framework for managing cultural resources on the public lands.

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I. American Indian Religious Freedom Act of 1978 (P.L. 95-431; 92 Stat. 469; 42 U.S.C. 1996) resolves that it shall be the policy of the United States to protect and preserve for the American Indian, Eskimo, Aleut, and Native Hawaiian the inherent right of freedom to believe, express, and exercise their traditional religions, including but not limited to access to religious sites, use and possession of sacred objects, and freedom to worship through ceremonials and traditional rites. Federal agencies are directed to evaluate their policies and procedures to determine if changes are needed to ensure that such rights and freedoms are not disrupted by agency practices. The act, a specific expression of First Amendment guarantees of religious freedom, is not implemented by regulations. (See Appendix 7.) (Note: A U.S. Court of Appeals has determined that there is a compliance element in the American Indian Religious Freedom Act, requiring that (1) the views of Indian leaders be obtained and considered when a proposed land use might conflict with traditional Indian religious beliefs or practices, and that (2) unnecessary interference with Indian religious practices be avoided during project implementation, but specifying that (3) conflict need not necessarily bar Federal agencies from adopting proposed land uses in the public interest. Wilson v. Block, 708 F.2d 735, 747 (D.C. Cir. 1983).) An amendment in 1994 (P.L. 103-344) provided for Indians' use, possession, and transportation of peyote for traditional religious purposes.

J. Archaeological Resources Protection Act of 1979 (P.L. 96-95; 93 Stat. 721; 16 U.S.C. 470aa et seq.) as amended (P.L. 100-555; P.L. 100-588) provides felony-level penalties, more severe than those of the Antiquities Act of 1906 (see .03A), for the unauthorized excavation, removal, damage, alteration, defacement, or the attempted unauthorized removal, damage, alteration, or defacement of any archaeological resource, more than 100 years of age, found on public lands or Indian lands. The act also prohibits the sale, purchase, exchange, transportation, receipt, or offering of any archaeological resource obtained from public lands or Indian lands in violation of any provision, rule, regulation, ordinance, or permit under the act, or under any Federal, State, or local law. Archaeological resources need not be determined eligible for the National Register of Historic Places (as in the National Historic Preservation Act) to receive consideration under the ARPA. The act establishes definitions, permit requirements, and criminal and civil penalties, among other provisions. The act overlaps with and partially supersedes the Antiquities Act, in its provisions for permits and penalties. It is implemented by uniform regulations and departmental regulations, both at 43 CFR Part 7. An amendment in 1988 gives Federal agencies explicit direction to establish educational programs explaining the importance of archaeology, to help members of the public understand why archaeological resources are protected from unauthorized removal or damage (See Appendix 8.)

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K. Native American Graves Protection and Repatriation Act of 1990 (P.L. 101-601; 104 Stat. 3048; 25 U.S.C. 3001) establishes rights of Indian tribes and Native Hawaiian organizations to claim ownership of certain "cultural items," including human remains, funerary objects, sacred objects, and objects of cultural patrimony held or controlled by Federal agencies and museums that receive Federal funds. The act requires agencies and museums to identify holdings of such remains and objects and to work with appropriate Native American groups toward their repatriation. Permits for the excavation and/or removal of "cultural items" protected by the act require Native American consultation, as do discoveries of "cultural items" made during land use activities. The Secretary of the Interior's implementing regulations are at 43 CFR Part 10. (See Appendix 9.)

L. National Trails System Act of 1968 (P.L. 90-543; 16 U.S.C. 1241 et. seq. as amended through P.L. 107-325, December 4, 2002) established a national trails system to promote preservation of, public access to, travel within, and enjoyment of the open-air, outdoor areas, and historic resources of the nation. The Act designated initial trail system components and established methods and standards for adding additional components. Trails are added to the system only by act of Congress. Historic Trails, trail sites, and trail segments must be evaluated against the National Register criteria at 36 CFR Part 60, whether congressionally designated or not, to determine National Register qualification (See Manual Section 8110.3; Departmental Manual 710; National Register Bulletin #30) and related NHPA Section 106 responsibilities.

M. Executive Order 13007 ("Indian Sacred Sites," 61 F.R. 104, May 24, 1996) provides that in managing Federal lands, agencies—to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions—shall accommodate Indian religious practitioners' access to and ceremonial use of Indian sacred sites, shall avoid adversely affecting the physical integrity of such sites, and shall maintain the confidentiality of sacred sites. The responsibility to identify such sacred sites to the managing agency resides with the Indian tribe or appropriately authoritative representative of an Indian religion. The responsibility to inform tribes, where practicable and appropriate, of proposed actions or land management policies that could restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites, rests with the agency. The Order directs agencies to comply with the Executive Memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments." It explicitly does not create any new right or benefit for Indian tribes, nor any new trust responsibility for the Federal Government. (See Appendix 10.)

N. Executive Order 13287 ("Preserve America" 68 F.R. 43, March 5, 2003) orders the Federal Government to take a leadership role in protection, enhancement, and contemporary use of historic properties owned by the Federal Government, and promote intergovernmental cooperation and partnerships for preservation and use of historic properties. The order establishes new accountability for agencies with regard to inventories and stewardship.

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.04 Responsibility.

A. Director, through the Assistant Director, Renewable Resources and Planning, and the Manager, Cultural and Fossil Resources and Tribal Consultation Group, is responsible for:

1. Overall direction, leadership, and coordination for the implementation and evaluation of BLM's cultural resource management procedures and initiatives.
2. Cultural resource management guidance, information, strategies, procedures, and directives as required by other staffs and BLM offices. This is accomplished in consultation with the related Washington Office Group(s).
3. Coordination of contacts with other Federal bureaus, agencies, and departmental offices in Washington, D.C., regarding cultural resource concerns, in consultation with the related Washington Office Group(s).

B. State Directors, within their respective jurisdictions, are responsible for:

1. Directing implementation of the cultural resource management program and identifying priorities for implementing program elements.
2. Providing statewide training and technical direction for implementing program elements.
3. Monitoring the progress and quality of work being completed at the field level.

C. Field Office Managers are responsible for directing the implementation and maintenance of the cultural resource management program within their respective areas of authority, and for ensuring that all elements of the program are conducted in conformance with legal and professional standards. Managers are also responsible for encouraging and enabling the cultural resource staff specialists under their supervision to maintain and strengthen their professional qualifications, through training, course work, attendance at professional conferences, special details, and other means.

D. Cultural Resource Specialists are responsible for providing professionally sound recommendations, advice, and service to managers to assist them in fulfilling their responsibilities. Specialists are also responsible for maintaining and strengthening their own professional and technical knowledge and skills, which includes staying current with professional methods and standards and legal/regulatory matters pertinent to performance of their duties. Staff specialists must inform their supervisor when a proposed work assignment exceeds their professional qualifications. (See "Professional Development" commitments in BLM's national Programmatic Agreement, items 7.a. and b., App. 13, p. 10.)

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E. All Field Personnel are responsible for knowing and observing the prohibitions against unauthorized disturbance of cultural resources and collection of archaeological and historical artifacts; reporting all cultural resource discoveries; avoiding damage to or destruction of cultural resources; and reporting to appropriate officials any apparent violations of the laws and regulations protecting cultural resources.

F. The Bureau's Preservation Officer, a senior cultural resource specialist in the Headquarters Office, is responsible for fulfilling coordination duties under the National Historic Preservation Act (see Appendix 5, Section 110(c)), and for advising the directorate on professional and technical matters relating to cultural resource management. The Preservation Officer chairs the Preservation Board (.04H).

G. Deputy Preservation Officer, a senior cultural resource specialist on each State Director's staff, is responsible for advising the State Director and Field Office managers on professional and technical matters relating to cultural resource management, and for serving as an ex-officio member on the Preservation Board (.04H).

H. The Preservation Board, established by the Director pursuant to the national Programmatic Agreement of March 26, 1997 (Appendix 13), oversees historic preservation activities bureauwide, coordinates with the Advisory Council on Historic Preservation and the State Historic Preservation Officers, and advises the State Directors and the Headquarters Directorate on historic preservation matters. See Appendix 14, Preservation Board Charter, and BLM Manual Section 1211.09G.

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.05 References.

- A. National Programmatic Agreement of March 26, 1997 (see Appendix 13).
- B. Title 36 Code of Federal Regulations, Parts 60, 61, 63, 65, 68, 79, and 800.
- C. Title 43 Code of Federal Regulations, Parts 3 and 7.
- D. BLM Manual Section 8110 - Identifying and Evaluating Cultural Resources.
- E. BLM Manual Section 8120 – Tribal Consultation Under Cultural Resource Authorities
- F. BLM Manual Handbook H-8120-1 - Guidelines for Conducting Tribal Consultation
- G. BLM Manual Section 8130 - Planning for Uses of Cultural Resources
- H. BLM Manual Section 8140 - Protecting Cultural Resources.
- I. BLM Manual Section 8150 - Permitting Uses of Cultural Resources
- J. BLM Manual Section 8160 - Preserving Museum Collections [Reserved]
- K. BLM Manual Section 8170 - Interpreting Cultural Resources for Public Use

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.06 Policy.

A. Cultural resources are recognized as fragile, irreplaceable resources with potential public and scientific uses, representing an important and integral part of our Nation's heritage.

B. The BLM manages cultural resources under its jurisdiction or control according to their relative importance, protecting against impairment, destruction, and inadvertent loss, and encouraging and accommodating the uses determined appropriate through planning and public participation.

C. Apart from certain considerations derived from specific cultural resource statutes, management of cultural resources on the public lands is primarily based on FLPMA (see .03H), and is governed by the same multiple use principles and the same planning and decisionmaking processes as are followed in managing other public land resources.

.07 File and Records Maintenance. See .22, .23C, .23D, .24A-D, .3. See also subsidiary Manual Sections in this series. Filing requirements are found in the GRS/BLM Combined Records Schedule (Schedule 4).

.08 Responsibility for Non-Federal Cultural Resources.

A. The BLM assures that its actions and authorizations are considered in terms of their effects on cultural resources located on non-Federal land. The extent of BLM's responsibility for identifying and protecting non-Federal cultural resources is limited by the degree to which BLM decisions determine or control the location of activities on non-Federal lands which could have effects on cultural resources. (See BLM Manual Section 8140.06D.)

B. The BLM conducts, or causes to be conducted, the inventory and evaluation of cultural resources on non-Federal lands within the area potentially impacted by proposed land uses, whether initiated by BLM or in response to a land use application.

C. The BLM mitigates, or causes to be mitigated, adverse effects to non-Federal cultural properties that would result from land uses carried out by or authorized by BLM.

D. When mitigation involves data recovery, the artifacts, samples, and collections recovered from non-Federal land remain the property of the non-Federal landowner unless donated to the Federal Government. The United States must receive complete and true copies of the investigator's original field notes, maps, records of analyses, photographs, other data, and reports when mitigation work is conducted on non-Federal land on behalf of the Federal Government. Reports resulting from work on non-Federal land should be made available to the land owner.

E. Identification and/or mitigation 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.

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.09 Program Relationships.

A. Relationship to Other BLM Programs.

1. BLM Planning System. (See BLM Manual Sections 1601 and 8130).

a. The management of cultural resources (including but not limited to protection, public use, and scientific use of the resources) shall be guided by and in accordance with approved BLM land use plans, principally Resource Management Plans (RMP).

b. Together with the other public land resources, cultural resources are considered in BLM land use plans as follows:

(1) Land use plans take into account the extent to which implementation of the cultural resource management objectives may affect other resource management programs and actions.

(2) Land use plans also take into account the extent to which other potential land and resource uses may have effects on cultural resources. The need for developing additional cultural resource information, e.g., sample inventory, is assessed relative to the potential effects, responsibility is assigned, and data acquisition tasks and schedules are established at the outset of land use planning.

(3) Evidence of cultural resource consideration (including, as applicable, compliance with Section 106 of the National Historic Preservation Act (NHPA) and Native American consultation in observance of the NHPA, the American Indian Religious Freedom Act, the Archaeological Resources Protection Act, and the Native American Graves Protection and Repatriation Act) is incorporated in the environmental impact statement prepared as part of the land use plan.

(4) Each land use plan should make full use of any cultural resource information that can provide insights into successful and failed attempts at using the land and resources in the prehistoric and historic past, whenever analogous land and resource uses are being considered in the plan.

2. Recreation Management Program. (See BLM Manual series 8300.)

a. The long-term management of some cultural properties, determined to be suited to management for public visitation and/or interpretation, may be found to fall partly within the recreation management program. Whenever cultural properties are to be developed to accommodate public visitation, interpretation, and education, recreation management expertise is an essential part of the development.

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b. Any recreational use of cultural properties must be compatible with cultural resource management objectives established through evaluation and planning, and must be closely coordinated with and draw on the technical expertise of the cultural resource staff.

c. Restoration of cultural properties may be undertaken by BLM to meet recreation program objectives. In contrast, similar cultural resource program actions are normally limited to stabilizing and maintaining a cultural property's present condition.

d. Onsite interpretation of cultural properties for public education may also have the objective and effect of protecting other use(s) assigned to the cultural properties. The division of funding, staffing, and roles is determined case by case, based on the balance of benefits to each program.

e. The cultural resource staff assists the recreation staff by providing:

(1) Cultural resource inventory and evaluation data appropriate for analysis from a recreation opportunity standpoint.

(2) Any cultural resource technical expertise needed for accurate interpretation, restoration, or other recreation-related development and use of cultural properties.

3. National Landscape Conservation System (NLCS). The NLCS staff in Headquarters, State, and field offices guides the long-term management of National Monuments, National Conservation Areas, Wilderness Areas, National Rivers, National Trails, and other types of congressionally designated conservation system units. Presidential proclamations and congressional designations for many units of these systems recognize the contributions of archaeological and historic properties to their overall national importance. For such units, coordination between NLCS and cultural resource staffs is vital, especially during the development of management plans.

4. Other Land and Resource Management Programs.

a. Compliance Requirements. All BLM resource programs that may have an effect on cultural resources through their actions or authorizations are responsible, as benefiting activities, for funding:

(1) Cultural resource inventories and evaluations as needed to measure potential effects, including analysis and report preparation following completion of fieldwork.

(2) Documentation adequate for conducting consultations required under Section 106 of the National Historic Preservation Act and Section 3(c) of the Native American Graves Protection and Repatriation Act.

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(3) Cultural resource protection work needed to avoid or mitigate adverse effects of land or resource use on cultural resources, including analysis and report preparation following completion of fieldwork, and curation of collections and copies of records, data, photographs, and other documents derived from the work following completion of analyses and reports.

b. Paleontological Resource Management. Paleontological (fossil) resource management (subject-function code 8270) is distinct from cultural resource management (subject-function code 8100, etc.). However, if fossils are found in direct association with archaeological materials, they are also considered to be archaeological resources and are protected by the Archaeological Resources Protection Act. (See Appendix 8, Section 3.)

5. Management Supporting Programs. The Manuals in this Manual Series frequently refer to the various BLM programs that contribute support to assist the cultural resource management program in meeting its objectives (such as planning, environmental coordination, law enforcement, engineering, cadastral survey, land and minerals operations, records, public affairs, and others). Personnel in those programs receive technical and policy guidance from their own Manuals and program directives unless otherwise noted.

B. Relationship to Federal Historic Preservation Programs.

1. National Park Service (NPS). The National Park Service administers several programs the BLM may employ while managing cultural resources on BLM- administered lands. Consultation, joint projects, or technical assistance may be arranged with the NPS when they would promote the effectiveness or efficiency of BLM program execution or aid the NPS in its assigned roles. The BLM provides data to the NPS as requested for annual reports to the Congress under Public Laws 93-291 and 96-95 (see Appendices 4 and 8).

a. National Register and Landmarks. The NPS administers the National Register of Historic Places and the National Historic Landmarks program. The BLM's National Register nominations and formal requests for determinations of eligibility are submitted to the NPS for decision (36 CFR Part 60). Properties the BLM and the State Historic Preservation Officer recommend for inclusion in the National Register as nationally significant are considered by NPS for potential Landmark designation. The BLM comments on NPS proposals to designate BLM properties as Landmarks. The NPS exercises the responsibilities of the Secretary to administer these programs, but does not have any management authority over BLM properties included in these programs.

b. Project Mitigation. The Secretary's responsibility for coordinating activities under the Reservoir Salvage Act as amended by the Archeological and Historic Preservation Act (Public Laws 86-523 and 93-291, Appendices 3 and 4), and for preparing an annual report to the Congress on the scope and effectiveness of that program, is delegated to the NPS. It would be exceedingly rare for BLM to conduct project mitigation under this authority (see .03D) instead of under the authority of Section 106 of the National Historic Preservation Act (see .03E).

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c. Protection Consultation and Technical Information. Executive Order 11593 authorizes the Secretary, through the NPS, to advise Federal agencies on the identification and evaluation of cultural resources, and to develop and disseminate information concerning methods and techniques of protection, restoration, and maintenance of cultural properties. The BLM may consult with NPS on these matters. Implementation of NPS recommendations is at the BLM's discretion.

d. Standards and Guidelines. The National Historic Preservation Act requires the Secretary to develop various professional standards and guidelines for the preservation of cultural properties in Federal ownership or control. This function is delegated to the NPS. The BLM observes the standards and guidelines as applicable.

e. Native American Graves Protection. Under the Native American Graves Protection and Repatriation Act (see Appendix 9), the Secretary is responsible to promulgate implementing regulations, to establish a Review Committee to oversee implementation, to ensure that museums comply, and to grant funds to Indian tribes, Native Hawaiian organizations, and museums for carrying out the Act. The Secretary has delegated these duties to the NPS.

2. Advisory Council on Historic Preservation. Under the national Programmatic Agreement, the Advisory Council has an advisory-consultative role in the BLM management process and when a proposed land use might have an effect on a nationally significant cultural property or would involve interstate and/or interagency coordination. Offices not operating under the national Programmatic Agreement are required to follow the Council's Section 106 regulations at 36 CFR Part 800. In either case, after compliance obligations have been met, the authority and responsibility for decisions remain with the Field Office manager.

C. Relationship to Tribal, State and Local Historic Preservation Programs.

1. Tribal Historic Preservation Officer (THPO).

a. As authorized in Section 101(d) of the National Historic Preservation Act and subject to the Secretary's approval, Indian tribes may establish historic preservation programs to give them greater roles and responsibilities for preserving historic properties on tribal lands. Tribes with approved programs designate Tribal Historic Preservation Officers (THPO) who may assume any or all of the functions of a State Historic Preservation Officer (SHPO) with respect to tribal land. Assumed functions may include identifying and maintaining inventories of culturally significant properties, nominating properties to national and tribal registers of historic places, conducting Section 106 reviews of Federal agency projects on tribal lands, and conducting educational programs on the importance of preserving historic properties.

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(1) For tribes with approved programs, Field Office managers consult with the THPO in lieu of the SHPO for undertakings occurring on, or affecting historic properties on, tribal lands.

(2) For other tribes, Field Office managers consult a tribally designated representative in addition to the SHPO during review of projects occurring on, or affecting historic properties on, their tribal lands.

b. In accordance with Section 101(d)(6) of the National Historic Preservation Act, Indian tribes often choose to designate the THPO as the tribal representative to assist Federal officials in identifying tribally significant, National Register-eligible properties, potentially affected by a proposed Federal undertaking on non-tribal lands. Although the same individual or office is involved, this is a role completely apart from the THPO's roles with respect to the tribe's preservation program and tribal lands.

(1) Concerning non-tribal lands, THPOs do not assume any of the SHPO's functions.

(2) Concerning non-tribal lands, Field Office managers consult with THPOs only when they have been designated as tribal representatives for purposes of Section 106, for their assistance in identifying and evaluating properties of traditional religious and cultural importance to the tribe. This does not substitute for consultation with SHPO under .09C2e.

(3) Concerning non-tribal lands, THPOs designated as tribal representatives for purposes of Section 106 are acting as tribal representatives, not as THPOs. This distinction and its implications may not always be clear. THPOs do not have management responsibility or authority for tribally significant properties on non-tribal lands.

c. The BLM national Programmatic Agreement does not apply to undertakings on tribal lands. A Field Office manager considering an undertaking on tribal lands complies with 36 CFR Part 800, or where the tribe has entered into an agreement with the Advisory Council, with the tribe's preservation regulations.

d. A tribe's establishment of a tribal preservation program and designation of a THPO often facilitates cooperative opportunities with the tribe, such as sharing information and expertise.

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2. State Historic Preservation Officer (SHPO). Field Office managers work closely with SHPOs to satisfy the working relationships set forth in the national Programmatic Agreement, and the State's BLM-SHPO Protocols developed to implement the Programmatic Agreement. The BLM cooperates with the SHPO in fulfilling functions that relate to BLM. These include:

- a. Assisting in data base automation and development of GIS capability.
- b. Developing and implementing a comprehensive State historic preservation plan. (See 36 CFR Part 61.)
- c. Directing and conducting a continuing statewide survey of cultural properties and maintaining inventories of such properties.
- d. Reviewing and commenting on all BLM National Register nominations and BLM requests for formal determinations of eligibility from the Keeper of the National Register.
- e. Reviewing and commenting on documentation submitted by BLM for compliance with Section 106 of the National Historic Preservation Act.
- f. It is not normally the SHPO's function to perform surveys or evaluate, nominate, or manage cultural properties on BLM-administered lands, unless arranged through agreements, contracts, or permits.

2. Certified Local Governments. Any affected local government with a historic preservation program that has been certified pursuant to section 101(c)(1) of the National Historic Preservation Act (see Appendix 5) may assume parts of the Section 106 consultation duties of the SHPO if the local government, the SHPO, and the Advisory Council agree.

D. Relationship to Other Countries' Historic Preservation Programs

1. Account for Effects in Other Countries. In Section 402 of the National Historic Preservation Act Amendments of 1980 (P.L. 96-515 Title IV, 16 U.S.C. Sec. 470a-2) the Congress directs Federal agencies to take into account the effects of their undertakings on significant cultural resources in other countries.

a. Cross-border Linear Projects. The BLM does not conduct or authorize undertakings outside the United States. However, the BLM does sometimes process applications for the U.S. portions of cross-border linear projects, such as oil and gas pipelines, that could cause or enable adverse effects on another country's significant cultural resources, effects that might not otherwise occur except for the U.S. participation.

b. DOE Lead. International energy projects require Presidential permits. The Department of Energy (DOE) has been assigned the lead role on such projects, including compliance responsibility for the National Historic Preservation Act (NHPA). On occasion the BLM might agree to carry out compliance activities on DOE's behalf.

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2. Contact, Communication, and Coordination. When carrying out the lead NHPA role for a proposed cross-border undertaking, the BLM lacks authority to require another country's significant cultural resources to be identified, or for adverse effects to them to be avoided or mitigated. Nevertheless, the Congress's purpose is clear, that Federal agencies should not be heedless of adverse effects that United States involvement might generate on significant cultural resources outside U.S. borders. The BLM will fulfill Section 402's purpose as follows:

a. When the BLM and Department of Energy agree that the BLM will fulfill the Federal Government's NHPA compliance responsibilities for a proposed cross-border undertaking that would potentially affect significant cultural resources outside the United States, the responsible BLM manager shall contact counterpart officials in the other country and shall facilitate communication among government agencies and proponent companies in both countries. The aim of contact and communication is to alert officials in the other country so that they may appropriately direct project-related activities and account for the project's potential effects on significant cultural resources.

b. The State Historic Preservation Officer and the Advisory Council on Historic Preservation must be involved in the historic preservation review for the U.S. portion of the project, according to provisions of the BLM national Programmatic Agreement and State protocols. They do not, however, have any statutory role in the consideration of effects to significant cultural resources outside the United States, and they are not to be formally involved in cross-border coordination.

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.1 National Programmatic Agreement Regulates BLM's Compliance with NHPA. The Programmatic Agreement (PA) executed by the BLM, the Advisory Council on Historic Preservation (Council), and the National Conference of State Historic Preservation Officers (NCSHPO) on March 26, 1997, legally replaces 36 CFR Part 800, the Council's governmentwide regulations, as the procedural basis for BLM managers to meet their responsibilities under Sections 106, 110(f), and 111(a) of the National Historic Preservation Act (NHPA)(See App. 15).

.11 Historic Preservation is Integrated into Multiple-Use Management under FLPMA. The parties to the PA agreed that historic preservation in BLM will be best achieved by integrating NHPA responsibilities as fully as possible into land-use planning and resource management procedures under FLPMA. Correspondingly, management of the public lands and other public land resources will benefit from early attention to the statutory authorities, executive orders and national policies concerning cultural resources.

.12 Authority to Implement the Programmatic Agreement is Provisional. The PA is based on the Council's and NCSHPO's recognition that BLM is capable of assuming more historic preservation responsibility without case-by-case Council and SHPO oversight, because of strategically placed professional staff, well developed cultural resource management direction (this manual series), and its managers' commitment to preservation goals, as demonstrated by a history of good performance. The parties agreed that the BLM could implement the PA after completing actions summarized in .13. At the same time, the PA is clear that these capabilities must be maintained in order to keep the PA in effect.

.13 BLM Standards Required under the National Programmatic Agreement. To replace the preservation oversight usually provided by the SHPO and Council, the Director agreed to:

A. Establish a Preservation Board to advise the BLM's line managers (the Director, State Directors and Field Office managers). (See Appendix 14 for Board composition and duties.)

B. Update the national BLM policies and procedures (the 8100 manual series) with the advice of the Preservation Board and assisted by the Council, the NCSHPO, the SHPOs and other participating parties, to fit their larger role under the PA.

C. Develop State Director/SHPO operating protocols, to tailor the national policies and procedures to State-specific circumstances and needs.

D. Train all Field Office managers and their cultural heritage staffs in the operation of the national policies and procedures and the State protocols.

E. Certify that Field Offices under a State Director's jurisdiction are appropriately qualified to employ the streamlined procedures developed pursuant to the PA.

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.14 Thresholds for Council Participation. The parties to the PA agreed that BLM will request the Council's participation in case of the following, and other similar occasions as the Field Office manager deems appropriate:

- A. Nonroutine interstate and/or interagency projects or programs.
- B. Undertakings directly or adversely affecting National Historic Landmarks or National Register eligible properties of national significance.
- C. Highly controversial undertakings, when BLM, a SHPO, an Indian tribe, a local government, or an applicant for a BLM authorization requests Council review. (In general, "highly controversial" means cases where historic preservation issues are unusually contentious and are the subject of media, congressional, and public inquiries.)

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.2 Personnel Qualifications and Administrative Requirements. Only properly qualified personnel may complete the professional staff work and implement the streamlined procedures developed pursuant to the PA.

.21 Personnel Must Meet Permit Standards. Provisions of Section 4 of the Archaeological Resources Protection Act (BLM Manual Section 8100, Appendix 8) and 43 CFR Part 7 regarding qualifications, conditions, and Native American religious and cultural consideration, must be met whether individuals approved to conduct the work are permittees, government employees, government contractors, or volunteers.

.22 Alternate Documentation Allowed for Official Duties. To meet legal requirements without unnecessary duplication of administrative effort, 43 CFR 7.5(c) provides that persons carrying out official agency management duties under the Federal land manager's direction do not need to hold a permit per se. However, the Federal land manager must document that the professional qualifications standards of the regulations (43 CFR 7.8) have been met; must set appropriate conditions in writing consistent with the regulations (43 CFR 7.9); and must ensure that carrying out of any official duties that are likely to result in harm to or destruction of a known Indian tribal religious or cultural site have been the subject of notification and consultation, as appropriate, consistent with the regulations (43 CFR 7.7).

.23 BLM Personnel.

A. Specialists. Only professionally qualified specialists, trained and experienced in the appropriate discipline(s), may undertake or oversee inventories and evaluations. Only appropriately qualified specialists may make evaluation and management recommendations. Entry-grade and other junior cultural resource specialists may not be assigned independent cultural resource work beyond the level of their qualifications. Only properly qualified specialists may review and recommend approval of cultural resource work done by other specialists, technical assistants, contractors, permittees, cooperating agencies, and volunteers.

B. Technical Assistants. Adequately trained and experienced BLM cultural resource technical assistants (paraprofessionals) (see .21 and .22), under the direction of an appropriately qualified BLM cultural resource specialist, may assist in carrying out inventory tasks. "Under the direction" includes assigning, checking, approving, and accepting professional responsibility for the assistant's work. The specialist decides whether to assign a technical assistant on a project, based on the assistant's training and experience and the anticipated sensitivity of the project area. The specialist is responsible for evaluating cultural resources, recommending mitigation measures, writing final reports, and ensuring compliance with the national Programmatic Agreement and the State's BLM-SHPO Protocol in all instances where a technical assistant records cultural resources. All technical assistants' work must be approved in writing by a qualified BLM professional cultural resource specialist before it can be used as a basis for management decisions or included in cultural resource records systems or data bases. Technical assistants may not direct others participating in inventory work.

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C. Documentation of Qualifications. Required qualifications, appropriate to the work to be performed, and qualification criteria are identified through the position description, vacancy announcement, and rating plan prepared at the time of recruitment. Documentation that the criteria are met is included in the Merit Promotion Case File (BLM Manual Section 1400-335). Qualifications upgraded through training and experience on the job may be documented through certificates of training, completed prior-year performance review forms, and other relevant documentation included in the employee's official personnel file. Field Office managers must document the professional staff capability available to them as part of satisfying the provisions of the national Programmatic Agreement, and must maintain sufficient professional staff capability to operate under the Agreement.

D. Documentation of Assignments. Supervisors are responsible for ensuring that the level of work assigned and performed is appropriate to an employee's qualifications. It is the employee's ethical responsibility to inform the supervisor when an assignment would go beyond the employee's qualifications. Field Office managers must ensure that staff assignments are appropriately matched to staff members' professional qualifications in order to operate under the national Programmatic Agreement.

.24 Non-BLM Personnel. Inventory and evaluation tasks performed by non-BLM personnel must be overseen and accepted by an appropriately qualified BLM cultural resource specialist, whose recommendations must be approved by the responsible manager.

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A. Contractors. BLM may obtain professional services for inventories and/or evaluations through contracts with appropriately qualified non-Federal sources. Potential contractors' minimum required qualifications are specified in the request for proposals (see BLM Manual Handbook 1510-1, Ch. VIII). Assessment of offerors' qualifications is performed by the Technical Proposal Evaluation Committee and Contracting Officer, and documented in the procurement record. Appropriate conditions are specified in the contract. Notification of Indian tribes, if necessary, is the responsibility of the program office originating the procurement, and should precede the procurement. Any notification and any subsequent consultation should be documented in both the procurement record and the related job file.

B. Third-Party Consultants. Land use applicants often obtain the services of professionally qualified cultural resource consultants to conduct inventory and/or evaluation tasks to expedite BLM processing of their land use applications. Permit provisions in BLM Manual Section 8150 govern consultants proposing to conduct inventory and/or evaluation tasks on public lands. Permittees' qualifications to do specific work or evaluate specific resources are documented in the permit file. Terms and conditions are incorporated in the permit. Any required BLM notification of Indian tribes and subsequent BLM consultation is documented in the permit file.

C. Cooperators. Qualifications, conditions, and any required notifications relating to work done cooperatively by another agency or a partner is documented in the same general manner as for contractors or third-party consultants, as appropriate, in the cooperative agreement file. (See BLM Manual Sections 1510 and 1780.)

D. Volunteers. Appropriately trained volunteers may assist in conducting inventories. Professionally qualified volunteers may conduct inventory work in the manner of a contractor or third-party consultant, under the direction of a qualified BLM cultural resource specialist, at the discretion of the responsible manager and with the concurrence of the cultural resource specialist. Less qualified volunteers may be used under the direct supervision of a qualified BLM cultural resource specialist, as appropriate. Volunteers' qualifications shall be reviewed and documented. The appropriate assignment of volunteers shall be documented in individual volunteer services agreements (Form 1114-4, BLM Manual Section 1114).

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.3 Preparing and Distributing Annual Reports. The BLM cooperates with the National Park Service in meeting the Secretary's requirements to report annually to the Congress under the Archeological and Historic Preservation Act (Appendix 4) and the Archaeological Resources Protection Act (Appendix 8). In addition, the national PA (see Appendix 13, item 9.a.) obligates each State Director to prepare an annual report in consultation with the appropriate SHPO(s), outlining the preservation activities conducted under the PA in the preceding year. Annual cultural resource data is also integrated into the Public Land Statistics, Chief Financial Officers/Stewardship Assets, and “Public Rewards from Public Lands” reports.

.31 Data Compilation. Field Offices should record pertinent data continually, as the data are being generated, and should automate the recording process so that data fields can be tabulated with minimum effort at any time. To the extent possible, compilation of PA-related data into the State Director's report format should be timed to coincide with compilation of the Secretary's annual report data.

.32 Report Content. Annual reports should include the following information.

A. Secretary's Report.

1. Tabular data on cultural resource inventories, recorded properties, National Register evaluations, cultural resource overviews and data reviews, unanticipated discoveries, data recovery projects, and archaeological permitting.

2. Narratives on agency highlights, including accomplishments in public outreach, heritage education, collections management, and data automation.

3. Listing of Outlaw Treachery (LOOT) forms that describe law enforcement prosecutions and convictions of archaeological crimes.

B. Programmatic Agreement Report.

1. Statistical information on resource inventories, recorded properties, National Register listings and evaluations, resource overviews, properties physically and administratively protected, mitigation and data recovery, and cultural resource use permits.

2. Progress in implementing the national Programmatic Agreement including working with State Historic Preservation Officers to automate existing cultural resource site data, synthesize existing cultural resource inventory information and complete historic context documents.

3. Public benefits projects resulting from cost savings realized through implementation of the national PA.

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C. Public Land Statistics Report.

1. Statistical information on resource inventories, recorded properties, and cultural resource use permits.

D. Chief Financial Officer/Stewardship Assets Report.

1. Statistical information on resource inventories, recorded properties, cultural resource use permits, curatorial facilities holding BLM museum objects

2. Narratives on agency highlights, including accomplishments in public outreach, heritage education, collections management, and data automation.

3. Progress in implementing the national Programmatic Agreement including working with State Historic Preservation Officers to automate existing cultural resource site data, synthesize existing cultural resource inventory information and complete historic context documents.

E. Public Rewards from Public Lands. Statistical information on resource inventories and recorded properties by State.

.33 Report Distribution.

A. Secretary's Report. The Director will annually submit a compilation of the preceding fiscal year's cultural resource accomplishments, including numerical and narrative information and highlights, to the National Park Service for incorporation into the Secretary's Report to Congress. The NPS will be responsible for distribution of this report, including dissemination to BLM field office specialists.

B. Programmatic Agreement Report. Each State Director will provide copies to the appropriate SHPO(s), the Council, the Preservation Board, and interested parties who have made themselves known to the State Director, and will make copies available to the public on request.

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Glossary of Terms

-A-

adverse effect: alteration of the characteristics of a cultural property that may qualify it for the National Register, thereby reducing or eliminating the resource's use potential, diminishing its integrity, or disqualifying it from Register eligibility. Determination of adverse effect to cultural properties is guided by criteria in the Advisory Council's regulations, 36 CFR Part 800.

Advisory Council: the Advisory Council on Historic Preservation as established by Title II of the National Historic Preservation Act. (See Appendix 5.) The Advisory Council is an independent executive agency that reports to and advises the President and the Congress on historic preservation matters. Headquartered in Washington, D.C., the Advisory Council also has a staff office in Denver, Colorado.

"archaeological resource": a term with legal definition and application (see Appendix 8, Section 3) which means any material remains of human life or activities that are at least 100 years of age, and that are of archaeological interest, as further defined at 43 CFR 7.3. (See "archaeology.")

archaeology: the subfield of anthropology engaged in recovering, analyzing, interpreting, and explaining evidence of the human prehistoric and historic past; the time-depth arm of anthropology. Archaeology as a scholarly endeavor is not limited in the scope of its subject matter by legal or regulatory provisions such as the minimum age assigned to archaeological resources (for enforcement purposes) by the Archaeological Resources Protection Act. (See "archaeological resource.") (Note on spelling: In BLM, retention of the second 'a' in 'archaeology' is preferred except when quoting material that originally used the alternate spelling.)

artifact: literally, human made, not natural; any object that shows evidence of human manufacture, modification, or use. In common usage, normally refers to portable prehistoric items such as implements made of stone, bone, pottery, or other durable material. Compare 43 CFR 7.3.

avoidance: preventing a potential adverse effect from occurring by the partial or complete redesign or relocation of a proposed land use.

-C-

clearance: a word best avoided; it has no legal meaning in the context of section 106 or other compliance, and its use tends to suggest expectations that may be overly simplified or inappropriate to required actions.

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compliance: adherence to specific provisions of any law, executive order, regulation, authorization, agreement, or similar legal instrument. In cultural resource management, most commonly used to mean documented observance of the regulated procedural requirements of Section 106 of the National Historic Preservation Act, or, for BLM, documented observance of the national Programmatic Agreement and State Director/SHPO protocols.

Council: (See "Advisory Council.")

cultural: of or pertaining to culture, the regularized, patterned, learned behavior shared by members of an interacting social group and passed from generation to generation, comprising the group's technology, economy, religion, arts, social organization, and more. A group's partly subconscious consensus on how things are done. Aspects of culture vary among contemporary groups and change through time. Culture may be viewed as a complex set of instrumental behaviors interposed between a group and its natural and social environment, and may be said to constitute the group's adaptation to its environment.

cultural resource or cultural property: a definite location of human activity, occupation, or use identifiable through field inventory (survey), historical documentation, or oral evidence. The term includes archaeological, historic, or architectural sites, structures, or places with important public and scientific uses, and may include definite locations (sites or places) of traditional cultural or religious importance to specified social and/or cultural groups. (Cf. "traditional cultural property"; see "definite location".) Cultural resources are concrete, material places and things that are located, classified, ranked, and managed through the system of identifying, protecting, and utilizing for public benefit described in this Manual series. They may be but are not necessarily eligible for the National Register (See "historic property" or "historic resource".)

cultural resource inventory classes: (See BLM Manual Section 8110.21.)

1. class I - existing information inventory: a study of published and unpublished documents, records, files, registers, and other sources, resulting in analysis and synthesis of all reasonably available data. Class I inventories encompass prehistoric, historic, and ethnological/sociological elements, and are in large part chronicles of past land uses. They may have major relevance to current land use decisions.
2. class II - probabilistic field survey: a statistically based sample survey designed to help characterize the probable density, diversity, and distribution of archaeological properties in a large area by interpreting the results of surveying limited and discontinuous portions of the target area. (Cf. "reconnaissance survey".)
3. class III - intensive field survey: a continuous, intensive survey of an entire target area, aimed at locating and recording all archaeological properties that have surface indications, by walking close-interval parallel transects until the area has been thoroughly examined. Class III methods vary geographically, conforming to the prevailing standards for the region involved.

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cultural resource management: in a strict sense, the management of cultural resources begins when the responsible manager's cultural resource protection and use decisions are implemented. Less precisely, cultural resource management is often considered to include the inventory, evaluation, and planning steps that precede the manager's decisions and their implementation. The BLM's cultural resource management program includes all the program elements that contribute to management. Cultural resource management in BLM may be characterized as the process by which a Field Office manager (1) becomes informed of the nature of the cultural resources known and expected to occur within his or her area of administrative responsibility, (2) assesses their various use potentials, (3) assigns uses, thereby accepting a commitment to safeguard those uses, (4) takes planned steps to protect or realize assigned uses, and (5) authorizes appropriate uses.

cultural resource management manuals: the 8100 Manual series, covering the various aspects of BLM's cultural resource management program.

cultural resource manager: any line manager (Field Office manager, State Director, Director) whose responsibilities and decisionmaking authority include cultural resource management.

cultural resource specialist: a professionally qualified anthropologist, archaeologist, architectural historian, historian, historical architect, or similar professional who serves in a staff or advisory capacity and provides professional recommendations and services to assist managers in meeting their cultural resource management responsibilities (see .2).

-D-

decision: an authorized manager's exercise of choice within the limits of discretionary authority. This is in contrast to mere fulfillment of ministerial functions with prescribed conclusions determined by findings of fact, such as approving a mineral patent application upon making a finding that the requirements of law and regulation have been met.

definite location: having discernible, mappable, more or less exact limits or boundaries, on a scale that can be established by a survey crew using conventional sensing and recording equipment, by an informant's direct on-the-ground indication, or by precise placement in a documentary source (see "cultural resource or cultural property").

-E-

effect: any change in the characteristics that contribute to the use(s) determined appropriate for a cultural resource, or to the qualities that qualify a cultural property for the National Register. Determination of effect to cultural properties is guided by criteria in the regulations of the Advisory Council, 36 CFR Part 800.

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evaluation:

1. with regard to BLM planning: the process of determining the public and scientific use potential of cultural resources through (a) the analysis of cultural resource inventory data, (b) the application of professional judgment to identify characteristics contributing to possible uses, and (c) the recommendation of appropriate uses. (For definitions of use categories, see BLM Manual Section 8110.4.)
2. with regard to the National Register of Historic Places: the application of the National Register eligibility criteria, 36 CFR 60.4. (See BLM Manual Section 8110.3.)

excavation: the controlled, scientific recovery of subsurface materials and information from an archaeological property, through professionally applied archaeological techniques. (See also "recovery of cultural resource data.")

-H-

historical archaeology: the branch of archaeology that investigates cultural properties dating to the historic period by combining archaeological methods and documentary research.

"historic context": "an organizing structure for interpreting history that groups information about historic properties that share a common theme, common geographical area, and a common time period. The development of historic contexts is a foundation for decisions about the planning, identification, evaluation, registration, and treatment of historic properties, based upon comparative historic significance" (quoted from National Register Bulletin No. 15, Glossary).

"historic preservation": "includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, reconstruction, or any combination of the foregoing activities" (quoted from National Historic Preservation Act, Section 301; Appendix 5) in relation to properties significant in American history, architecture, archaeology, or culture.

"historic property" or "historic resource": "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. The term includes, for purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term 'eligible for inclusion in the National Register' includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria" (quoted from 36 CFR 800.2(e); compare National Historic Preservation Act, Section 301, Appendix 5). (See also "cultural resource - cultural property." "Cultural property" is an analogous BLM term not limited by National Register status.)

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-I-

identification: the general term for the component of BLM's cultural resource management program that includes locating, recording, and determining the legal, scientific, public, and conservation values of cultural resources, i.e., giving cultural resources a management identity. (See "inventory" and "evaluation.")

Indian tribe or tribe: as defined in Section 301 of the National Historic Preservation Act, "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." (See Appendix 5.)

important: with regard to cultural resources, determined to be worthy of long-term management because of identified public, tribal, or scientific value, as established through inventory, consultation, evaluation and planning.

inadvertent: inattentive, unmindful; literally, not turning (one's attention) to. (Note that NAGPRA, .03K, uses this word in a way that is not consistent with standard definitions, to mean something similar to unintended, unexpected, or unplanned.)

inventory: a term used to refer to both a record of cultural resources known to occur within a defined geographic area, and the methods used in developing the record. Depending on intended applications for the data, inventories may be based on (a) compilation and synthesis of previously recorded cultural resource data from archival, library, and other indirect sources; (b) systematic examinations of the land surface and natural exposures of the subsurface (survey) for indications of past human activity as represented by artificial modifications of the land and/or the presence of artifacts; and (c) the use of interviews and related means of locating and describing previously unrecorded or incompletely documented cultural resources, including those that may not be identifiable through physical examination. (See "cultural resource inventory classes.")

-M-

mitigation: lessening the severity of a potential adverse effect by application of appropriate protection measures, such as the recovery of archaeological data from sites, or other means. (Note on usage: One mitigates adverse effects or impacts, i.e., lessens them. One does not mitigate cultural resources.)

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National Register: the National Register of Historic Places, expanded and maintained by the Secretary of the Interior, as authorized by section 2(b) of the Historic Sites Act and section 101(a)(1)(A) of the National Historic Preservation Act. The National Register lists cultural properties found to qualify for inclusion because of their local, State, or national significance. Eligibility criteria and nomination procedures are found in 36 CFR Part 60. The Secretary's administrative responsibility for the National Register is delegated to the National Park Service.

-P-

professionally qualified: cultural resource staff specialists are deemed minimally professionally qualified when found to meet Office of Personnel Management (OPM) degree requirements and other qualification standards for their occupation series (GS-193 archaeologist, GS-170 historian, etc.). Additional training and supervised experience beyond the minimum qualifications are necessary for most full-performance field positions. Staff archaeologists carrying out official agency duties that for nonemployees would require a permit must meet the same professional qualifications as required of permittees in ARPA and 43 CFR Part 7 (see BLM Manual Sections 8100.21 and 8150.12B2). It is incumbent on managers and their staff specialists to assess training and experience needs on a regular basis, in order to ensure that specialists can carry out all preservation assignments effectively (see .04C, .04D, and .21).

programmatic agreement: an agreement among the responsible agency official, the Advisory Council, the appropriate State Historic Preservation Officer(s) or the National Conference of SHPOs, and others as invited, establishing alternative agency procedures to substitute for the governmentwide procedures in 36 CFR Part 800 for complying with Section 106 of the National Historic Preservation Act (see "Section 106"). The BLM's national Programmatic Agreement, which applies to all BLM activities below specified thresholds, provides regulatory relief in most instances from the requirement for case-by-case review by SHPOs and the Advisory Council, in exchange for managers' maintenance of appropriate staff capability and observance of internal BLM standards as set out in the 8100 Manual series. (See Appendices 13 and 14.)

proposed land use: any use of lands or resources, BLM-administered or not, that requires a BLM manager's formal approval, whether proposed by BLM or by an outside applicant. When a decision to approve a proposed land use might affect cultural properties eligible for the National Register, the term is synonymous with "undertaking" as used in the National Historic Preservation Act (see "undertaking") and is subject to compliance with Section 106 of the Act.

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protection measures:

1. physical protection measure: any physical means, such as stabilization of elements of a cultural property or its immediate environment, placement of physical barriers, or similar measures, employed to arrest, slow the rate of, or divert the source of natural or human-caused deterioration to a cultural property.
2. administrative protection measure: any nonphysical means, such as withdrawal, closure, or other measures, employed to limit conflicting use of, or access to, an area containing or importantly pertaining to a cultural resource undergoing or threatened by deterioration.

-R-

reconnaissance survey: field survey that is less systematic, less intensive, or otherwise does not fully meet inventory standards (see "cultural resource inventory classes - class II and class III"). Reconnaissance surveys may be useful for checking class I inventory or class II survey conclusions, or for developing recommendations about further survey needs in previously unsurveyed areas. Other terms sometimes applied to similar kinds of survey include "judgmental," "intuitive," "opportunistic," and "purposive."

recovery of cultural resource data: the professional application of archaeological techniques of controlled observation, collection, excavation and/or removal of physical remains, including analysis, interpretation, explanation, and preservation of recovered remains and associated records in an appropriate curatorial facility, used as a means of protection. Data recovery may sometimes employ professional collection of data such as oral histories, genealogies, folklore, and related information to portray the social significance of the affected resources.

resource: in this context, something useful held in reserve until needed.

-S-

salvage (See "recovery of cultural resource data".)

Secretary: the Secretary of the Interior.

Section 106: the section of the National Historic Preservation Act (see Appendix 5) that requires Federal agency officials (1) to take into account the effects of their undertakings on properties eligible for or included in the National Register of Historic Places, and (2) to afford the Advisory Council a reasonable opportunity to comment on the undertaking. 36 CFR Part 800 implements section 106. The BLM complies with Section 106 and 36 CFR 800 by following its national Programmatic Agreement (Appendix 12), BLM/SHPO protocols established pursuant to the national Programmatic Agreement, and BLM Manuals in this 8100 series.

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Section 110: the section of the National Historic Preservation Act (see Appendix 5) that requires Federal agency officials to preserve historic properties owned or controlled by the agency, including, among other things, (1) identifying, evaluating and nominating properties to the National Register, (2) managing and maintaining such properties in ways consistent with their preservation value, (3) consulting with Indian tribes and Federal, State and local agencies, and (4) carrying out agency programs and projects, including those conducted under permit or other authorization, in accordance with the purposes of the Act.

"significance" or "significant": terms with legal/regulatory application (see National Historic Preservation Act, Section 101(a), Appendix 5; and 36 CFR Part 60), which mean that a property meets the National Register eligibility criteria. This is the only technical, operational meaning. Cultural properties may be found to qualify for the National Register at local, State, or national levels of significance.

site: the location of activities or events, often used loosely to mean the same as cultural resource. In archaeological jargon, the basic meaning of site is a place where archaeological evidence occurs, with precise meanings varying considerably from region to region and among recording institutions within regions. Section 4(c) of the Archaeological Resources Protection Act (see Appendix 8) uses "site" in the term "religious or cultural site" in its common dictionary sense, i.e., as a location, not as a synonym for "archaeological resource." If the Congress had meant "archaeological resource" in Section 4(c), the drafters either would have used that defined term or would have defined "site" to mean the same as "archaeological resource." According to the Glossary of National Register Terms in National Register Bulletin No. 16A, site means "location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of any existing structure."

split estate: real property for which ownership is split; the surface estate is owned by one entity and the mineral estate is held by another.

survey: the application of professional methods and techniques for field inventory, used to locate and identify cultural properties. (See "cultural resource inventory classes - class II and class III," and "reconnaissance survey.")

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tradition: longstanding, socially conveyed, customary patterns of thought, cultural expression, and behavior, such as religious beliefs and practices, social customs, and land or resource uses. Traditions are shared generally within a social and/or cultural group and span generations.

traditional: conforming to tradition.

traditional cultural property: a property that derives significance from traditional values associated with it by a social and/or cultural group such as an Indian tribe or local community. See “cultural resource or cultural property” and “definite location.” A traditional cultural property may qualify for the National Register if it meets the criteria and criteria exceptions at 36 CFR 60.4. See National Register Bulletin 38.

traditional value: a social and/or cultural group’s traditional systems of religious belief, cultural practice, or social interaction, not closely identified with definite locations. Another group’s shared values are abstract, nonmaterial, ascribed ideas that one cannot know about without being told. Traditional values are taken into account through public participation during planning and environmental analysis or through tribal consultation, as applicable. Traditional values may imbue a place with historic significance (see “traditional cultural property”).

treasure or treasure trove: generally taken to mean precious metals in coin, plate, or bullion, loose gem stones, or other monetarily valuable materials. The term and a presumption of associated legal rights derive from English common law. For BLM’s policy negating salvors’ presumed appropriation rights over Government property, see BLM Manual Section 8140.4.

tribal land: as defined in Section 301 of the National Historic Preservation Act (see Appendix 5): "(A) all lands within the exterior boundaries of any Indian reservation; and (B) all dependent Indian communities." The BLM very rarely has any involvement with tribal land in the context of compliance with the NHPA.

Tribal Historic Preservation Officer (THPO): a term adopted in practice to indicate the “tribal preservation official” authorized in Section 101(d)(2) of the National Historic Preservation Act (NHPA; see Appendix 5) : "the tribe designates a tribal preservation official to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or as a tribal ordinance may otherwise provide". A THPO may assume some or all duties of the State Historic Preservation Officer concerning tribal land, in accord with the Secretary's approval of the tribe's historic preservation program. While a THPO’s authority does not extend to nontribal lands, a THPO is sometimes designated to represent the tribe in consultation relative to NHPA Section 101(d)(6). See Manual Section 8120.08 and Handbook H-8120-1.

tribe: (See "Indian tribe or tribe".)

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-U-

"undertaking": a term with legal definition and application i.e., “actions carried out by or on behalf of the agency; those carried out with Federal financial assistance; those requiring a Federal permit, license, or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a federal agency.” (See National Historic Preservation Act, Section 106 and Section 301(7), Appendix 5; 36 CFR Part 800). However, Section 106 does not apply to actions subject to State or local regulation only. The vast majority of land use authorizations approved by BLM, as well as BLM-funded projects, are undertakings for purposes of Section 106 of the NHPA. (See also "decision" and "proposed land use.")

use categories: within the framework of these manuals, this term refers to six BLM categories (scientific use, conservation for future use, traditional use, public use, experimental use, discharged from management) employed by Field Office managers to connect identified cultural resources with decisions about their protection and utilization (see BLM Manual Section 8110.42). All cultural resources have uses, to which they can often be assigned even before they have been individually identified. Use allocations allow Field Office managers to know in advance how to respond to potential conflicts between cultural resources and proposed land uses. A cultural property may be allocated to more than one use category. Although some scientific and experimental uses result in physical alteration of resources, use does not imply consumptive use. Managed use of cultural resources can be fully compatible with long-range preservation, and also the means by which preservation is achieved.

Appendix 1
(.03A)

8100 - CULTURAL RESOURCE MANAGEMENT - (Public)

Antiquities Act of 1906

[Public–No. 209]

An Act For the preservation of American Antiquities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

SEC. 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected: *Provided,* That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

SEC. 3. That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulation as they may prescribe: *Provided,* That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums.

SEC. 4. That the Secretaries of the Departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act.

Approved, June 8, 1906

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Historic Sites Act of 1935

[PUBLIC—No. 292—74TH CONGRESS]

[S. 2073]

AN ACT

**To provide for the preservation of historic American sites, buildings, objects,
and antiquities of national significance, and for other purposes.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared that it is a national policy to preserve for public use historic sites, buildings and objects of national significance for the inspiration and benefit of the people of the United States.

SEC. 2. The Secretary or the Interior (hereinafter referred to as the Secretary), through the National Park Service, for the purposes of effectuating the policy expressed in section 1 hereof, shall have the following powers and perform the following duties and functions:

(a) Secure, collate, and preserve drawings, plans, photographs, and other data of historic and archaeological sites, buildings, and objects.

(b) Make a survey of historic and archaeological sites, buildings, and objects for the purpose of determining which possess exceptional value as commemorating or illustrating the history of the United States.

(c) Make necessary investigations and researches in the United States relating to particular sites, buildings, or objects to obtain true and accurate historical and archaeological facts and information concerning the same.

(d) For the purpose of this Act, acquire in the name of the United States by gift, purchase, or otherwise any property, personal or real, or any interest or estate therein, title to any real property to be satisfactory to the Secretary: *Provided*, That no such property which is owned by any religious or educational institution, or which is owned or administered for the benefit of the public men be so acquired without the consent of the owner: *Provided further*, That no such property shall be acquired or contract or agreement for the acquisition thereof made which will obligate the general fund of the Treasury for the payment of such property, unless or until Congress has appropriated money which is available for that purpose.

(e) Contract and make cooperative agreements with States, municipal subdivisions, corporations, associations, or individuals, with proper bond where deemed advisable, to protect, preserve, maintain, or operate any historic or archaeological building, site, object, or property used in connection therewith for public use, regardless as to whether the title thereto is in the United States: *Provided*, That no contract or cooperative agreement shall be made or entered into which will obligate the general fund of the Treasury unless or until Congress has appropriated money for such purpose.

(f) Restore, reconstruct, rehabilitate, preserve, and maintain historic or prehistoric sites, buildings, objects, and properties of national historical or archaeological significance and where deemed desirable establish and maintain museums in connection therewith.

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Historic Sites Act of 1935

(g) Erect and maintain tablets to mark or commemorate historic or prehistoric places and events of national historical or archaeological significance.

(h) Operate and manage historic and archaeological sites, buildings, and properties acquired under the provisions of this Act together with lands and subordinate buildings for the benefit of the public, such authority to include the power to charge reasonable visitation fees and grant concessions, leases, or permits for the use of land, building space, roads, or trails when necessary or desirable either to accommodate the public or to facilitate administration: *Provided*, That such concessions, leases, or permits, shall be let at competitive bidding, to the person making the highest and best bid.

(i) When the Secretary determines that it would be administratively burdensome to restore reconstruct, operate, or maintain any particular historic or archaeological site, building, or property donated to the United States through the National Park Service, he may cause the same to be done by organizing a corporation for that purpose under the laws of the District of Columbia or any State.

(j) develop an educational program and service for the purpose of making available to the public facts and information pertaining to American historic and archaeological sites, buildings, and properties of national significance. Reasonable charges may be made for the dissemination of any such facts or information.

(k) Perform any and all acts, and. make such rules and regulations not inconsistent with this Act as may be necessary and proper to carry out the provisions thereof. Any person violating any of the regulations authorized by this Act shall be punished by a fine of not more than \$500 and be adjudged to pay all cost of the proceedings.

SEC. 3. A general advisory board to be known as the "Advisory Board on National Parks, Historic Sites, Buildings, and Monuments " is hereby established, to be composed of not to exceed eleven persons, citizens of the United States, to include representatives competent in the fields of history, archaeology, architecture, and human geography, who shall be appointed by the Secretary and serve at his pleasure. The members of such board shall receive no salary but may be paid expenses incidental to travel when engaged in their duties as such members.

It shall be the duty of such board to advise on any matters relating to national parks and to the administration of this Act submitted to it for consideration by the Secretary. It may also recommend policies to the Secretary from time to time pertaining to national parks and to the restoration, reconstruction. conservation, and general administration of historic and archaeological sites, buildings, and properties.

SEC. 4. The Secretary, in administering this Act, is authorized to cooperate with and may seek and accept the assistance of any Federal, State, or municipal department or agency, or any educational or scientific institution, or any patriotic association, or any individual.

(b) When deemed necessary, technical advisory committees may be established to act in an advisory capacity in connection with the restoration or reconstruction of any historic or prehistoric building or structure.

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Historic Sites Act of 1935

(c) Such professional and technical assistance may be employed without regard to the civil-service laws, and such service may be established as may be required to accomplish the purposes of this Act and for which money may be appropriated by Congress or made available by gifts for such purpose.

SEC. 5. Nothing in this Act shall be held to deprive any State, or political subdivision thereof, of its civil and criminal jurisdiction in and over lands acquired by the United States under this Act.

SEC. 6. There is authorized to be appropriated for carrying out the purposes of this Act such sums as the Congress may from time to time determine.

SEC. 7. The provisions of this Act shall control if any of them are in conflict with any other Act or Acts relating to the same subject matter.

Approved, August 21, 1935.

Reservoir Salvage Act

Public Law 86-523

June 27, 1960

AN ACT

[S. 1185]

To provide for the preservation of historical and archeological data (including relics and specimens) which might otherwise be lost as the result of the construction of a dam.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the purpose of this Act to further the policy set forth in the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes", approved August 21, 1935 (16 U.S.C. 461-467), by specifically providing for the preservation of historical and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of flooding, the building of access roads, the erection of workmen's communities, the relocation of railroads and highways, and other alterations of the terrain caused by the construction of a dam by any agency of the United States, or by any private person or corporation holding a license issued by any such agency.

SEC. 2. (a) Before any agency of the United States shall undertake the construction of a dam, or issue a license to any private individual or corporation for the construction of a dam, it shall give written notice to the Secretary of the Interior setting forth the site of the proposed dam and the approximate area to be flooded and otherwise changed if such construction is undertaken: *Provided,* That with respect to any floodwater retarding dam which provides less than five thousand acre-feet of detention capacity and with respect to any other type of dam which creates a reservoir of less than forty surface acres the provisions of this section shall apply only when the constructing agency, in its preliminary surveys, finds, or is presented with evidence that historical or archeological materials exist or may be present in the proposed reservoir area.

(b) Upon receipt of any notice, as provided in subsection (a), the Secretary of the Interior (hereinafter referred to as the "Secretary"), shall cause a survey to be made of the area proposed to be flooded to ascertain whether such area contains historical and archeological data (including relics and specimens) which should be preserved in the public interest. Any such survey shall be conducted as expeditiously as possible. If, as a result of any such survey, the Secretary shall determine (1) that such data exists in such area, (2) that such data has exceptional historical or archeological significance, and should be collected and preserved in the public interest, and (3) that it is feasible to collect and preserve such data, he shall cause the necessary work to be performed in such area to collect and preserve such data. All such work, shall be performed as expeditiously as possible.

(c) The Secretary shall keep the instigating agency notified at all times of the progress of any survey made under this Act, or of any work undertaken as a result of such survey, in order that there will be as little disruption or delay as possible in the carrying out of the functions of such agency.

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Reservoir Salvage Act

(d) A survey similar to that provided for by section (b) of this section and the work required to be performed as a result thereof shall so far as practicable also be undertaken in connection with any dam the construction of which has been heretofore authorized by any agency of the United States, or by any private person or corporation holding a license issued by any such agency.

(e) The Secretary shall consult with any interested Federal and State agencies, educational and scientific organizations, and private institutions and qualified individuals, with a view to determining the ownership of and the most appropriate repository for any relics and specimens recovered as a result of any work performed as provided for in this section.

SEC. 3. In the administration of this Act, the Secretary may—

- (1) enter into contracts or make cooperative agreements with any Federal or State agency, any educational or scientific organization, or any institution, corporation, association, or qualified individual; and
- (2) procure the temporary or intermittent services of experts or consultants or organizations thereof as provided in section 15 of the Act of August 2, 1946 (5 U.S.C. 55a) ; and
- (3) accept and utilize funds made available for salvage archeological purposes by any private person or corporations holding a license issued by an agency of the United States for the construction of a dam or other type of water or power control project.

SEC. 4. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

Approved June 27, 1960.

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Archeological and Historic Preservation Act

Public Law 93-291

May 24, 1974

AN ACT

[S. 514]

To amend the Act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to provide for the preservation of historical and archeological data (including relics and specimens) which might otherwise be lost as the result of the construction of a dam", approved June 27, 1960 (74 Stat. 220; 16 U.S.C. 469), is amended as follows:

(1) In section 1, after "result of" insert "(1)" and delete "agency." and insert "agency or (2) any alteration of the terrain caused as a result of any Federal construction project or federally licensed activity or program."

(2) In section 2, change "SEC. 2. (a) ", to "SEC. 2."; after "Secretary of the Interior" insert " (hereafter referred to as the Secretary)", and delete all of subsection (b).

(3) Add the following new sections:

"SEC. 3. (a) Whenever any Federal agency finds, or is notified, in writing, by an appropriate historical or archeological authority, that its activities in connection with any Federal construction project or federally licensed project, activity, or program may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary, in writing, and shall provide the Secretary with appropriate information concerning the project, program, or activity. Such agency may request the Secretary to undertake the recovery, protection, and preservation of such data (including preliminary survey, or other investigation as needed, and analysis and publication of the reports resulting from such investigation), or it may, with funds appropriated for such project, program, or activity, undertake such activities. Copies of reports of any investigations made pursuant to this section shall be submitted to the Secretary, who shall make them available to the public for inspection and review.

"(b) Whenever any Federal agency provides financial assistance by loan, grant, or otherwise to any private person, association, or public entity, the Secretary, if he determines that significant scientific, prehistorical, historical, or archeological data might be irrevocably lost or destroyed, may with funds appropriated expressly for this purpose conduct, with the consent of all persons, associations, or public entities having a legal interest, in the property involved, a survey of the affected site and undertake the recovery, protection, and preservation of such data (including analysis and publication). The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or any nonfederally owned lands.

"Sec. 4. (a) The Secretary, upon notification, in writing, by any Federal or State agency or appropriate historical or archeological authority that scientific, prehistorical, historical, or archeological data is being or may be irrevocably lost or destroyed by any Federal or federally assisted or licensed project, activity, or program, shall, if he determines that such data is significant and is being or may be irrevocably lost or destroyed and after reasonable notice to the agency responsible for funding or licensing such project, activity, or program, conduct or cause to be conducted a survey and other investigation of the areas which are or may be affected and recover and preserve such data (including analysis and publication) which, in his opinion, are not being, but should be, recovered and preserved in the public interest'.

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Archeological and Historic Preservation Act

" (b) No survey or recovery work shall be required pursuant to this section which in the determination of the head of the responsible agency would impede Federal or federally assisted or licensed projects or activities undertaken in connection with any emergency, including projects or activities undertaken in anticipation of, or as a result of, a natural disaster.

“(c) The Secretary shall initiate the survey or recovery effort within sixty days after notification to him pursuant to Subsection (a) of this section or within such time as may be agreed upon with the head of the agency responsible for funding or licensing the project, activity, or program in all other cases.

"(d) The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of the temporary loss of the use of private or nonfederally owned land."

(4) In Section 2. change "SEC. 2. (c)" to "SEC. 5. (a)" and change "instigating agency" to "agency responsible for funding or licensing the project" and delete "agency." and insert "agency and the survey and recovery programs shall terminate at a time mutually agreed upon by the Secretary and the head of such agency unless extended by mutual agreement."

(5) Delete subsection 2(d).

(6) In section 2, change "SEC. 2. (e) " to "SEC. 5. (b)".

(7) In section 5, add the following new subsection:

" (c) The Secretary shall coordinate all Federal survey and recovery activities authorized under this Act and shall submit an annual report at the end of each fiscal year to the Interior and Insular Affairs committees of the United States Congress indicating the scope and effectiveness of the program, the specific projects surveyed and the results produced, and the costs incurred by the Federal Government as a result thereof." .

(8) Redesignate "Sec. 3." as "Sec. 6." and change paragraphs (2) and (3) to read as follows:

"(2) obtain the services of experts and consultants or organizations thereof in accordance with section 3109 of title 5, United States Code; and

"(3) accept and utilize funds made available for salvage archeological purposes by any private person or corporation or transferred to him by any Federal agency."

(9) Delete all of section 4 and insert the following:

"SEC. 7. (a) To carry out the purposes of this Act, any Federal agency responsible for a construction project may assist the Secretary and/or it may transfer to him such funds as maybe agreed upon, but not more than 1 per centum of the total amount authorized to be appropriated for such project, except that the 1 per centum limitation of this section shall not apply in the event that the project involves 50,000 or less: *Provided*, That the costs of such survey, recovery, analysis, and publication shall be considered nonreimbursable project costs.

"(b) For the purposes of subsection 3 (b), there are authorized to be appropriated such sums as may be necessary, but not more than \$500,000 in fiscal year 1974; \$1,000,000 in fiscal year 1975; \$1,500,000 in fiscal year 1976; \$1,500,000 in fiscal year 1977; and \$1,500,000 in fiscal year 1978.

"(c) For the purposes of subsection 4(a), there are authorized to be appropriated not more than \$2,000,000 in fiscal year 1974; \$2,000,000 in fiscal year 1975; \$3,000,000 in fiscal year 1976; \$3,000,000 in fiscal year 1977; and \$3,000,000 in fiscal year 1978."

Approved May 24, 1974.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

National Historic Preservation Act

THE NATIONAL HISTORIC PRESERVATION ACT¹ As Amended through 1992

AN ACT to Establish a Program for the Preservation of Additional Historic Properties throughout the Nation, and for Other Purposes, Approved October 15, 1966 (Public Law 89-665; 80 Stat. 915; 16 U.S.C. 470) as amended by (Public Law 91-243, Public Law 93-54, Public Law 94-422, Public Law 94-458, Public Law 96-199, Public Law 96-244, Public Law 96-515, Public Law 98-483, Public Law 99-514, Public Law 100-127, and Public Law 102-575).

Section 1 (16 U.S.C. 470)

Short title

(a) This Act may be cited as the "National Historic Preservation Act."

Purpose of the Act

(b) The Congress finds and declares that—

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, esthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

National Historic Preservation Act

Section 2 (16 U.S.C. 470-1)

Declaration of policy of Federal Government

It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organization and individuals to--

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments;

(3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organization and individuals undertaking preservation by private means;

(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic build environment; and

(6) assist State and local governments, Indian tribes and Native Hawaiian organizations and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

TITLE I

Section 101 (16 U.S.C. 470a)

National Register of Historic Places, expansion and maintenance

(a)(1)(A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.

National Historic Landmarks, designation

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on the date of enactment of the National Historic Preservation Act Amendments of 1980 shall be deemed to be included on the National Register as of their initial listing for purposes of this Act. All historic properties listed in the Federal Register of February 6, 1979, as "National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National Historic Landmarks of national historic significance as of their initial listing as such in the Federal Register for purposes of this Act and the Act of August 21, 1935 (49 Stat. 666); except that in cases of National Historic Landmark districts for which no boundaries have been established, boundaries must first be published in the Federal Register and submitted to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.

National Historic Preservation Act

(2) The Secretary in consultation with national historical and archeological associations, shall establish or revise criteria for properties to be included on the National Register and criteria for National Historic Landmarks, and shall also promulgate or revise regulations as may be necessary for—

(A) nominating properties for inclusion in, and removal from, the National Register and the recommendation of properties by certified local governments;

(B) designating properties as National Historic Landmarks and removing such designation;

(C) considering appeals from such recommendations, nomination, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(D) nominating historic properties for inclusion in the World Heritage List in accordance with the terms of the Convention concerning the Protection of the World Cultural and Natural Heritage;

(E) making determinations of eligibility of properties for inclusion on the National Register; and

(F) notifying the owner of a property, and any appropriate local governments, and the general public when the property is being considered for inclusion on the National Register, for designation as a National Historic Landmark or for nomination to the World Heritage List.

(3) Subject to the requirements of paragraph (6), any State which is carrying out a program approved under subsection (b), shall nominate to the Secretary properties which meet the criteria promulgated under subsection (a) for inclusion on the National Register. Subject to paragraph (6), any property nominated under this paragraph or under section 110(a)(2) shall be included on the National Register on the date forty-five days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves such nomination within such forty-five day period or unless an appeal is filed under paragraph (5).

(4) Subject to the requirements of paragraph (6) the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if such property is located in a State where there is no program approved under subsection (b). The Secretary may include on the National Register any property for which such a nomination is made if he determines that such property is eligible in accordance with the regulations promulgated under paragraph (2). Such determinations shall be made within ninety days from the date of nomination unless the nomination is appealed under paragraph (5).

(5) Any person or local government may appeal to the Secretary a nomination of any historic property for inclusion on the National Register and may appeal to the Secretary the failure or refusal of a nominating authority to nominate a property in accordance with this subsection.

(6) The Secretary shall promulgate regulations requiring that before any property or district may be included on the National register or designated as a National Historic Landmark, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of a historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of a historic district, object to such inclusion or designation, such property shall not be included on the National Register or designated as a National Historic Landmark until such objection is withdrawn. The Secretary shall review the nomination of the property or district

National Historic Preservation Act

where any such objection has been made and shall determine whether or not the property or district is eligible for such inclusion or designation, and if the Secretary determines that such property or district is eligible for such inclusion or designation, he shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official and the owner or owners of such property, of his determination. The regulations under this paragraph shall include provisions to carry out the purposes of this paragraph in the case of multiple ownership of a single property.

Regulations for curation, documentation, and local government certification

(7) The Secretary shall promulgate, or revise, regulations--

(A) ensuring that significant prehistoric and historic artifacts, and associated records, subject to section 110 of this Act, the Act of June 27, 1960 (16 U.S.C. 469c), and the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) are deposited in an institution with adequate long-term curatorial capabilities;

(B) establishing a uniform process and standards for documenting historic properties by public agencies and private parties for purposes of incorporation into, or complementing, the national historic architectural and engineering records within the Library of Congress; and

(C) certifying local governments, in accordance with subsection (c)(1) and for the allocation of funds pursuant to section 103(c) of this Act.

(8) The Secretary shall, at least once every 4 years, in consultation with the Council and with State Historic Preservation Officers, review significant threats to properties included in, or eligible for inclusion on, the National Register, in order to--

(A) determine the kinds of properties that may be threatened;

(B) ascertain the causes of the threats; and

(C) develop and submit to the President and Congress recommendations for appropriate action.

State Historic Preservation Programs

(b)(1) The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the National Trust for Historic Preservation, shall promulgate or revise regulations for State Historic Preservation Programs. Such regulations shall provide that a State program submitted to the Secretary under this section shall be approved by the Secretary if he determines that the program--

(A) provides for the designation and appointment by the Governor of a "State Historic Preservation Officer" to administer such program in accordance with paragraph (3) and for the employment or appointment by such officer of such professionally qualified staff as may be necessary for such purposes;

(B) provides for an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and

(C) provides for adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register.

(2)(A) Periodically, but not less than every 4 years after the approval of any State program under this subsection, the Secretary, in consultation with the Council on the appropriate provisions of this Act, and in cooperation with the State Historic Preservation

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Officer, shall evaluate the program to determine whether it is consistent with this Act.

(B) If, at any time, the Secretary determines that a major aspect of a State program is not consistent with this Act, the Secretary shall disapprove the program and suspend in whole or in part any contracts or cooperative agreements with the State and the State Historic Preservation Officer under this Act, until the program is consistent with this Act, unless the Secretary determines that the program will be made consistent with this Act within a reasonable period of time.

(C) The Secretary, in consultation with State Historic Preservation Officers, shall establish oversight methods to ensure State program consistency and quality without imposing undue review burdens on State Historic Preservation Officers.

(D) At the discretion of the Secretary, a State system of fiscal audit and management may be substituted for comparable Federal systems so long as the State system--

- (i)** establishes and maintains substantially similar accountability standards; and
- (ii)** provides for independent professional peer review.

The Secretary may also conduct periodic fiscal audits of State programs approved under this section as needed and shall ensure that such programs meet applicable accountability standards.

SHPO responsibilities

(3) It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program and to--

(A) in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;

(B) identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;

(C) prepare and implement a comprehensive statewide historic preservation plan;

(D) administer the State program of Federal assistance for historic preservation within the State;

(E) advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;

(F) cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;

(G) provide public information, education and training, and technical assistance in historic preservation;

(H) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c);

(I) consult with the appropriate Federal agencies in accordance with this Act on--

(i) Federal undertakings that may affect historical properties; and

(ii) the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties; and

(J) advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.

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(4) Any State may carry out all or any part of its responsibilities under this subsection by contract or cooperative agreement with any qualified nonprofit organization or educational institution.

(5) Any State historic preservation program in effect under prior authority of law may be treated as an approved program for purposes of this subsection until the earlier of--

(A) the date on which the Secretary approves a program submitted by the State under this subsection, or

(B) three years after the date of the enactment of the National Historic Preservation Act Amendments of 1992.

(6)(A) Subject to subparagraphs (c) and (d), the Secretary may enter into contracts or cooperative agreements with a State Historic Preservation Officer for any State authorizing such Officer to assist the Secretary in carrying out one or more of the following responsibilities within that State--

(i) Identification and preservation of historic properties.

(ii) Determination of the eligibility of properties for listing on the National Register.

(iii) Preparation of nominations for inclusion on the National Register.

(v) Evaluation of eligibility for Federal preservation incentives.

Nothing in this paragraph shall be construed to provide that any State Historic Preservation Officer or any other person other than the Secretary shall have the authority to maintain the National Register for properties in any State.

(B) The Secretary may enter into a contract or cooperative agreement under subparagraph (a) only if--

(i) the State Historic Preservation Officer has requested the additional responsibility;

(ii) the Secretary has approved the State historic preservation program pursuant to section 101(b)(1) and (2);

(iii) the State Historic Preservation Officer agrees to carry out the additional responsibility in a timely and efficient manner acceptable to the Secretary and the Secretary determines that such Officer is fully capable of carrying out such responsibility in such manner;

(iv) the State Historic Preservation Officer agrees to permit the Secretary to review and revise, as appropriate in the discretion of the Secretary, decisions made by the Officer pursuant to such contract or cooperative agreement; and

(v) the Secretary and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying out such responsibility.

(C) For each significant program area under the Secretary's authority, the Secretary shall establish specific conditions and criteria essential for the assumption by State Historic Preservation Officers of the Secretary's duties in each such program.

(D) Nothing in this subsection shall have the effect of diminishing the preservation programs and activities of the National Park Service.

Certification of local governments

(c)(1) Any State program approved under this section shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this Act and provide for the transfer, in accordance with section 103(c), of a portion of the grants received by the States under this Act, to such local governments. Any local government shall be certified to participate under the provisions of this section if the

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applicable State Historic Preservation Officer, and the Secretary, certifies that the local government—

(A) enforces appropriate State or local legislation for the designation and protection of historic properties;

(B) has established an adequate and qualified historic preservation review commission by State or local legislation;

(C) maintains a system for the survey and inventory of historic properties that furthers the purposes of subsection (b);

(D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and

(E) satisfactorily performs the responsibilities delegated to it under this Act.

Where there is no approved State program, a local government may be certified by the Secretary if he determines that such local government meets the requirements of subparagraphs (a) through (e); and in any such case the Secretary may make grants-in-aid to the local government for purposes of this section.

(2)(A) Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission. The commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and his recommendation to the State Historic Preservation Officer. Except as provided in subparagraph (B), after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to section 101(a). The State may expedite such process with the concurrence of the certified local government.

(B) If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless within thirty days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the State. If such an appeal is filed, the State shall follow the procedures for making a nomination pursuant to section 101(a). Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

(3) Any local government certified under this section or which is making efforts to become so certified shall be eligible for funds under the provisions of section 103(c) of this Act, and shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the Secretary deems necessary or advisable.

(4) For the purposes of this section the term—

(A) "designation" means the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of a local government; and

(B) "protection" means a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic properties designated pursuant to subsection (c).

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Program for assistance to Indian tribes

(d)(1)(A) The Secretary shall establish a program and promulgate regulations to assist Indian tribes in preserving their particular historic properties. The Secretary shall foster communication and cooperation between Indian tribes and State Historic Preservation Officers in the administration of the national historic preservation program to ensure that all types of historic properties and all public interests in such properties are given due consideration, and to encourage coordination among Indian tribes, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic properties.

(B) The program under subparagraph (a) shall be developed in such a manner as to ensure that tribal values are taken into account to the extent feasible. The Secretary may waive or modify requirements of this section to conform to the cultural setting of tribal heritage preservation goals and objectives. The tribal programs implemented by specific tribal organizations may vary in scope, as determined by each tribe's chief governing authority.

(C) The Secretary shall consult with Indian tribes, other Federal agencies, State Historic Preservation Officers, and other interested parties and initiate the program under subparagraph (a) by not later than October 1, 1994.

Tribal assumption of State Historic Preservation Officer functions

(2) A tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with subsections (b)(2) and (b)(3), with respect to tribal lands, as such responsibilities may be modified for tribal programs through regulations issued by the Secretary if—

(A) the tribe's chief governing authority so requests;

(B) the tribe designates a tribal preservation official to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or as a tribal ordinance may otherwise provide;

(C) the tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;

(D) the Secretary determines, after consultation with the tribe, the appropriate State Historic Preservation Officer, the Council (if the tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 106), and other tribes, if any, whose tribal or aboriginal lands may be affected by conduct of the tribal preservation program—

(i) that the tribal preservation program is fully capable of carrying out the functions specified in the plan provided under subparagraph (c);

(ii) that the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer;

(iii) that the plan provides, with respect to properties neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe, at the request of the owner thereof, the State Historic Preservation Officer, in addition to the tribal preservation official, may exercise the historic preservation responsibilities in accordance with subsections (b)(2) and (b)(3); and

(E) based on satisfaction of the conditions stated in subparagraphs (a), (b), (c), and (d), the Secretary approves the plan.

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(3) In consultation with interested Indian tribes, other Native American organizations and affected State Historic Preservation Officers, the Secretary shall establish and implement procedures for carrying out section 103(a) with respect to tribal programs that assume responsibilities under paragraph (2).

(4) At the request of a tribe whose preservation program has been approved to assume functions and responsibilities pursuant to paragraph (2), the Secretary shall enter into contracts or cooperative agreements with such tribe permitting the assumption by the tribe of any part of the responsibilities referred to in subsection (b)(6) on tribal land, if--

(A) the Secretary and the tribe agree on additional financial assistance, if any, to the tribe for the costs of carrying out such authorities;

(B) the Secretary finds that the tribal historic preservation program has been demonstrated to be sufficient to carry out the contract or cooperative agreement and this Act; and

(C) the contract or cooperative agreement specifies the continuing responsibilities of the Secretary or of the appropriate State Historic Preservation Officers and provides for appropriate participation by--

(i) the tribe's traditional cultural authorities;

(ii) representatives of other tribes whose traditional lands are under the jurisdiction of the tribe assuming responsibilities; and

(iii) the interested public.

Review of undertakings under tribal preservation regulations instead of section 106

(5) The Council may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 106, if the Council, after consultation with the tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic properties consideration equivalent to those afforded by the Council's regulations.

Traditional religious and cultural properties potentially eligible

(6)(A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

Section 106 review and religious and cultural properties

(B) In carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).

(C) In carrying out his or her responsibilities under subsection (b)(3), the State Historic Preservation Officer for the State of Hawaii shall--

(i) consult with Native Hawaiian organizations in assessing the cultural significance of any property in determining whether to nominate such property to the National Register;

(ii) consult with Native Hawaiian organizations in developing the cultural component of a preservation program or plan for such property; and

(iii) enter into a memorandum of understanding or agreement with Native Hawaiian organizations for the assessment of the cultural significance of a property in determining whether to nominate such property to the National Register and to carry out the cultural component of such preservation program or plan.

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Grants to States

(e)(1) The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this Act.

(2) The Secretary shall administer a program of matching grants-in-aid to the National Trust for Historic Preservation in the United States, chartered by Act of Congress approved October 26, 1949 (63 Stat. 947), for the purposes of carrying out the responsibilities of the National Trust.

(3)(A) In addition to the programs under paragraphs (1) and (2), the Secretary shall administer a program of direct grants for the preservation of properties included on the National Register. Funds to support such program annually shall not exceed 10 per centum of the amount appropriated annually for the fund established under section 108. These grants may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer--

(i) for the preservation of National Historic Landmarks which are threatened with demolition or impairment and for the preservation of historic properties of World Heritage significance;

(ii) for demonstration projects which will provide information concerning professional methods and techniques having application to historic properties;

(iii) for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation; and,

(iv) to assist persons or small businesses within any historic district included in the National Register to remain within the district.

(B) The Secretary may also, in consultation with the appropriate State Historic Preservation Officer, make grants or loans or both under this section to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage.

(C) Grants may be made under subparagraph (a)(i) and (iv) only to the extent that the project cannot be carried out in as effective a manner through the use of an insured loan under section 104.

(4) Grants may be made under this subsection for the preservation, stabilization, restoration, or rehabilitation of religious properties listed in the National Register of Historic Places, provided that the purpose of the grant is secular, does not promote religion, and seeks to protect those qualities that are historically significant. Nothing in this paragraph shall be construed to authorize the use of any funds made available under this section for the acquisition of any property referred to in the preceding sentence.

(5) The Secretary shall administer a program of direct grants to Indian tribes and Native Hawaiian organizations for the purpose of carrying out this Act as it pertains to Indian tribes and Native Hawaiian organizations. Matching fund requirements may be modified. Federal funds available to a tribe or Native Hawaiian organization may be used as matching funds for the purposes of the tribe's or organization's conducting its responsibilities pursuant to this section.

(6)(A) As a part of the program of matching grant assistance from the Historic Preservation Fund to States, the Secretary shall administer a program of direct grants to the Federated States of Micronesia, the Republic of the Marshall Islands, the Trust Territory of the Pacific Islands, and upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau (referred to as the Micronesian States) in furtherance of the Compact of Free Association between the United States and the

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Federated States of Micronesia and the Marshall Islands, approved by the Compact of Free Association Act of 1985 (48 U.S.C. 1681 note), the Trusteeship Agreement for the Trust Territory of the Pacific Islands, and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled 'Joint Resolution to approve the "Compact of Free Association" between the United States and Government of Palau, and for other purposes' (48 U.S.C. 1681 note). The goal of the program shall be to establish historic and cultural preservation programs that meet the unique needs of each Micronesian State so that at the termination of the compacts the programs shall be firmly established. The Secretary may waive or modify the requirements of this section to conform to the cultural setting of those nations.

(B) The amounts to be made available to the Micronesian States shall be allocated by the Secretary on the basis of needs as determined by the Secretary. Matching funds may be waived or modified.

(f) No part of any grant made under this section may be used to compensate any person intervening in any proceeding under this Act. **(g)** In consultation with the Advisory Council on Historic Preservation, the Secretary shall promulgate guidelines for Federal agency responsibilities under section 110 of this title.

(h) Within one year after the date of enactment of the National Historic Preservation Act Amendments of 1980, the Secretary shall establish, in consultation with the Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of the General Services Administration, professional standards for the preservation of historic properties in Federal ownership or control.

(i) The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning professional methods and techniques for the preservation of historic properties and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students.

(j)(1) The Secretary shall, in consultation with the Council and other appropriate Federal, tribal, Native Hawaiian, and non-Federal organizations, develop and implement a comprehensive preservation education and training program.

(2) The education and training program described in paragraph (1) shall include--

(A) new standards and increased preservation training opportunities for Federal workers involved in preservation-related functions;

(B) increased preservation training opportunities for other Federal, State, tribal and local government workers, and students;

(C) technical or financial assistance, or both, to historically black colleges and universities, to tribal colleges, and to colleges with a high enrollment of Native Americans or Native Hawaiians, to establish preservation training and degree programs;

(D) coordination of the following activities, where appropriate, with the National Center for Preservation Technology and Training--

(i) distribution of information on preservation technologies;

(ii) provision of training and skill development in trades, crafts, and disciplines related to historic preservation in Federal training and development programs; and

(iii) support for research, analysis, conservation, curation, interpretation, and display related to preservation.

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Section 102 (16 U.S.C. 470b)

(a) No grant may be made under this Act—

(1) unless application therefore is submitted to the Secretary in accordance with regulations and procedures prescribed by him;

(2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897);

(3) for more than 60 percent of the aggregate costs of carrying out projects and programs under the administrative control of the State Historic Preservation Officer as specified in section 101(b)(3) in any one fiscal year;

(4) unless the grantee has agreed to make such reports, in such form and containing such information as the Secretary may from time to time require;

(5) unless the grantee has agreed to assume, after completion of the project, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and

(6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable.

Except as permitted by other law, the State share of the costs referred to in paragraph (3) shall be contributed by non-Federal sources. Notwithstanding any other provision of law, no grant made pursuant to this Act shall be treated as taxable income for purposes of the Internal Revenue Code 1954.

(b) The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this Act to the National Trust for Historic Preservation in the United States.

(c) No State shall be permitted to utilize the value of real property obtained before the date of approval of this Act in meeting the remaining cost of a project for which a grant is made under this Act.

(d) The Secretary shall make funding available to individual States and the National Trust for Historic Preservation as soon as practicable after execution of a grant agreement. For purposes of administration, grants to individual States and the National Trust each shall be considered to be one grant and shall be administered by the National Park Service as such.

(e) The total administrative costs, direct and indirect, charged for carrying out State projects and programs may not exceed 25 percent of the aggregate costs except in the case of grants under section 101(e)(6).

Section 103 (16 U.S.C. 470c)

(a) The amounts appropriated and made available for grants to the States for the purposes of this Act shall be apportioned among the States by the Secretary on the basis of needs as determined by him.

(b) The amounts appropriated and made available for grants to the States for projects and programs under this Act for each fiscal year shall be apportioned among the States as the Secretary determines to be appropriate. The Secretary shall notify each State of its apportionment under this subsection within thirty days following the date of enactment of legislation appropriating funds under this Act. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection. The Secretary shall analyze and revise as necessary the

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method of apportionment. Such method and any revision thereof shall be published by the Secretary in the Federal Register.

(c) A minimum of 10 per centum of the annual apportionment distributed by the Secretary to each State for the purposes of carrying out this Act shall be transferred by the State, pursuant to the requirements of this Act, to local governments which are certified under section 101(c) for historic preservation projects or programs of such local governments. In any year in which the total annual apportionment to the States exceeds \$65,000,000, one half of the excess shall also be transferred by the States to local governments certified pursuant to section 101(c).

(d) The Secretary shall establish guidelines for the use and distribution of funds under subsection (c) to ensure that no local government receives a disproportionate share of the funds available, and may include a maximum or minimum limitation on the amount of funds distributed to any single local government. The guidelines shall not limit the ability of any State to distribute more than 10 per centum of its annual apportionment under subsection (c), nor shall the Secretary require any State to exceed the 10 per centum minimum distribution to local governments.

Section 104 (16 U.S.C. 470d)

(a) The Secretary shall establish and maintain a program by which he may, upon application of a private lender, insure loans (including loans made in accordance with a mortgage) made by such lender to finance any project for the preservation of a property included on the National Register.

(b) A loan may be insured under this section only if—

(1) the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;

(2) the amount of the loan, and interest rate charged with respect to the loan, do not exceed such amount, and such a rate, as is established by the Secretary, by rule;

(3) the Secretary has consulted the appropriate State Historic Preservation Officer concerning the preservation of the historic property;

(4) the Secretary has determined that the loan is adequately secured and there is reasonable assurance of repayment;

(5) the repayment period of the loan does not exceed the lesser of forty years or the expected life of the asset financed;

(6) the amount insured with respect to such loan does not exceed 90 per centum of the loss sustained by the lender with respect to the loan; and

(7) the loan, the borrower, and the historic property to be preserved meet other terms and conditions as may be prescribed by the Secretary, by rule, especially terms and conditions relating to the nature and quality of the preservation work. The Secretary shall consult with the Secretary of the Treasury regarding the interest rate of loans insured under this section.

(c) The aggregate unpaid principal balance of loans insured under this section and outstanding at any one time may not exceed the amount which has been covered into the Historic Preservation Fund pursuant to section 108 and subsection (g) and (i) of this section, as in effect on the date of the enactment of the Act but which has not been appropriated for any purpose. (d) Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

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(e) The Secretary shall specify, by rule and in each contract entered into under this section, the conditions and method of payment to a private lender as a result of losses incurred by the lender on any loan insured under this section.

(f) In entering into any contract to insure a loan under this section, the Secretary shall take steps to assure adequate protection of the financial interests of the Federal Government. The Secretary may—

(1) in connection with any foreclosure proceeding, obtain, on behalf of the Federal Government, the property securing a loan insured under this title; and

(2) operate or lease such property for such period as may be necessary to protect the interest of the Federal Government and to carry out subsection (g).

(g)(1) In any case in which a historic property is obtained pursuant to subsection (f), the Secretary shall attempt to convey such property to any governmental or nongovernmental entity under such conditions as will ensure the property's continued preservation and use; except that if, after a reasonable time, the Secretary, in consultation with the Advisory Council on Historic Preservation, determines that there is no feasible and prudent means to convey such property and to ensure its continued preservation and use, then the Secretary may convey the property at the fair market value of its interest in such property to any entity without restriction.

(2) Any funds obtained by the Secretary in connection with the conveyance of any property pursuant to paragraph (1) shall be covered into the historic preservation fund, in addition to the amounts covered into such fund pursuant to section 108 and subsection (i) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

(h) The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this section. Any such fees shall be covered into the Historic Preservation Fund, in addition to the amounts covered into such fund pursuant to section 108 and subsection (g) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

(i) Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned upon the use of non-Federal funds by the recipient for payment of any portion of the costs of such project or activity.

(j) Effective after the fiscal year 1981 there are authorized to be appropriated, such sums as may be necessary to cover payments incurred pursuant to subsection (e).

(k) No debt obligation which is made or committed to be made, or which is insured or committed to be insured, by the Secretary under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

Section 105 (16 U.S.C. 470e)

The beneficiary of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the disposition by the beneficiary of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

National Historic Preservation Act**Section 106** (16 U.S.C. 470f)***Advisory Council on Historic Preservation, comment on
Federal undertakings***

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

Section 107 (16 U.S.C. 470g)

Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

Section 108 (16 U.S.C. 470h)

To carry out the provisions of this Act, there is hereby established the Historic Preservation Fund (hereafter referred to as the "fund") in the Treasury of the United States. There shall be covered into such fund \$24,400,000 for fiscal year 1977, \$100,000,000 for fiscal year 1978, \$100,000,000 for fiscal year 1979, \$150,000,000 for fiscal year 1980, \$150,000,000 for fiscal year 1981, and \$150,000,000 for each of fiscal years 1982 through 1997, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469) as amended (43 U.S.C. 338) and/or under the Act of June 4, 1920 (41 Stat. 813) as amended (30 U.S.C. 191), notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: Provided, that appropriations made pursuant to this paragraph may be made without fiscal year limitation.

Section 109 (16 U.S.C. 470h-1)

(a) In furtherance of the purposes of sections of this Act, the Secretary may accept the donation of funds which may be expended by him for projects to acquire, restore, preserve, or recover data from any district, building, structure, site, or object which is listed on the National Register of Historic Places established pursuant to section 101 of this Act, so long as the project is owned by a State, any unit of local government, or any nonprofit entity.

(b) In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; and the expressed intentions of the donor. Funds expended under this subsection shall be made available without regard to the matching requirements established by section 102 of this Act, but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 108 of this Act.

(c) The Secretary is hereby authorized to transfer unobligated funds previously donated to the Secretary for purposes of the National Park Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with the provisions of this Act.

National Historic Preservation Act**Section 110** (16 U.S.C. 470h-2)***Agency responsibility to preserve historic properties within its jurisdiction***

(a)(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g), any preservation, as may be necessary to carry out this section.

Agency preservation program, establishment

(2) Each Federal agency shall establish (unless exempted pursuant to section 214), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure--

(A) that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register;

(B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 106 and gives special consideration to the preservation of such values in the case of properties designated as having National significance;

Agency responsibility to consider nonagency historic properties

(C) that the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning;

(D) that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; and

(E) that the agency's procedures for compliance with section 106--

(i) are consistent with regulations issued by the Council pursuant to section 211;

(ii) 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, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and

(iii) 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 (25 U.S.C. 3002(c)). (b) Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, a historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a), in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

National Historic Preservation Act***Agency designation of Preservation Officer***

(c) The head of each Federal agency shall, unless exempted under section 214, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this Act. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 101(h).

(d) Consistent with the agency's mission and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act.

(e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

Minimizing harm to National Historic Landmarks: comment opportunity

(f) Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

Preservation costs borne by sponsors of undertakings

(g) Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this Act, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit.

(h) The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts not to exceed \$1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the president of the United States to any citizen of the United States recommended for such award by the Secretary.

(i) Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969, and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

(j) The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

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(k) Each Federal agency shall ensure that the agency will not grant 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, 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.

(l) With respect to any undertaking subject to section 106 which adversely affects any property included in or eligible for inclusion in the National Register, and for which a Federal agency has not entered into an agreement with the Council, the head of such agency shall document any decision made pursuant to section 106. The head of such agency may not delegate his or her responsibilities pursuant to such section. Where a section 106 memorandum of agreement has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all of its parts.

Section 111 (16 U.S.C. 470h-3)

(a) Notwithstanding any other provision of law, any Federal agency, after consultation with the Council, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes, and may lease a historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately ensure the preservation of the historic property.

(b) The proceeds of any lease under subsection (a) may, notwithstanding any other provision of law, be retained by the agency entering into such lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to such property or other properties which are on the National Register which are owned by, or are under the jurisdiction or control of, such agency. Any surplus proceeds from such leases shall be deposited into the Treasury of the United States at the end of the second fiscal year following the fiscal year in which such proceeds were received.

(c) The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and insure adequate preservation of historic property.

Section 112 (16 U.S.C. 470h-4)

(a) **In general.** Each Federal agency that is responsible for the protection of historic resources, including archaeological resources pursuant to this Act or any other law shall ensure each of the following—

(1)(A) All actions taken by employees or contractors of such agency shall meet professional standards under regulations developed by the Secretary in consultation with the Council, other affected agencies, and the appropriate professional societies of the disciplines involved, specifically archaeology, architecture, conservation, history, landscape architecture, and planning.

National Historic Preservation Act

Professional standards

(B) Agency personnel or contractors responsible for historic resources shall meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of the disciplines involved. The Office of Personnel Management shall revise qualification standards within 2 years after the date of enactment of this Act for the disciplines involved, specifically archaeology, architecture, conservation, curation, history, landscape architecture, and planning. Such standards shall consider the particular skills and expertise needed for the preservation of historic resources and shall be equivalent requirements for the disciplines involved.

Permanent records of research, surveys, and excavations

(2) Records and other data, including data produced by historical research and archaeological surveys and excavations are permanently maintained in appropriate data bases and made available to potential users pursuant to such regulations as the Secretary shall promulgate.

(b) **Guidelines.** In order to promote the preservation of historic resources on properties eligible for listing in the National register, the Secretary shall, in consultation with the Council, promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this Act include plans to—

(1) provide information to the owners of properties containing historic (including architectural, curatorial, and archaeological) resources with demonstrated or likely research significance, about the need for protection of such resources, and the available means of protection;

(2) encourage owners to preserve such resources intact and in place and offer the owners of such resources information on the tax and grant assistance available for the donation of the resources or of a preservation easement of the resources;

(3) encourage the protection of Native American cultural items (within the meaning of section 2(3) and (9) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 (3) and (9)) and of properties of religious or cultural importance to Indian tribes, Native Hawaiians, or other Native American groups; and

(4) encourage owners who are undertaking archaeological excavations to--

(A) conduct excavations and analyses that meet standards for federally-sponsored excavations established by the Secretary;

(B) donate or lend artifacts of research significance to an appropriate research institution;

(C) allow access to artifacts for research purposes; and

(D) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under section 3(a)(2)(B) or (C) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(a)(2)(B) and (C)), given [sic] notice to and consult with such Indian tribe or Native Hawaiian organization.

Section 113 (16 U.S.C. 470h-5)

(a) **Study.** In order to help control illegal interstate and international traffic in antiquities, including archaeological, curatorial, and architectural objects, and historical documents of all kinds, the Secretary shall study and report on the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities.

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(b) Consultation. In conducting the study described in subsection (a) the Secretary shall consult with the Council and other Federal agencies that conduct, cause to be conducted, or permit archaeological surveys or excavations or that have responsibilities for other kinds of antiquities and with State Historic Preservation Officers, archaeological, architectural, historical, conservation, and curatorial organizations, Indian tribes, Native Hawaiian organizations, and other Native American organizations, international organizations and other interested persons.

(c) Report. Not later than 18 months after the date of enactment of this section, the Secretary shall submit to Congress a report detailing the Secretary's findings and recommendations from the study described in subsection (a).

(d) Authorization. There are authorized to be appropriated not more than \$500,000 for the study described in subsection (a), such sums to remain available until expended.

TITLE II

Section 201 (16 U.S.C. 470i)

Advisory Council on Historic Preservation membership

(a) There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation which shall be composed of the following members:

(1) a Chairman appointed by the President selected from the general public;

(2) the Secretary of the Interior;

(3) the Architect of the Capitol;

(4) the Secretary of Agriculture and the heads of four other agencies of the United States (other than the Department of the Interior), the activities of which affect historic preservation, appointed by the President;

(5) one Governor appointed by the President;

(6) one mayor appointed by the President;

(7) the President of the National Conference of State Historic Preservation Officers;

(8) the Chairman of the National Trust for Historic Preservation;

(9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archaeology, and other appropriate disciplines;

(10) three at-large members from the general public, appointed by the President; and

(11) one member of an Indian tribe or Native Hawaiian organization who represents the interests of the tribe or organization of which he or she is a member, appointed by the President.

(b) Each member of the Council specified in paragraphs (2) through (8) (other than (5) and (6)) may designate another officer of his department, agency, or organization to serve on the Council in his stead, except that, in the case of paragraphs (2) and (4), no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities may be so designated.

(c) Each member of the Council appointed under paragraph (1), and under paragraphs (9) and (10) of subsection (a) shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall serve for terms of one to four years, as designated by the President at the time of appointment, in such manner as to ensure that the terms of not more than two of them will expire in any one year. The members appointed under paragraphs (5) and (6) shall serve for the term of their

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elected office but not in excess of four years. An appointed member whose term has expired shall serve until that member's successor has been appointed.

(d) A vacancy in the Council shall not affect its powers, but shall be filled not later than sixty days after such vacancy commences, in the same manner as the original appointment (and for the balance of any unexpired terms). The members of the Advisory Council on Historic Preservation appointed by the President under this Act as in effect on the day before the enactment of the National Historic Preservation Act Amendments of 1980 shall remain in office until all members of the Council, as specified in this section, have been appointed. The members first appointed under this section shall be appointed not later than one hundred and eighty days after the enactment of the National Historic Preservation Act Amendments of 1980.

(e) The President shall designate a Vice Chairman, from the members appointed under paragraphs (5), (6), (9), or (10). The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

(f) Nine members of the Council shall constitute a quorum.

Section 202 (16 U.S.C. 470j)

(a) The Council shall—

(1) advise the President and the Congress on matters relating to historic preservation, recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;

(2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;

(3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;

(4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;

(5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;

(6) 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 this Act; and,

(7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

(b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this Act.

National Historic Preservation Act**Section 203** (16 U.S.C. 470k)

The Council is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of this title; and each such department or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

Section 204 (16 U.S.C. 470l)

The members of the Council specified in paragraphs (2), (3), and (4) of section 201(a) shall serve without additional compensation. The other members of the Council shall receive \$100 per diem when engaged in the performances of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

Section 205 (16 U.S.C. 470m)

(a) There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman with the concurrence of the Council. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

(b) The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint such other attorneys as may be necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, including enforcement of agreements with Federal agencies to which the Council is a party, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

(c) The Executive Director of the Council may appoint and fix the compensation of such officers and employees in the competitive service as are necessary to perform the functions of the Council at rates not to exceed that now or hereafter prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of Title 5, United States Code; Provided, however, That the Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed five employees in the competitive service at rates not to exceed that now or hereafter prescribed for the highest rate of grade 17 of the General Schedule under section 5332 of Title 5, United States Code.

(d) The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and the Classification Act of 1949.

(e) The Executive Director of the Council is authorized to procure expert and consultant services in accordance with the provisions of section 3109 of Title 5, United States Code.

(f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon the Chairman of the Council and the Secretary of the Interior; Provided, That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from

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erroneous payments (5 U.S.C. 46(e)) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. 665(g)) shall apply to appropriations of the Council: And provided further, That the Council shall not be required to prescribe such regulations.

(g) The members of the Council specified in paragraphs (2) through (4) of Section 201(a) shall provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the members, with such funds, personnel, facilities, and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties and may also receive donations of moneys for such purpose, and the Executive Director is authorized, in his discretion, to accept, hold, use, expend, and administer the same for the purposes of this Act.

Section 206 (16 U.S.C. 470n)

(a) The participation of the United States as a member of the International Centre for the Study of the Preservation and Restoration of Cultural Property is hereby authorized.

(b) The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation, the members of the official delegation which will participate in the activities of the Centre on behalf of the United States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to him by the Council.

(c) For the purposes of this section there is authorized to be appropriated an amount equal to the assessment for United States membership in the Centre for fiscal years 1979, 1980, 1981, and 1982: Provided, that no appropriation is authorized and no payment shall be made to the Centre in excess of 25 per centum of the total annual assessment of such organization. Authorization for payment of such assessment shall begin in fiscal year 1981, but shall include earlier costs.

Section 207 (16 U.S.C. 470o)

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, programmed, or available or to be made available by the Department of the Interior in connection with the functions of the Council, as the Director of the Office of Management and Budget shall determine, shall be transferred from the Department to the Council within 60 days of the effective date of this Act.

Section 208 (16 U.S.C. 470p)

Any employee in the competitive service of the United States transferred to the Council under the provisions of this section shall retain all rights, benefits, and privileges pertaining thereto held prior to such transfer.

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Section 209 (16 U.S.C. 470q)

The Council is exempt from the provisions of the Federal Advisory Committee Act (86 Stat. 770), and the provisions of the Administrative Procedure Act (80 Stat. 381) shall govern the operations of the Council.

Section 210 (16 U.S.C. 470r)

No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Council voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Council shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

Section 211 (16 U.S.C. 470s)

Council regulations to govern section 106

The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of this Act in its entirety. The Council shall, by regulation, establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 106 which affect such local governments.

Section 212 (16 U.S.C. 470t)

(a) The Council shall submit its budget annually as a related agency of the Department of the Interior. There are authorized to be appropriated for purposes of this title not to exceed \$5,000,000 for each of the fiscal years 1993 through 1996. (b) Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Interior and Insular Affairs and the Senate committee on Energy and Natural Resources.

Section 213 (16 U.S.C. 470u)

To assist the Council in discharging its responsibilities under this Act, the Secretary at the request of the Chairman, shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects.

Section 214 (16 U.S.C. 470v)

The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of this Act when such exemption is determined to be consistent with the purposes of this Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties.

TITLE III

Section 301 (16 U.S.C. 470w)

National Historic Preservation Act

Definitions

As used in this Act, the term—

(1) "**Agency**" means agency as such term is defined in section 551 of Title 5, United States Code.

(2) "**State**" means any State of the United States, the District of Columbia, the commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and, upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau.

(3) "**Local government**" means a city, county, parish, township, municipality, or borough, or any other general purpose political subdivision of any State.

(4) "**Indian tribe**" or "**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.

(5) "**Historic property**" or "**historic resource**" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource.

(6) "**National Register**" or "**Register**" means the National Register of Historic Places established under section 101.

(7) "**Undertaking**" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including—

(A) those carried out by or on behalf of the agency;

(B) those carried out with Federal financial assistance;

(C) those requiring a Federal permit, license, or approval; and

(D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

(8) "**Preservation**" or "**historic preservation**" includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.

(9) "**Cultural park**" means a definable area which is distinguished by historic resources and land related to such resources and which constitutes an interpretive, educational, and recreational resource for the public at large.

(10) "**Historic conservation district**" means an area which contains—

(A) historic properties,

(B) buildings having similar or related architectural characteristics,

(C) cultural cohesiveness, or

(D) any combination of the foregoing.

(11) "**Secretary**" means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(12) "**State Historic Preservation Review Board**" means a board, council, commission, or other similar collegial body established as provided in section 101(b)(1)(B)—

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(A) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law)

(B) a majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archeology, architectural history, architecture, folklore, cultural anthropology, curation, conservation, and landscape architecture; and

(C) which has the authority to—

(i) review National Register nominations and appeals from nominations;

(ii) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;

(iii) provide general advice and guidance to the State Historic Preservation Officer, and

(iv) perform such other duties as may be appropriate.

(13) "**Historic preservation review commission**" means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 101(c)(1)(B), and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among—

(A) professionals in the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation, and landscape architecture or related disciplines, to the extent such professionals are available in the community concerned, and

(B) such other persons as have demonstrated special interest, experience, or knowledge in history, architecture, or related disciplines and as will provide for an adequate and qualified commission.

(14) "**Tribal lands**" means—

(A) all lands within the exterior boundaries of any Indian reservation; and

(B) all dependent Indian communities.

(15) "**Certified local government**" means a local government whose local historic preservation program has been certified pursuant to section 101(c).

(16) "**Council**" means the Advisory Council on Historic Preservation established by section 201.

(17) "**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.

(18) "**Native Hawaiian organization**" means any organization which—

(A) serves and represents the interests of Native Hawaiians;

(B) has as a primary and stated purpose the provision of services to Native Hawaiians; and

(C) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians.

The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kapuna O Hawai'i Nei, an organization incorporated under the laws of the State of Hawaii.

Section 302 (16 U.S.C. 470w-1)

Where appropriate, each Federal agency is authorized to expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this Act, except to the extent appropriations legislation expressly provides otherwise.

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Section 303 (16 U.S.C. 470w-2)

(a) The Secretary is authorized to accept donations and bequests of money and personal property for the purposes of this Act and shall hold, use, expend, and administer the same for such purposes.

(b) The Secretary is authorized to accept gifts or donations of less than fee interests in any historic property where the acceptance of such interests will facilitate the conservation or preservation of such properties. Nothing in this section or in any provision of this Act shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose.

Section 304 (16 U.S.C. 470w-3)

Freedom of Information Act exemption

(a) **Authority to withhold from disclosure.** The head of a Federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may—

- (1) cause a significant invasion of privacy;
- (2) risk harm to the historic resource; or
- (3) impede the use of a traditional religious site by practitioners.

(b) **Access determination.** When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to subsection (a), the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.

(c) **Consultation with Council.** When the information in question has been developed in the course of an agency's compliance with Section 106 or 110(f), the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b).

Section 305 (16 U.S.C. 470w-4)

In any civil action brought in any United States district court by any interested person to enforce the provisions of this Act, if such person substantially prevails in such action, the court may award attorneys' fees, expert witness fees, and other costs of participating in such action, as the court deems reasonable.

Section 306 (16 U.S.C. 470w-5)

(a) In order to provide a national center to commemorate and encourage the building arts and to preserve and maintain a nationally significant building which exemplifies the great achievements of the building arts in the United States, the Secretary and the Administrator of the General Services Administration are authorized and directed to enter into a cooperative agreement with the Committee for a National Museum of the Building Arts, Incorporated, a nonprofit corporation organized and existing under the laws of the District of Columbia, or its successor, for the operation of a National Museum for the Building Arts in the Federal Building located in the block bounded by Fourth Street, Fifth Street, F Street, and G Street, Northwest in Washington, District of Columbia. Such museum shall--

- (1) collect and disseminate information concerning the building arts, including the establishment of a national reference center for current and historic documents, publications, and research relating to the building arts;

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(2) foster educational programs relating to the history, practice and contribution to society of the building arts, including promotion of imaginative educational approaches to enhance understanding and appreciation of all facets of the building arts;

(3) publicly display temporary and permanent exhibits illustrating, interpreting and demonstrating the building arts;

(4) sponsor or conduct research and study into the history of the building arts and their role in shaping our civilization; and

(5) encourage contributions to the building arts.

(b) The cooperative agreement referred to in subsection (a) shall include provisions which—

(1) make the site available to the Committee referred to in subsection (a) without charge;

(2) provide, subject to available appropriations, such maintenance, security, information, janitorial and other services as may be necessary to assure the preservation and operation of the site; and

(3) prescribe reasonable terms and conditions by which the Committee can fulfill its responsibilities under this Act.

(c) The Secretary is authorized and directed to provide matching grants-in-aid to the Committee referred to in subsection (a) for its programs related to historic preservation. The Committee shall match such grants-in-aid in a manner and with such funds and services as shall be satisfactory to the Secretary, except that no more than \$500,000 may be provided to the Committee in any one fiscal year.

(d) The renovation of the site shall be carried out by the Administrator with the advice of the Secretary. Such renovation shall, as far as practicable—

(1) be commenced immediately,

(2) preserve, enhance, and restore the distinctive and historically authentic architectural character of the site consistent with the needs of a national museum of the building arts and other compatible use, and

(3) retain the availability of the central court of the building, or portions thereof, for appropriate public activities.

(e) The Committee shall submit an annual report to the Secretary and the Administrator concerning its activities under this section and shall provide the Secretary and the Administrator with such other information as the Secretary may, from time to time, deem necessary or advisable.

(f) For purposes of this section, the term " building arts" includes, but shall not be limited to, all practical and scholarly aspects of prehistoric, historic, and contemporary architecture, archeology, construction, building technology and skills, landscape architecture, preservation and conservation, building and construction, engineering, urban and community design and renewal, city and regional planning, and related professions, skills, trades and crafts.

Section 307 (16 U.S.C. 470w-6)

(a) At least thirty days prior to publishing in the Federal Register any proposed regulation required by this Act, the Secretary shall transmit a copy of the regulation to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Secretary also shall transmit to such committees a copy of any final regulation prior to its publication in the Federal Register. Except as provided in subsection (b) of this section, no final regulation of the Secretary shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

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(b) In the case of an emergency, a final regulation of the Secretary may become effective without regard to the last sentence of subsection (a) if the Secretary notified in writing the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate setting forth the reasons why it is necessary to make the regulation effective prior to the expiration of the thirty-day period.

(c) Except as provided in subsection (b), the regulation shall not become effective if, within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the regulation promulgated by the Secretary dealing with the matter of _____, which regulation was transmitted to Congress on _____," the blank spaces therein being appropriately filled.

(d) If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided for.

(e) For the purposes of this section—

(1) continuity of session is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

(f) Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such regulation.

TITLE IV

Section 401

The Congress finds and declares that, given the complexity of technical problems encountered in preserving historic properties and the lack of adequate distribution of technical information to preserve such properties, a national initiative to coordinate and promote research, distribute information, and provide training about preservation skills and technologies would be beneficial.

Section 402

For the purposes of this title—

(1) The term "Board" means the National Preservation Technology and Training Board established pursuant to section 404.

(2) The term "Center" means the National Center for Preservation Technology and Training established pursuant to section 403.

(3) The term "Secretary" means the Secretary of the Interior.

Section 403

(a) **Establishment.** There is hereby established within the Department of the Interior a National Center for Preservation Technology and Training. The Center shall be located at Northwestern State University of Louisiana in Natchitoches, Louisiana.

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(b) Purposes. The purposes of the Center shall be to–

(1) develop and distribute preservation and conservation skills and technologies for the identification, evaluation, conservation, and interpretation of prehistoric and historic resources;

(2) develop and facilitate training for Federal, State and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the preservation field;

(3) take steps to apply preservation technology benefits from ongoing research by other agencies and institutions;

(4) facilitate the transfer of preservation technology among Federal agencies, State and local governments, universities, international organizations, and the private sector; and

(5) cooperate with related international organizations including, but not limited to the International Council on Monuments and Sites, the International center for the Study of Preservation and Restoration of Cultural Property, and the International Council on Museums.

(c) Programs. Such purposes shall be carried out through research, professional training, technical assistance, and programs for public awareness, and through a program of grants established under section 405.

(d) Executive Director. The Center shall be headed by an Executive Director with demonstrated expertise in historic preservation appointed by the Secretary with advice of the Board.

(e) Assistance from Secretary. The Secretary shall provide the Center assistance in obtaining such personnel, equipment, and facilities as may be needed by the Center to carry out its activities.

Section 404

(a) Establishment. There is established a Preservation Technology and Training Board.

(b) Duties. The Board shall–

(1) provide leadership, policy advice, and professional oversight to the Center;

(2) advise the Secretary on priorities and the allocation of grants among the activities of the Center; and

(3) submit an annual report to the President and the Congress.

(c) Membership. The Board shall be comprised of–

(1) The Secretary, or the Secretary's designee;

(2) 6 members appointed by the Secretary who shall represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations, and

(3) 6 members appointed by the Secretary on the basis of outstanding professional qualifications who represent major organizations in the fields of archeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

Section 405

(a) In general. The Secretary, in consultation with the Board, shall provide preservation technology and training grants to eligible applicants with a demonstrated institutional capability and commitment to the purposes of the Center, in order to ensure an effective and efficient system of research, information distribution and skills training in all the related historic preservation fields.

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(b) Grant requirements.

(1) Grants provided under this section shall be allocated in such a fashion to reflect the diversity of the historic preservation fields and shall be geographically distributed.

(2) No grant recipient may receive more than 10 percent of the grants allocated under this section within any year. (3) The total administrative costs, direct and indirect, charged for carrying out grants under this section may not exceed 25 percent of the aggregate costs.

(c) Eligible applicants. Eligible applicants may include Federal and non Federal laboratories,

accredited museums, universities, non profit organizations; offices, units, and Cooperative Park Study Units of the National Park System, State Historic Preservation Offices, tribal preservation offices, and Native Hawaiian organizations.

(d) Standards. All such grants shall be awarded in accordance with accepted professional standards and methods, including peer review of projects.

(e) Authorization of appropriations. There is authorized to be appropriated to carry out this section such sums as may be necessary.

Section 406

(a) Acceptance of grants and transfers. The Center may accept—

(1) grants and donations from private individuals, groups, organizations, corporations, foundations, and other entities; and

(2) transfers of funds from other Federal agencies.

(b) Contracts and cooperative agreements. Subject to appropriations, the Center may enter into contracts and cooperative agreements with Federal, State, local, and tribal governments, Native Hawaiian organizations, educational institutions, and other public entities to carry out the Center's responsibilities under this title.

(c) Authorization of appropriations. There are authorized to be appropriated such sums as may be necessary for the establishment, operation, and maintenance of the Center. Funds for the Center shall be in addition to existing National Park Service programs, centers, and offices.

Section 407

In order to improve the use of existing National Park Service resources, the Secretary shall fully utilize and further develop the National Park Service preservation (including conservation) centers and regional offices. The Secretary shall improve the coordination of such centers and offices within the National Park Service, and shall, where appropriate, coordinate their activities with the Center and with other appropriate parties.

APPENDIX I

National Historic Preservation Act Amendments of 1980, Public Law 96 515, December 12, 1980, 94 Stat. 3000

This appendix contains related legislative provisions enacted in the National Historic Preservation Act Amendments of 1980 but that are not part of the National Historic Preservation Act.

Section 208 (16 U.S.C. 469c 2)

Notwithstanding section 7(a) of the Act of June 27, 1960 (16 U.S.C. 469c) or any other provision of law to the contrary—

(1) identification, surveys, and evaluation carried out with respect to historic properties within project areas may be treated for purposes of any law or rule of law as planning costs of the project and not as costs of mitigation;

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(2) reasonable costs for identification, surveys, evaluation, and data recovery carried out with respect to historic properties within project areas may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit; and

(3) Federal agencies, with the concurrence of the Secretary and after notification of the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, are authorized to waive, in appropriate cases, the 1 per centum limitation contained in section 7(a) of such Act.

Section 401 (16 U.S.C. 470a 1)

(a) The Secretary of the Interior shall direct and coordinate United States participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, approved by the Senate on October 26, 1973, in cooperation with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation. Whenever possible, expenditures incurred in carrying out activities in cooperation with other nations and international organizations shall be paid for in such excess currency of the country or area where the expense is incurred as may be available to the United States.

(b) The Secretary of the Interior shall periodically nominate properties he determines are of international significance to the World Heritage Committee on behalf of the United States. No property may be so nominated unless it has previously been determined to be of national significance. Each such nomination shall include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection). Before making any such nomination, the Secretary shall notify the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

(c) No non Federal property may be nominated by the Secretary of the Interior to the World Heritage Committee for inclusion on the World Heritage List unless the owner of the property concurs in writing to such nomination.

Section 402 (16 U.S.C. 470a 2)

Prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects.

Section 502 (16 U.S.C. 470a note)

The Secretary, in cooperation with the American Folklife Center of the Library of Congress shall, within two years after the date of the enactment of this act, submit a report to the President and the Congress on preserving and conserving the intangible elements of our cultural heritage such as arts, skills, folklife, and folkways. The report shall take into account the view of other public and private organizations, as appropriate. This report shall include recommendations for legislative and administrative actions by the Federal Government in order to preserve, conserve, and encourage the continuation of the diverse traditional prehistoric, historic, ethnic, and folk cultural traditions that underlie and are a living expression of our American heritage.

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Section 503 (16 U.S.C. 470j note)

Council's report to the President and Congress: tax laws

The Advisory Council on Historic Preservation, in cooperation with the Secretary and the Secretary of the Treasury, shall submit a report to the President and the Congress on Federal tax laws relating to historic preservation or affecting in any manner historic preservation. Such report shall include recommendations respecting amendments to such laws which would further the purposes of this Act. Such report shall be submitted within one year after the date of enactment of this Act.

Section 504 (16 U.S.C. 470h note)

The Secretary shall submit a report directly to the President and the Congress on or before June 1, 1986, reviewing the operation of the Historic Preservation Fund and the national historic preservation program since the enactment of this Act and recommending appropriate funding levels, the time period for the reauthorization for appropriations from the fund, and other appropriate legislative action to be undertaken upon the expiration of the current fund authorization.

Section 505 (40 U.S.C. 874 note)

The Pennsylvania Avenue Development Corporation shall review the development plan for those parts of the development area which are not under development or committed for development as of the date of the enactment of this Act, to identify means by which the historic values of such parts of the development area may be preserved and enhanced to the maximum extent feasible. The foregoing review shall not be limited by the applicable provisions of the development plan in effect at the time of the review; nor shall the review require any actions by the Corporation during the course of the review or during its consideration by the Congress. Within one year of the date of this act the Corporation shall submit to the appropriate committees of Congress a report containing the findings of the review required under this section, together with the Corporation's recommendations for any legislative measures or funding necessary to carry out the purposes of this section. The report shall also include a description of those activities which the Corporation proposes to undertake to carry out the purposes of this section and the financial implications of carrying out those activities.

Section 506 (16 U.S.C. 470a note)

The Secretary shall undertake a comprehensive study and formulate recommendations for a coordinated system of cultural parks and historic conservation districts that provide for the preservation, interpretation, development, and use by public and private entities of the prehistoric, historic, architectural, cultural, and recreational resources found in definable urban areas throughout the Nation. The study shall propose alternatives concerning the management and funding of such system by public and private entities and by various levels of government. The Secretary shall submit a report of his study and recommendations to the President and the Congress within two years after the enactment of this Act.

Section 507 (16 U.S.C. 470a note)

The Secretary, in cooperation with the Secretary of the Treasury, the Administrator of the United States Fire Administration, and the Administrator of the Federal Insurance Administration, shall submit a report to the President and the Congress on fire in historic properties. Such report shall include a review of Federal laws to determine any relationship between these laws and arson or fire by "suspicious origin", and to make recommendations

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respecting amendments to such laws should a correlation be found to exist. Such report shall include the feasibility and necessity of establishing or developing protective measures at the Federal, State, or local level for the prevention, detection, and control of arson or fire by "suspicious origin" in historic properties. Such report shall also include recommendations regarding the Federal role in assisting the States and local governments with protecting historic properties from damage by fire. Such report shall be submitted within eighteen months after the date of enactment of this Act.

APPENDIX II

National Historic Preservation Act Amendments of 1992, Public Law 102 575, October 30, 1992, 106 Stat. 4753

This appendix contains related legislative provisions enacted in the National Historic Preservation Act Amendments of 1992 but that are not part of the National Historic Preservation Act.

Section 4021 (16 U.S.C. 470a note)

The Secretary of the Interior, in consultation with the Advisory Council, shall seek to ensure that historic properties preserved under the National Historic Preservation Act fully reflect the historical experience of this nation.

Section 4023 (16 U.S.C. 470a note)

Section 6 of the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes" (16 U.S.C. 461 467) is amended to read as follows:

"**Sec. 6.** Requirement for specific authorization for projects under the Historic Sites, Buildings, and Antiquities Act.

"**(a) In general.** Except as provided in subsection (b), notwithstanding any other provision of law, no funds appropriated or otherwise made available to the Secretary of the Interior to carry out section 2(e) or 2(f) may be obligated or expended after the date of enactment of this section—

"**(1)** unless the appropriation of such funds has been specifically authorized by law enacted on or after the date of enactment of this section; or

"**(2)** in excess of the amount prescribed by law enacted on or after such date.

"**(b) Savings provision.** Nothing in this section shall prohibit or limit the expenditure of or obligation of any funds appropriated prior to January 1, 1993.

"**(c) Authorization of appropriations.** Except as provided by subsection (a), there is authorized to be appropriated for carrying out the purposes of this Act such sums as the Congress may from time to time determine."

Section 4025 (16 U.S.C. 470a note)

(a) Report. Not later than one year after the date of enactment of this Act, the Secretary of the Interior shall prepare and submit to the Congress a report on the manner in which properties are listed or determined to be eligible for listing on the National Register, including but not limited to, the appropriateness of the criteria used in determining such eligibility, and the effect, if any, of such listing or finding of eligibility.

(b) Preparation. In preparing the report, the Secretary shall consult with, and consider the views and comments of other Federal agencies, as well as interested individuals and public and private organizations, and shall include representative comments received as an appendix to the report.

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ENDNOTES

¹The wording of the "National Historic Preservation Act Amendments of 1992" is as passed in Title XL of HR429.

HR429 also contains an amendment to An Act to Establish the Martin Luther King, Jr. National Historic Site in the State of Georgia, Public Law 96 428; 94 Stat. 1839, which has not been reprinted.

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Executive Order 11593

Title 3–The President

EXECUTIVE ORDER 11593

Protection and Enhancement of the Cultural Environment

By virtue of the authority vested in me as President of the United States and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (83 Stat. 852, 42 U.S.C. 4321 et seq.), the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470 et seq.), the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461 et seq.), and the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431 et seq.), it is ordered as follows:

SECTION 1. *Policy.* The Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. Agencies of the executive branch of the Government (hereinafter referred to as "Federal agencies") shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations, (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored and maintained for the inspiration and benefit of the people, and (3), in consultation with the Advisory Council on Historic Preservation (16 U.S.C. 470i), institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archaeological significance.

SEC. 2. *Responsibilities of Federal agencies.* Consonant with the provisions of the acts cited in the first paragraph of this order, the heads of Federal agencies shall:

(a) no later than July 1, 1973, with the advice of the Secretary of the Interior, and in cooperation with the liaison officer for historic preservation for the State or territory involved, locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places.

(b) exercise caution during the interim period until inventories and evaluations required by subsection (a) are completed to assure that any federally owned property that might qualify for nomination is not inadvertently transferred, sold, demolished or substantially altered. The agency head shall refer any questionable actions to the Secretary of the Interior for an opinion respecting the property's eligibility for inclusion on the National Register of Historic Places. The Secretary shall consult with the liaison officer for historic preservation for the State or territory involved in arriving at his opinion. Where, after a reasonable period in which to review and evaluate the

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property, the Secretary determines that the property is likely to meet the criteria prescribed for listing on the National Register of Historic Places, the Federal agency head shall reconsider the proposal in light of national environmental and preservation policy. Where, after such reconsideration, the Federal agency head proposes to transfer, sell, demolish or substantially alter the property he shall not act with respect to the property until the Advisory Council on Historic Preservation shall have been provided an opportunity to comment on the proposal.

(c) initiate measures to assure that where as a result of Federal action or assistance a property listed on the National Register of Historic Places is to be substantially altered or demolished, timely steps be taken to make or have made records, including measured drawings, photographs and maps, of the property, and that copy of such records then be deposited in the Library of Congress as part of the Historic American Buildings Survey or Historic American Engineering Record for future use and reference. Agencies may call on the Department of the Interior for advice and technical assistance in the completion of the above records.

(d) initiate measures and procedures to provide for the maintenance, through preservation, rehabilitation, or restoration, of federally owned and registered sites at professional standards prescribed by the Secretary of the Interior.

(e) submit procedures required pursuant to subsection (d) to the Secretary of the Interior and to the Advisory Council on Historic Preservation no later than January 1, 1972, and annually thereafter, for review and comment.

(f) cooperate with purchasers and transferees of a property listed on the National Register of Historic Places in the development of viable plans to use such property in a manner compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interests.

SEC. 3. Responsibilities of the Secretary of the Interior. The Secretary of the Interior shall:

(a) encourage State and local historic preservation officials to evaluate and survey federally owned historic properties and, where appropriate, to nominate such properties for listing on the National Register of Historic Places.

(b) develop criteria and procedures to be applied by Federal agencies in the reviews and nominations required by section 2(a). Such criteria and procedures shall be developed in consultation with the affected agencies.

(c) expedite action upon nominations to the National Register of Historic Places concerning federally owned properties proposed for sale, transfer, demolition or substantial alteration.

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(d) encourage State and Territorial liaison officers for historic preservation to furnish information upon request to Federal agencies regarding their properties which have been evaluated with respect to historic, architectural or archaeological significance and which as a result of such evaluations have not been found suitable for listing on the National Register of Historic Places.

(e) develop and make available to Federal agencies and State and local governments information concerning professional methods and techniques for preserving, improving, restoring and maintaining historic properties.

(f) advise Federal agencies in the evaluation, identification, preservation, improvement, restoration and maintenance of historic properties.

(g) review and evaluate the plans of transferees of surplus Federal properties transferred for historic monument purposes to assure that the historic character of such properties is preserved in rehabilitation, restoration, improvement, maintenance and repair of such properties.

(h) review and comment upon Federal agency procedures submitted pursuant to section 2(e) of this order.

/s/ Richard Nixon

THE WHITE HOUSE,
May 13, 1971.

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American Indian Religious Freedom Act

PUBLIC LAW 95-341–AUG. 11, 1978

92 STAT. 469

Public Law 95-341
95th Congress

Joint Resolution

Aug. 11, 1978
[S.J. Res. 102]

American Indian Religious Freedom

Whereas the freedom of religion for all people is an inherent right, fundamental to the democratic structure of the United States and is guaranteed by the First Amendment of the United States Constitution;

Whereas the United States has traditionally rejected the concept of a government denying individuals the right to practice their religion and, as a result, has benefited from a rich variety of religious heritages in this country;

Whereas the religious practices of the American Indian (as well as Native Alaskan and Hawaiian) are an integral part of their culture, tradition and heritage, such practices forming the basis of Indian identity and value systems:

Whereas the traditional American Indian religions, as an integral part of Indian life, are indispensable and irreplaceable;

Whereas the lack of a clear, comprehensive, and consistent Federal policy has often resulted in the abridgment of religious freedom for traditional American Indians;

Whereas such religious infringements result from the lack of knowledge or the insensitive and inflexible enforcement, of Federal policies and regulations premised on a variety of laws;

Whereas such laws were designed for such worthwhile purposes as conservation and preservation of natural species and resources but were never intended to relate to Indian religious practices and, therefore, were passed without consideration of their effect on traditional American Indian religions;

Whereas such laws and policies often deny American Indians access to sacred sites required in their religions, including cemeteries;

Whereas such laws at times prohibit the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies;

Whereas traditional American Indian ceremonies have been intruded upon, interfered with, and in a few instances banned: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

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SEC. 2. The President shall direct the various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices. Twelve months after approval report of this resolution, the President shall report back to the Congress the results of his evaluation, including any changes which were made in administrative policies and procedures, and any recommendations he may have for legislative action.

Approved August 11, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1308 accompanying H.J. Res. 738 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 95-709 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Apr. 3, considered and passed Senate.

July 18, H.J. Res. 738 considered and passed House; proceedings vacated and S.J. Res. 102, amended, passed in lieu.

July 27, Senate concurred in House amendment.

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American Indian Religious Freedom Act

PUBLIC LAW 103-344—Oct 6, 1994
103rd Congress

108 Stat. 3124

American Indian Religious Freedom Act Amendments of 1994

An Act

To amend the American Indian Religious Freedom Act to provide for the traditional use of peyote by Indians for religious purposes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “American Indian Religious Freedom Act Amendments of 1994”.

SEC. 2. TRADITIONAL INDIAN RELIGIOUS USE OF THE PEYOTE SACRAMENT.

The Act of August 11, 1978 (42 U.S.C. 1996), commonly referred to as the “American Indian Religious Freedom Act”, is amended by adding at the end thereof the following new section:

SEC. 3. (a) The Congress finds and declares that

(1) for many Indian people, the traditional ceremonial use of the peyote cactus as a religious sacrament has for centuries been integral to a way of life, and significant in perpetuating Indian tribes and cultures;

(2) since 1965, this ceremonial use of peyote by Indians has been protected by Federal regulation;

(3) while at least 28 States have enacted laws which are similar to, or are in conformance with, the Federal regulation which protects the ceremonial use of peyote by Indian religious practitioners, 22 States have not done so, and this lack of uniformity has created hardship for Indian people who participate in such religious ceremonies;

(4) the Supreme Court of the United States, in the case of *Employment Division v. Smith*, 494 U.S. 872 (1990), held that the First Amendment does not protect Indian practitioners who use peyote in Indian religious ceremonies, and also raised uncertainty whether this religious practice would be protected under the compelling State interest standard; and

(5) the lack of adequate and clear legal protection for the religious use of peyote by Indians may serve to stigmatize and marginalize Indian tribes and cultures, and increase the risk that they will be exposed to discriminatory treatment.

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(b)(1) Notwithstanding any other provision of law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State. No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation, including, but not limited to, denial of otherwise applicable benefits under public assistance programs.

(2) This section does not prohibit such reasonable regulation and registration by the Drug Enforcement Administration of those persons who cultivate, harvest, or distribute peyote as may be consistent with the purposes of this Act.

(3) This section does not prohibit application of the provisions of section 481.111(a) of Vernon's Texas Health and Safety Code Annotated, in effect on the date of enactment of this section, insofar as those provisions pertain to the cultivation, harvest, and distribution of peyote.

(4) Nothing in this section shall prohibit any Federal department or agency, in carrying out its statutory responsibilities and functions, from promulgating regulations establishing reasonable limitations on the use or ingestion of peyote prior to or during the performance of duties by sworn law enforcement officers or personnel directly involved in public transportation or any other safety-sensitive positions where the performance of such duties may be adversely affected by such use or ingestion. Such regulations shall be adopted only after consultation with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice. Any regulation promulgated pursuant to this section shall be subject to the balancing test set forth in section 3 of the Religious Freedom Restoration Act (Public Law 103-141; 42 U.S.C. 2000bb1).

(5) This section shall not be construed as requiring prison authorities to permit, nor shall it be construed to prohibit prison authorities from permitting, access to peyote by Indians while incarcerated within Federal or State prison facilities.

(6) Subject to the provisions of the Religious Freedom Restoration Act (Public Law 103-141; 42 U.S.C. 2000bb1), this section shall not be construed to prohibit States from enacting or enforcing reasonable traffic safety laws or regulations.

(7) Subject to the provisions of the Religious Freedom Restoration Act (Public Law 103-141; 42 U.S.C. 2000bb1), this section does not prohibit the Secretary of Defense from promulgating regulations establishing reasonable limitations on the use, possession, transportation, or distribution of peyote to promote military readiness, safety, or compliance with international law or laws of other countries. Such regulations shall be adopted only after consultation with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice.

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(c) For purposes of this section—

(1) the term “Indian” means a member of an Indian tribe;

(2) the term “Indian tribe” means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) the term “Indian religion” means any religion --

(A) which is practiced by Indians, and

(B) the origin and interpretation of which is from within a traditional Indian culture or community; and

(4) the term “State” means any State of the United States, and any political subdivision thereof.

(d) Nothing in this section shall be construed as abrogating, diminishing, or otherwise affecting—

(1) the inherent rights of any Indian tribe;

(2) the rights, express or implicit, of any Indian tribe which exist under treaties, Executive orders, and laws of the United States;

(3) the inherent right of Indians to practice their religions; and

(4) the right of Indians to practice their religions under any Federal or State law.

Approved October 6, 1994

H.R.4230

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Archaeological Resources Protection Act

PUBLIC LAW 96-95–OCT. 31, 1979

93 STAT. 721

To protect archaeological resources on public lands and Indian lands, Oct. 31, 1979
and for other purposes. [H.R. 1825]

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Archaeological Resources Protection Act of 1979".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

- (1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;
- (2) these resources are increasingly endangered because of their commercial attractiveness;
- (3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and
- (4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act.

DEFINITIONS

SEC. 3. As used in this Act—

- (1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

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(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "Public lands" means

(A) lands which are owned and administered by the United States as part of—

- (i) the national park system,
- (ii) the national wildlife refuge system, or
- (iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution;

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

(6) The term "Person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

EXCAVATION AND REMOVAL

SEC. 4. (a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that

- (1) the applicant is qualified, to carry out the permitted activity,
- (2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,

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(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 6. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7 against the permittee or upon the permittee's conviction under section 6.

(g)(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h)(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

(j) Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act.

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CUSTODY OF RESOURCES

SEC. 5. The Secretary of the Interior may promulgate regulations providing for—

- (1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this Act, and
- (2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) or the Act of June 8, 1906 (16 U.S.C. 431-433).

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

PROHIBITED ACTS AND CRIMINAL PENALTIES

SEC. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of

- (1) the prohibition contained in subsection (a), or
- (2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$5,000, such person shall be fined not more than \$20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

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(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

CIVIL PENALTIES

SEC. 7. (a)(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost or restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration or repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b)(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty,

the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer

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oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

REWARDS; FORFEITURE

SEC. 8. (a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay, from penalties and fines collected under sections 6 and 7 an amount equal to one-half of such penalty or fine, but, not to exceed \$500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon

- (1) such person's conviction of such violation under section 6,
- (2) assessment of a civil penalty against such person under section 7 with respect to such violation, or
- (3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

CONFIDENTIALITY

SEC. 9. (a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

- (1) further the purposes of this Act or the Act of June 27, 1960 (16 U.S.C. 469-469c), and

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(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a), upon the written request of the Governor of any State, which request shall state—

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

REGULATIONS; INTERGOVERNMENTAL COORDINATION

SEC. 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be

appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

COOPERATION WITH PRIVATE INDIVIDUALS

SEC. 11. The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

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SAVINGS PROVISIONS

SEC. 12. (a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1).

(c) Nothing in this Act shall be construed to affect an land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

REPORT

SEC. 13. As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469-469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals.

Approved October 31, 1979.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-311 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 96-179 accompanying S. 490 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 125 (1979):

July 9, considered and passed House.

July 30, considered and passed Senate, amended, in lieu of S. 490.

Oct. 12, House agreed to Senate amendments with an amendment.

Oct. 17, Senate concurred in House amendment.

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Archaeological Resources Protection Act

PUBLIC LAW 100-555–OCT. 28, 1988

An Act

To improve the protection and management of archeological resources on Federal land.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Archaeological Resources Protection Act of 1979 (Public Law 96-95; 16 U.S.C. 470ii) be amended to add the following new section after section 13:

"SEC. 14. The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall–

"(a) develop plans for surveying lands under their control to determine the nature and extent of archaeological resources on those lands;

"(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archaeological resources; and

"(c) develop documents for the reporting of suspected violations of this Act and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies."

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

S. 1985

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Archaeological Resources Protection Act

PUBLIC LAW 100–588–NOV. 3, 1988

To amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that Act, and for other purposes. Nov. 3, 1988
[H.R. 4068]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979.

(a) Section 3(3) of such Act is amended by striking out the semi-colon at the end thereof and substituting a period.

(b) Section 6(a) of such Act is amended by inserting after "deface" the following: ", or attempt to excavate, remove, damage, or otherwise alter or deface".

(c) Section 6(d) of such Act is amended by striking "\$5,000" and inserting in lieu thereof "\$500".

(d) Section 10 of such Act is amended by adding the following new subsection at the end thereof:

"(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program."

Approved November 3, 1988.

LEGISLATIVE HISTORY—H.R. 4068 (S. 1985):

HOUSE REPORTS: No. 100-791, Pt. 1 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: No. 100-566 (Comm. on Energy and Natural Resources)
and No. 100-569 accompanying S. 1985 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 134 (1988):

July 26, considered and passed House.

Oct. 14, considered and passed Senate, amended.

Oct. 19, House concurred in Senate amendment.

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Native American Graves Protection and Repatriation Act

Public Law 101-601
101st Congress

An Act

Nov. 16, 1990
[H.R. 5237]

To provide for the protection of Native American graves, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native American Graves Protection and Repatriation Act".

SEC. 2. DEFINITIONS.

For purposes of this Act, the term—

(1) "burial site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) "cultural affiliation" means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

(3) "cultural items" means human remains and—

(A) "associated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

(B) "unassociated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

(C) "sacred objects" which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) "cultural patrimony" which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed

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by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) "Federal agency" means any department, agency, or instrumentality of the United States and shall include, except as may be inconsistent with the provisions of P.L. 101-185, the Smithsonian Institution.

(5) "Federal lands" means any land other than tribal lands which are controlled or owned by the United States.

(6) "Hui Malama I Na Kupuna O Hawai'i Nei" means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) "Indian tribe" means any tribe, band, nation, or other organized Indian group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) "museum" means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) "Native American" means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(10) "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.

(11) "Native Hawaiian organization" means any organization which—

(A) serves and represents the interests of Native Hawaiians,

(B) has a primary and stated purpose the provision of services to Native Hawaiians, and

(C) has expertise in Native Hawaiian Affairs, and

shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei.

(12) "Office of Hawaiian Affairs" means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.

(13) "right of possession" means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of an unassociated Native American funerary object, sacred object, or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 7(c), result in a Fifth Amendment taking by the United States as determined by the United States Claims Court pursuant to 28 U.S.C. 1491 in which event the "right of possession" shall be as provided under otherwise applicable property law. The original acquisition of Native American

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human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

(14) "Secretary" means the Secretary of the Interior.

(15) "tribal land" means—

(A) all lands within the exterior boundaries of any Indian reservation;

(B) all dependent Indian communities;

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3.

SEC. 3. OWNERSHIP.

(a) **NATIVE AMERICAN HUMAN REMAINS AND OBJECTS.**—The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after the date of enactment of this Act shall be (with priority given in the order listed)—

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe—

(1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

(b) **UNCLAIMED NATIVE AMERICAN HUMAN REMAINS AND OBJECTS.**—Native American cultural items not claimed under subsection (a) shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 8, Native American groups, representatives of museums and the scientific community.

(c) **INTENTIONAL EXCAVATION AND REMOVAL OF NATIVE AMERICAN HUMAN REMAINS AND OBJECTS.**—The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study,

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or removal of such items is permitted only if–

- (1) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979 (93 Stat. 721; 16 U.S.C. 470aa et seq.) which shall be consistent with this Act;
- (2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;
- (3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b); and
- (4) proof of consultation or consent under paragraph (2) is shown.

(d) **INADVERTENT DISCOVERY OF NATIVE AMERICAN REMAINS AND OBJECTS.**–(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after the date of enactment of this Act shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971, the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

(e) **RELINQUISHMENT.**–Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.

SEC. 4. ILLEGAL TRAFFICKING.

(a) **ILLEGAL TRAFFICKING.**–Chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new section:

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"§ 1170. Illegal Trafficking in Native American Human Remains and Cultural Items

"(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.

"(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both."

(b) TABLE OF CONTENTS.—The table of contents for chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"1170. Illegal Trafficking in Native American Human Remains and Cultural Items."

SEC. 5. INVENTORY FOR HUMAN REMAINS AND ASSOCIATED FUNERARY OBJECTS.

(a) IN GENERAL.—Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliation of such item.

(b) REQUIREMENTS.—(1) The inventories and identifications required under subsection (a) shall be—

(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after the date of enactment of this Act, and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 8.

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section. The term "documentation" means a summary of existing museum or Federal agency records, including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and this Act shall not be construed to be an authorization for, the initiation of

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new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

(c) EXTENSION OF TIME FOR INVENTORY.—Any museum which has made a good faith effort to carry out an inventory and identification under this section, but which has been unable to complete the process, may appeal to the Secretary for an extension of the time requirements set forth in subsection (b)(1)(B). The Secretary may extend such time requirements for any such museum upon a finding of good faith effort. An indication of good faith shall include the development of a plan to carry out the inventory and identification process.

(d) NOTIFICATION.—(1) If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined pursuant to this section, the Federal agency or museum concerned shall, not later than 6 months after the completion of the inventory, notify the affected Indian tribes or Native Hawaiian organizations.

(2) The notice required by paragraph (1) shall include information—

(A) which identifies each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to tribal origin; and

(C) which lists the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with that Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe or Native Hawaiian organization.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who shall publish each notice in the Federal Register.

(e) INVENTORY.—For the purposes of this section, the term "inventory" means a simple itemized list that summarizes the information called for by this section.

SEC. 6. SUMMARY FOR UNASSOCIATED FUNERARY OBJECTS, SACRED OBJECTS, AND CULTURAL PATRIMONY.

(a) IN GENERAL.—Each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of such objects based upon available information held by such agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.

(b) REQUIREMENTS.—(1) The summary required under subsection (a) shall be—

(A) in lieu of an object-by-object inventory;

(B) followed by consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders; and

(C) completed by not later than the date that is 3 years after the date of enactment of this Act.

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(2) Upon request, Indian tribes and Native Hawaiian organizations shall have access to records, catalogues, relevant studies or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American objects subject to this section. Such information shall be provided in a reasonable manner to be agreed upon by all parties.

SEC. 7. REPATRIATION.

(a) REPATRIATION OF NATIVE AMERICAN HUMAN REMAINS AND OBJECTS POSSESSED OR CONTROLLED BY FEDERAL AGENCIES AND MUSEUMS.—(1) If, pursuant to section 5, the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects.

(2) If, pursuant to section 6, the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.

(3) The return of cultural items covered by this Act shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.

(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 5, or the summary pursuant to section 6, or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) and, in the case of unassociated funerary objects, subsection (c), such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

(5) Upon request and pursuant to subsections (b), (c) and (e), sacred objects and objects of cultural patrimony shall be expeditiously returned where—

(A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

(B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable tribe or organization; or

(C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no

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identifiable lineal descendants of said member or the lineal descendants, upon notice, have failed to make a claim for the object under this Act.

(b) **SCIENTIFIC STUDY.**—If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.

(c) **STANDARD OF REPATRIATION.**—If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this Act and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects.

(d) **SHARING OF INFORMATION BY FEDERAL AGENCIES AND MUSEUMS.**—Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.

(e) **COMPETING CLAIMS.**—Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this Act, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this Act or by a court of competent jurisdiction.

(f) **MUSEUM OBLIGATION.**—Any museum which repatriates any item in good faith pursuant to this Act shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are inconsistent with the provisions of this Act.

SEC. 8 REVIEW COMMITTEE.

(a) **ESTABLISHMENT.**—Within 120 days after the date of enactment of this Act, the Secretary shall establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5, 6 and 7.

(b) **MEMBERSHIP.**—(1) The Committee established under subsection (a) shall be composed of 7 members,

(A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders;

(B) 3 of whom shall be appointed by the Secretary from nominations submitted by national museum organizations and scientific organizations; and

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(C) 1 who shall be appointed by the Secretary from a list of persons developed and consented to by all of the members appointed pursuant to subparagraphs (A) and (B).

(2) The Secretary may not appoint Federal officers or employees to the committee.

(3) In the event vacancies shall occur, such vacancies shall be filled by the Secretary in the same manner as the original appointment within 90 days of the occurrence of such vacancy.

(4) Members of the committee established under subsection (a) shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in committee business. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(c) Responsibilities.—The committee established under subsection (a) shall be responsible for—

(1) designating one of the members of the committee as chairman;

(2) monitoring the inventory and identification process conducted under sections 5 and 6 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

(3) reviewing upon the request of any affected party and finding relating to

(A) the identity or cultural affiliation of cultural items, or

(B) the return of such items;

(4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;

(5) compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

(6) consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;

(7) consulting with the Secretary in the development of regulations to carry out this Act;

(8) performing such other related functions as the Secretary may assign to the committee; and

(9) making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated.

(d) Any records and findings made by the review committee pursuant to this Act relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissible in any action brought under section 15 of this Act.

(e) RECOMMENDATIONS AND REPORT.— The committee shall make the recommendations under paragraph (c)(5) in consultation with Indian tribes and Native Hawaiian organizations and appropriate scientific and museum groups.

(f) ACCESS.—The Secretary shall ensure that the committee established under

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subsection (a) and the members of the committee have reasonable access to Native American cultural items under review and to associated scientific and historical documents.

(g) DUTIES OF SECRETARY.—The Secretary shall—

- (1) establish such rules and regulations for the committee as may be necessary, and
- (2) provide reasonable administrative and staff support necessary for the deliberations of the committee.

(h) ANNUAL REPORT.—The committee established under subsection (a) shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

(i) TERMINATION.—The committee established under subsection (a) shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the committee has been completed.

SEC. 9. PENALTY.

(a) PENALTY.—Any museum that fails to comply with the requirements of this Act may be assessed a civil penalty by the Secretary of the Interior pursuant to procedures established by the Secretary through regulation. A penalty assessed under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation shall be a separate offense.

(b) AMOUNT OF PENALTY.—The amount of a penalty assessed under subsection (a) shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

- (1) the archeological, historical or commercial value of the item involved;
- (2) the damages suffered, both economic and non-economic, by an aggrieved party;
- (3) the number of violations that have occurred.

(c) ACTIONS TO RECOVER PENALTIES.—If any museum fails to pay an assessment of a civil penalty pursuant to a final order of the Secretary that has been issued under subsection (a) and not appealed or after a final judgment has been rendered on an appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

(d) SUBPOENAS.—In hearings held pursuant to subsection (a), subpoenas may be issued for the attendance and testimony of witnesses and the production of relevant papers, books and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

SEC. 10. GRANTS.

(a) INDIAN TRIBES AND NATIVE HAWAIIAN ORGANIZATIONS.—The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

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(b) MUSEUMS.—The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 5 and 6.

SEC. 11. SAVINGS PROVISIONS.

Nothing in this Act shall be construed to—

- (1) limit the authority of any Federal agency or museum to—
 - (A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and
 - (B) enter into any other agreement with the consent of the culturally affiliated tribe or organization as to the disposition of, or control over, items covered by this Act;
- (2) delay actions on repatriation requests that are pending on the date of enactment of this Act;
- (3) deny or otherwise affect access to any court;
- (4) limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or
- (5) limit the application of any State or Federal law pertaining to theft or stolen property.

SEC. 12. SPECIAL RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND INDIAN TRIBES.

This Act reflects the unique relationship between the Federal government and Indian tribes and Native Hawaiian organizations and should not be construed to establish a precedent with respect to any other individual, organization or foreign government.

SEC. 13. REGULATIONS.

The Secretary shall promulgate regulations to carry out this Act within 12 months of enactment.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

SEC. 15. ENFORCEMENT.

The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.

Approved November 16, 1990.

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Excerpts from

THE NATIONAL TRAILS SYSTEM ACT
(P.L. 90-543, as amended through P.L. 107-325, December 4, 2002)
(also found in *United States Code*, Volume 16, Sections 1241-1251)

SEC. 3. [16USC1242]

- (a) The national system of trails shall be composed of the following:

* * *

(3) National historic trails, established as provided in section 5 of this Act, which will be extended trails which follow as closely as possible and practicable the original trails or routes of travel of national historic significance. Designation of such trails or routes shall be continuous, but the established or developed trail, and the acquisition thereof, need not be continuous onsite. National historic trails shall have as their purpose the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment. Only those selected land and water based components of a historic trail which are on federally owned lands and which meet the national historic trail criteria established in this Act are included as Federal protection components of a national historic trail. The appropriate Secretary may certify other lands as protected segments of an historic trail upon application from State or local governmental agencies or private interests involved if such segments meet the national historic trail criteria established in this Act and such criteria supplementary thereto as the appropriate Secretary may prescribe, and are administered by such agencies or interests without expense to the United States.

* * *

SEC. 5. [16USC1244]

- (b) The Secretary * * * shall make such additional studies as are herein or may hereafter be authorized by the Congress for the purpose of determining the feasibility and desirability of designating other trails as national scenic or national historic trails. * * *

- (11) To qualify for designation as a national historic trail, a trail must meet all three of the following criteria:

(A) It must be a trail or route established by historic use and must be historically significant as a result of that use. The route need not currently exist as a discernible trail to qualify, but its location must be sufficiently known to permit evaluation of public recreation and historical interest potential. A designated trail should generally accurately follow the historic route, but may deviate somewhat on occasion of necessity to avoid difficult routing through subsequent development, or to provide some route variations offering a more pleasurable recreational experience. Such deviations shall be so noted on site. Trail segments no longer possible to travel by trail due to subsequent development as motorized transportation routes may be designated and marked onsite as segments which link to the historic trail.

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(B) It must be of national significance with respect to any of several broad facets of American history, such as trade and commerce, exploration, migration and settlement, or military campaigns. To qualify as nationally significant, historic use of the trail must have had a far reaching effect on broad patterns of American culture. Trails significant in the history of native Americans may be included.

(C) It must have significant potential for public recreational use or historical interest based on historic interpretation and appreciation. The potential for such use is generally greater along roadless segments developed as historic trails and at historic sites associated with the trail. The presence of recreation potential not related to historic appreciation is not sufficient justification for designation under this category.

* * *

(f) Within two complete fiscal years of the date of enactment of legislation designating a national historic trail or the Continental Divide National Scenic Trail or the North Country National Scenic Trail as part of the system, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, and the relevant Advisory Council established pursuant to section 5(d) of this Act, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the management, and use of the trail, including but not limited to, the following items:

- (1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of any anticipated cooperative agreements to be consummated with State and local government agencies or private interests, and for national scenic or national historic trails an identified carrying capacity of the trail and a plan for its implementation;
- (2) the process to be followed by the appropriate Secretary to implement the marking requirements established in section 7(c) of this Act;
- (3) a protection plan for any high potential historic sites or high potential route segments * * *.

* * *

DEFINITIONS

SEC. 12. [16USC1251] As used in this Act:

(1) The term "high potential historic sites" means those historic sites related to the route, or sites in close proximity thereto, which provide opportunity to interpret the historic significance of the trail during the period of its major use. Criteria for consideration as high potential sites include historic significance, presence of visible historic remnants, scenic quality, and relative freedom from intrusion.

Executive Order 13007

Presidential Documents

Executive Order 13007 of May 24, 1996

Indian Sacred Sites

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. *Accommodation of Sacred Sites.* (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) “Federal lands” means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) “Indian tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and “Indian” refers to a member of such an Indian tribe; and

(iii) “Sacred site” means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Sec. 2. *Procedures.* (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments.”

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Executive Order 13007

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, “agency action” has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

/s/ William J. Clinton

THE WHITE HOUSE,
May 24, 1996.

Source: Federal Register May 29, 1996 (Volume 61, Number 104) Pages 26771 - 26772

Executive Order 13287

Presidential Documents

Executive Order 13287 of March 3, 2003

Preserve America

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) (NHPA) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), it is hereby ordered:

Section 1. *Statement of Policy.* It is the policy of the Federal Government to provide leadership in preserving America's heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the Federal Government, and by promoting intergovernmental cooperation and partnerships for the preservation and use of historic properties. The Federal Government shall recognize and manage the historic properties in its ownership as assets that can support department and agency missions while contributing to the vitality and economic well-being of the Nation's communities and fostering a broader appreciation for the development of the United States and its underlying values. Where consistent with executive branch department and agency missions, governing law, applicable preservation standards, and where appropriate, executive branch departments and agencies ("agency" or "agencies") shall advance this policy through the protection and continued use of the historic properties owned by the Federal Government, and by pursuing partnerships with State and local Governments, Indian tribes, and the private sector to promote the preservation of the unique cultural heritage of communities and of the Nation and to realize the economic benefit that these properties can provide. Agencies shall maximize efforts to integrate the policies, procedures, and practices of the NHPA and this order into their program activities in order to efficiently and effectively advance historic preservation objectives in the pursuit of their missions.

Sec. 2. *Building Preservation Partnerships.* When carrying out its mission activities, each agency, where consistent with its mission and governing authorities, and where appropriate, shall seek partnerships with State and local governments, Indian tribes, and the private sector to promote local economic development and vitality through the use of historic properties in a manner that contributes to the long-term preservation and productive use of those properties. Each agency shall examine its policies, procedures, and capabilities to ensure that its actions encourage, support, and foster public-private initiatives and investment in the use, reuse, and rehabilitation of historic properties, to the extent such support is not inconsistent with other provisions of law, the Secretary of the Interior's Standards for Archeology and Historic Preservation, and essential national department and agency mission requirements.

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Sec. 3. *Improving Federal Agency Planning and Accountability.* (a) Accurate information on the state of Federally owned historic properties is essential to achieving the goals of this order and to promoting community economic development through local partnerships. Each agency with real property management responsibilities shall prepare an assessment of the current status of its inventory of historic properties required by section 110(a)(2) of the NHPA (16 U.S.C. 470h–2(a)(2)), the general condition and management needs of such properties, and the steps underway or planned to meet those management needs. The assessment shall also include an evaluation of the suitability of the agency's types of historic properties to contribute to community economic development initiatives, including heritage tourism, taking into account agency mission needs, public access considerations, and the long-term preservation of the historic properties. No later than September 30, 2004, each covered agency shall complete a report of the assessment and make it available to the Chairman of the Advisory Council on Historic Preservation (Council) and the Secretary of the Interior (Secretary).

(b) No later than September 30, 2004, each agency with real property management responsibilities shall review its regulations, management policies, and operating procedures for compliance with sections 110 and 111 of the NHPA (16 U.S.C. 470h–2 & 470–3) and make the results of its review available to the Council and the Secretary. If the agency determines that its regulations, management policies, and operating procedures are not in compliance with those authorities, the agency shall make amendments or revisions to bring them into compliance.

(c) Each agency with real property management responsibilities shall, by September 30, 2005, and every third year thereafter, prepare a report on its progress in identifying, protecting, and using historic properties in its ownership and make the report available to the Council and the Secretary. The Council shall incorporate this data into a report on the state of the Federal Government's historic properties and their contribution to local economic development and submit this report to the President by February 15, 2006, and every third year thereafter.

(d) Agencies may use existing information gathering and reporting systems to fulfill the assessment and reporting requirements of subsections 3(a)–(c) of this order. To assist agencies, the Council, in consultation with the Secretary, shall, by September 30, 2003, prepare advisory guidelines for agencies to use at their discretion.

(e) No later than June 30, 2003, the head of each agency shall designate a senior policy level official to have policy oversight responsibility for the agency's historic preservation program and notify the Council and the Secretary of the designation. This senior official shall be an assistant secretary, deputy assistant secretary, or the equivalent, as appropriate to the agency organization. This official, or a subordinate employee reporting directly to the official, shall serve as the agency's Federal Preservation Officer in accordance with section 110(c) of the NHPA. The senior official shall ensure that the Federal Preservation Officer is qualified consistent with guidelines established by the Secretary for that position and has access to adequate expertise and support to carry out the duties of the position.

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Sec. 4. *Improving Federal Stewardship of Historic Properties.* (a) Each agency shall ensure that the management of historic properties in its ownership is conducted in a manner that promotes the long-term preservation and use of those properties as Federal assets and, where consistent with agency missions, governing law, and the nature of the properties, contributes to the local community and its economy.

(b) Where consistent with agency missions and the Secretary of the Interior's Standards for Archeology and Historic Preservation, and where appropriate, agencies shall cooperate with communities to increase opportunities for public benefit from, and access to, Federally owned historic properties.

(c) The Council is directed to use its existing authority to encourage and accept donations of money, equipment, and other resources from public and private parties to assist other agencies in the preservation of historic properties in Federal ownership to fulfill the goals of the NHPA and this order. (d) The National Park Service, working with the Council and in consultation with other agencies, shall make available existing materials and information for education, training, and awareness of historic property stewardship to ensure that all Federal personnel have access to information and can develop the skills necessary to continue the productive use of Federally owned historic properties while meeting their stewardship responsibilities.

(d) The National Park Service, working with the Council and in consultation with other agencies, shall make available existing materials and information for education, training, and awareness of historic property stewardship to ensure that all Federal personnel have access to information and can develop the skills necessary to continue the productive use of Federally owned historic properties while meeting their stewardship responsibilities.

(e) The Council, in consultation with the National Park Service and other agencies, shall encourage and recognize exceptional achievement by such agencies in meeting the goals of the NHPA and this order. By March 31, 2004, the Council shall submit to the President and the heads of agencies recommendations to further stimulate initiative, creativity, and efficiency in the Federal stewardship of historic properties.

Sec. 5. *Promoting Preservation Through Heritage Tourism.* (a) To the extent permitted by law and within existing resources, the Secretary of Commerce, working with the Council and other agencies, shall assist States, Indian tribes, and local communities in promoting the use of historic properties for heritage tourism and related economic development in a manner that contributes to the long-term preservation and productive use of those properties. Such assistance shall include efforts to strengthen and improve heritage tourism activities throughout the country as they relate to Federally owned historic properties and significant natural assets on Federal lands.

(b) Where consistent with agency missions and governing law, and where appropriate, agencies shall use historic properties in their ownership in conjunction with State, tribal, and local tourism programs to foster viable economic

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partnerships, including, but not limited to, cooperation and coordination with tourism officials and others with interests in the properties.

Sec. 6. *National and Homeland Security Considerations.*

Nothing in this order shall be construed to require any agency to take any action or disclose any information that would conflict with or compromise national and homeland security goals, policies, programs, or activities.

Sec. 7. *Definitions.* For the purposes of this order, the term “historic property” means any prehistoric or historic district, site, building, structure, and object included on or eligible for inclusion on the National Register of Historic Places in accordance with section 301(5) of the NHPA (16 U.S.C. 470w(5)).

The term “heritage tourism” means the business and practice of attracting and accommodating visitors to a place or area based especially on the unique or special aspects of that locale’s history, landscape (including trail systems), and culture. The terms “Federally owned” and “in Federal ownership,” and similar terms, as used in this order, do not include properties acquired by agencies as a result of foreclosure or similar actions and that are held for a period of less than 5 years.

Sec. 8. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

/s/ George W. Bush

THE WHITE HOUSE,
March 3, 2003.

Source: Federal Register March 3, 2003 (Volume 68, Number 43) Pages 10635 - 10638

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

Preamble

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

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

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

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

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

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

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

Basis for Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Components Of Agreement

1. Applicability

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

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

2. Establishment of Preservation Board

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

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

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

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

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

3. Revision of "Cultural Resource Management" Procedures

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

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

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

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

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

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

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

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

4. Thresholds for Council Review

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

5. Cooperation and Enhanced Communication

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

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

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

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

At a minimum, protocols will address the following:

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

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

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

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

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

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

6. Training Program

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

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

7. Professional Development

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

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

8. State Office Certification and Decertification

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

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

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

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

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

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

9. Accountability Measures

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

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

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

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

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10. Reviewing and Changing the Agreement

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

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

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

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

Affirmation

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

/s/ Sylvia V. Baca

3/26/97

Director, Bureau of Land Management

Date

/s/ Cathryn B. Slater

March 26, 1997

Chairman, Advisory Council on Historic Preservation

Date

/s/ Judith E. Bittner

Mar 26, 1997

President, National Conference of State Historic
Preservation Officers

Date

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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

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- 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 Bureauwide 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. Bureauwide 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. Bureauwide Historic Preservation Practice

The Preservation Board will monitor Field Office performance under Bureauwide 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).

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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

11/15/99

Preservation Officer on behalf of the
Preservation Board

Date

Approved:

/s/ Tom Fry

12/1/99

Director

Date

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Council Letter With Transition Questions and Answers

**Advisory
Council On
Historic
Preservation**

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

May 24, 1999

Dear Preservation Partner:

The Council is pleased to convey a copy of the revised 36 CFR Part 800, "Protection of Historic Properties." Published in the *Federal Register* May 18, 1999, at 64 F.R. 27043-27084, they go into effect June 17, 1999. The document also includes the Council's "Recommended Approach for Recovery of Significant Information From Archaeological Sites" (pp. 27085-27087).

The new regulations significantly modify the Section 106 review process, introducing new streamlining while incorporating changes mandated by the 1992 amendments to NHPA. They give greater deference to decisions made by Federal agencies and SHPOs; focus Council actions on larger issues such as monitoring Federal preservation program trends and overall performance; define and strengthen the roles of Indian tribes and other Native Americans; recognize the role of applicants; and encourage early compliance.

The rule also encourages Federal agencies to integrate Section 106 review with reviews required under the National Environmental Policy Act and other laws. Specific provisions now allow agencies to use information and analyses prepared for one law to meet the requirements of another. Revisions and refinements throughout the regulations cumulatively improve the operation of the Section 106 review process.

In addition to the rule itself, the materials in this package include an overview of significant changes, a flow chart of the new process, procedural Q&As, and information about transitional briefings. Additional materials will be posted on our Web site www.achp.gov as they become available.

Thank you for your support throughout the process of regulatory revision. With your help, we now have a more effective and efficient Section 106 review process.

Sincerely,



John M. Fowler
Executive Director

Enclosures

Transition Questions and Answers

**Revised Section
106 Regulations**

Effective June 17, 1999

Major Changes

Full Text of the
Revised Regulations

Regs Flow Chart

Flow Chart
Explanatory Material

Archeology
Guidance

Transition Questions
and Answers

Briefings Schedule

ACHP 106

Making the Transition to the Council's Revised Regulations: Questions and Answers

Introduction

1. Are existing Memoranda of Agreement and Programmatic Agreements still valid?

2. What interpretation applies to provisions of MOAs/PAs executed before the effective date of the new regulations that refer to the former regulations by section numbers?

3. How are existing MOAs/PAs to be interpreted that do not specifically refer to a section of the former regulations but refer instead to the Council's regulations in a general manner?

4. Under what regulations must cases in progress be handled?

5. How are MOAs prepared under the former regulations to be executed when they are received by the Council after the new regulations go into effect?

6. If it is decided that the former regulations are to be used for one purpose under an MOA/PA, is use of the revised regulations precluded for another purpose in the same MOA/PA?

7. To what address must case materials be sent?

Summary

Introduction

The Advisory Council on Historic Preservation has revised the regulations that implement Section 106 of the National Historic Preservation Act. Published in the *Federal Register* (64 FR 27043-27084) on May 18, 1999, the revised regulations go into effect June 17, 1999. This briefing sheet addresses questions that are expected to arise during the transition from the former regulations to the revised ones.

The revisions are the culmination of careful Council review of the Section 106 process, which was last amended in 1986. This review reaffirmed the basic tenets of the Section 106 process, while

Transition Questions and Answers

introducing new flexibility and options for agencies to meet their legal obligations. The process continues to focus on constructive resolution of potential conflicts between a Federal undertaking and historic properties through consultation and agreement among the agency, the State or Tribal Historic Preservation Officer (SHPO/THPO), and the Council.

1. Are existing Memoranda of Agreement and Programmatic Agreements still valid?

Yes. Memoranda of Agreement (MOAs) and Programmatic Agreements (PAs) executed under the former regulations are still valid. The revised regulations contain changes to the process by which agreements will be developed and executed after June 17, 1999.

2. What interpretation applies to provisions in Memoranda of Agreement and Programmatic Agreements executed before the effective date of the new regulations that refer to the former regulations by section numbers?

When the parties to existing MOAs and PAs entered into those agreements, the former regulations were in place. By referring to sections of those regulations, the signatories expressed their intent to be bound by the terms of the regulations existing at the time the agreements were executed.

Unless a particular MOA or PA expressly states that the most current version of the regulations is to apply, each MOA or PA must be interpreted under the version of the regulations that was current at the time the agreement was executed. If an MOA or PA states that the most current version of the regulations is to govern the agreement's terms, then the revised regulations should be used. Few, if any, agreements contain such a provision.

Under both the former and the revised regulations and under most MOAs and PAs, signatories are entitled to seek amendment to the agreement. Thus, if a signatory is unhappy with a reference to a section of the former regulations or its interpretation, that party would be free to seek amendment to bring the MOA or the PA under the revised regulations.

However, except in a highly unusual situation, it is anticipated that amendments will be pursuant to the revised regulations. In addition, all the signatories to the original document must agree to the amendment.

Transition Questions and Answers

3. How are existing MOAs and PAs to be interpreted that do not specifically refer to a section of the former regulations but refer instead to the Council's regulations in a general manner?

By including in the Memoranda of Agreement a general reference to the Council's regulations rather than a specific reference, the parties agreed to a general process and not to specific steps as might be contained in a particular section or subsection of the former regulations.

This sort of general reference is often seen in stipulations in MOAs that require the agency to seek the comments of the Council under 36 CFR Part 800 if the provisions of the MOA cannot be met. Although it could be shown that the parties intended the processes contained in the former regulations to apply, it is more reasonable to assume that the most current process is applicable. Therefore, new consultation required by such general references, including that occurring in the context of an MOA, should be conducted under the revised regulations.

Again, parties may seek amendment of MOAs or PAs to clarify any ambiguities.

4. Under what regulations must cases in progress be handled?

Even if an agency has initiated the Section 106 process prior to June 17, 1999, the revised regulations should be applied unless circumstances strongly warrant completing the process under the former regulations. This approach should not cause delay in completing the Section 106 process.

Generally, regarding cases in progress when the revised regulations go into effect, it will be assumed that the revised regulations apply unless the consulting parties agree to the contrary. The parties should consider the following factors in deciding which regulations to use to complete the process:

- How long ago did the agency initiate the process? If the process was initiated so long ago that the agency might have reasonably expected that the former regulations would apply, it might make sense to continue to apply those regulations.
- How far into the process is the case? If a case has been nearly completed under the former regulations, it might be

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more expedient to complete the process under the former regulations. If the process has only begun, the revised regulations should be applied.

- Will continued application of the former regulations create any delay, expense, or hardship? If so, it is more reasonable to apply the revised regulations.
- Will continuing to use the former regulations deprive any party (e.g. THPO, other tribes, applicants, local governments) or the public of an opportunity to participate? If so, the revised regulations should apply.

If the Agency Official, SHPO, and Council cannot agree, then the revised regulations should apply.

5. How are Memoranda of Agreement prepared under the former regulations to be executed when they are received by the Council after June 17, 1999?

When agreements that have been prepared under the former regulations come to the Council for consideration and signature, the Council will assume that the revised regulations apply to its own actions with regard to those agreements. The Council will treat them as MOAs under §800.6(b)(2) of the revised regulations, requiring the Council's signature.

Although the appropriate documentation required by the revised regulations should be submitted, the Council will apply the documentation requirements flexibly when, in its estimation, circumstances so warrant.

6. If it is decided that the former regulations are to be used for one purpose under an MOA or a PA, is use of the revised regulations precluded for another purpose in the same MOA or PA?

Although it is preferable to apply only one set of regulations to any given MOA or PA, there may be circumstances in which it would be more reasonable to apply both the former and the revised regulations for different purposes. For example, when an existing MOA or PA refers to a specific section of the former regulations and it is clear that the parties intended the particular terms of that section to apply, then the specified section of the former regulations may be used.

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The same MOA or PA may also require the parties to seek Council comment when the terms of the agreement cannot be met. For this second reference, the revised regulations would apply. (See answer to question #3.)

7. To what address must case materials be sent?

All case materials developed under the regulations should be sent to the Director, Office of Planning and Review. Materials for cases originating in localities east of the Mississippi River, as well as in Minnesota, Iowa, and Missouri, should be sent to ACHP, 1100 Pennsylvania Ave., NW, Suite 809, Washington, DC 20004. Materials for cases originating west of the Mississippi River (exclusive of Minnesota, Iowa, and Missouri) should be sent to ACHP, 12136 W. Bayaud Ave., Suite 330, Lakewood, CO 80228.

Summary

Specific references to sections of the former regulations in existing agreements should be interpreted under the version of the regulations that existed at the time the agreement was executed, unless the MOA or PA contains a provision to the contrary or the signatories agree that the MOA or PA should be interpreted under the revised regulations. General references to the Council's regulations in existing MOAs or PAs should be interpreted as references to the revised regulations unless the MOA clearly indicates otherwise.

Cases in progress generally should follow the revised regulations. However, the consulting parties, who began consultation before the effective date of the new regulations, and having considered all pertinent factors, may agree to complete the process under the former regulations. Such agreement should be in writing and should state the reasons for the decision.

The Council staff is available to answer any questions and provide guidance on application of the regulations in specific circumstances. For questions related to the regulations, call (202) 606-8508, or e-mail regs@achp.gov.

Source: <http://www.achp.gov/regsqa.html>. Transmitted with App. 15, page 1, May 24, 1999.

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1. List of Selected National Register Bulletins
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.01 Purpose. This Manual Section provides general direction for identifying, evaluating, categorizing, and allocating to uses all the cultural resources that occur on public lands within a Field Office manager's jurisdiction.

.02 Objectives. The objectives of the identification component of the cultural resource management program are to ensure that BLM Field Office managers accomplish the following:

A. Locate and record cultural resources on lands they administer and in areas affected by undertakings they authorize.

B. Establish the resources' National Register significance and their scientific, cultural, public, traditional, and conservation values as the basis for managing the resources and the surrounding land area over the long term.

C. Prepare to enter into land use planning with sound qualitative, quantitative, and geographical information about known and anticipated cultural resources, and with definite goals for their short- and long-term management.

D. Maintain permanent, up-to-date records through cooperation with the State Historic Preservation Officer, and encourage their use for appropriate educational, research, and other learning purposes.

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

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

.05 References. (See also BLM Manual Section 8100.05)

A. National Programmatic Agreement of March 26, 1997, among the Director, BLM, the Chairman, Advisory Council on Historic Preservation, and the President, National Conference of State Historic Preservation Officers (see BLM Manual Section 8100, Appendix 13).

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

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

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

E. National Register Bulletin series, published by the National Park Service (see Appendix 1 for selected list).

F. Glossary of Terms, BLM Manual Section 8100.

.06 Policy.

The BLM's Field Office managers, with the assistance and advice of professionally qualified cultural resource staff, shall:

A. Incorporate cultural resource considerations into all aspects of planning and decision making.

B. Complete appropriate levels of cultural resource inventory, evaluation, and documentation, at the appropriate stage in planning, for all lands potentially affected by BLM decisions, regardless of ownership.

C. Consider the character, importance, potential uses, and appropriate management of cultural resources when inventorying, evaluating, and documenting them.

D. Inventory cultural resources that are potentially affected by Section 106 undertakings, by the methods and at a level commensurate with the nature of the proposed undertaking and its likely effects on the protection and management of the cultural resources (see additional guidance in 8110.23 and 8140.2).

E. Ensure that only professionally qualified archaeologists, historians, anthropologists, architectural historians, or other specialists as appropriate to the nature of the resources, locate, evaluate, document, or collect cultural resources (see Glossary of Terms, BLM Manual Section 8100: "professionally qualified;" and Section 8100.03).

F. Record all cultural resource locations using Global Positioning System (GPS) technology, at a level of accuracy within a mean error of 12.5 meters or less at a 95 percent confidence level. (See Appendix 2.)

G. Allocate cultural resources on public land to the appropriate use categories and manage them in a manner that ensures, protects, or contributes to their assigned uses.

H. Cooperate in sharing cultural resource data with State Historic Preservation Offices (SHPO) according to the State's BLM-SHPO Protocol established pursuant to the national Programmatic Agreement, ensuring that records and data bases will be permanently maintained, properly secured, and kept current and readily available to meet agency information needs.

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I. Withhold sensitive information from public disclosure when disclosure would threaten the resources (see National Historic Preservation Act, Section 304, BLM Manual Section 8100, Appendix 5; and Archaeological Resources Protection Act, Section 9, BLM Manual Section 8100, Appendix 8).

J. Provide Federal, tribal, State, and local agencies, qualified professionals, and the public with access to cultural resource information when access would further the BLM's objectives, consistent with the National Historic Preservation Act and the Archaeological Resources Protection Act, and would not result in harm to the resources.

.07 File and Records Maintenance. See .11C, .32C, .5, .51-.57. Filing requirements are found in the GRS/BLM Combined Records Schedule (Schedule 4).

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.1 Determining Identification Needs. The timely and adequate professional identification of cultural resources on public lands and in areas affected by BLM's undertakings is essential to making informed resource management and land use decisions.

.11 Elements of Identification. Inventory, evaluation, and documentation are the three main elements of identification. Each has a critical role to play in enabling the long-term management and use of cultural resources.

A. Inventory is meant to ensure that the nature and distribution of cultural resources on BLM-administered lands (and in areas affected by BLM undertakings) are identified by professional cultural resource staff and made known to the responsible Field Office manager.

B. Evaluation is meant to ensure that the significance and use potential of the cultural resources are analyzed and recommended by professional cultural resource staff and approved by the responsible Field Office manager, after appropriate consultation with the State Historic Preservation Officer and tribal officials.

C. Documentation is meant to record adequately the resources' location, geographical settings, physical characteristics, and scientific, historical, architectural, traditional, educational, interpretive, and conservation values. Documentation is not done as a separate step but occurs throughout the identification process. Qualified professionals prepare documentation in the course of inventorying and evaluating cultural resources. The BLM works in cooperation with State Historic Preservation Offices to ensure that this documentation is maintained in permanent and secure paper and digital files and databases in a manner that fulfills data sharing requirements of the national Programmatic Agreement and data sharing agreements and programs that exist for individual states.

.12 Information Needs. During the earliest feasible stage of land use planning or environmental review, the Field Office manager, assisted by professional staff, will determine the information needed to locate and evaluate cultural resources potentially affected by the plan or undertaking. After this determination, the Field Office manager will also seek information from relevant Indian tribes and interested persons to identify historic and traditional cultural properties and potential effects on them. Where possible, information needs can be determined on a large-scale programmatic basis.

A. During planning, the Field Office manager, assisted by professional staff, shall complete cultural resource inventory, evaluation, and use allocations for public lands potentially affected by planning decisions as an integral component of regional plans, local interdisciplinary plans, or project plans.

B. In issuing land use authorizations, the Field Office manager shall ensure that areas where proposed land uses are being considered in response to a land use application or a BLM proposal are inventoried to identify potentially affected cultural resources at a level commensurate with the nature of the proposed undertaking and its likely effects on cultural resources.

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.13 Environmental Documentation. When an environmental assessment or environmental impact statement is being prepared for a proposed land use that might affect cultural resources, preparers must have access to sufficient inventory data, and professional expertise, to allow them to give meaningful consideration to cultural resources known or projected to occur in the potential impact area.

.14 SHPO Views. The Field Office manager shall consider the views of the appropriate SHPO(s), obtained programmatically or on a case basis as appropriate, before making decisions about cultural resource inventory needs, evaluations, and treatment options relating to a planning effort or proposed land use. Where the BLM national Programmatic Agreement is active, SHPO views shall be obtained according to the State's BLM-SHPO Protocol.

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.2 Gathering Cultural Resource Information. Given that inventory, evaluation, and documentation are the three main elements of cultural resource identification, inventory – a representation of the cultural resource content of a geographical locale – is the most fundamental element.

.21 Kinds of Inventory. The BLM cultural resource inventory system is composed of three kinds of inventory: class I - existing information inventory; class II - probabilistic field survey; and class III - intensive field survey (see .21A-C). Each is designed to provide specific kinds of cultural resource information for various planning and resource management needs. The most frequently employed method of inventory is class III survey carried out for specific projects to enable BLM to comply with Section 106 of the National Historic Preservation Act (NHPA) before making decisions about proposed land and resource uses. In those cases, unless specifically prohibited in regulations, the cost of inventories shall be the responsibility of the land-use applicant or the benefiting BLM activity, as authorized in Section 110(g) of NHPA.

A. Class I - Existing Information Inventory.

1. A class I inventory is most useful for gaining a comprehensive view of all the known archaeological, historic, cultural and traditional places within a large area, such as the area to be covered by a land-use plan or an EIS. A class I inventory is a professionally prepared study that includes a compilation and analysis of all reasonably available cultural resource data and literature, and a management-focused, interpretive, narrative overview, and synthesis of the data. The overview also defines regional research questions and treatment options. Existing cultural resource data are obtained from published and unpublished documents, BLM cultural resource inventory records, institutional site files, State and national registers, interviews, and other information sources. Class I inventories, which should have prehistoric, historic, and ethnological elements, are in large part chronicles of past land uses, and as such they should be relevant to current land use decisions. General information about sacred sites and other places of traditional cultural or religious importance to Native Americans or other cultural groups (including "traditional cultural properties" as discussed in National Register Bulletin No. 38) should as much as possible be included in the inventory. Class I inventories are periodically updated, in both the compilation and the synthesis, to incorporate new data from class II and class III inventories, histories, oral testimony, and other sources. They can be used to develop regional research designs for resource evaluation. Maintaining current class I inventories in Geographic Information System (GIS) compatible format is of critical importance for making cultural resources information readily available for research, planning, management and compliance activities.

a. Purpose. The purpose of a class I inventory is to provide cultural resource specialists and managers with an informed basis for understanding the study area in terms of:

(1) The range of variety, the apparent extent, and the probable importance of each of the various kinds of cultural resources presently known to exist within the study area, including how and by whom they may be considered important.

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(2) The natural settings where the various known kinds of cultural resources might be expected to occur or not to occur within the study area, based on present information.

(3) The potential for and probable consequences of conflict between the known kinds of cultural resources and the various types of land and resource uses that are likely to be proposed in the study area.

(4) The need for new cultural resource survey to improve the state of knowledge, especially where there are substantial data gaps because previous survey has been limited and/or biased, and the data gaps coincide with areas of potential land use.

(5) The human uses of the land and resources through time, as evidenced in the prehistoric and historic record, and the ways that this knowledge of successful and unsuccessful past adaptations might apply to decisionmaking for current land use proposals.

b. Not a mere “records check”. A class I inventory is a detailed study consisting of all the elements described in .21A3 and A4. In contrast, a "literature review," "existing data review," "file search," or "records check" is generally the brief first step before initiating a field survey. Ideally, completing an existing data review means consulting the part II documentation of a completed, up-to-date class I inventory (see .21A4) and/or the SHPO's automated database. Sometimes it means checking relatively undeveloped BLM and SHPO survey and site records to learn whether any survey has been conducted and any cultural properties have been recorded nearby. This level of review is not to be confused with a full class I inventory and should not be called a class I inventory.

2. Regional Overview. Part I of a class I inventory is a narrative overview consisting of the following 10 elements.

a. Abstract. The abstract is a brief summary of the overview, up to 250 words in length, that highlights the major points and findings of the study. Because it may be used for various general reference systems, such as the National Technical Information System, the abstract should be sufficiently informative that a reader unfamiliar with the study area can determine the kind of information the document contains. It is basically a highly condensed version of the management summary (see next paragraph).

b. Management Summary. The management summary or "executive summary" should be limited to approximately 2500 words. It gives a brief account of the major points of the complete class I inventory, including both the overview and the data compilation. It summarizes what is known about human land use experiences in the study area from the earliest prehistoric occupation to the immediate past, provides concise statements about the study area's cultural resource data base, and discusses the relative importance of the area's known and projected cultural resources. The five points in .21A1 are specifically addressed and may form the basis for the summary's organization. The management summary should allow the reader to be familiar with the class I inventory results without reading the entire document. It and the abstract should be prepared last.

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c. Study Area Orientation. The study area is identified, together with the reasons and goals for the study, the underlying assumptions, and theoretical and methodological approaches to the study. Problems encountered in undertaking the work and steps taken to resolve them may be identified. The personnel involved in the study and the role of each person should be identified, as should procedures used for data collection and review, field work (if any), and report preparation.

d. Environmental Factors. Past and present environmental factors important for understanding the study area's prehistoric and historic human use and occupation, as well as factors affecting preservation, are discussed. Factors are those that describe the geographic system of the study area:

- (1) Surface geology.
- (2) Climate.
- (3) Topography.
- (4) Soils.
- (5) Flora and fauna
- (6) The effects of human activity.
- (7) The effects of time.

The factors are treated in terms of a dynamic, interactive system, and single-factor analyses are avoided.

e. Prior Cultural Resource Investigations and Research.

(1) Summary of Past and Current Work. Important past and ongoing archaeological, historical, and ethnological/sociological investigations in the study area are briefly described. This should be limited to those that have contributed substantially to knowledge about the cultural resources of the study area. Investigations are assessed in terms of their strengths and weaknesses relative to the goals of the study. The general character of data and materials collected from the study area as part of the prior work are briefly discussed, including information on their nature, extent, and location.

(2) Survey Coverage. Locations where cultural resource surveys have been conducted are identified, and surveys are assessed quantitatively and qualitatively.

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(3) Present Research Emphases. The problem orientation and objectives of current cultural resource research pertaining to the study area are discussed. Management orientations and objectives should also be included as applicable. Regional or problem-specific research designs or strategies presently planned or being implemented within the area are discussed. If none exists, specific research designs, strategies, or orientations from surrounding areas, that may be pertinent to the study of cultural resources within the study area, should be discussed and evaluated for possible applicability.

f. Cultural Resource Narrative. This constitutes a major portion of the cultural resource overview, providing the descriptive data from which the synthesis is drawn. Depending on the data, it may be convenient to treat prehistoric, historic, and contemporary cultures separately, but it may also be useful to minimize these boundaries when they would detract from a clear view of continual, changing land use through time. Topics below may be organized differently as appropriate.

(1) Prehistory.

(a) Culture Sequence. The reconstructed prehistoric chronology of the study area is described, including summary discussion of the archaeologically defined cultures, the basis for their definition, and the field basis for their recognition.

(b) Prehistoric Lifeways. Technological, settlement, economic, social, religious, and political systems thought to represent the various cultures described in (1) are discussed. Ethnographic analogy and inferences may be used, but should be so identified.

(2) History.

(a) Historic Lifeways. The lifeways of the historic groups known to have lived in or used the area, however temporarily, and including ethnic and/or religious groups as appropriate, are discussed chronologically. The discussion should extend the preceding discussion of prehistoric lifeways and should address the same topics. Historical material culture and the tangible evidence remaining or expected in the study area should be described.

(b) Historic Context. The study area is also discussed in terms of its historical place within the broad pattern of westward movement, settlement, and land use. Historic context provides a basis for targeting future inventory and for evaluating historic period cultural resources.

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(3) Contemporary Culture. The populations currently occupying and/or using the study area and their lifeways are discussed, including rural members of the dominant culture. Topically, this discussion should be a further extension of discussions of the study area's Prehistory and History, paragraphs .21A2f (1) and (2). In addition, any locations that contemporary peoples are known to recognize as important to their traditional lifeways are identified, including identification of sources of information.

(4) Cultural Chronology Summary. An outline of the cultural chronology may be used to summarize the major prehistoric, historic, and recent land uses and events occurring within or affecting the study area. A summary of variations in kinds and locations of associated cultural properties should be included.

g. Cultural Resource Synthesis. This is a concise but comprehensive synthesis of all available cultural resource data, depicting human use and occupation of the study area from earliest prehistoric time to the present. A synthesis is more than a summary of the database. It organizes diverse and incomplete information in terms of cultural process and deals specifically, but not exclusively, with changes in settlement patterns and settlement systems; changes in land use technology; changes in land tenure; changes in the nature and effects of the cultural systems operating within the study area over time; and other topics needed to provide a coherent view of dynamic human use and occupation of the area, including factors affecting preservation of archaeological evidence. It is basically a land use theory that strives to account for all significant human use of the study area. This is the most creative and most important part of a class I inventory.

h. Management Classification. All cultural resources known and anticipated to occur in the study area are broadly classified and grouped according to their similarities. The classification may be based on whatever organizing criteria are appropriate to the data, as reflected in the synthesis. These criteria might include some mix of age, culture, function, location, size, public or scientific appeal, attractiveness to illegal looters, etc., but should focus as much as possible on producing groupings of resources that reflect the management implications of their similarities. The classification derives from and extends the synthesis, moving the synthesis beyond its more or less theoretical conclusions and setting the stage for its practical application. It is the first step toward evaluating resources (see .3) and assigning them to uses (see Manual Section 8130). It should establish a general classificatory framework that will facilitate evaluation without preempting the evaluation process.

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i. Suggested Management Options and Research Directions. General questions and issues, relating to future archaeological, historical, and ethnological/sociological research and to future management of cultural resources in the study area, are briefly discussed. Gaps in the present data base related to these questions and issues are indicated, and future research goals and investigation needs are suggested, including well-supported, suggested priorities and strategies for new field inventory. Relevant cultural resource management options for the area are discussed, and the desirability and viability of the options are considered from public, scientific, and management points of view.

j. Bibliography and Supporting Documentation. Pertinent backup materials follow the text. This should include an evaluatively annotated bibliography of sources cited and other relevant but uncited sources, and appendices containing relevant information not suited to presentation in the body of the report. Maps and graphics may be incorporated within the text or may follow it, as appropriate.

3. Compilation of Known Cultural Resource Data. Part II of a class I inventory is the compilation of all known cultural resource information for the study area, consisting of the following elements.

a. Maps. All identified cultural properties, and any traditional values that can be usefully represented on maps, shall be mapped at a scale of 1:24,000 or the nearest equivalent, preferably using GIS technology. Each such location is identified with a reference number. Permanent BLM numbers should not be assigned to unverified cultural properties (see .5). A separate map at a scale capable of showing the entire study area should indicate survey coverage and provide easy reference to the general locations and densities of known cultural resources. Relative sensitivity of subareas should be indicated, based on the importance and/or complexity of resources (and therefore the severity of potential land use conflicts) rather than on simple density alone.

b. Inventory Forms. Copies of cultural resource recording forms not previously on file at the appropriate BLM office, from recording or repository institutions and other sources, are duplicated to supplement the BLM and SHPO record system.

c. Report. The part II report is a brief narrative that may be included at the end of the cultural resource overview. It includes the following elements.

(1) Data Sources. Sources used, time and personnel involved, methods used, and any problems encountered in compiling the data are summarized. Possible sources that could not be used, such as data believed to exist only outside the United States, are identified.

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(2) Cultural Resource Recording Systems. Recording systems in use for the area are briefly discussed, including a description of numbering conventions and locations where records are maintained. A conversion table may be included to cross-reference between recording institutions' numbers and BLM-assigned numbers.

(3) Data Reliability. The quality of the cultural resource data used in the compilation is assessed, including precision of cultural resource locations, definitions in use for "site" or any other term used variously or ambiguously, and other relevant observations bearing on the reliability of sources and the probable need for ground-truthing.

(4) Formal Systems of Recognition. All cultural resources included in or formally determined eligible for the National Register of Historic Places, found to qualify for or designated as National Historic Landmarks, included in the Historic American Buildings Survey or Historic American Engineering Record, or included in State, county, or local registers or similar lists, are identified and discussed in brief.

(5) Summary Table. A summary listing of all known cultural resources should include at least the following:

- (a) Reference number(s).
- (b) Location (cadastral or UTM).
- (c) Ownership.
- (d) Function/type.
- (e) Cultural affiliation/historic context.
- (f) Chronological placement.
- (g) Established uses.
- (h) Formal recognition.
- (i) Recorder.
- (j) Date recorded.

4. Reason for Detailed Class I Direction. To prepare for professionally acceptable on-the-ground class II and class III surveys, the BLM can rely on up-to-date method and theory literature, consultants' expertise, and the prevailing State and regional standards. However, there is no outside source for direction on how to construct a compilation and synthesis of all existing cultural resource information as preparation for multiple-use, land-use planning and day-to-day cultural resource decisionmaking. The direction above is detailed because a class I inventory is one of the most important tools a Field Office manager can have for putting useful information in plans and for guiding those day-to-day cultural resource decisions

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B. Class II - Probabilistic Field Survey

1. A class II survey is most useful for improving cultural resource information in a large area, such as for planning or EIS purposes, where insufficient systematic identification work has been done in the past. A class II probabilistic field survey is a statistically based sample survey, designed to aid in characterizing the probable density, diversity, and distribution of cultural properties in an area, to develop and test predictive models, and to answer certain kinds of research questions. Within individual sample units, survey aims, methods, and intensity are the same as those applied in class III survey. Class II survey may be conducted in several phases, using different sample designs, to improve statistical reliability.

2. Class II survey may be appropriate when comparing alternative locations for proposed undertakings. Class II survey is generally not appropriate for determining specific effects of a proposed land use, except when the sample distribution and sample rate have proven to be sufficient to demonstrate that the specific environmental situation(s) in the area sampled did not support human occupation or use to a degree that would make further field survey information useful or meaningful. Class II survey may be appropriate when existing information about the project area or similar environments indicates that a properly designed sample survey would adequately address the relevant research questions about past human use of the area. Class II survey is generally not appropriate where designing a sample and executing a discontinuous survey may prove more demanding and time-consuming than a continuous class III survey.

3. Class II surveys may be appropriate for testing hypotheses about presence or absence of significant prehistoric and historic archaeological and architectural properties, such as:

a. When the regional inventory suggests a significant correlation between certain environmental variables and particular significant property types, which can be tested through sampling the study area.

b. When comparative effects or cumulative effects assessments are needed for environmental documentation.

c. When class I data are found to be biased or otherwise insufficient to allow for reasoned judgments during general land use planning or activity planning.

d. When generating statistical data needed for developing and testing predictive models.

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4. This Manual does not discuss how to design class II surveys because the methods and theories of sampling are continually being refined. Well-qualified consultants should be retained to work with the BLM staff to develop a sample design appropriate to the particular place and the particular reasons for the data collection.

C. Class III - Intensive Field Survey. Intensive survey is most useful when it is necessary to know precisely what historic properties exist in a given area or when information sufficient for later evaluation and treatment decisions is needed on individual historic properties. Intensive survey describes the distribution of properties in an area; determines the number, location and condition of properties; determines the types of properties actually present within the area; permits classification of individual properties; and records the physical extent of specific properties.

1. Thorough Coverage. Consistent with standards in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716, September 29, 1983), a BLM class III Intensive Field Survey is a professionally conducted, thorough pedestrian survey of an entire target area (except for any subareas exempted), intended to locate and record all historic properties.

2. Field Methods. While BLM class III methods may differ from State to State (and sometimes between geographical/cultural regions within a State), they conform to the prevailing professional survey standards for the State or region involved, provided that these standards meet or exceed the Secretary's Standards and Guidelines. Agreed-upon methodological guidance is generally incorporated by reference or inclusion in the BLM/SHPO protocol required by the national Programmatic Agreement. In Eastern States, where the Programmatic Agreement is not in use, methods are determined in consultation with the appropriate SHPO.

3. Complete Record. A class III survey provides managers and cultural resource specialists with a complete record of cultural properties, locatable from surface and exposed profile indications, occurring within a specified and defined target area. Because class III survey is designed to produce a total inventory of the cultural properties observable within the target area (if any), once it has been completed no further survey work should be needed in the target area. Areas with dense vegetation cover, partial snow cover, dune activity, or other surface-obscuring conditions may require further survey as these conditions change. Local conditions which might make resurvey advisable should be defined in the State's BLM-SHPO Protocol developed pursuant to the national Programmatic Agreement.

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4. Professional Documentation Standard. As specified in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, an intensive survey report should document: (a) the kinds of properties looked for; (b) the boundaries of the area surveyed; (c) the method of survey, including an estimate of the extent of survey coverage; (d) a record of the precise location of all properties at a degree of accuracy that meets or exceeds the National Map Accuracy Standard for 1:24,000 scale maps (<http://rockyweb.cr.usgs.gov/nmapsstds/nmas.html>) and, after 1 Apr 2004, obtained using Global Positioning System (GPS) technology; and (e) information on the appearance, significance, integrity and boundaries of each property sufficient to permit an evaluation of its significance. Reports should also include discussion of the area's culture history, previous research in the area, and treatment recommendations. Field work must be designed and staffed appropriately to ensure that this documentation standard will be achieved.

.22 Other Information-Gathering Techniques

A. Reconnaissance Survey.

1. Standing outside the inventory classes defined in .21, a BLM reconnaissance survey is a focused or special-purpose information tool that is less systematic, less intensive, less complete, or otherwise does not meet class III inventory standards. While portions of an area investigated by reconnaissance survey may have been covered to standards, an area surveyed only by reconnaissance methods cannot be considered to be "inventoried" and may be subject to resurvey for other purposes (depending in part on the purposes and results of the reconnaissance).

2. Reconnaissance surveys may be used, among other purposes, for:

- a. Checking the adequacy of previous surveys.
- b. Developing recommendations about inventory needs in previously unsurveyed areas.
- c. Verifying assumed conditions that would warrant a waiver of more intensive survey.
- d. Locating architectural or other high-profile properties.
- e. Filling special management information needs, such as locating properties associated with particular kinds of landscape features, or properties potentially damaged by wildfire, wildfire suppression, or other emergency treatments; ground-truthing remote sensing results; or spot checking the effects of a class of authorized uses on a given landscape.

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B. Limited Subsurface Testing. Initial field survey should not require subsurface testing, e.g. shovel tests, as a standard practice. It may be useful where recent soil deposition could have covered cultural resources, where dense vegetation obscures cultural resources, or where it is difficult to determine the horizontal or vertical extent of a property from surface indications alone. It may be authorized under the authority of a survey and recordation permit, as long as (1) a qualified BLM professional cultural resource specialist determines that the work would not be likely to affect the attributes of properties that may make them eligible for the National Register, and (2) consultation with tribes, or with the SHPO pursuant to the State's BLM-SHPO Protocol, as applicable, is not necessary. Collection of cultural materials is generally not authorized through survey and recordation permits (see BLM Manual Section 8150).

C. Test Excavation. Controlled test excavation, by implication, exceeds the disturbance threshold for limited subsurface testing (.22B) and is more likely to affect attributes that may make a property eligible for the National Register. Test excavation must be limited to a scale that would not substantially alter the property's significant archaeological features, that is, those which would make it eligible for inclusion in the National Register of Historic Places. If the property would be substantially altered, the Field Office manager may need to consult with tribes, as appropriate, and with the SHPO pursuant to the State's BLM-SHPO Protocol. Test excavation as part of survey for Section 106 compliance purposes should be limited to cases where it is necessary to assist in assessing the eligibility or ineligibility of a property being evaluated. This necessity is difficult to determine in advance of field work. Except where heavy vegetation cover or aggrading surfaces are the rule, test excavation should not be authorized under the authority of a general survey and recordation permit (see BLM Manual Section 8150), but should be justified for each project and authorized with an appropriate project-specific testing or excavation permit.

D. Locating Properties of Traditional Cultural Importance. Properties of traditional cultural or religious importance to Native Americans (including "traditional cultural properties" as discussed in National Register Bulletin No. 38) can be found to meet National Register criteria and thus should be located, described, and evaluated at the same stage in the Section 106 compliance process as the field inventory for historic properties. Properties of traditional cultural or religious importance must meet one or more National Register criteria (i.e., must be historically significant) in order to be determined eligible for the National Register (see .31).

1. Specific, Definite Places. Properties of traditional cultural or religious importance are specific, definite places that figure directly and prominently in a particular group's cultural practices, beliefs, or values, when those practices, beliefs, or values (i) are widely shared within the group, (ii) have been passed down through the generations, and (iii) have served a recognized role in maintaining the group's cultural identity for at least 50 years. While an individual member of a group may attach importance to a place that does not meet this definition, e.g., a personally important place, such places should not be considered to be properties of traditional cultural or religious importance.

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2. Identified by Consultation, Not Field Survey. Specific properties, or categories of properties, of traditional cultural or religious importance should be known to the group that ascribes traditional value to them. Accordingly, such properties are not identified using survey methods analogous to archaeological survey. Instead, they are identified by consulting with the cultural groups known to have traditional interests in the target area. Consultation gives interested persons an opportunity to reveal to the BLM the specific locations of traditional cultural places that are known to them and that they want the BLM to consider during decision making. Consultation with Native Americans to locate properties of traditional importance is carried out in conformance with Handbook H-8120-1. Consultation to identify these types of properties should always precede field survey.

3. Inventory Reports are Generally Not a Subject for Consultation. Appropriate planning documents pertaining to the nature and location of a proposed undertaking should be shared with Indian tribes as part of consultation about the undertaking. There is no general need routinely to provide Indian tribes or other cultural groups with inventory reports and other cultural resource documentation or to consult with them about survey results, unless additional consultation is needed because a proposed undertaking would potentially affect properties of traditional cultural or religious importance, which a tribe or group identified to us in consultation preceding the survey.

E. Predictive Modeling. As discussed in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, predictive modeling is an application of basic sampling techniques that projects or extrapolates the number, classes, distribution, and frequencies of properties. Predictive modeling can be an effective tool in land use planning, during the early stages of planning an undertaking, for targeting field survey, and for other management purposes. However, the reliability of the model must be verified; predictions should be confirmed through field testing, and the model should be redesigned and retested if necessary. Models that characterize the known density and distribution of cultural resources in relation to observable environmental variables can be useful planning tools for understanding regional settlement and land use patterns in the archaeological and historical record. Properly developed, statistically valid models can provide Field Office managers with estimates of the probability of finding cultural properties within a specific landscape. These predictions can be used to allocate scarce resources to inventory and management activities and to estimate the time and effort that may be required for compliance work, including survey, in support of proposed land uses. Models can also be useful in developing management plans and historic contexts to evaluate resources.

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.23 Survey Requirements and Exceptions. Section 106 of NHPA requires agency officials to identify historic properties in a proposed undertaking's area of potential effect. In determining the appropriate level of identification effort, the responsible manager ("agency official") must take into account past planning, research and studies, the nature of the undertaking, 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 effect. The manager must also take into account the alternatives under consideration and the views of the SHPO/THPO and any other consulting parties.

A. Survey Required. In a previously unsurveyed area of potential effect, a class III (intensive) survey is generally required when a proposed undertaking would substantially disturb the land surface, transfer land out of Federal ownership, affect the integrity of historic properties, or alter the traditional use of known properties with traditional cultural or religious importance to an Indian tribe.

B. Survey Not Required. Previously surveyed areas where conditions have not significantly changed should not require further survey. If resurvey is to be done in previously surveyed areas, the record must clearly state the justification. In addition, survey requirements may be waived when any of the following conditions exists:

1. Natural conditions are such, or previous natural ground disturbance has modified the surface so extensively, that the likelihood of finding evidence of cultural properties is negligible. (Examples: glaciers; avalanche areas; flood plains.)

2. Human activity within the last 50 years has changed the natural topography enough to eradicate cultural properties. (Examples: contouring a right of way to meet Federal Aid highway safety standards; leveling agricultural fields for irrigation by extensive cutting and filling.)

3. Existing survey data are sufficient to indicate that the specific environmental situation did not support human occupation or use to a degree that would make further inventory information useful or meaningful, and records documenting the location, methods, results, and reliability of the survey are at hand.

4. The type of undertaking or the geographical or environmental setting is exempted from survey in the State's BLM-SHPO Protocol developed under the national Programmatic Agreement. (Exemption of a geographical or environmental setting is generally based on an analysis of existing survey data -- using modeling or other analytical tools in combination with field testing the conclusions -- that indicates a low probability of finding significant cultural resources in such settings. See .22E above.)

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.3 Evaluating Legal Significance.

31. Legal Standards.

A. Accountability for Effects on Significant Properties. While Field Office managers are responsible generally for ensuring that all cultural properties on public lands in their jurisdiction are appropriately managed, Sections 106 and 110 of the National Historic Preservation Act (NHPA), and implementing regulations at 36 CFR Part 800, place specific procedural requirements on managers. Managers are required to take into account the effects that a proposed BLM undertaking (action or authorization) would have on significant cultural properties, prior to making a decision to approve or authorize the undertaking (see BLM Manual Section 8140).

B. The Nature of Significance. "Significance" under the NHPA is indicated by inclusion in or eligibility for the National Register of Historic Places. To comply with the NHPA, Field Office managers must ensure that appropriately qualified historic preservation specialists evaluate the significance of all cultural properties potentially affected by a proposed undertaking. Qualified specialists, guided by Regional Overviews, research designs, historic contexts, and their own professional knowledge of the resources, apply the National Register criteria for evaluation (see .32A) to determine if a cultural property is eligible for listing in the National Register of Historic Places. The specialist then provides the Field Office manager with appropriate recommendations concerning eligibility.

C. A Uniform System of Significance Measurement. The same criteria and integrity standards are applied to all cultural properties, whether archaeological, historical, architectural, or traditional. In order to be listed in or found eligible for listing in the National Register, a property must have integrity and must meet one or more of the four criteria. No type of property is automatically eligible for listing in the National Register.

.32 Determining National Register of Historic Places Eligibility

A. Specialist Applies the National Register Criteria. In determining the National Register eligibility of a cultural property, an appropriately qualified cultural resource specialist must apply each of the four National Register of Historic Places criteria for evaluation (36 CFR Part 60.4; see .32E). If a cultural property has integrity, meets one or more criteria, and is not ruled out by a criterion exception, the specialist should recommend to the responsible manager that it be considered to be an eligible "historic property" as defined in the National Historic Preservation Act and related regulations. The National Park Service's National Register Bulletins provide guidance on applying the evaluation criteria and assessing integrity (see Appendix 1).

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B. Specialist Applies SHPO Information. Each State Historic Preservation Office maintains information relevant for evaluating the legal significance of cultural resources in the State. The qualified specialist applying the National Register criteria is expected to be well-versed in this information and to use it appropriately when considering eligibility. Relevant SHPO information includes a comprehensive inventory of cultural resources, copies of all National Register documentation for the properties in the State, and the statewide historic preservation plan, which identifies themes or contexts important in that State's history and prehistory.

C. Specialist Makes Staff Recommendation. As needed for Section 106 compliance or management planning, the appropriately qualified specialist recommends whether cultural properties should be considered to be eligible for the National Register. A positive or negative recommendation about a property's eligibility is a professional judgment based on careful consideration of information concerning the integrity of the cultural property and the reasons why the property is thought to be, or not to be, significant. All staff recommendations about eligibility must be documented. Field Office managers use this information in decision making about potential undertakings and management strategies that might affect the cultural property.

D. Legal Implications of Recommendation. Further compliance requirements under Section 106 of the NHPA are triggered only when a National Register-listed or -eligible property is present in the area of potential effects. Where no eligible properties are involved, Section 106 does not have further requirements.

1. Where Programmatic Agreement is Not Active. In Field Offices where the national Programmatic Agreement is not in effect, eligibility determinations must be made between the Field Office manager and the SHPO, following the consensus procedures in 36 CFR 800 or the procedures in 36 CFR 63 for a formal Determination of Eligibility through the Keeper of the National Register.

2. Where Programmatic Agreement is Active. Under the national Programmatic Agreement and the States' BLM-SHPO Protocols implementing it, SHPOs' direct involvement in determining eligibility should be limited to exceptional properties and to those for which the BLM Field Office lacks the appropriate expertise (e.g., historic architecture). Otherwise, full responsibility for eligibility judgments, negative and positive, rests with the responsible Field Office managers and their professional staffs. Improperly made or inadequately documented eligibility determinations, if subjected to appeal or injunction proceedings, would at a minimum result in extended delays to the land use authorization process. If a Field Office manager and his or her professional staff are uncertain about a property's eligibility, or if a Field Office manager disagrees with a staff recommendation, the manager shall consult with the SHPO to resolve the eligibility question. If the Field Office manager and SHPO are then unable to agree about the property's eligibility, they shall apply the formal determination of eligibility procedure (36 CFR Part 63).

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E. The National Register Criteria. A district, site, building, structure, object, traditional cultural property, historic landscape, or discrete group of thematically related properties, that represents America's history, architecture, archaeology, engineering, or culture may be eligible for the National Register. To be judged eligible, a property must possess integrity of location, design, setting, materials, workmanship, feeling, and association, and must meet at least one of the following criteria:

1. Property is associated with an event or events that have made a significant contribution to the broad patterns of America's history. (Corresponds to 36 CFR 60.4 criterion “a”.)

2. Property is associated with the lives of persons significant in our past. (Corresponds to 36 CFR 60.4 criterion “b”.)

3. Property embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic value, or represents a significant and distinguishable entity whose components may lack individual distinction. (Corresponds to 36 CFR 60.4 criterion “c”.)

4. Property has yielded or may be likely to yield information important in prehistory or history. (Corresponds to 36 CFR 60.4 criterion “d”.)

F. Religious and Other Properties Excluded. In general, properties used for religious purposes, cemeteries, graves, birthplaces, moved structures, reconstructed buildings, commemorative properties, and properties that are less than 50 years old are excluded from National Register eligibility. See 36 CFR 60.4, "Criteria considerations," for more details and an explanation of the specific factors that may counteract the general exclusions.

1. Native American Religious Places, Cemeteries, and Graves. Properties used for traditional religious purposes by Native Americans may be found eligible for the National Register. The eligibility exclusion pertaining to religious properties is not intended to exclude traditional cultural properties merely because they have religious uses, as traditional cultures often do not distinguish between what is secular and what is sacred. As with all traditional cultural properties, properties used for traditional religious purposes must have multi-generation time depth and conform to the meaning of traditional (see “tradition” and “traditional” definitions, BLM Manual 8120 Glossary) and satisfy one or more National Register criteria to be found eligible. Native American graves ("burials") and cemeteries, the criteria exclusions notwithstanding, may also be found eligible as traditional cultural properties.

2. Ethnohistoric Documentation. A traditional cultural property important for the religious or funerary values ascribed to it may be found to be eligible, but only if its importance has been ethnohistorically documented and the property can be clearly defined (see National Register Bulletin No. 15, “Criteria Consideration A: Religious Properties”).

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G. National Register of Historic Places Registration

1. National Register Nominations. Districts, sites, buildings, structures, objects, traditional cultural properties, historic landscapes, and discrete groups of thematically-related multiple properties on public lands may be nominated for listing in the National Register. Appropriately qualified cultural resource professionals prepare nomination Form No. 10306, with continuation sheets (where necessary) form No. 10300A, and accompanying maps and photographs that adequately document the property. (See 36 CFR Part 60 and National Register Bulletins 15, 16A, and 16B.)

2. Nomination Submission and Review Process.

a. Field Offices prepare nominations and forward to the State Director for review and submission to the SHPO.

b. State Directors submit nominations to the SHPO for review and comment regarding the adequacy of the nomination, the significance of the property and its eligibility for the National Register. Concurrently, the chief elected local officials of the county or equivalent government unit and municipal political jurisdiction in which the property is located are notified and given 45 days in which to comment. The SHPO signs the form with an eligibility recommendation.

c. After receiving the SHPO-signed nomination, the State Director submits the nomination to the Preservation Officer (WO-240) with any comments from the SHPO and chief local official, and requests the Preservation Officer approve the nomination and forward it to the Keeper of the National Register.

d. The Preservation Officer reviews the nomination form.

(1) If the Preservation Officer finds that the nomination is technically and professionally correct and sufficient and that the property meets the National Register criteria, the Preservation Officer signs and submits the nomination form to the Keeper of the National Register indicating whether the property appears to qualify for the Register at the national, State, or local level of significance.

(2) If the Preservation Officer finds that the nomination is not technically and professionally correct and sufficient, or that the property does not meet the eligibility criteria, the Preservation Officer will contact the State Office for clarification. If changes are needed, the Preservation Officer will return the nomination to the State Office.

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e. The National Register provides notice in the Federal Register that the nominated property is being considered for listing in the National Register. Nominations will be included in the National Register within 45 days of receipt by the Keeper unless the Keeper disapproves such nomination or an appeal is filed. Nominations that are technically or professionally inadequate will be returned for correction and resubmission. When a property does not appear to meet the National Register criteria for evaluation, the nomination will be returned with an explanation as to why the property does not meet the National Register criteria for evaluation.

.33 Nationally Significant Properties. The national Programmatic Agreement obligates the BLM to consult with the Advisory Council when an undertaking would involve a National Historic Landmark or a National Register-eligible property of national significance. The implications of national-level eligibility were not fully explored at the time the Agreement was negotiated. The procedural complexities are described in .33A through C, and the policy resolution is set out in .33D2.

A. National Historic Landmarks.

1. Higher Standards of Evaluation. National Historic Landmarks are this Nation's only officially recognized, nationally significant historic properties that are designated after a criteria-led, professional evaluation process (compare .33C). The Secretary of the Interior designates Landmarks on the basis of recommendations from the National Park System Advisory Board, a committee of scholars and other citizens, under the authority of the Historic Sites Act of 1935. The National Park Service staffs the program and maintains the National Historic Landmarks inventory. The National Historic Landmark criteria (36 CFR Part 65.4; National Register Bulletin No. 16, Appendix V), while similar to the National Register criteria, set substantially higher thresholds for evaluating significance. (Because evaluation according to the National Historic Landmark criteria is the prerogative of the National Park System Advisory Board, there is no need for Field Office staffs to apply the Landmark criteria when evaluating cultural properties.)

2. Protection and Preservation. Landmarks enjoy a higher threshold for protection: Section 110(f) of the National Historic Preservation Act requires Federal agencies to minimize harm to National Historic Landmarks to the maximum extent possible. The National Park Service monitors the preservation of National Historic Landmarks (36 CFR 65.70) and reports to the Congress on its findings (Section 8, National Park Systems General Authorities Act of 1970, as amended), especially focusing on threats to Landmarks.

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B. Nationally Significant National Register Properties.

1. Recommendations and Referrals. Based on the recommendation of the State Historic Preservation Officer and/or the agency Preservation Officer, the National Register staff will review the significance level of a property being nominated to the National Register, and may or may not concur that the property appears to be of national significance. If the National Register staff does concur, the nomination is referred to the National Historic Landmarks staff for consideration.

2. National Significance is Determined through Landmark Evaluation. The NPS would not be able to justify separate, competing National Register and National Landmark systems for evaluating national significance. Consequently, the system of objective criteria, professional staffing, and board review established for the National Historic Landmarks program--which preceded the National Register by three decades--prevails as the only official process by which a historic property may be evaluated for national significance. Note that neither the National Historic Preservation Act nor the Historic Sites Act recognizes the concept of “eligible National Historic Landmarks,” and there is no process in place to make such determinations.

3. Status Information. The annual report compiled by the Washington Office Cultural and Fossil Resources and Tribal Consultation Group is the most accurate source of information about BLM’s Register and Landmark properties. In addition, the National Register of Historic Places maintains an inventory of properties referred for Landmark consideration (among other information) in its National Register Information Systems (NRIS) database and property files. The NRIS may be accessed online at the National Park Service's World Wide Web site.

C. Other Historical Designations.

1. Congressional and Presidential Designations. The Congress, through legislation, and the President, through Executive proclamation, sometimes designates places that are distinguished for their historical importance. For example, the Congress may designate components of the National Historic Trails system, and the President may proclaim National Monuments, a large percentage of which are archaeological or historical in nature. Such areas are managed according to the particular requirements in the legislation or proclamation that designated them.

a. National Register and Landmark Status not Automatic. Unless they had already been included in the National Register or designated as National Historic Landmarks, there may be no direct connection between special congressional and presidential designations and the application of the National Historic Preservation Act or Historic Sites Act. Consequently, significance relative to the National Register of Historic Places will need to be established separately.

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b. Evaluation Follows the Normal Process. Where a proposed undertaking would potentially affect a specially designated place such as a National Monument or a National Historic Trail, the first step is to determine if it is listed in the National Historic Landmark inventory or the National Register.

(1) If the monument or trail is listed in either inventory, then the cultural resource specialist must determine if the portion of the property to be affected is a contributing part of the property. This is determined by applying the National Register criteria for evaluation and assessing integrity to that portion of the property. If the area or features (such as historic wagon ruts) appear to be contributing and the monument or the trail is a National Historic Landmark or listed in the National Register of Historic Places at the national level of significance, then the SHPO and the Advisory Council should be consulted in accordance with the national Programmatic Agreement.

(2) If the monument or trail is not a National Historic Landmark or listed in the National Register of Historic Places, but the portion that would be affected appears to be eligible in its own right or to contribute to an eligible historic property, then the area or feature should be considered eligible for the National Register and treated as such. If it is neither eligible in its own right nor contributing, then the portion that would be affected should not be considered a historic property as defined by the National Historic Preservation Act.

2. State, Local, and Tribal Designations. Properties designated as historically or culturally significant by non-Federal entities, such as State and local governments and Indian tribes, do not automatically accrue National Register eligibility or status as a result of such designations. Similar to the process in paragraph 1.b., where a proposed undertaking would potentially affect a specially designated place such as a State historic register property or a community commemorative site, the first step is to determine if it is listed in or eligible for the National Register.

3. United Nations Designations. The World Heritage List was established under terms of The Convention Concerning the Protection of the World Cultural and Natural Heritage adopted in November 1972 at the 17th General Conference of UNESCO. The Convention states that a World Heritage Committee "will establish, keep up-to-date and publish" a World Heritage List of cultural and natural properties, submitted by the States Parties and considered to be of outstanding universal value. The BLM manages several Chacoan Outlier sites, associated with the Chaco Culture National Historic Park and listed on the World Heritage List.

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D. Identification and Consultation.

1. Designated Properties. Designated National Historic Landmarks and National Register properties determined to be nationally significant through the listing process must be identified at the earliest stages of project or undertaking planning. As specified in the national Programmatic Agreement, if they would be directly and adversely affected by the undertaking, then the BLM will consult with the SHPO and the Council.

2. Undesignated Properties. For purposes of the national Programmatic Agreement, if the SHPO and the State Director, with the advice of the Deputy Preservation Officer, concur that an undesignated property should be listed as nationally significant, the property will be regarded as if nationally significant and, if it would be directly and adversely affected by an undertaking, subject to consultation with the SHPO and the Council.

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.4 Categorizing According to Uses. Categorizing cultural resources according to their potential uses is the culmination of the identification process and the bridge to protection and utilization decisions. Use categories establish what needs to be protected, and when or how use should be authorized. All cultural resources have uses, but not all should be used in the same way. Cultural resources can be allocated to the various recognized use categories even before they are individually identified. The clear advantage in doing this is that it allows Field Office managers to know in advance how to respond to conflicts that arise between specific cultural resources and other land uses. Relative to the national Programmatic Agreement, categorizing resources to uses provides a mechanism for the Field Office manager and the SHPO to confer and concur on how to handle most routine cases of conflict in advance, enabling the Field Office manager to put decisions into effect in the most appropriate and most timely manner.

.41 Allocations to Use Categories.

A. Field Office managers shall allocate to appropriate use categories all cultural properties known and projected to occur in a plan area. Allocations are made in land use plans (RMP), and may be applied both to individual properties and to classes of similar properties. Appropriately qualified staff professionals recommend suitable uses for each cultural property or class of properties, considering the properties' characteristics, condition, setting, location, and accessibility, and especially their perceived values and potential uses. A cultural property may be allocated to more than one use category or it may pass from one category to another (e.g., from Scientific Use to Public Use, as when an archaeological property becomes appropriate for in-place interpretation and conservation for future scientific use, upon completion of scientific investigation). During the compliance process for proposed land uses, allocations allow Field Office managers to analyze needs and develop appropriate mitigation and treatment options. Allocations should be consistent with historic context documents and State Historic Preservation Plans.

B. Allocations shall be reevaluated and revised, as appropriate, when circumstances change or new data become available. Conditions and/or criteria for revising allocations must be included in the RMP, or else revisions may require a plan amendment.

C. A Field Office more than 1 year from an RMP start may assign cultural resources to use categories through an implementation plan (e.g., integrated or interdisciplinary plan, coordinated resource management plan, or landscape management plan) that implements any commitment in an existing land use plan to manage cultural resources appropriately (even if only a commitment to comply with the National Historic Preservation Act; see next to last sentence in .41A). Assignments made in implementation plans do not become full allocation decisions until incorporated in an approved RMP.

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.42 Use Categories

A. Scientific Use. This category applies to any cultural property determined to be available for consideration as the subject of scientific or historical study at the present time, using currently available research techniques. Study includes methods that would result in the property's physical alteration or destruction. This category applies almost entirely to prehistoric and historic archaeological properties, where the method of use is generally archaeological excavation, controlled surface collection, and/or controlled recordation (data recovery). Recommendations to allocate individual properties to this use must be based on documentation of the kinds of data the property is thought to contain and the data's importance for pursuing specified research topics. Properties in this category need not be conserved in the face of a research or data recovery (mitigation) proposal that would make adequate and appropriate use of the property's research importance.

B. Conservation for Future Use. This category is reserved for any unusual cultural property which, because of scarcity, a research potential that surpasses the current state of the art, singular historic importance, cultural importance, architectural interest, or comparable reasons, is not currently available for consideration as the subject of scientific or historical study that would result in its physical alteration. A cultural property included in this category is deemed worthy of segregation from all other land or resource uses, including cultural resource uses, that would threaten the maintenance of its present condition or setting, as pertinent, and will remain in this use category until specified provisions are met in the future.

C. Traditional Use. This category is to be applied to any cultural resource known to be perceived by a specified social and/or cultural group as important in maintaining the cultural identity, heritage, or well being of the group. Cultural properties assigned to this category are to be managed in ways that recognize the importance ascribed to them and seek to accommodate their continuing traditional use.

D. Public use. This category may be applied to any cultural property found to be appropriate for use as an interpretive exhibit in place, or for related educational and recreational uses by members of the general public. The category may also be applied to buildings suitable for continued use or adaptive use, for example as staff housing or administrative facilities at a visitor contact or interpretive site, or as shelter along a cross-country ski trail.

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E. Experimental Use. This category may be applied to a cultural property judged well-suited for controlled experimental study, to be conducted by BLM or others concerned with the techniques of managing cultural properties, which would result in the property's alteration, possibly including loss of integrity and destruction of physical elements. Committing cultural properties or the data they contain to loss must be justified in terms of specific information that would be gained and how it would aid in the management of other cultural properties. Experimental study should aim toward understanding the kinds and rates of natural or human-caused deterioration, testing the effectiveness of protection measures, or developing new research or interpretation methods and similar kinds of practical management information. It should not be applied to cultural properties with strong research potential, traditional cultural importance, or good public use potential, if it would significantly diminish those uses.

F. Discharged from Management. This category is assigned to cultural properties that have no remaining identifiable use. Most often these are prehistoric and historic archaeological properties, such as small surface scatters of artifacts or debris, whose limited research potential is effectively exhausted as soon as they have been documented. Also, more complex archaeological properties that have had their salient information collected and preserved through mitigation or research may be discharged from management, as should cultural properties destroyed by any natural event or human activity. Properties discharged from management remain in the inventory, but they are removed from further management attention and do not constrain other land uses. Particular classes of unrecorded cultural properties may be named and described in advance as dischargeable upon documentation, but specific cultural properties must be inspected in the field and recorded before they may be discharged from management.

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.43 Relationship between Evaluation and Allocation. Cultural properties are evaluated with reference to National Register criteria for the purpose of assessing their historical values and their public significance. Such evaluations should be carefully considered when cultural properties are allocated to use categories and decisions are made regarding the appropriateness of National Register nomination and/or long-term preservation. Although preservation and nomination priorities must be weighed on a case-by-case basis, the following table can serve as a general guide to illustrate the relationship between National Register evaluation and allocation to use categories.

Cultural Resource Use Category	National Register Eligibility	Preservation/National Register Nomination
Scientific Use	Usually eligible	Long-term preservation not critical; medium National Register nomination priority.
Conservation for Future Use	Always eligible	Long-term preservation is required; highest nomination priority.
Traditional Use	May be eligible	Long-term preservation is desirable; nomination priority is determined in consultation with the appropriate cultural group(s).
Public Use	Usually eligible	Long-term preservation is desirable; high nomination priority.
Experimental Use	May be eligible	Long-term preservation not anticipated; low nomination priority.
Discharged from Management	Not eligible	Long-term preservation and management are not considerations; nomination is inappropriate.

TABLE 8110-1. Relationship Among Use Categories, National Register Eligibility, and Preservation/National Register Nomination

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.44 Consultation with Outside Parties

A. Consultation with SHPO. In accordance with the national Programmatic Agreement and the State's BLM-SHPO protocol, the Field Office manager should invite the SHPO to participate in developing or revising regional, local and project plans, with regard to cultural property evaluations, allocations to use categories (or revisions to such allocations), identification of objectives, and development of management actions. If evaluations and allocations are jointly agreed to, a major portion of future Section 106 consultation requirements will have been satisfied in advance of specific land use proposals. Evaluations and allocations should be consistent with research and preservation priorities identified in the SHPO's State Historic Preservation Plan and should consider assessments of significance in any historic contexts that have been developed.

B. Consultation with Tribes. Consultation with American Indian tribes and Alaska Native tribes during the inventory and evaluation information-gathering steps is essential for planning purposes and for subsequent compliance with FLPMA, AIRFA, NHPA, ARPA, NAGPRA, and Executive Order 13007. Involving tribal governments closely at this level of resource identification will greatly facilitate coordination and consultation at later stages of planning and project development. (See Manual Section 8100.08C1, Manual Section 8120 and Manual Handbook H-8120-1.)

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.5 Documentation and Maintenance of Data, Records, and Maps

.51 Cultural Resource Inventory Records. The BLM cultural resource inventory record system documents cultural properties discovered as a result of field surveys, and traditional cultural properties identified through interviews connected with class III inventories, ethnographic studies, oral testimony, or other sources of reliable information. Such inventories cannot be considered to be complete until the appropriate records (cultural resource record forms, survey records, project reports, maps and photographs) have been developed and sent to the SHPO as specified in BLM/SHPO Protocols developed under the national Programmatic Agreement. The reliability of data on individual cultural properties obtained from non-BLM sources, particularly older data, shall be ascertained before being incorporated fully as part of the system ("recorded"). All inventory information shall be provided to the SHPO promptly in fulfillment of BLM's data sharing commitments.

A. Cultural Resource Record Forms. The basic documentation of adequately recorded cultural properties and traditional cultural properties, as applicable, shall be done with forms and formats acceptable to the appropriate state data repositories in a manner that fulfills the data sharing requirements of the national Programmatic Agreement and data sharing agreements and programs that exist for individual states, and be filed as a permanent part of the Field Office filing system.

B. Survey Record. The results of the inventory for each area surveyed must be recorded and the record made a permanent part of the Field Office filing system. These records shall include the nature and intensity of the inventory, both positive and negative results, and appropriate cultural resource record forms, survey notes, project reports, a catalog of curated materials, maps and photographs. Survey records shall be done with forms and formats acceptable to the appropriate state data repositories in a manner that fulfills the data sharing requirements of the national Programmatic Agreement and data sharing agreements and programs that exist for individual states.

C. Maps and Photographs. All recorded cultural properties, any traditional cultural concerns that may be represented on maps, and all class II or class III survey units are plotted on scaled maps, preferably using GIS technology, which become a part of the cultural resource inventory record. Photographs and negatives are maintained in proper files, preferably separate from the record forms and cross-keyed to the cultural resource survey record.

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.52 Maintenance of Inventory and Evaluation Data.

A. Paper Files. Each Field Office maintains permanent, up-to-date cultural resource inventory and evaluation records files. At a minimum, the records files include all cultural resource inventory and cultural resource evaluation records prepared for cultural resources and areas inventoried within the relevant administrative unit.

B. Digital Data and Automated Files. Each State Director shall cooperate with the SHPO in developing and supporting automated systems for maintaining and utilizing inventory records, and shall ensure that the systems are sufficiently compatible to fulfill the data sharing aims of the national Programmatic Agreement and data sharing agreements and programs that exist for individual states, and also to support the development of BLM GIS based planning and analysis capabilities.

.53 Master Maps. Each Field Office will maintain a master set of maps showing all areas surveyed within the administrative unit, the locations of all recorded cultural properties, and any traditional values that can be usefully represented on maps, preferably using GIS technology. Plotted cultural resources are identified by an appropriate reference number acceptable to the appropriate State data repositories in a manner that fulfills the data sharing requirements of the national Programmatic Agreement and data sharing agreements and programs that exist for individual states.

.54 Inventory Reports. Each Field Office will maintain a permanent file of all cultural resource inventory reports completed within the administrative unit.

.55 Confidentiality. Cultural resource inventory and evaluation records, maps, and reports may be withheld from disclosure to the public as necessary to protect the resource (see Manual Section 8100 Appendix 5, Sec. 304, and Appendix 8, Sec. 9). Each Field Office shall develop procedures related to internal and external GIS data handling and security.

.56 Archival Standards. Maintenance of permanent records files, maps, electronic media, and especially photographs, negatives, and slides, should follow archival standards to the extent practical. While it may not be practical to eliminate all possible sources of deterioration, such as fire, humidity, light, and chemical changes, care should be taken not to introduce sources of deterioration when there is a choice. Paper archives should be maintained in an environment conducive to preservation, i.e. temperature and humidity are within acceptable ranges, containers are of an appropriate size and shape, and chemically compatible (folders and sleeves are acid free), and damage from air pollution, light and biological infestations (insects and rodents) is effectively prevented. Digital GIS data records shall be backed up using standard best practice procedures within the computer industry.

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.57 Collections. Artifacts, samples, collections, and copies of records, data, photographs, reports, and other documents resulting from inventory must be housed in an appropriate curatorial facility. Field Office files should maintain a record of artifacts, samples, and collections (which remain the property of the United States), where they are located, and any pertinent curatorial agreement.

.58 Inventory Updating. Field Office managers are responsible for ensuring that class I inventories and associated GIS data layers, including survey areas, cultural resource locations and requirements and strategies of unsurveyed areas, are updated often enough to remain fully useful for multiple use decision making.

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.6 External Review.

.61 SHPO Review. SHPO review of inventory findings and evaluation recommendations will be determined in each State according to the provisions of the national Programmatic Agreement and State's BLM-SHPO Protocol. As partners in Field Offices' certification procedures under the national Programmatic Agreement, SHPOs will also be interested in verifying that personnel doing inventory and evaluation work are appropriately professionally qualified (see Manual Section 8100.1 and 2).

.62 Tribal Review. Inventory findings and evaluation recommendations resulting from consultation with American Indian tribes and Alaska Native tribes under .44 should be communicated to the tribes, so that they can know how their information was employed and what recommended safeguards will be carried into planning.

.63 Peer Review. Field Office managers responsible for cultural resource inventories and evaluations should seek professional peer review as appropriate to ensure quality products. Peer review is especially desirable during historic context or research design development, or other planning and inventory efforts that form the primary substantive and theoretical basis for evaluation and planning. It is also appropriate for planning, implementing, and reporting major inventory or data recovery projects. State and/or regional professional cultural resource associations, universities, and SHPOs are good sources for identifying possible reviewers.

Appendix 1
(.05E; .32A)

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List of Selected National Register Bulletins	
Number	Title
15	How to Apply the National Register Criteria for Evaluation
16A	How to Complete the National Register Registration Form
16B	How to Complete the National Register Multiple Property Documentation Form
18	How to Evaluate and Nominate Designed Historic Landscapes
30	Guidelines for Evaluating and Documenting Rural Historic Landscapes
32	Guidelines for Evaluating and Documenting Properties Associated with Significant Persons
36	Guidelines for Evaluating and Registering Historical Archeological Sites and Districts (Note: also applicable to evaluating and registering prehistoric archaeological sites and districts)
38	Guidelines for Evaluating and Documenting Traditional Cultural Properties
39	Researching a Historic Property
41	Guidelines for Evaluating and Registering Cemeteries and Burial Places
42	Guidelines for Identifying, Evaluating and Registering Historic Mining Properties
Available from the National Register of Historic Places, National Park Service, 1849 C Street, N.W., Washington, D.C. 20240	

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**Recording Cultural Resource Locations
Using Global Position System (GPS) Technology**

Purpose and Objective. This guidance describes minimum requirements for recording BLM cultural resource locations using GPS technology. The BLM has required the use of GPS to record all cultural resource locations since April 1, 2004.

The GPS has become a major tool both for traditional mapping applications and for Geographic Information System (GIS). The main objective of this guidance is to improve the overall reliability of site location information recorded by cultural resource specialists, including cooperators, contractors, and permittees; and to support the standardization and expansion of GIS applications for cultural resource management.

Accuracy Standard. The accuracy standard for cultural resource location data shall be a mean error of +/-12.5 meters or less, at a 95 percent confidence level. This mean error requirement is consistent with the National Map Accuracy Standard for 1:24,000 scale quadrangles and Federal Geographic Data Committee (FGDC) reporting requirements. This degree of accuracy can be achieved with a variety of contemporary GPS equipment. Appropriate equipment is defined as GPS technology that meets the accuracy standard.

Field Observation Standards – GPS. Cultural resources shall be located by reporting a minimum of one GPS-observed coordinate taken in the approximate estimated visible center (centroid) of the resource. The centroid need not be perfectly central to a site, but it must lie in the site's approximate center for map-plotting purposes. Multiple coordinates shall be used to define the approximate centerline of a linear resource (e.g., trail), if field judgment suggests that a single centroid is insufficient to record its location. More points, lines or polygons may be taken for other mapping purposes, including recording project area boundaries, site datums or markers, or internal attributes. Applicability of this standard for recording isolated finds shall be a State-level decision.

Field Observation Standards – UTM. In addition, cultural resource locations shall be reported using the Universal Transverse Mercator (UTM) coordinate system, North American Datum 1983 (NAD83). This is the same standard used for the National Register of Historic Places. A State Historic Preservation Office may also request that locations be reported in a State-specific coordinate system. Consequently, it is important that all reported coordinates clearly identify the coordinate system used.

Alternative Field Observation Methods. In situations where GPS observations are not practical or possible due to geography, vegetation, satellite availability, or the presence of hazardous materials, the recorder should locate the resource using GPS offset equipment and capabilities, map coordinates, or a combination of GPS and other techniques. Such non-GPS methods must be described in the site or project area record.

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Recording Standard: The location observations shall be reported on the appropriate part of a resource recording form, in the narrative description of the resource, or both, and shall include the following information:

- The UTM coordinates with the UTM zone. For all coordinates, the datum reference must be reported.
- The coordinate system for observations should be recorded in an obvious way (e.g. "UTM Zone 10 NAD83 centroid coordinate: N4986000 E302000 meters")
- The probable error must also be recorded in narrative, if the error terms for a given coordinate are known (e.g., "GPS observations were differentially processed to an average error of less than 5m root mean standard deviation [RMS]").
- Receiver type, correction status, length of observation and number of observation points, position dilution of precision (PDOP), and horizontal error estimates must be recorded with the location whenever GPS equipment and software provides such information.
- Discrepancies between GPS locations and USGS quadrangle locations should be noted on the site record. Because GPS locations are mathematically precise coordinates, a point plotted from GPS may appear to be in an incorrect location on a USGS quadrangle.

Standards may be exceeded. These are minimum standards and should not be used to lessen any applicable State or Federal standard or reduce site location accuracy from conventional mapping methods. There may be situations where more accurate location information is desirable or required. For instance, State Offices may apply more stringent standards for intra-site mapping, excavation unit and datum locations. In all instances, the most accurate and capable equipment available shall be used to meet the needs of the types of data that are being recorded, even if it exceeds the accuracy standards in this guidance. Appropriate GPS experts within Washington Office, National Centers, State and Field Offices should be consulted as needed.

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Glossary of Terms

8120 - TRIBAL CONSULTATION UNDER CULTURAL RESOURCE AUTHORITIES – (Public)

.01 Purpose. This Manual Section provides basic policy direction on BLM's consultation responsibilities under cultural resource-related laws and executive orders, regarding cultural, historical, and religious concerns of American Indians and Alaska Natives ("tribes"). Its purpose is to clarify legal relationships between BLM and tribes relative to such concerns. Procedural direction will be found in Handbooks issued subject to this Manual Section. Direction on consulting with tribes under other authorities, such as land- and natural-resource-management authorities, may be found in other programs' directives under the appropriate subject-function codes.

.02 Objectives. The objectives of the tribal consultation component of the cultural resource management program are to:

A. Define policy and standards for government-to-government consultation within the framework of the legal authorities listed in .03.

B. Ensure that tribal issues and concerns are given legally adequate consideration during decision-making.

C. Provide guidance about collecting, evaluating, applying, and protecting sensitive information relating to tribal concerns.

D. Foster good working relationships with tribes.

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.03 Authorities.

A. American Indian Religious Freedom Act of 1978 (P.L. 95-341; 92 Stat. 469; 42 U.S.C. 1996) resolves that it shall be the policy of the United States to protect and preserve for the American Indian, Eskimo, Aleut, and Native Hawaiian the inherent right of freedom to believe, express, and exercise their traditional religions, including but not limited to access to religious sites, use and possession of sacred objects, and freedom to worship through ceremonies and traditional rites. Federal agencies are directed to evaluate their policies and procedures to determine if changes are needed to ensure that such rights and freedoms are not disrupted by agency practices. The Act, a specific expression of First Amendment guarantees of religious freedom, is not implemented by regulations. Duties pursuant to the Act fall under general administrative responsibilities such as planning and environmental review. It is included here because of legislative linkage with the Archaeological Resources Protection Act (see .03C). (Note: A U.S. Court of Appeals has determined that there is a compliance element in the American Indian Religious Freedom Act, requiring that the views of Indian leaders be obtained and considered when a proposed land use might conflict with traditional Indian religious beliefs or practices, and that unnecessary interference with Indian religious practices be avoided during project implementation, but specifying that conflict need not necessarily bar Federal agencies from adopting proposed land uses in the public interest. Wilson v. Block, 708 F.2d 735, 747 [D.C. Cir. 1983].)

B. National Historic Preservation Act of 1966 (P.L. 89-665; 80 Stat. 915; 16 U.S.C. 470) addresses preservation of historic properties, including historical and archaeological districts, sites, buildings, structures, and objects that are eligible for the National Register of Historic Places. Federal agencies must take into account the probable effects of their proposed undertakings on eligible properties. Some properties may be eligible for the National Register because of historical importance to a tribe, including traditional religious and cultural importance. A 1992 amendment to the Act (P.L. 102-575) explicitly directs that properties of traditional religious and cultural importance to an Indian tribe may be determined to be eligible for inclusion on the National Register, and that in carrying out its responsibilities under Section 106 of the Act, a Federal agency shall consult with any Indian tribe that attaches religious and cultural significance to such properties. Determining any property's National Register eligibility follows a criteria-driven evaluation procedure specified at 36 CFR Part 60.

C. Archaeological Resources Protection Act of 1979 (P.L. 96-95; 93 Stat. 721; 16 U.S.C. 470aa) provides for the protection and management of archaeological resources, and specifically requires notification of the affected Indian tribe if archaeological investigations proposed in a permit application would result in harm to or destruction of any location considered by the tribe to have religious or cultural importance. The Act directs consideration of the American Indian Religious Freedom Act (see .03A) in the promulgation of uniform regulations for the Act.

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D. Native American Graves Protection and Repatriation Act of 1990 (P.L. 101-601; 104 Stat. 3048; 25 U.S.C. 3001) establishes that lineal descendants, tribes, and Native Hawaiian organizations have rights of ownership to "cultural items" (i.e., human remains, funerary objects, sacred objects, and objects of cultural patrimony, as defined in the Act), taken from Federal lands and Indian lands after the date of enactment. It requires identification of "cultural items" that were in Federal agencies' and federally funded museums' possession or control before enactment; establishes a requirement and process for agencies and museums to repatriate "cultural items" on request; directs the Secretary to form a review committee to oversee implementation; provides for imposing civil penalties on museums that fail to comply; authorizes grants of funds for tribes, Native Hawaiian organizations, and museums to carry out the Act; requires the Secretary to promulgate regulations; and assigns to U.S. District Courts jurisdiction to adjudicate violations of the Act and to enforce the Act's provisions.

E. Executive Order 13007, "Indian Sacred Sites" (May 24, 1996) directs Federal agencies to manage Federal lands in a manner that accommodates Indian religious practitioners' access to and ceremonial use of Indian sacred sites, and that avoids adversely affecting the physical integrity of such sacred sites, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions. The Order "is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person" (Sec. 4).

F. Presidential Memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments," directs the heads of departments and agencies to operate within a government-to-government relationship with recognized tribes; to consult openly and candidly with tribal governments prior to taking actions that affect recognized tribal governments; to assess the impact of Federal plans, projects, programs, and activities on tribal trust resources and to consider tribal government rights and concerns during their development; to take appropriate steps to remove procedural impediments to working with tribal governments on activities that affect the trust property and/or governmental rights of the tribes; among other things. The Memorandum was elevated to Order strength by reference in E.O. 13007 (see .03E).

G. Secretarial Order No. 3215, "Principles for the Discharge of the Secretary's Trust Responsibility" (April 28, 2000) provides guiding principles to employees of the Department who carry out the Secretary's responsibility toward Indian trust assets. It defines "Beneficial owner," meaning tribes and individual Indians for whom Indian trust assets are held in trust or restricted against alienation; "Trustee," meaning the Secretary or any person authorized to act as Trustee for Indian trust assets; "Indian trust assets," meaning lands, natural resources, money, or other tangible assets held in trust for Indian tribes and individual Indians or restricted against alienation; and "Trust responsibility," meaning responsibility only toward Indian trust assets as defined. It establishes a series of Trust Principles concerning (for example) protection, management, accounting for, and maintenance of records about Indian trust assets during the discharge of the Secretary's trust responsibility.

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.04 Responsibility.

A. Director, through Assistant Director for Renewable Resources and Planning, has overall responsibility for establishing, implementing, and evaluating policy for meeting BLM's tribal consultation responsibilities.

B. Group Manager for Cultural Heritage, Fossil Resources, and Tribal Liaison is responsible for leading affected staffs in developing, reviewing, and revising BLM's national level tribal consultation policy and procedures, and for maintaining contacts with other Federal bureaus, agencies, and departmental offices in Washington, D.C., regarding the proper consideration of tribal issues and concerns.

C. State Directors within their respective jurisdictions are responsible for:

1. Ensuring that tribal consultation responsibilities are accomplished.
2. Developing technical information, policy guidance, and procedures as needed.
3. Maintaining contacts with other Federal offices at State and regional levels regarding tribal issues and concerns.

D. Field Office Managers, as appropriate, are responsible for:

1. Initiating contact and consulting with tribes pursuant to requirements of laws, executive orders, and regulations cited in .03 and .05.
2. Obtaining, documenting, and using input from tribes when developing plans, actions, and programs, including needs for access to sacred sites as defined in E.O. 13007.
3. Developing protocols, where appropriate, for communication within the framework of the Bureau's government-to-government relationship with tribes.

E. Tribal Liaisons, acting as staff to the Director, State Directors, and Field Office Managers, are responsible for providing professionally sound information, recommendations, and advice regarding tribes' traditional uses of public lands, traditional tribal practices and beliefs, and locations on public lands that may be associated with such practices and beliefs.

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.05 References.

A. BLM Manual Section 8110 - Identifying and Evaluating Cultural Resources. Section 8110.22D gives guidance on locating properties of traditional cultural importance. Section 8110.32F1 and 2 address exceptions to the general exclusion of religious properties from National Register eligibility. Section 8110.33C2 states that properties designated historically or culturally significant by State, local, and tribal governments do not automatically accrue National Register eligibility, but must be evaluated according to the National Register criteria (see .05C).

B. BLM Manual Section 8150 - Permitting Uses of Cultural Resources. Section 8150.12B7 and .13 require that cultural resource use permit applications be reviewed to determine if proposed work would have potentially harmful or destructive effects on locations of religious or cultural importance to Indian tribes, and that tribes be notified and consulted if harmful or destructive effects would occur.

C. 36 CFR Part 60 - National Register of Historic Places. Section 60.4 sets out the criteria and criteria considerations, and the procedures, for determining National Register eligibility

D. 36 CFR Part 800 - Protection of Historic Properties. Regulations of the Advisory Council on Historic Preservation implement Section 106 of the National Historic Preservation Act, including consultation with tribes pursuant to Section 101(d)(6) of the Act (see .03B). The BLM, operating independently of the regulations through agreements with the Advisory Council and the State Historic Preservation Officers (see Manual Section 8120, App. 1), must observe a tribal consultation process comparable to the process in the regulations.

E. 43 CFR Part 7 - Protection of Archaeological Resources. Section 7.7 defines the process for "Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance," pursuant to Section 4(c) of the Archaeological Resources Protection Act (see .03C).

F. 43 CFR Part 10 - Native American Graves Protection and Repatriation Regulations. These regulations cover procedures for complying with the Native American Graves Protection and Repatriation Act.

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.06 Policy.

A. State Directors and Field Office Managers, as appropriate, shall represent the United States in government-to-government meetings with tribes.

B. Field Office Managers shall establish day-to-day working relationships with tribal officials comparable to their working relationships with State and local government officials.

C. Field Office Managers and staffs shall recognize that traditional tribal practices and beliefs are an important, living part of our Nation's heritage, and shall develop the capability to address their potential disruption as a consequence of a proposed BLM land use decision.

D. Field Office Managers and staffs shall facilitate access to public lands for the purposes of religious use and other traditional uses, such as gathering natural resources, and shall avoid unnecessary interference with traditional religious practices.

E. Field Office Managers and staffs shall consult with affected tribes to identify and consider their concerns in BLM land use planning and decision-making, and shall document all consultation efforts.

F. Field Office Managers and staffs shall ensure that information on tribal religious and cultural issues receives good faith consideration during decision-making, and that BLM decisions do not unduly or unnecessarily burden the pursuit of traditional religious or cultural practices.

G. Field Office Managers and staffs shall protect from disclosure to the public sensitive and confidential information about traditional tribal practices and beliefs, and the locations with which they are associated, to the greatest degree possible under law and regulation. Where appropriate, Field Offices shall maintain the confidentiality of sacred sites.

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.07 File and Records Maintenance. See .06E, .06G. Filing requirements are found in the GRS/BLM Combined Records Schedule (Schedule 4).

.08 Relationship to Tribal Governments.

A. Federally Recognized Tribes. The governments of federally recognized tribes are the legal representatives for ensuring that tribal members may exercise rights and privileges held through treaties, executive orders, and agreements with the United States, both on and off reservations. The special legal status of tribal governments requires that official relations with BLM, including consultation pursuant to this Manual Section, shall be conducted on a government-to-government basis. Authorities and responsibilities of specific tribal governments are defined in the constitutions and bylaws of the individual tribes.

B. Alaska Natives. The Alaska Native Claims Settlement Act of 1971 (ANCSA; 43 U.S.C. 1601) created in Alaska both federally recognized tribes and other federally established Alaska Native entities.

1. Alaska Native Tribes. Federally recognized Alaska Native tribes are accorded the same benefits and privileges as federally recognized Indian tribes in the contiguous 48 states. Alaska tribes, as identified by the Bureau of Indian Affairs annually in the Federal Register, are acknowledged to have the immunities and privileges available to other federally recognized tribes by virtue of their government-to-government relationship with the United States, as well as the responsibilities, powers, and obligations of such tribes. An up-to-date tribal listing can be obtained from the designated Native Liaison in the Alaska State Office or a Field Office, or from the headquarters office of the Bureau of Indian Affairs.

2. Alaska Native Corporations. In addition to recognized tribes, the BLM in Alaska routinely works with the native corporations formed under ANCSA, and acknowledges their additional roles in representing their shareholders. The for-profit, business corporations manage the subsurface rights of approximately 44 million acres, identified in the Act to be conveyed to Alaska Natives through the corporations. These federally established, State-chartered corporations, while distinct from tribal governments, also may provide important information for BLM managers. Most native corporations have Web sites that can be located with a normal search.

C. Groups and Communities that are not Federally Recognized. The BLM may consult with non-recognized Native groups and communities at its discretion. However, there is no obligation in the cultural resource laws to do so. Non-recognized groups and communities and their individual members may participate in the BLM's decision making as members of the public.

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D. Indian Individuals. Lineal descendants who may or may not be tribal members have rights to claim human remains and associated funerary objects under the Native American Graves Protection and Repatriation Act (.03D). Individuals' religious observances are protected under the American Indian Religious Freedom Act (.03A) and Executive Order No. 13007 (.03E). Where such individuals are already known to the BLM, direct contact would be possible. However, as a matter of protocol and courtesy, initiation of contacts with tribal members should always be coordinated with tribal officials.

E. Tribal Historic Preservation Officers. (The following paragraphs 1. through 3. are repeated, and renumbered, from BLM Manual Section 8100.08C1.)

1. As authorized in Section 101(d) of the National Historic Preservation Act and subject to the Secretary's approval, Indian tribes may establish historic preservation programs to give them greater roles and responsibilities for preserving historic properties on tribal lands. Tribes with approved programs designate Tribal Historic Preservation Officers (THPO) who may assume any or all of the functions of a State Historic Preservation Officer (SHPO) with respect to tribal land. Assumed functions may include identifying and maintaining inventories of culturally significant properties, nominating properties to national and tribal registers of historic places, conducting Section 106 reviews of Federal agency projects on tribal lands, and conducting educational programs on the importance of preserving historic properties.

a. For tribes with approved programs, Field Office managers consult with the THPO in lieu of the SHPO for undertakings occurring on, or affecting historic properties on, tribal lands.

b. For other tribes, Field Office managers consult a tribally designated representative in addition to the SHPO during review of projects occurring on, or affecting historic properties on, their tribal lands.

2. In accordance with Section 101(d)(6) of the National Historic Preservation Act, Indian tribes often choose to designate the THPO as their tribal representative to assist Federal officials in identifying tribally significant, National Register-eligible properties, potentially affected by a proposed Federal undertaking on non-tribal lands. Although the same individual or office is involved, this is a role completely apart from the THPO's roles with respect to the tribe's preservation program and tribal lands.

a. Concerning non-tribal lands, THPOs do not assume any of the SHPO's functions.

b. Concerning non-tribal lands, Field Office managers consult with THPOs only when they have been designated as tribal representatives for purposes of Section 106, for their assistance in identifying and evaluating properties of traditional religious and cultural importance to the tribe.

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c. Concerning non-tribal lands, THPOs designated as tribal representatives for purposes of Section 106 are acting as tribal representatives, not as THPOs. This distinction and its implications may not always be clear. THPOs do not have management responsibility or authority for tribally significant properties on non-tribal lands.

3. The BLM national Programmatic Agreement (Manual Section 8100, Appendix 13) does not apply to undertakings on tribal lands. A Field Office manager considering an undertaking on tribal lands complies with 36 CFR Part 800, or where the tribe has entered into an agreement with the Advisory Council, with the tribe's preservation regulations.

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Glossary of Terms

(See also Manual Section 8100, Glossary of Terms.)

-A-

Alaska Native: (See "Indian tribe." See also .08B.)

-C-

consultation: the process of identifying and seeking input from appropriate tribal governing bodies, considering their issues and concerns, and documenting the manner in which the input affected the specific management decision(s) at issue.

-G-

government-to-government relationship: the formal relationship that exists between the Federal Government and tribal governments under United States laws. Tribal governments are considered dependent domestic sovereignties with primary and independent jurisdiction (in most cases) over tribal lands. Concerning proposed BLM plans and actions, at least the level of consideration and consistency review provided to State governments must be afforded to tribal governments.

-I-

Indian tribe: any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe. (See Public Law No. 103-454, 108 Stat. 4791, 25 U.S.C. 479a. See also .08.)

-R-

reburial: an action sometimes requested of Federal agencies by lineal descendants or Indian tribes concerning human remains and/or other NAGPRA "cultural items" (see Manual Section 8100 Appendix 9, Sec. 2) that have been repatriated (a) from museum collections; (b) after an authorized intentional excavation and removal; or (c) after removal from the immediate vicinity of their original location following an "inadvertent discovery" (see Manual Section 8100 Appendix 9, Sec. 3(d). See also Handbook H-8120-1, Ch. II.C.)

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-S-

sacred site: "any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site." (Quoted from Executive Order 13007, Section 1(b)(iii).)

-T-

tradition: longstanding, socially conveyed, customary patterns of thought, cultural expression, and behavior, such as religious beliefs and practices, social customs, and land or resource uses. Traditions are shared generally within a social and/or cultural group and span generations.

traditional: conforming to tradition.

tribal government: the formal representative governing body of a recognized tribe (as defined in 25 CFR 61 and published annually in the Federal Register).

tribe: (See "Indian tribe." See also .08.)

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FIG. 1. Cultural resource use categories and corresponding desired future conditions

FIG. 2. Management actions needed to realize use allocations

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.01 Purpose. The purpose of this Manual Section is to clarify the level of cultural resource information and the kinds of long-term management decisions needed in land use plans that pertain to cultural resources, as outlined in Manual Section 1601, "Land Use Planning," Manual Handbook H-1601-1, "Land Use Planning Handbook," and Manual Section 8110, "Identifying Cultural Resources;" and to provide instruction on preparation of other property-, resource- and project-specific plans that pertain to management of cultural resources.

.02 Objective. The objective of the planning component of the cultural resource management program is to establish parameters for planning decisions with the potential to affect management of cultural resources in a Field Office manager's jurisdiction. The BLM goal is development of land use plans that (a) set priorities for preserving and protecting significant cultural resources and ensuring that they will be available for appropriate uses by present and future generations; (b) identify priority geographic areas for new field inventory, based upon the probability of unrecorded significant resources; and (c) identify and resolve use allocation conflicts with the potential to adversely affect cultural resources.

.03 Authority (See BLM Manual Section 8100.03.)

A. Federal Land Policy and Management Act of 1976 (P.L. 94-579; 90 Stat. 2743; 43 U.S.C. 1701; "FLPMA") states that the Secretary shall prepare and maintain on a continuing basis a current inventory of all public lands and their resource and other values; and with public involvement, develop, maintain, and when appropriate, revise land use plans using the principles of multiple use and sustained yield; and that public lands be managed in a manner that protects the quality of scientific, scenic, historical, and archeological values.

B. National Historic Preservation Act of 1966 (P.L. 89-665; 80 Stat. 915; 16 U.S.C. 470), as amended by P.L. 96-515, December 12, 1980, directs in Section 110 (among other things) that (1) each Federal agency shall establish a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and the protection of historic properties; (2) such properties under the jurisdiction or control of the agency as are listed or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values; (3) historic properties not under control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning; (4) the agency's preservation related activities are carried out in consultation with other Federal, State, and local agencies and Indian tribes carrying out historic preservation planning activities, and with the private sector; and (5) prior to approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark.

C. National Trails System Act (P.L. 90-543) (16 U.S.C. 1241 et. seq.) as amended through P.L. 107-325, December 4, 2002, states that within two fiscal years of the date of enactment of legislation designating a national or historic trail, as part of the system, the responsible Secretary shall submit a comprehensive plan for the management and use of the trail including all significant historical and cultural resources preserved and a protection plan for any high potential historic sites or high potential route segments.

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.04 Responsibility (See BLM Manual Section 8100.04.)

.05 References (See also BLM Manual Section 8100.05.)

A. BLM Manual Section 1601, "Land Use Planning."

B. BLM Manual Handbook H-1601-1, "Land Use Planning Handbook."

C. BLM Manual Section 8110, identifying and Evaluating Cultural Resources

.06 Policy. State Directors and Field Office managers and their staffs shall ensure that:

A. New and revised land use and project plans shall incorporate current information on cultural resources inventory, information needs, use allocations, protection issues, and special management concerns, including plans for historic trails, National Monuments and other specially-designated areas, at the appropriate scale and level of detail.

B. New and revised land use and project plans shall give full consideration to cultural resources and resolve use conflicts between cultural and other resources, in such a way as to identify and seek to avoid potential adverse impacts to cultural resources in establishing land use allocations and management goals and practices that support multiple use and sustainable yield.

C. The development, implementation and revision of plans with the potential to affect cultural resources shall include appropriate opportunities for participation by Indian tribes, State and local governments, other Federal agencies, and the public, including consideration of related cultural resource planning and management programs.

D. Plans that include implementation authorizations and associated National Environmental Policy Act (NEPA) documents shall incorporate effect determinations and consideration of No Effect alternatives, so that approvals may appropriately take into account the effects on cultural resources, as required by Section 106 of the National Historic Preservation Act.

E. Plans shall be maintained, supplemented, amended or revised as necessary to incorporate results of ongoing cultural resource inventory and consultation.

.07 File and Records Maintenance. See .14E, .15A3, .43A3, .44C, .47A1. Filing requirements are found in the GRS/BLM Combined Records Schedule (Schedule 4).

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.1 Principles and Standards for Cultural Resource Planning

.11 Planning Requirements. Besides the inventory and planning requirements in the Federal Land Policy and Management Act (FLPMA), which apply to all resource management programs, the BLM is required to consider the short- and long-term management of cultural resources under Sections 106 and 110 of the National Historic Preservation Act (NHPA; see BLM Manual Section 8100, App. 5); Section 14 of the Archaeological Resources Protection Act (ARPA; see BLM Manual Section 8100, App. 8); the National Trails System Act (see BLM Manual Section 8100, App. 10) (16 U.S.C. 1241 et. seq.) and the BLM's national Programmatic Agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers (PA; see Manual Section 8100.03M and Appendix 13).

.12 Information Needed for Decision Making in Land Use Plans.

A. Data Needs. The following cultural resource related data may be required when preparing or revising regional or local plans.

1. Estimated density, diversity and distribution of cultural properties in the plan area. The population of cultural properties in the plan area should be classified and described in quantitative and qualitative terms, preferably according to subunits of the plan area defined from the cultural resource data.

2. Present condition of the known cultural properties in the plan area.
3. Existing and potential uses of the cultural properties in the plan area.
4. Existing and reasonably foreseeable threats to the cultural properties in the plan area.
5. Traditional values ascribed to places and resources by Native Americans or other cultural groups.
6. Results of previous management actions to prevent the loss or destruction of cultural properties in the plan area.
7. Tribal, State, or local planning goals related to cultural resources in the planning area.
8. Existing cultural resource related commitments and agreements, e.g., Memoranda of Agreement, Programmatic Agreements, or Protocols with the State Historic Preservation Officer or Memoranda of Understanding with Indian tribes.

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B. Data Sources. Decision making in regional or local plans should be preceded by at least the data compilation phase of an initial or updated class I Existing Information Inventory. Depending on the adequacy of existing inventory data relative to the issues to be addressed in decision making, a class II survey may also be needed in selected portions of the plan area. Some decision making may not require additional cultural resource data, depending on the land use issues to be addressed and the potential effects on, or constraints imposed by, cultural resources. Tribal, State, and local cultural resource planning documents should be consulted, as appropriate.

C. Data Analysis. Cultural property use evaluations should be completed during preplanning or early in the decision making process. For each kind of cultural property, considered individually or in collective groupings, a context should be prepared that includes a description of the resource(s) being evaluated, principal contributing characteristics, possible uses, and recommended management objectives. Use evaluations should include National Register eligibility assessments by the type of use and/or the kind of property (see Manual Section 8110.43 and Table 8110-1).

D. Data Display. A geographic information system (GIS) provides essential tools to bring cultural resources and other data together at various scales and formats for spatial analysis and display of results.

.13 Management Direction in Land Use Plans. Field Office managers develop objectives in regional and local plans to provide management direction consistent with the allocations described in Manual Section 8110.4 and to identify management actions necessary to achieve the objectives. Objectives should address at least the following:

A. Prioritizing Research Needs. Assess information gaps and needs for studying particular kinds of cultural properties through research projects, by BLM or others, or through data recovery as a means of mitigating adverse effects. Outline in general the major research questions that need to be addressed in the plan area consistent with research priorities identified in historic context documents, State Historic Preservation Plans, land use plans, class I Existing Information Inventories, and other BLM studies. Identify known properties or kinds of properties that could appropriately be committed to the purpose of fulfilling information needs as opportunities arise.

B. Clarifying Purposes of Long-Term Conservation. Address the need to hold specific, exceptional cultural properties available for future use by prohibiting any use, including scientific study, that would threaten their condition. Objectives or management actions should define conditions under which such properties may be released from the constraints of long-term conservation and used for some other purpose.

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1. If a cultural property's importance lies in its outstanding research potential, include in its description the kinds of data the property apparently contains, its apparent value for the pursuit of specified research topics, and the exact, technical reasons for prohibiting scientific study at this time. Specify, as clearly as possible, precisely what methodological, technological, or other conditions need to be met before the property will be released from its conservation status and made available for research, i.e., what has to happen before scientific study would be allowed? Why would we not accept a good research proposal right now? How will we be able to determine in the future if the release conditions have been met?

2. If a cultural property is important for historical or architectural reasons and is not suitable for study that might result in its physical alteration, including stabilization-related study, describe the precise reasons for withholding it from such study.

3. If a property is to be conserved for the future and also managed for a compatible use (either traditional use or public use), include long-term protection safeguards in local interdisciplinary plans and subsequent project plans. If interpretation is the intended end use of a property, and steps will be taken within a reasonable time to accommodate that use, then allocate the property to interpretation in addition to long-term conservation.

C. Anticipating Traditional Uses. Address needs of Native Americans and other cultural groups for access to and unhampered use of places of traditional cultural or religious importance, including collection of natural resources for traditional purposes.

D. Considering Educational and Recreational Needs. Consider opportunities and public demand for places to visit and learn from cultural properties. Management actions should include the general steps that may be necessary before recreational or educational activities can be accommodated at properties allocated to those uses, such as interpretive development, “hardening” sites to withstand increased visitation, data recovery, and preparation of field school agreements.

E. Targeting Experimental Study. Identify technical questions and opportunities to address them through experimental use of cultural properties that lend themselves to the purpose. Identifying management actions should include identifying any administrative or on-the-ground steps that will be necessary before experimental use can begin, such as limiting land uses to focus the experiment, recording baseline data, establishing controls, notifying the public, etc.

F. Effects on Other Resources. Special cultural resource considerations that may affect the location, timing, method of development or use of other resources in the planning area, should be addressed in objectives or management actions pertaining to the resources involved.

G. Protection Needs. Address means for monitoring, reducing or removing threats, specifying the kind and level of protection measures (including law enforcement), data recovery, or other mitigation actions needed where deterioration is ongoing or reasonably expected.

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H. Data Needs. Consider needs and priorities for gathering additional information such as sample inventory in areas where inventory data are inadequate, test excavations of archaeological properties where difficulties in interpreting surface data make management allocations tentative, condition assessments, or ethnographic studies where little or no information is currently available.

I. Contributions to Management of Other Resources. Identify opportunities to use cultural resource data to improve management of other resources. For example, using ethnohistorical data to show how past land uses have affected present-day plant communities; using archaeological data to indicate past species distributions; using cultural resources to date slope or fluvial processes; and using tree-ring data to reflect cycles of precipitation and stream flow.

.14 Factors to Consider in Decision Making. The following factors should be considered in making cultural resource use allocation decisions in regional or local plans.

A. Relative Importance and Sensitivity. In establishing management objectives, the relative importance and sensitivity of known and anticipated cultural properties should be considered, not simply their geographic distribution and density. Simple density is not necessarily a measure of the importance of cultural properties or the magnitude of potential conflicts. For example, a large cluster of dots on a map could represent a group of small archaeological manifestations determined to have very little scientific importance and no public value, at small risk from other resource or land uses. Alternatively, an isolated dot could represent a unique archaeological property of overriding importance and high vulnerability to competing uses.

B. Feasibility. Cultural resources should be included under a management objective only if there is a reasonable potential of achieving the objective. For example, a rare and important archaeological property should not be proposed for long-term conservation if its deterioration is proceeding at a pace or due to causes that cannot reasonably be arrested.

C. Necessity. Management decisions should be made on the basis of their need, not just their feasibility. For example, while many cultural properties are capable of being interpreted to the public, in some areas there is virtually no need or desirability for interpretive development.

D. Balance. Cultural properties are not divided among the several management categories in any set proportion. In most plan areas, the majority of cultural properties will be prehistoric and historic archaeological properties managed for scientific use. Objectives pertaining to other management categories may be scarcely represented or not represented at all in a given plan area.

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E. Sensitive Information. In any documentation of decision-making that is made available to the public, cultural resource discussions should be generalized so as not to disclose sensitive locational information. Precise information concerning the nature and location of archaeological resources (43 CFR 7.3) and cultural properties eligible for the National Register of Historic Places (36 CFR 60.4) may be withheld from the public as necessary for their protection (ARPA Section 9, 43 CFR 7.18; and NHPA Section 304).

.15 Consultation with Other Parties

A. Consultation with Indian Tribes. Tribal consultation during preparation of RMPs/EISs, RMP amendments, and Interdisciplinary Plans is needed to meet the BLM's responsibilities under FLPMA, NEPA, AIRFA, NAGPRA, and Executive Order 13007. The BLM must inform tribal officials of opportunities to comment on and to participate in development of BLM land use plans, specifically requesting their views, asking them which individuals, such as traditional leaders, should be contacted, if any, and making an effort to pursue those contacts. Consultation responsibilities during land use planning can be met as follows:

1. Subjects of Consultation. Communication with the tribe should at a minimum provide a description (and map) of the planning effort, invite the tribe to participate in scoping, and request the tribe's comments on:

a. Any issues or concerns the tribe might have regarding BLM's management of the planning area.

b. Whether there are any places of traditional religious or cultural importance to the tribe within the planning area, or needs for access to these places, that should be considered in BLM's planning effort.

c. Whether there are any individuals, such as traditional cultural leaders, who should also be contacted. If the Field Office is already aware of such individuals, the letter should state that the BLM will be contacting them as well.

2. Use of Information Obtained. The Field Office manager must consider comments provided by the Native Americans consulted in making decisions on the plan, and must notify consulted persons of the relevant final plan decisions.

3. Documentation. All consultation efforts should be carefully documented. If acceptable to tribal officials, a memorandum of understanding endorsed by the Field Office manager and the appropriate tribal official is the best possible method of documentation.

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4. Sufficiency of Consultation. The Field Office manager should extend an invitation to the chief governing authority of each tribe potentially concerned about or affected by a plan, seeking the tribe's participation and comments. This should minimally involve contact by a telephone call. If the tribe chooses not to participate or provide comments, the Field Office manager's efforts will be considered sufficient. If tribal officials request it, the Field Office manager should meet with them or other tribal members in person. If the Field Office already knows of individuals, such as traditional leaders, who might wish to know about BLM planning issues, the Field Office manager should inform tribal officials that the BLM anticipates contacting the individuals directly, before actually doing so. These few steps are the minimum level of effort sufficient to meet tribal consultation requirements on land use plans.

B. Consultation with State and Local Governments

1. Consultation with SHPO. The BLM/SHPO protocol, implementing the national Programmatic Agreement in each State (see Manual Section 8140, Appendix 1 or Manual Section 8100, Appendix 13), establishes each State's procedures and standards for involving SHPO in the development of land use plans. Early SHPO involvement is a vital element for effectively incorporating historic preservation and cultural resource management in land use decisions.

2. Consultation with County and Municipal Governments. Certified Local Governments and other local governments that have expressed an interest in historic preservation and cultural resource management decision making should be involved in land use plans. An MOU is an appropriate means for defining involvement and establishing the standard of sufficiency for consultation with local governments.

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.2 Incorporating Cultural Resource Content in Resource Management Plans (RMP)

.21 New RMPs, RMP revisions, and RMP amendments. The provisions in subsection .1 of this Manual Section apply to all pending RMPs, RMP revisions, and RMP amendments. All new and updated RMPs will identify the nature and importance of cultural resources in the RMP area; establish goals for their management; make cultural resource use allocation decisions in support of the objectives; and choose management actions and prescriptions that will contribute to achieving those decisions.

A. Budgeting for Identification Costs. Field Offices developing preparation plans and budget requests for RMPs must target sufficient land use planning funds from subactivity 1610 for the assembly, analysis, synthesis, and evaluation of available cultural resource information.

B. Identification. The scope and scale of cultural resource identification is much more general and less intensive for land use planning than for processing specific land use proposals. Instead of new, on-the-ground inventory, the appropriate identification level for land use planning is a class I Existing Information Inventory; i.e., (1) a compilation and analysis of reasonably available cultural resource data and literature, and (2) a management-oriented synthesis of the resulting information. (See Manual Section 8110.21A) However, if land use decisions are more specific in terms of impacts, they may require a more detailed level of identification of the scope and nature of cultural resources during land use planning.

1. Data source. The State Historic Preservation Office (SHPO) database is the primary data source for Existing Information Inventory. In addition to locating and characterizing the distribution of all surveyed areas and recorded cultural resources, qualitatively and quantitatively, class I inventory should interpret the potential cultural resource contents and densities of unsurveyed areas. Data and data interpretations, including projected cultural resource distributions in the unsurveyed areas, should be presented in Geographical Information System (GIS) format.

2. Existing Class I Overviews. Most field offices already have older class I inventories that can be updated, singly or in combination, to meet RMP needs (see Attachment 1). Most existing class I inventories were completed a decade or more ago for "planning units" under an earlier planning strategy. Some were prepared at a larger "resource area" scale, which may or may not correspond to current field office area boundaries. Many are outdated and therefore reflect less-reliable and less-complete information than is available now.

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3. "Landscape" scale inventories. For current planning purposes, some overviews warrant development at the "landscape" scale, focusing less on administrative boundaries and more on the continuity of geographic and cultural similarities and influences. For example, basing an overview on a linear cultural-geographical feature such as an historic trail, or a natural physiographic unit such as a watershed, might be a better way to organize cultural resource data for planning than field office or other arbitrary boundaries would be. A single landscape-level inventory may contribute to the cultural resource information needs for more than one RMP.

4. Outreach. Groups and individuals with historical, scientific, Native American, interpretive, and similar kinds of information and interests should be invited to participate in identification of the cultural resources in the RMP area, especially including evaluation of the resources' use potential. Participation of these groups and individuals is supposed to be recommended in preparation plans. Where this was not done and plan preparation is already underway, their participation should be requested as soon as possible.

5. Consultation. Consultation at the outset of planning with Indian tribes and the SHPO is required by law, regulations, and implementing agreements, and is a vital part of identification and management. Involving tribal governments and SHPOs closely at this level of resource consideration will greatly facilitate coordination and consultation at later stages of planning and project development. (See Manual Section 8120 and Manual Handbook H-8120-1.)

6. Minimum data standards. Each State should develop standards on how to acquire and display data, compatible with the Federal Geographic Data Committee report <<http://colby.uwyo.edu/fgdcdocs/fgdcreport.pdf>>, National Map Accuracy Standard <<http://rockyweb.cr.usgs.gov/nmapstds/nmas.html>>, SHPO data standards, final National Interagency Trail Data Standards, and any additional internal State BLM standards that apply.

C. Goals. A particular RMP may include numerous cultural resource goals. All will include at least the following two goals. (Pertinent legal authorities are shown in parentheses.)

1. Preserve and protect significant cultural resources and ensure that they are available for appropriate uses by present and future generations. (FLPMA Sec. 103(c), 201(a), 202(c); NHPA Sec. 110(a); ARPA Sec. 14(a).)

2. Seek to reduce imminent threats and resolve potential conflicts, from natural or human-caused deterioration, or from other resource uses (FLPMA Sec 103(c), NHPA Sec. 106; 110(a)(2);

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D. Allocations in Support of Goals. Allocate all cultural properties in the RMP area, whether already recorded or projected to occur on the basis of existing-data synthesis, to one or more of the following uses according to their nature and relative preservation value (see Appendix 2). These use allocations pertain to cultural resources, not to areas of land.

Use Category *	Desired Future Condition
a. Scientific Use	Preserved until research potential is realized
b. Conservation for Future Use	Preserved until conditions for use are met
c. Traditional Use	Long-term preservation
d. Public Use	Long-term preservation, on-site interpretation
e. Experimental Use	Protected until used
f. Discharged from Management	No use after recordation; not preserved
<p>* The majority of the cultural properties in a given geographic area will fall into categories a and f. The less-common properties in categories b-e are likely to be associated with particular settings that can be delineated geographically in the planning process. As the plan is developed, properties in categories b-d will require the most attention to balance their proactive uses with other land and resource uses.</p>	

FIG. 1. Cultural resource use categories and corresponding desired future conditions.

E. Management Actions in Support of Goals.

1. Goal 1 – Preserve and Protect.

a. Maintain current cultural resources inventory information in GIS format, including identification of priority geographic areas for future inventory, based upon the probability of unrecorded significant resources (ARPA Sec. 14(a); NHPA Sec. 106, 110). State Offices, Field Office Managers and staff shall support BLM and SHPO efforts to complete and maintain automated cultural resource databases and GIS capability, and continually refine strategies for appropriate consideration of cultural resources in unsurveyed areas, including categorizing geographic areas on the basis of sensitivity and as high/medium/low priority for future cultural resource inventory.

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b. Incorporate the following management actions in planning documents to realize use potentials allocated to cultural properties:

Use	Management Actions
Scientific Use	Permit appropriate research, including data recovery
Conservation for Future Use	Propose protection measures/designations*
Traditional Use	Consult with tribes; determine limitations
Public Use	Determine limitations, permitted uses*
Experimental Use	Determine nature of experiment(s)
Discharged from Management	Remove protective measures
* Managers may impose safeguards against incompatible land and resource uses through withdrawals, stipulations on leases and permits, design requirements, and similar measures which are developed and recommended by an appropriately staffed interdisciplinary team.	

FIG. 2. Management actions needed to realize use allocations.

2. Goal 2 – Reduce Threats. Seek to reduce imminent threats and resolve potential conflicts, from natural or human-caused deterioration, or from other resource uses.

a. State Offices must ensure that all authorizations for land and resource use will comply with Section 106 of the National Historic Preservation Act, consistent with and subject to the objectives established in the RMP for the proactive use of cultural properties in the public interest. All sections of the RMP that address the development of lands and resources will contain standard language stating that managers must not approve proposed activities until compliance with Section 106 of the National Historic Preservation Act has been completed and documented, including, where applicable, consultation with the SHPO and federally recognized Indian Tribes.

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b. In resolving conflicts between cultural resource use allocations and competing land use allocations, where the competing land use has potential to adversely affect cultural resources, managers shall consider all prudent and feasible alternatives to avoid adverse effects on the cultural resources or their uses. Where such alternatives would require undue cost or would be incompatible with competing goals, managers shall seek to balance goals, considering the magnitude of the harm to the cultural resource or its use, the significance of the resource or its use, the effect of mitigation activities on the competing use allocation, and public sensitivities.

F. Monitoring and Evaluating Effectiveness of Management Actions. Field Office Managers shall ensure that plans include a schedule and standards to monitor and evaluate plans to determine whether management actions and protective measures are working satisfactorily.

.22 Maintaining, Amending, and Revising Cultural Resource Content in Recent RMPs. New circumstances may call for changes in the cultural resource content in RMPs prepared according to the above standards. Examples are new cultural resource data of significance to the plan, substantial change in related plans of other Federal agencies, State and local governments and Indian tribes, or changed legal requirements. Maintenance of RMP decisions and supporting components, to reflect minor changes in data, can be done without formal public involvement or preparation of an environmental assessment. Changes in an approved plan's cultural resource use decisions would require an amendment. Where the entire plan or major portions of the plan would be affected, a plan revision would be required.

.23 Previous-Generation Land-Use Plans. Plans prepared before recent authorities such as NAGPRA, the 1992 NHPA amendments, and E.O. 13007 existed, before current planning guidance was in place, or before the national Programmatic Agreement was approved, may not have specific resource management goals and management actions, and may have relied on public participation and consultation guidance which, while adequate at the time, differs from current standards. These plans will need to be updated to current standards as soon as practicable.

A. Plans Scheduled for Amendment or Revision in the Near Future. Field Office managers shall provide for developing cultural resource data before scheduled planning starts. As detailed in Manual Handbook H-1601-1, Manual Section 8110, and this Manual Section every new, revised, and amended RMP is required to incorporate sufficient information to identify the nature and importance of all cultural resources known or expected to be present in the RMP area; definite goals for their management; land use allocation decisions in support of the goals; and management actions and prescriptions that will contribute to achieving the allocation decisions.

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. B. Plans Not Scheduled for Amendment or Revision in the Near Future. Even where plans will not be formally updated for some time, interim working documents may be developed to guide cultural resource-related decisions as appropriate. Field Office managers should seek opportunities to assign staff and/or cooperators to begin developing information and recommendations within available time and funds: assembling and organizing existing cultural resource information; acquiring new information, where needed, through reconnaissance-level field work and consultation; identifying potential management goals for the cultural resources and considering the management tools that would help to achieve them; and recording the information and recommendations to be easily retrievable by general geographical location

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.3 Incorporating Cultural Resource Content in Local Land Use Plans

A. Consideration of cultural resources in local land use plans, e.g. interdisciplinary resource (activity level) plans, shall meet RMP standards on types and levels of cultural resource information, at a scale and level of detail appropriate to the size and complexity of the area and subject matter.

B. Consideration of cultural resources in special resource plans shall meet any supplemental guidance, as for instance the National Trails System Act.

C. Local land use plans shall seek to provide resolution between alternative uses for known cultural resources and also identify and provide strategies for resolving any conflicts between cultural resource protection and any competing management actions.

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.4 Incorporating Cultural Resource Content in Project Plans.

.41 Other Subactivities' Project Plans.

A. Recreation Management. Interpretive or related recreational development and use of cultural properties, allocated to and being protected for public use, may require preparation of a recreation project plan. This maybe done in lieu of preparing a CRPP, provided the recreation project plan includes the appropriate CRPP elements. Once the necessary recreation plan has been implemented, it may be appropriate to transfer long-term management responsibility to the recreation management program.

B. Wilderness Management. Wilderness management plans may have sections addressing management of cultural resources. When the cultural resource management elements of CRPPs are included in these plans, they may be substituted for CRPPs.

C. Other Special Management Areas. Areas of Critical Environmental Concern (ACECs) or other areas of special management attention may appropriately address cultural resources in lieu of preparing CRPPs.

.42 Cultural Resource Project Plans. Cultural Resource Project Plans (CRPP) are detailed design plans for implementing decisions made in regional or local land use plans. Cultural resource project plans include precise estimates of workforce, time/scheduling, equipment and supply needs for specific management or information gathering actions. They should be sufficiently detailed to serve as contract specifications, as needed, and to provide a direct link between planning and budgeting. Jobs that are based on completed project plans shall receive priority consideration during annual work plan preparation. They cover:

A. Protection projects for individual cultural properties or for classes of cultural properties requiring similar measures within a manageable spatial unit.

B. Information projects such as inventory or test excavations where needed to provide a basis for refining evaluations and allocations to use categories.

C. Interpretation projects in which cultural properties are developed for public visitation.

.43 Developing CRPPs. Appropriately qualified culture resource specialists develop project plans in close consultation with engineering, recreation, and staff personnel as appropriate. Project plans are prepared according to the schedule in the local land use plan. Project plans are also developed for protection projects such as stabilization or emergency protection for threatened cultural resources before a local land use plan has been prepared.

A. Required Narrative Components. Project plans should not duplicate information in regional or local land use plans.

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1. Introduction. Provide a brief introduction to orient the reader, referencing the regional or local land use plan being implemented and including: objectives of the CRPP; a summary of the cultural resources and/or resource types involved; the uses to be protected or implemented; a summary of the relevant land use plan decisions/strategies; a concise statement of the management problem or opportunity being addressed by the CRPP; and a brief description of the relevant geographical and physical characteristics considered from a logistical or engineering perspective.

2. Planned Actions. Describe specific information gathering, protection, and other management actions, by order of implementation or by calendar dates for initiation and completion. Identify dependent actions as such; that is, if step Y cannot proceed until step X is completed, state this. Protection actions to be considered include installation of physical protection devices, stabilization, partial data recovery, and law enforcement surveillance. Protection supporting actions include withdrawals and closures, execution of cooperative agreements, and cadastral survey. Information gathering actions include new inventory where protection may be needed, new documentary research, test excavations for refining evaluations and management allocations, and similar data-oriented actions. Identify subactivities that will be involved, and provide cost and scheduling details for prescribed actions in narrative, tabular, and graphic form (such as sketches, maps, photos, time lines, etc.) as appropriate.

3. Appendices.

a. Graphics. Include maps, overlays, or similar attachments integral to the plan in an appendix. Date and initial all maps and overlays, and clearly identify any cultural resources affected by the plan.

b. Supporting Data. Include detailed information and documentation needed for the permanent project record in an appendix (e.g., forms, data summaries, evaluation summaries, and related records not already included in the regional or local land use plan). Also, reference or summarize any relevant State or local cultural resource plans and professional reports within the project area.

c. Specific Location Information. Delete legal descriptions and maps from CRPPs before they are made available for public review or inspection if there is sufficient reason to expect that disclosure of location would lead to a cultural property's unauthorized disturbance (see National Historic Preservation Act, Section 304; and Archaeological Resources Protection Act, Section 9).

B. Implementation Schedule and Cost Estimate. Prepare a detailed implementation schedule for the planned actions, including specific work requirements and cost estimates on a year-by-year-basis. Give careful consideration to monitoring and maintenance needs; do not plan term management on a single-year basis. The CRPP must also include a description of the methods to be used in monitoring, measuring and reporting CRPP progress and accomplishment of objectives, and in identifying needs and methods for changes in the implementation process.

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.44 Compliance and Consultation for CRPPs.

A. NEPA Compliance. Compliance with the National Environmental Policy Act is guided by BLM Manual Section 1790 and Handbook H-1790-1. Environmental review is required for every CRPP. Each existing germane NEPA document is identified and reviewed to determine if it can be used to satisfy NEPA requirements for the CRPP, or if a new document is needed. This must in all cases include examination of the environmental impact statement/environmental assessment for the regional land use plan and local plan, if any, under which the CRPP is being prepared. Environmental analysis (usually resulting in an environmental assessment tiered to the existing environmental documents) is completed as necessary to fully disclose projected impacts of the actions covered by the CRPP. Documentation of the results of the review and any subsequent environmental analysis is conducted as specified in H-1790-1.

B. Native American Consultation.

1. Native American Participation. If any tribe or Indian individual attributes religious or cultural importance to a cultural property involved in the project plan, and if the proposed management action was not considered as part of the tribal coordination or public participation for the regional or local plan EIS/EA or during ARPA notification (see .44B2), provide the tribe or individual an opportunity to participate prior to plan approval, during preparation of the CRPP EA. The need for, and extent of, Native American consultation should be determined in accordance with Handbook H-8120-1.

2. ARPA Notification. If work under the project plan would require an excavation permit or its equivalent under the ARPA and could harm or destroy a site that has been identified by an Indian tribe as being of religious or cultural importance, notify the tribe after CRPP actions have been determined (see 43 CFR 10.3 7.7, BLM Manual Section 8150.13), during plan development. Complete consultation requested by the Indian tribe, prior to plan approval.

3. NAGPRA Consultation. If work under the project plan includes the intentional excavation of Native American human remains, funerary objects, sacred objects or objects of cultural patrimony, consult with the lineal descendant(s) and affiliated tribe(s) during plan development to determine views with regard to the excavation. If excavation is still planned after considering the results this consultation, incorporate into the plan appropriate treatment and disposition measures 43 CFR 10.3). Complete consultation prior to plan approval.

C. SHPO Consultation. As appropriate to the actions covered by a CRPP, consult with the SHPO in accordance with the national Programmatic Agreement and BLM/SHPO Protocol prior to plan approval, and prior to implementing any action that may have an effect on cultural properties eligible for or included in the National Register. Document this consultation in the plan.

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.45 CRPP Approval Process. After involved staff specialists have indicated their participation by signature and date, the appropriate Field Office manager approves the plan or plan revision by signing and dating the approval sheet.

.46 Implementing CRPPs

A. Annual Work Plan Process (PTA/AWP). The implementation schedule and cost information provide direct input to the development of the PTA/AWP. Include in the PTA/AWP submission both the level of implementation that can be funded within the proposed cost target and also the specific actions that will require additional funding for full implementation. The approved AWP sets the rate of CRPP implementation based on statewide assessment of protection or information needs and other program priorities.

B. Performance Review. When the implementation or maintenance of a CRPP is funded in the AWP, the CRPP provides specific details for developing specific performance measures to be included in the annual performance reviews for responsible managers and staff specialists.

C. Reporting Accomplishments

1. Performance Indicators. Report individual projects or actions that implement the plan each fiscal year through the performance indicator feedback requested in the AWP.

2. Annual Report. Report plan completion and implementation among annual report data requested by the Director early in the following fiscal year.

.47 Evaluating CRPP Effectiveness

A. Review

1. Where CRPPs pertain to long-term protection and use of resources, conduct on-the-ground monitoring, studies, and/or analyses on a regular basis to measure CRPP effectiveness. Unless more frequent review is indicated by the nature of conditions that prompted plan preparation, review the effectiveness of CRPP implementation at least annually. Document reviews and findings as an addendum to the plan.

2. Where CRPPs pertain to information gathering projects, incorporate results in Class 1 inventories and evaluation records within one year of project completion, and evaluate the project's effectiveness at correcting the deficiency that prompted the project.

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B. Revisions. Ensure that any major plan revision incorporates the same analysis, coordination, and compliance as required for the original CRPP, and that revisions are approved in the manner of an original CRPP.

1. Revise protection CRPPs as necessary, based on annual review or other indication that changes need to be made. A revision is indicated when the condition of the resources has continued to deteriorate at an unacceptable rate, or when other objectives of the plan are not being met.

2. Revise information-gathering CRPPs as needed. For example, revise to design a subsequent phase of class II survey when review indicates that intended results were not adequately attained, or when a predictive model developed on project data now requires new data for testing its usefulness.

3. Revise public-interpretation CRPPs when deteriorating resource or facility conditions, visitor surveys, or other public response indicate that objectives are not being met.

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Appendix

1. National Programmatic Agreement of March 26, 1997

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

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

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

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

.05 References.

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

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

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

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

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

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

G. Glossary of Terms, BLM Manual Section 8100.

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.06 Policy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Administrative Conservation Measures

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

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

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

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

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

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

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

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

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

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

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

C. Seek information in accordance with BLM land use planning and environmental review processes from Indian tribes and other parties likely to have knowledge of or concerns with cultural properties in the area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Considerations for Physical Conservation

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

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

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

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

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B. Considerations for Administrative Conservation

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

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

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

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

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

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

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

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

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

C. Interpretation of data and conclusions.

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

E. Recommendations for future research directions.

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

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

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

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

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

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.3 Preventing Loss and Destruction From Illegal Activities.

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

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

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

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

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

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

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

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

.35 Criminal Prosecutions.

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

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1. Penalties under ARPA.

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

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

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

2. Penalties under NAGPRA.

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

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

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

.36 Civil Proceedings.

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

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

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

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

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

.37 Rewards

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

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.4 Treasure Hunting on Public Lands

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

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

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.5 Coordinating With Outside Parties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Preamble

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

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

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

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

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

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

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

Basis for Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Components Of Agreement

1. Applicability

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

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

2. Establishment of Preservation Board

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

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

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

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

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

3. Revision of "Cultural Resource Management" Procedures

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

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

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

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

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

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

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

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

4. Thresholds for Council Review

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

5. Cooperation and Enhanced Communication

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

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

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

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

At a minimum, protocols will address the following:

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

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

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

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

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

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

6. Training Program

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

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

7. Professional Development

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

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

8. State Office Certification and Decertification

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

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

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

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

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

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

9. Accountability Measures

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

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

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

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

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10. Reviewing and Changing the Agreement

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

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

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

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

Affirmation

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

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

Programmatic Agreement Authority

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

Section 800.13 Programmatic Agreements

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

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

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

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

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

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

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

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

Criteria of Effect and Adverse Effect

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

Section 800.9 Criteria of effect and adverse effect

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

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

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

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

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

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

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

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

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

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

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

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Glossary of Terms

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.01 Purpose. The purpose of this Manual Section is to provide specific procedural direction on authorizing the use of cultural resources on public land, and on administering permits and the products resulting from permitted work.

.02 Objectives. Objectives of the program's utilization component are to facilitate appropriate scientific use of cultural properties on public lands; to ensure that collections of archaeological materials removed from public lands and records relating to them are maintained in qualified public repositories as United States property and are used for appropriate research or educational purposes; and to ensure that tangible public benefits follow from permitted uses of public land cultural resources.

.03 Authority.

A. (See BLM Manual Section 8100.03A, H, I, and J.)

B. Title 43 Code of Federal Regulations, Parts 3, 4, 7, and 2920.

C. Departmental Manual, 519 DM 2 and 411 DM

D. Title 36 Code of Federal Regulations, Part 79

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

A. State Directors, through or with the assistance of the appropriate Deputy State Director(s) or his or her delegate within the State Office, as assigned, are responsible for receiving permit applications; for preparing permanent files; for conducting technical and management reviews to ensure that all qualifying requirements are met; for issuing or denying, modifying, suspending, and revoking permits; for establishing consultation relationships with potentially affected Indian tribes; and for maintaining complete and current files. Authority to issue, deny, modify, suspend, or revoke permits, and to issue warnings to permittees, may be delegated to an appropriate official within the State Office, at the State Director's discretion. Staffing of the necessary administrative work may be assigned as appropriate, but decision authority remains with the State Director or his or her immediate delegate in the State Office.

B. Field Office managers, through or with the assistance of their delegates, as assigned, are responsible for conducting technical and management reviews of permit applications as requested by the State Director; for making recommendations concerning permit issuance, denial, modification, warning, suspension, and revocation; for receiving requests to authorize field work proposed under the authority of a permit; for issuing or denying such fieldwork authorizations; for notifying and consulting with affected Indian tribes; and for monitoring work conducted under permits and fieldwork authorizations.

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C. Cultural Resource Specialists on State Office or Field Office staffs are responsible, within the limits of their professional qualifications, for providing and documenting technical reviews and recommendations; for developing and recommending permit terms and conditions; for monitoring and documenting permittees' technical performance and compliance with permit terms and conditions; for overseeing and documenting the maintenance of collections in BLM and public repositories; and for promoting the beneficial use of cultural resources and information derived from them.

.05 References (See BLM Manual Section 8100.05.)

.06 Policy.

A. The BLM encourages appropriate scientific use of cultural resources on public land and authorizes such use, consistent with the controlling laws and regulations and the established objectives for the resources' long-term management.

B. Responsible Field Office managers monitor activities under permits to ensure that permittees observe agreed-upon conditions of authorized cultural resource use.

C. As much as possible the BLM ensures that approved activities that change the integrity of cultural resources are prudent in the effects they cause, and generous in the public benefits they contribute.

D. The BLM ensures that archaeological materials removed from public lands are properly housed in approved curatorial facilities and maintained to Federal standards as U.S. property.

E. As appropriate, the BLM promotes the use of U.S. collections for educational and research purposes.

F. Each activity conducted under a permit must be assessed in writing for its contribution to cultural resource knowledge, for its implications for cultural resource planning decisions and protection priorities, and for its importance to the public.

.07 File and Records Maintenance. See .12A, .12B1, .12B8, .12B9, .12C, .12E2, .12E3c-d, .13, .23, .31B, .32B2, .32D, .33D4, .33I, .34A3c, .35. Filing requirements are found in the GRS/BLM Combined Records Schedule (Schedule 4, Item 14).

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.1 Authorizing Scientific Uses of Cultural Resources

.11 Limitations of Permits

A. To Whom Permits May Be Issued. State Directors may issue permits to appropriately qualified non-Federal applicants, provided that work proposed would further knowledge in the public interest, would not conflict with other legitimate or protected uses of the public lands and resources, and would not be inconsistent with any approved management plan, objective, or established policy applicable to the public lands or resources concerned.

B. To Whom Permits May Not Be Issued.

1. Federal Agencies. State Directors may not issue permits to other Federal agencies. Officially proposed cultural resource work, which would be conducted on the public lands by appropriately qualified Federal employees from another agency and which would otherwise require a permit, may be authorized by a written agreement. Approval is subject to exactly the same review process and considerations as are specified in this Manual Section for a permit. Where the written agreement is not job specific, other Federal agencies are required to obtain a Fieldwork Authorization from the appropriate Field Office manager prior to beginning fieldwork. An employee of another Federal agency, proposing to do off-duty personal research that would require a permit, is subject to the regular permit application process.

2. BLM Employees and Agents. State Directors may not issue permits as such to BLM employees or cultural resource consultants under contract to BLM, who are carrying out official agency duties associated with the management of cultural resources on public lands. BLM employees and contractors must meet qualifications provisions in .12B2b and limiting provisions in .11B3 of this Manual Section. This must be documented through the means appropriate to employment and assignment of duties, or procurement of services (see BLM Manual Sections 1400-335, 1400-90, 1510, and 8100.2). A BLM employee, proposing to do off-duty personal research that would require a permit, is subject to the regular permit application process.

3. Federal Employees Acting as Consultants. State Directors may not issue a permit to any Federal employee whose intent is to provide off-duty consultation services directly or indirectly to a BLM land use applicant. Field Office managers may not issue a fieldwork authorization for such consultation services to a Federal employee who holds a cultural resource use permit for off-duty personal research as allowed in paragraphs .11B1 and 2.

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C. Applicability of Permits

1. Public Lands. Permit requirements described in this Manual Section pertain only where BLM administers the surface. Cultural resource consultants may not be required to hold BLM permits to conduct work on non-Federal surface overlying Federal subsurface (split estate), even though BLM is requiring the work prior to authorizing development of subsurface minerals. (Buried cultural resources are legally recognized as part of the surface estate.)

2. Non-Federal Lands. Although permits are not issued for consultants working on non-Federal surface under BLM requirements, BLM is responsible for the quality of work done to satisfy historic preservation requirements and should review both the project proponent's proposed choice of consultant and the adequacy of the work proposed and advise the proponent about adequacy of the qualifications and/or the work through official correspondence. The BLM must accept a consultant's work product, even if indirectly, before completing the historic preservation review process and approving the proponent's land use application.

3. Ethnographic Work. Ethnographic work pertaining to public lands does not require a cultural resource use permit. However, when ethnographic work is being done on behalf of the BLM to enable the BLM to comply with a legal requirement, the qualifications of the ethnographer and proposed methodology should be reviewed, to ensure that they meet the Secretary of the Interior's professional qualification Standards, and approved in writing by the State Office prior to the initiation of field studies.

D. Uses Authorized. The following activities are subject to permitting under the procedures below.

1. Survey and Recordation may be authorized for applicants who propose to identify, evaluate, record, or conduct similar non-impacting studies of cultural properties that will not include excavation and/or removal of material remains or other significant disturbance of cultural properties. As agreed in advance and specifically limited in the permit conditions, such permits may authorize collection of isolated archaeological materials, not in association with cultural properties, and limited subsurface testing (e.g. shovel testing), as described in BLM Manual Section 8110.22B. Survey and Recordation permits may be issued on a multiple-Field Office or Statewide basis, for extended periods of time, to facilitate Section 106 compliance inventories and surveys. As appropriate, this type of permit may also be used to authorize nonimpacting research projects.

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2. Limited Testing and/or Collection may be authorized for applicants who propose to do small-scale testing and/or systematic collection and removal of material remains during field identification, evaluation, and recording activities, so that the significance or research potential of a cultural property may be better understood but not substantially diminished. Work proposed under Limited Testing and/or Collection permits may be used to determine future mitigation strategies. This category of permit does not normally require notification under .13 since the work proposed is unlikely to cause harm to or destruction of sites having religious or cultural importance. These are project-specific permits.

3. Excavation and/or Removal may be authorized for applicants who propose to excavate and/or remove material remains at a greater scale than the limited testing described in .11D2, with the result that the significance and/or future research potential of a cultural property or properties may be substantially altered. This category of permit includes major testing programs designed to answer research questions and to guide future data recovery efforts. Ordinarily, this type of permit will require notification and consultation with Indian Tribes pursuant to the Archaeological Resources Protection Act (ARPA) and the Native American Graves Protection Act (NAGPRA) because of the substantial likelihood that the work authorized could result in harm to or destruction of sites having religious or cultural importance to Indian Tribes or disturb cultural items subject to NAGPRA. These are project-specific permits.

4. A Combination of Activities described in .11D1 through 3 may be authorized in a single permit, as appropriate to the extent and nature of work proposed in the application. A permit may be modified, under provisions of .32, to authorize additional activities, project areas, and/or cultural properties that were not specified in the permit at the time of issuance.

E. Curation Agreements are Required Regardless of the Use Authorized. The permittee will be required to deposit copies of records, data, photographs, and other documents, and collections as applicable, with an approved curatorial facility.

.12 Processing Applications for Permits. Any person (see Glossary) may apply for a cultural resource use permit by submitting an approved application form and required supporting documentation (see .12B2 through .12B5), in person or by mail, to the address designated by the State Director responsible for administering the public lands where the proposed work would occur.

A. Application Receipt and Initial Processing. Applications are officially received, assigned a case identifier number, and assembled in a permanent record folder by the appropriate staff, as determined under .04.

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B. Application Review and Evaluation.

1. Completeness. An appropriately qualified specialist shall examine each application upon receipt to determine if the filing is regular and completely fills all information requirements.

a. Information Lacking. Applications that are missing necessary information or required documentation in support of an information item may be withheld from further review until the needed information or documentation is provided. The applicant shall be informed as quickly as possible what is needed for review. For this purpose, documented telephone contact is preferable to written notification.

b. Unmet Criteria. Any application that fails to meet minimum qualifying criteria specified in .12B2 through .12B5, either upon initial receipt or through failure to respond adequately to a request for missing information, may be recommended for rejection without further review, by following the permit denial procedure in .12B8, .12B9, and .12C. An exception is that the criteria pertaining to organizational qualifications, principal investigator's qualifications, crew chiefs' qualifications, and purpose of proposed work shall not be applied to an application filed by the Governor for a permit on behalf of the State (16 U.S.C. 470cc(j)).

2. Qualifications of Applicant. Applications shall be reviewed by an appropriately qualified cultural resource specialist to determine whether or not applicants are adequately qualified for work proposed, except that among criteria in .12B, only the requirement to name a project administrator qualified to obligate the applicant organization shall apply to an application filed by the Governor for a permit on behalf of the State (16 U.S.C. 470cc(j)). Applicants may be disqualified on the basis of failure to meet qualifying criteria, which may include documented history of inadequate performance under a previous permit (e.g., revocation for cause). Similarly, individuals named in applications may be excluded from a permit or have their intended roles changed for insufficient qualifications or documented inadequate performance under a previous permit (see .33C).

a. Organizational Qualifications. Applications must show the applicant's organizational capability to accomplish work of the type and scope proposed. An organizational resume or summary of organizational experience should be submitted to provide the following minimum information:

(1) Statement of applicant's organizational ability to accomplish work, including:

- (a) Location(s) of facilities and equipment.
- (b) Description of facilities and equipment.
- (c) Organizational structure and staffing.

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(d) Specification of which and to what extent facilities, equipment, and staff listed would be involved in the proposed work.

(2) Statement of applicant's organizational history in completing type of work proposed, including:

(a) Similar past projects.

(b) Past Government contracts.

(c) Selected bibliography of project or contract reports and/or publications resulting from (a) and (b).

(d) Federal permits held in the last 3 years, effective dates of permits currently in force, and applications pending or planned (information on current permits and applications is important for interagency or intrabureau coordination under .2).

(3) Other pertinent organizational experience, such as research and special studies.

(4) If the applicant is a newly formed entity, any information that might take the place of information about similar past projects and past Government contracts should be provided. In such cases, individual capabilities of personnel will carry greater weight in evaluation of organizational qualifications. Lack of an organizational history should not be the principal factor in a recommendation for permit denial.

b. Individual Qualifications.

(1) Permit Administrator. Applications must show the name of the individual proposed to be responsible for carrying out the conditions of the permit and otherwise complying with legal requirements applicable to the permitted activity. This individual must be legally empowered to obligate the applicant organization and must sign the application and other official correspondence such as permit amendments. Unless this individual is also named under 12B2b(2) or (3), this individual need not be professionally qualified as a field investigator.

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(2) Principal Investigator. Applications must include the name of any individual(s) proposed to be responsible for planning, supervising, and overseeing field projects, including responsibility for the professional quality of evaluations and recommendations. Principal investigators shall have primary accountability for technical completeness and competence of work conducted under the permit. They shall be responsible for development of work plans and/or research designs, for performance of crew chiefs, for selection standards and limitations on work assignments of crew members, for analysis and interpretation of field data, for integration of fieldwork results into comparative regional perspectives, and for preparation of reports. For each such individual, information must be included with the application to demonstrate that the individual has achieved the following:

(a) Adequate professional instruction. This may be obtained in either of the following two ways:

(i) Formal education resulting in a graduate degree in the appropriate discipline.

(ii) Formal education resulting in a bachelor's degree in the appropriate discipline for the permitted activity plus at least 24 months of professionally supervised experience including similar duties as proposed in the application.

(b) Competence in theory and methods, and in recording, collecting, handling, analyzing, evaluating, and reporting cultural property data, relative to the type and scope of work proposed.

(c) Ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed.

(d) Ability to carry research to completion, as evidenced by timely completion of theses, research reports, and similar documents.

(e) Completion of at least 16 months of professional cultural resource management experience including similar duties as proposed in the application. This experience must include at least 4 months of experience with comparable cultural resources in similar cultural contexts and environmental settings. The State Director may reduce the 4-month geographical experience requirement, as appropriate, if the proposed work is a narrow technical study independent of culture or location, such as research focused on a particular aspect of lithic technology. If equivalency is claimed under .12B2b(2)(a)(ii), the 16 months of experience required in this paragraph is to be included in, not in addition to, the required 24 months.

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(3) Crew Chief. Applications must include the name of any individual(s) proposed to be responsible for carrying out field projects. Crew chiefs shall be responsible for the technical quality of field work, for the direct on-the-ground supervision of all aspects of field work and data gathering, for proposing resource evaluations and recommendations for further treatment, and for preparing field records and descriptive reports. For each such individual, information must be included with the application to demonstrate that the individual has achieved the following:

(a) Adequate professional instruction, obtained in either of the following two ways:

(i) Formal education resulting in a baccalaureate degree in appropriate discipline (anthropology/archaeology, history, architecture) and at least 12 months of pertinent professionally supervised experience, with increasing responsibility leading to duties similar to those proposed in the application.

(ii) Equivalent training and experience, including at least 30 months of professionally supervised experience including increasing responsibilities leading up to responsibilities equivalent to those proposed in the application.

(b) Competence in recording, collecting, handling, analyzing, evaluating, and reporting cultural property data, relative to the type and scope of work proposed.

(c) Demonstrated ability to supervise activity of the type and scope proposed.

(d) Completion of at least 4 months of professional cultural resource management experience with comparable cultural resources in similar cultural contexts and environmental settings. This may be part of the experience required in .12B2b(3)(a)(i) and (ii).

(4) Individual qualifications can be documented by information such as the following, with greater weight being given to field experience that corresponds to work proposed in the application:

(a) Survey and excavation reports of cultural resource management or Section 106 (or other compliance) projects that the individual carried out or supervised.

(b) National Register documentation based on the individual's field work, resulting in property listings or determinations of eligibility.

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(d) Publications including articles in professional journals, monographs, books, or chapters in edited books, related to the preservation of cultural properties.

(c) Materials such as presentations, booklets, brochures, lesson plans, or videos that interpret the results of the individual's cultural resource investigations for the general public;

(e) Presentations at regional, national, or international professional conferences related to the preservation of cultural properties.

(f) Professional service on boards or committees of regional, national, or international professional organizations concerned with the preservation of cultural properties.

(g) Awards, research grants, research fellowships, or invitations to teaching posts.

(5) The same individual may be proposed to perform any combination of permit administrator, principal investigator, and crew chief duties, provided that evidence is submitted to show that all pertinent qualifications are met for those positions.

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3. Qualifications of Proposed Curatorial Facility. To the maximum extent possible, proposed curatorial facilities should meet the 36 CFR Part 79 standards. State Directors shall determine that those facilities proposed to house collections and/or copies of records, data, photographs, and other documents derived from the permitted work satisfy the following minimum considerations, as applicable:

a. Physical Considerations:

- (1) Adequate security.
- (2) Adequate protection for the types of materials expected to be housed, such as climate control for perishable material remains, if applicable.
- (3) Adequate protection for records, data, photographs, and other documents.
- (4) Adequate records/accessioning/retrieval systems, including full capability to account for materials.
- (5) Adequate provisions for scholarly access and study.
- (6) Maintenance of physical plant insurance.

b. Administrative Considerations:

- (1) Provision for permanent preservation, including transfer to a Federal or federally approved location in the event the facility should cease to exist.
- (2) Adequate staffing.
- (3) Proximity to the region/culture area where work is proposed, preferably location in the same State within which work is proposed.
- (4) Provision for granting qualified scholars reasonable access to records and collections for research purposes.

4. Certification by Curatorial Facility. Each application must include written certification, signed by a properly authorized official of the proposed curatorial facility, of willingness to accept any collections, as applicable, and records, data, photographs, and other documents generated during the proposed term of the permit, and to assume permanent curatorial responsibility and accountability for such materials on behalf of the United States Government.

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5. Purpose of Proposed Work.

a. Public Interest. Applications must show that the work proposed would further knowledge of cultural properties in the public interest. Work that conforms to the use of a cultural property determined appropriate through evaluation and planning, and work that has been agreed to through the section 106 consultation process (including the application of a BLM-SHPO protocol), are considered to be in the public interest. Applications for excavation, research, or field school projects must include documentation that sets forth a methodological/theoretical framework appropriate to work proposed, and that proposes a schedule for timely and professional reporting of completed work.

b. Definite Need. Because of the considerable staff time it takes to review applications, prepare permits for approval, and monitor status, State Directors or their delegates should counsel prospective applicants not to apply for speculative permits. Permits must not be viewed or used as a Federal certification of consultants' credentials, a license to practice, or a precondition for consultants to compete for jobs. Applicants who are denied a speculative permit should be informed in writing (see .12B8) that an application for definite work will be processed promptly, and that denial under these circumstances does not reflect negatively on qualifications or performance. Land use applicants who will be requested to provide cultural resource information or services in support of their applications should be informed of the exact need, and asked to have their preferred consultant apply for a cultural resource use permit, as soon as the need is determined.

6. Conformity with Management Constraints. All applications must be reviewed for compatibility of proposed work with any approved management plan or established policy, objectives, or requirements applicable to the management of the public lands and resources involved.

a. Proposed work may be modified through limitations or conditions, or applications may be denied, if the application proposes work incompatible with:

(1) Cultural resource management commitments established through evaluation and planning. For example, if an applicant proposes to train university field school students in excavation techniques in a cultural property that has been allocated to long-term conservation because of scarcity and overriding scientific importance, a similar property that has been allocated to the research category should be substituted (after consultation with the applicant), or the application should be denied. (See BLM Manual Section 8110.)

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(2) Multiple use resource protection requirements pertaining to time of year, type of activity, type of equipment employed, access, personal safety, fire safety, or other management restrictions. For example, if an applicant proposes to do testing in a bighorn sheep lambing area during lambing season, or to use motorized equipment in a wilderness study area, the proposed timing or method of use should be changed through conditions (after consultation with the applicant) or the application should be denied.

(3) Other authorized uses of lands or resources exclusive in nature.

b. When the application is of a general nature, at a scope above the level of specific projects, so that potential conflicts cannot be identified, this review step may be limited or deferred until a request for fieldwork authorization is submitted pursuant to .12D.

7. Indian Tribal Religious or Cultural Concerns. All applications for Limited Testing and/or Collection permits and Excavation and/or Removal permits must be reviewed for potential harmful or destructive effects on locations of religious or cultural importance to Indian tribes. (See ARPA Section 4(c) and 43 CFR 7.7(a). See also Manual Handbook H-8120-1.) In addition, applications for Survey and Recordation permits may be so reviewed if there are reasons to think, because of an area's previously identified sensitivity, that even such nonimpacting use should be made known to Indian tribes. If it is determined that the potential exists for harm to or destruction of sites of religious or cultural concern to Indian tribes as a result of permit authorization, the notification procedures in .13 must be followed prior to making a decision to approve the application. Indian tribal religious or cultural concerns may be the basis for modification of the proposed work through limitations or terms and conditions, or for denial of the application.

8. Evaluation and Recommendation. Upon completing the review, the cultural resource specialist shall prepare a recommendation for permit issuance or denial. The basis for the recommendation, documented in writing, shall become a part of the permanent file.

a. Recommending Permit Conditions and Permit Term. When recommending that the State Director approve a permit, the cultural resource specialist shall prepare a brief written summary of review findings, complete an approved permit form with the standard conditions (Illustrations 1), and attach any special conditions determined appropriate to the work and recommended for approval (e.g., Illustration 2). The specialist's recommendation for the permit's term (duration) shall be indicated by the expiration date entered on the form.

(1) For permits that would cover a series of jobs over an extended period of time, the permit term reflects the confidence BLM has in the organization's ability to complete work and meet permit conditions. Three years is normal for survey permits issued to firms that have demonstrated a history of acceptable performance.

(2) New firms or firms that have experienced performance problems may be issued permits of shorter duration, such as one year, or held to a separate permit for each job.

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.12B8a
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Illustration 1

Required Permit Content

All cultural resource use permits must include completed information fields for:

1. Permit number
2. Name of permittee
3. Permittee's mailing address, telephone number, and email address
4. Nature of authorized cultural resource work
5. Location of authorized cultural resource work
 - a. Description of Public Lands involved
 - b. Identification of specific cultural resource(s) involved (if applicable)
6. Authorized beginning date
7. Expiration Date
8. Name of individual(s) authorized to plan and supervise field work and approve reports, evaluations, and recommendations
9. Name of individual responsible for carrying out terms and conditions of permit
10. Name of approved curatorial facility where collections and records shall be deposited upon completion of authorized cultural resource work
11. Signature of State Director or authorized official and date signed

All cultural resource use permits must include the following administrative conditions:

1. This permit is subject to all applicable provisions of pertinent regulations (43 CFR 2920; 43 CFR 3; 43 CFR 7), and policies and procedures (BLM Manual Section 8150), which are made a part hereof.
2. This permit may not be assigned.
3. Permittee shall immediately request that the State Director make a modification to accommodate any change in an essential condition of the permit (1, 2, 5, 6, 9, 10, 11 above), and shall without delay notify the State Director of any other changes affecting the permit or regarding information submitted as part of the application for the permit. Failure to do so may result in permit suspension or revocation or criminal charges.
4. This permit is issued for the term specified in 6 and 7 above. It is subject to suspension or revocation, for management purposes or for cause, at the discretion of the State Director, upon written notice.
5. Permittee may request permit extension, in writing, at any time prior to expiration of the term of the permit, specifying a limited, definite amount of time required to complete permitted work.
6. Any correspondence about this permit or work conducted under its authority must cite the permit number. Any publication of results of work conducted under the authority of this permit must cite the Bureau of Land Management and the permit number.
7. Special conditions attached to this permit are made a part hereof.
8. Permittee shall contact the affected Field Office manager prior to beginning any field work under the authority of this permit by submitting a fieldwork authorization request except when a specific fieldwork authorization is included with the permit.
9. Permittee's initiation of work or other activities under the authority of this permit signifies the permittee's acceptance of the terms and conditions of the permit.

(cont'd. next page)

Illustration 1 (continued)

Required Permit Content

Administrative conditions continued

10. Permittee may request a review, in writing to the official concerned, of any disputed decision regarding inclusion of specific terms and conditions in this permit or any fieldwork authorization, denial of a fieldwork authorization request, or modification, suspension, or revocation of this permit, setting out reasons for believing that the decision should be reconsidered.
11. Permittee shall not be released from requirements of this permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired. Permittee may be subject to civil penalties for violation of any term or condition of this permit.
12. Permittee shall use State Director-approved GPS technology to record all location data for field work authorized in this permit.
13. Permittee shall submit a preliminary report to the authorized officer within 10 days of completion of any episode of field work, setting out what was done, how it was done, by whom, specifically where, and with what results, including maps, GPS data, an approved site form for each newly recorded cultural property, a BLM evaluation form for each cultural property examined, and the permittee's professional recommendations, as results require. Depending on the scope, duration, and nature of the work, the authorized officer may require progress reports, during or after the fieldwork period or both.
14. Permittee shall submit a final report to each the authorized officer and the State Director not later than 180 days after completion of field work. Where a fieldwork episode involved only minor work and/or minor findings, a final report may be submitted in place of the preliminary report.
15. Permittee shall deposit all artifacts, samples and collections, as applicable, and copies of all records, data, photographs, and other documents, resulting from work conducted under this permit, with the curatorial facility named in item 11, above, not later than 90 days after the date the final report is submitted to the State Director. Not later than 180 days after the final report is submitted, permittee shall provide the State Director with a catalog and evaluation of all materials deposited with the curatorial facility, including the facility's accession and/or catalog numbers.

Illustration 2

Land Use and Resource Protection Conditions

Following are additional conditions the State Director may add to the permit if applicable (conditions pertaining to excavation, for example, would not be applicable in a permit that does not authorize excavation). The State Director may add any pertinent State-specific conditions. The Field Office manager may adjust or add conditions to fieldwork authorizations as appropriate to the location, time of year, or work to be conducted. Such adjusted and added conditions become a fully enforceable part of the permit.

1. Permittee shall observe all Federal, State, and local laws and regulations applicable to the public lands and resources, whether or not stipulated in the permit conditions.
2. Permittee shall allow the State Director and authorized officer or their representatives full access to the work area specified in this permit at any time the permittee is in the field, for purposes of examining the work area and any recovered materials and related records.
3. Permittee shall cease work upon discovering any human remains and associated funerary objects, and shall immediately notify the authorized officer. Work in the vicinity of the discovery may not resume until the authorized officer has given permission.
4. Permittee shall backfill all subsurface test exposures and excavation units as soon as possible after recording the results, and shall restore them as closely as reasonable to the original contour.
5. Permittee shall take precautions to protect livestock, wildlife, the public, or other users of the public lands from accidental injury in any excavation unit.
6. Permittee shall not conduct any flint knapping or lithic replication experiments at any archaeological site, aboriginal quarry source, or non-site location that might be mistaken for an archaeological site as a result of such experiments.
7. Permittee shall perform the field work authorized in this permit in a way that does not impede or interfere with other legitimate uses of the public lands, except when the authorized officer specifically provides otherwise.
8. Permittee shall restrict vehicular activity to existing roads and trails unless the authorized officer provides otherwise.
9. Permittee shall keep disturbance to the minimum area consistent with the nature and purpose of the field work.
10. Permittee shall not cut or otherwise damage living trees unless the authorized officer gives permission.
11. Permittee shall take precaution at all times to prevent wildfire. Permittee shall be held responsible for suppression costs for any fires on public lands caused by the permittee's negligence. Permittee may not burn debris without the authorized officer's specific permission.
12. Permittee shall not disturb resource management facilities within the permit area, such as fences, reservoirs, and other improvements, without the authorized officer's approval. Where disturbance is necessary, permittee shall return the facility to its prior condition, as determined by the authorized officer.
13. Permittee shall remove temporary stakes and/or flagging, which the permittee has installed, upon completion of field work. Permittee shall clean all camp and work areas before leaving the permit area.
14. Permittee shall take precautions to prevent littering or pollution on public lands, waterways, and adjoining properties. Refuse shall be carried out and deposited in approved disposal areas.

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b. Preparation of Denial Letter. For any recommendation to deny a permit application, the cultural resource specialist shall prepare a letter to the applicant, setting out in detail the reasons for denial.

9. Decision. The file, including the staff recommendation and documentation and the completed permit form or denial letter, shall be transmitted to the appropriate official for decision (see .04). Once the permit or the denial letter has been signed, that information shall be returned to the permanent file.

C. Permit Issuance or Denial.

1. Final Processing. Upon receiving the file, the responsible staff shall check the file for completeness.

2. Distribution. The responsible staff shall distribute the decision document and copies as follows:

a. Original signed permit, including standard and special conditions, or original signed letter of denial to applicant/permittee.

b. Copy to the permanent file.

c. Copy to each Field Office affected.

d. Copy to any curatorial facility identified under .12B4.

3. Additional Material to Permittees. With each original permit, include in the mailing to the permittee information about requesting fieldwork authorization, together with any procedural instructions and materials (inventory forms, etc.) that will aid the permittee in meeting conditions of the permit.

D. Information About Permits and Permittees.

1. Confidentiality. The State Director may withhold information about the location and nature of permitted work if disclosing it would compromise the protection of archaeological resources and/or National Register properties.

2. Public Information. The State Director and Field Office manager may on request provide the names of individuals and firms holding cultural resource use permits, but must not represent the information as identifying the only consultants who are qualified to conduct cultural resource studies. Land use applicants who are being required to provide inventory and evaluation data in support of their land use applications should be encouraged to select a qualified consultant and to request that the consultant apply for the appropriate permit. (See .12B5b) Permittee lists should not be used to limit competition in any way.

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E. Fieldwork Authorizations.

1. All permits require fieldwork authorizations, which may take the form of written documentation (including email or fax), a record of pre-field checks of office records, or documented oral authorizations by telephone. Project-specific permits (see .11D2 and 3) often include at issuance the only fieldwork authorization that they will require. However, if field work will be discontinuous, project-specific permits will need additional authorization prior to each episode of field work. The primary purpose of fieldwork authorizations is to determine whether areas have been previously surveyed, whether there are conflicts with other resources, or other factors (such as safety issues) that could affect timing and scope of the proposed fieldwork. For any recommendation to postpone fieldwork, the cultural resource specialist shall prepare a letter to the permittee, setting out in detail the reasons for delay and when work may begin. Fieldwork authorizations should not routinely be used to apply additional special conditions to the permit beyond what was attached at original issuance, nor should the fieldwork authorization process be used as a second level of review of proposed personnel.

2. Field Office managers are responsible for authorizing specific field work conducted under a cultural resource use permit. Field Offices shall maintain a file for each permit affecting them, documenting to the file all fieldwork authorized under the permit, and shall forward originals or copies of documentation, as appropriate, to the permanent file.

3. Written Authorization Procedures. Because fieldwork authorizations may be given as the product of in-office pre-field records checks, as telephone authorizations, as email or fax exchanges, or as more formal written documentation, the applicability of the procedural guidance in paragraphs .12E3a-d will vary from State to State, being most applicable to States that employ more formal fieldwork authorization procedures. States electing optional methods must document contacts and authorizations as part of the permit record. Permittees should also be advised to document contacts and authorizations for their own records.

a. Pre-work Contact. Except for project-specific permits that authorize work to begin immediately upon issuance, each permit shall require that the permittee contact the Field Office manager prior to beginning any work under authority of the permit. The permittee should make such contact by submitting a request for fieldwork authorization, in person or by mail, to the Field Office manager responsible for the administration of lands involved in the proposed field work (except when waived under paragraph .12E3b(1)). When proposed field work would consist of numerous instances of essentially similar tasks carried out in the same Field Office (e.g., oil and gas drill pad surveys), the Field Office manager may elect to limit pre-work contacts to initial and periodic (e.g., monthly or quarterly) submissions of fieldwork authorization requests, updated at the initiation of each new fieldwork episode by documented telephone contacts.

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b. Review. An appropriately qualified cultural resource specialist shall review proposed field work in consultation with the Field Office manager(s) with management responsibility for the location(s) specified. A cultural resource specialist who does not have appropriate professional qualifications to review the work proposed by the permittee may not be assigned to do the review.

(1) Site or Project-Specific Permits. When a permit is sufficiently specific to project location field work is proposed to begin immediately upon issuance of the permit, and the affected Field Office manager has approved the permit application, further review may be waived and a fieldwork authorization issued as part of the permit.

(2) General Authorization Permits. When permits are at a scope of generalization above the level of specific projects, so that pre-issuance review was limited or deferred, such review must be completed prior to approving a request for fieldwork authorization.

(3) Additional Permit Conditions. The cultural resource specialist in consultation with the Field Office manager may develop and recommend necessary and appropriate conditions that were not previously included in the permit. Additional conditions in fieldwork authorizations should ordinarily be limited to protecting other resources (e.g., restricting activity in specific areas during elk calving season) or ensuring public safety (e.g., alerting the permittee to extreme fire hazard and specifying necessary precautions). They may not substantially alter the scope of the permit. Simple instructions to the permittee that can be conveyed in a cover letter should not be added to the permit as conditions. Any conditions added in fieldwork authorizations have the same force and effect as conditions in the original permit. Special resource protection or safety considerations may be adequate reason to deny a request for fieldwork authorization or to delay its approval until the special circumstances have changed. Both as a courtesy and as a possible source of unconsidered alternatives, the permittee should be consulted before a decision is made to deny or delay a fieldwork authorization.

(4) Evaluation and Recommendation. Upon completing the review, the cultural resource specialist shall prepare a recommendation for approval, including any additional conditions considered necessary, or for denial. The basis for the recommendation must be adequately documented in writing.

(5) Preparation of Authorization Form. For any recommendation for approval, the cultural resource specialist shall prepare a fieldwork authorization, attaching any additional conditions recommended.

(6) Preparation of Denial Letter. For any recommendation to deny a request for fieldwork authorization, the cultural resource specialist shall prepare a letter to the permittee, setting out in detail the reasons for denial.

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c. Decision. A staff recommendation for approval or denial will be submitted to the Field Office manager for decision. Once the fieldwork authorization or denial letter has been signed, the temporary file shall be returned to the Field Office records section for further action.

d. Issuance. Upon receiving the temporary file, the Field Office records section shall distribute the decision document and copies as follows: Original signed fieldwork authorization, including additional conditions, if any, or original signed letter of denial to permittee; copy to issuing office for inclusion in the permanent file; copy to each Field Office manager affected.

.13 Notifying Indian Tribes. The State Director or Field Office managers, as appropriate, are responsible for notifying and consulting with Indian tribes when work proposed in an application for a permit might have a harmful or destructive effect on sites or areas that have tribal religious or cultural importance in accordance with ARPA and NAGPRA (see "site of religious or cultural importance" and "cultural item," Glossary of Terms). In general, only permits for major testing programs and excavation and/or removal are expected to be subject to consultation requirements (see .12B7 and .13). As defined in ARPA, the term "Indian tribe" includes Alaska Native Villages and Native Corporations defined in or established by the Alaska Native Claims Settlement Act. Except as noted below, the specific notification or consultation procedures and processes contained in BLM Manual Section 8120 and the associated Manual Handbook H-8120-1 shall be followed when dealing with Indian tribes on permitting issues. File information pertaining to the nature and location of sites or areas that are of concern to Indian tribes or groups for religious or cultural reasons, shall be protected from public disclosure to the extent allowed by statute. Sites or areas that are or coincide with archaeological resources as defined in ARPA and 43 CFR 7.3, or that are or coincide in location with a cultural property eligible for or included in the National Register of Historic Places, shall be protected from disclosure under a Freedom of Information Act request (16 U.S.C. 470w-3; 16 U.S.C. 470hh).

A. Permit Notification Requirement and Content. (See 43 CFR 7.7(a).)

1. When Notification Is Required. Upon receiving an application for an Excavation and/or Removal permit that could, if approved, result in harm to or destruction of already identified sites or areas of Indian tribal religious or cultural concern, the Field Office manager shall notify Indian tribe(s) known to have the concerns. Notification shall be by mail, return receipt requested.

2. When Notification Is Not Required. Notification shall not be required when one or more of the following conditions applies:

- a. The proposed activity will not result in surface disturbance.

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b. Diligent attempts to identify Indian tribes with aboriginal or historic ties have had a negative conclusion.

c. Information obtained pursuant to this subsection indicates that notification is not necessary under the circumstances of the proposed work.

d. Information has been withheld by the Indian tribe or group, and the Field Office manager has informed the tribe or group in writing that the absence of information will preclude notification.

e. The tribe has already been consulted about the proposed archaeological work pursuant to Section 106 of the National Historic Preservation Act, the national Programmatic Agreement, and the State's BLM-SHPO Protocol, sufficient to satisfy the requirement of 43 CFR 7.7.

3. Content of Notification. Any notification shall include, at a minimum, the following information:

a. Location and nature of proposed work.

b. Identification of anticipated harmful or destructive effects, to specific known sites or areas of religious or cultural importance, that the Field Office manager has determined might result from the proposed work.

c. Statement that any request for consultation with the Field Office manager must be received within 30 days from date of receipt of the notification (beginning as of the date of delivery shown on the return receipt).

d. Citation of ARPA Section 4(c) 43 CFR 7.7(a) as the basis for notification, and citation of NAGPRA Section 3(c) if the work involves intentional excavation of human remains and/or associated funerary objects.

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.2 Coordinating with Other Agencies and Offices.

.21 Coordination With Other Federal Agencies. For permit applications filed under the authority of ARPA that involve the jurisdictions of more than one Federal land manager, State Directors or appropriate Field Office managers are required to coordinate the review and evaluation of applications and the issuance of permits (see 43 CFR 7.8(b)).

A. Exchange Information. If needed, each State Director or Field Office manager shall seek to develop an agreement, such as a memorandum of understanding, with counterpart office heads for other Federal agencies that have permit issuance responsibility on lands proximate or contiguous to lands under the State Director's or Field Office manager's administrative jurisdiction. The agreement should provide for exchange of information pertaining to permit applications that affect lands under more than one jurisdiction. Similar agreements may also be developed with State agencies as appropriate.

B. Consistency of Requirements. State Directors or Field Office managers should notify office heads of other agencies when a permit application indicates that the other agency's lands are involved, that a permit for similar work on the other agency's lands is in force, or that a comparable application is pending in the other agency. When work would be essentially similar on the lands of more than one agency, proposed terms and conditions should be compared so that improved interagency consistency of requirements may be achieved.

C. Performance of Permittees. Information pertaining to permit reviews, warnings, suspensions, and revocations should be provided to office heads of other agencies when appropriate.

.22 Coordination Within BLM.

A. Consistency Criteria and Requirements. When an applicant is applying to more than one BLM State for a permit for the same or essentially similar work, the authorized officers should coordinate the review of applications and shall ensure, when possible, consistency of decisionmaking criteria and selection of terms and conditions.

B. Permit Issuance Lead. Two or more State Directors may agree that one will assume a lead role and issue a single permit with terms and conditions appropriate to each participating State. Fieldwork authorizations shall remain individual and specific to each affected Field Office.

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C. Interstate Effect of Suspension or Revocation. If a State Director suspends or revokes a permit for cause, documentation about the decision shall be transmitted to all other States where the permittee holds an active permit. Other BLM States administering active permits held by the permittee in question shall review the circumstances and decide whether their active permits should also be suspended or revoked. If the State Director deems it necessary, the active permit may be suspended immediately, pending completion of the review.

.23 Status of Permits and Performance. Information relating to applications, permits, and performance of permittees should be maintained in current status in an automated permit status file, which should be of a format that can be shared electronically. Other BLM States in which a permittee also holds a permit should be notified in any case of a suspension or revocation for cause (see .33).

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.3 Administering Permits

.31 Monitoring and Documenting Performance.

A. Monitoring and Review. Field Office managers shall be responsible for monitoring the permittee's performance at various intervals throughout the life of the permit. Monitoring, adequate to ensure compliance, shall be conducted when the permittee is in the field. Performance is reviewed with direct regard to conditions in the permit as well as applicable standards and guidelines. Monitoring is intended to verify the permittee's adherence to administrative conditions as well as adherence to technical and resource protection conditions. Administrative conditions include, among others, conducting the survey at the times agreed to and having the required personnel present during field work. Performance monitoring should be carried out often enough that developing problems can be recognized and brought to the permittee's attention at a time when they may still be easily corrected, without requiring a formal State Director's warning (see .33D). For any permit issued for a period greater than one year, the permittee's performance under the permit shall be reviewed at least annually. State Directors should establish the monitoring standards appropriate for their States. In addition to fieldwork monitoring, Field Office managers should verify the timely deposit of records and collections, as applicable, with approved curatorial facilities at least annually.

B. Documentation. Findings from any performance monitoring or annual review shall be entered into the permanent file and may be noted in an automated status file, as appropriate. The responsible manager should inform the permittee in writing of the results of performance monitoring, review, and verification.

.32 Modifying, Renewing, and Extending Permits.

A. Modification.

1. Initiated by Permittee. The permittee may request permit modification, in writing, at any time. The permittee must request a permit modification whenever a change in any essential condition of the permit is anticipated. Any change in an essential condition that is not accommodated by a modification shall make the permit invalid and shall be cause for suspension. Essential conditions include individuals named in the permit, type, scope, or location of work, location and facilities of permittee or curatorial facility, and any other conditions pertaining to the permittee's eligibility for the permit. A change of permit duration may not be accommodated by modification (see Renewal and Extension below).

2. Initiated by State Director. The State Director may modify a permit at any time when essential management considerations have changed but do not require that the permit be suspended or revoked. The State Director may modify a permit to remove an individual from a responsible position, such as crew chief, when monitoring has shown that the individual is incapable of performing adequately in the position, and suspension or revocation of the permit is otherwise not necessary.

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3. Written Notice. The State Director shall provide written notice of a permit modification to the permittee, in person or by mail (return receipt requested), setting out in full the reasons for the modification. Whenever possible, oral notice should precede written notice.

B. Renewal.

1. A permittee holding a permit for Survey and Recordation may request that the State Director renew it. The renewal request may be made up to 3 months prior to the expiration of the term of the permit or, provided no field work has been conducted after the permit expired, within a reasonable period of time after expiration. The permittee should submit an updated application form, showing any changes in essential conditions (see .32) since the original application. If such changes have been already been accommodated by modification, the State Director may allow the permittee to attest to this in a letter request in lieu of an application form. The State Director may renew a permit, provided that the permit is not suspended for cause and the permittee has no outstanding, significant performance problems. The State Director may modify and renew a permit at the same time.

2. A renewed permit should be given a new number so that case files do not become unwieldy, either in size or in complexity. This can be as simple a change as adding an ending-year suffix. In the event of a dispute or appeal, reviewing officials should not have to work with an excessively large case file containing years-old, superseded information. Cultural resource permit files should follow the same basic case recordation standards as serialized lands and minerals case files, for similar reasons.

C. Extension. A permittee holding a permit for Limited Testing and/or Collection or for Excavation and/or Removal may request that the State Director extend the permit. The request should be made a reasonable period of time before the permit's term expires. Because these are project-specific permits, there should not be a need for numerous extensions. The State Director may extend a permit, provided that any changes in an essential condition (see .32A) have been accommodated by modification, the permit is not suspended for cause, and the permittee has no outstanding, significant performance problems. The State Director may modify and extend a permit at the same time. An extended permit may retain the same number.

D. Decision and Documentation. Decisions on permit modification, renewal, and extension shall be based on a review process comparable to the review in .12B. Any modification, renewal, or extension shall be documented in the permanent file and noted in an automated status file.

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.33 Suspending and Revoking Permits.

A. Suspension for Cause.

1. The State Director may suspend a permit for infringements of permit conditions that are of a serious or irresponsible nature. For example, acts of commission or omission or misrepresentation warrant suspension when they are directly or indirectly detrimental to cultural or natural resources or public safety. Also, suspension is appropriate when the permittee has failed to meet a condition of the permit, such as failure to request a modification to accommodate change in an essential condition and failure to meet special resource protection conditions added as part of a fieldwork authorization or as a permit modification (initiated by the State Director). When a permittee's actions warrant suspension, prompt suspension is the appropriate BLM response; the State Director should not instead allow a problem permit to run to term and then deny a request for its renewal.

2. The State Director shall suspend a permit when the permittee has been formally charged with a violation of any prohibition in 16 U.S.C. 470ee or 43 CFR 7.4.

3. Because not all permit conditions are of equal weight, good judgment must be exercised in determining whether a permit should be suspended. Lesser performance problems that warrant an action of record should be handled by a State Director's warning (see .33D).

4. A suspended permit may be reinstated.

B. Revocation for Cause.

1. The State Director shall revoke a permit upon the permittee's conviction under 16 U.S.C. 470ee, or the assessment of a civil penalty under 16 U.S.C. 470ff and 43 CFR 7.

2. The State Director may revoke a permit upon the permittee's failure after a reasonable time to correct the situation that led to suspension for cause.

3. The State Director shall revoke a permit upon determining that information presented as fact in an application, a fieldwork authorization request, or a report was knowingly falsified.

4. A revoked permit may not be reinstated.

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C. Effects of Suspension or Revocation for Cause

1. Effect on Organization. The permittee, usually an organization rather than an individual, is the entity most clearly affected by a suspension or revocation for cause. Before considering a reinstatement request or a reapplication, the State Director will require a firm whose permit is suspended or revoked for cause to demonstrate that the cause has been corrected. The State Director may bar a firm, whose permit is revoked for cause, from consideration for a permit to work on BLM-administered lands for a period of years.

2. Effect on Individual. For supervisory personnel who committed or allowed the deficient performance that led to the organization's suspension or revocation for cause, that person will no longer be eligible to work under a cultural resource use permit in a supervisory capacity for that or any other organization. Upon demonstration that the causes for unsatisfactory performance problems have been resolved (e.g., by demonstrating additional training or experience), the State Director may consider reinstating the individual in a supervisory capacity.

D. State Director's Warning. The State Director may notify a permittee in writing when the permittee's performance under a permit is marginal and approaching cause for suspension. State Director's warnings are optional, discretionary, BLM administrative courtesies that are not procedurally required by law, regulation, or policy.

1. The State Director's warning notice should describe the problem in sufficient detail that the permittee can clearly understand the cause for the warning; should set forth what action is needed on the part of the permittee to correct the problem; and should set a time limit within which the permittee will be expected to remedy the problem.

2. The State Director's warning notice should point out that continuation of the problem without remedy is likely to result in permit suspension for cause.

3. When a performance problem is of a relatively minor nature, such as inadvertent omissions or incorrect procedures in the completion of forms or the preparation of reports, the State Director's or Field Office manager's staff should alert the permittee more informally, such as by a telephone call or other direct personal contact.

4. Written State Director's warnings become a part of the permanent permit file and could influence future permit decisions, including the outcome of disputes and appeals. Because of their gravity and their potential relationship to permit suspension, they may be issued only by the State Director.

5. Warnings below the State Director level are not authorized in the BLM cultural resource use permit system.

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E. Suspension for Management Purposes. The State Director may suspend a permit when management conditions that were not in effect at the time the permit was issued require that the permitted work be temporarily stopped. Protection of other resources, safety, or similar considerations might be cause for suspension for management purposes.

F. Revocation for Management Purposes. The State Director may revoke a permit if reasons warranting suspension for management purposes are expected to continue indefinitely.

G. Notice of Suspension. The State Director shall serve the permittee with written notice of suspension, in person or by mail (return receipt requested), setting out in full the reasons for the suspension. Suspension notices must inform the permittee clearly why the suspension has been imposed, what action the permittee must take and the time within which the permittee must act, as applicable, and potential legal consequences to the permittee if work under the suspended permit is continued.

H. Notice of Revocation. The State Director shall serve the permittee with written notice of revocation, in person or by mail (return receipt requested), setting out in full the reasons for the revocation and notifying the revokee that any continuation of work without a permit may be a violation of criminal law. Information on disputes and appeals must be included with any notice of revocation (see .34).

I. Documentation.

1. Any warning, suspension, or revocation shall be documented and entered in the permanent file. The permittee's performance record shall not be affected by suspension or revocation for management purposes, and the permittee shall be so informed. Warning, suspension, or revocation should be noted in an automated status file.

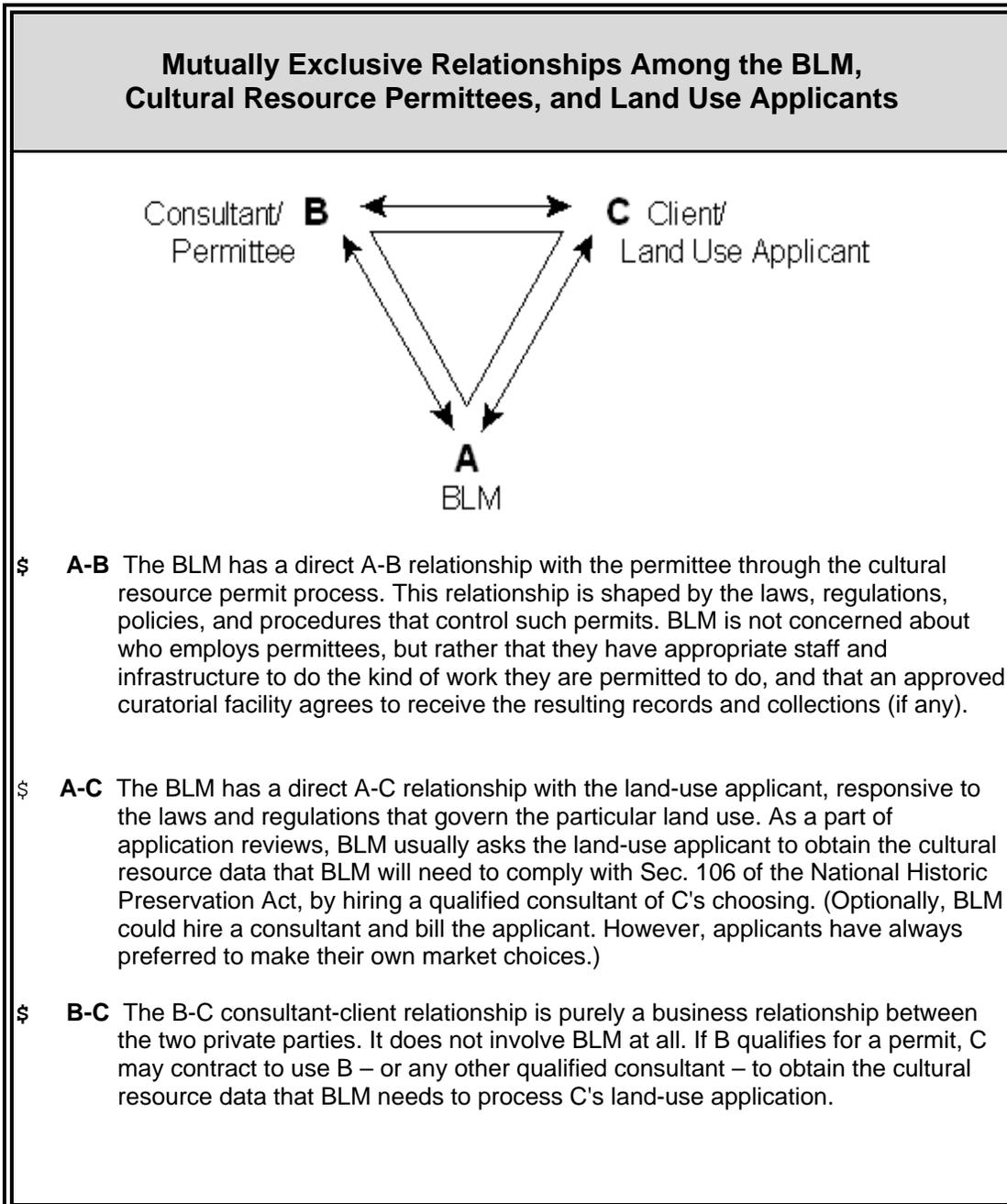
2. In the case of a State Director's warning, which does not take a permit out of operation, communication should be limited to BLM and the permittee. It is inappropriate for the State Director, or any official delegated to act in his or her stead (see .04), to send copies of warning letters and related correspondence to a permittee's client or sponsor. See Illustration 1.

3. In the case of suspension or revocation for cause, other agencies and BLM offices should be notified directly of the action. It is the permittee's or revokee's responsibility, not the BLM's, to notify any client or sponsor whose work will not be completed as scheduled.

Illustration 3
(.33I2)
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Illustration 3

Mutually Exclusive Relationships Among the BLM, Cultural Resource Permittees, and Land Use Applicants.



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.34 Responding to Disputes and Appeals.

A. Disputes. In accordance with 43 CFR 7.36(a) and (b), any applicant, permittee, or revokee ("disputant") may question the decision of the authorized officer (i.e., State Director or Field Office manager, as applicable) with respect to the denial of a permit application or a request for fieldwork authorization, the inclusion of specific terms and conditions in a permit, or the modification, suspension, or revocation of a permit.

1. Request for Review. The disputant may file a written request to the authorized officer for review of the authorized officer's decision, setting out reasons for believing that the decision should be reconsidered. The authorized officer may modify the original decision in light of information presented, or may sustain the original decision, in either case providing the disputant with written explanation.

2. Request for Conference. Either the disputant or the authorized officer may request a conference to discuss the original decision and its basis. The authorized officer may modify the original decision in light of information presented, or may sustain the original decision, in either case providing the disputant with a written explanation.

3. Review at Higher Organizational Level. The purpose of the disputes process is to resolve differences of understanding as quickly as possible and at the lowest organizational level possible. It is incumbent on the reviewing official to seek a reasonable resolution and to avoid passing a case upward. However, in some circumstances, higher level review is necessary.

a. The disputant, if unsatisfied with the outcome of a review or conference addressing the authorized officer's decision, may request, in writing to the authorized officer, that the decision be reviewed at the next higher organizational level. The disputant's written request should set out the procedural or substantive basis for thinking that the authorized officer's decision is in error. The authorized officer's decision shall stand during the course of any higher level review.

b. Decisions of a Field Office manager may be reviewed by the State Director, and those of a State Director may be reviewed by the Director. The Director may request that the Departmental Consulting Archeologist participate in the Director's review.

c. Upon receiving a request for higher level review, the authorized officer shall transmit the request and the pertinent file(s) to the reviewing official, i.e., the State Director or Director, as appropriate.

d. The reviewing official shall inform the disputant by mail (copy to the authorized officer) of the estimated time required for the review.

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e. If the reviewing official determines that the authorized officer's decision is procedurally and substantively correct and should stand unchanged, the reviewing official shall notify the disputant by mail (return receipt requested).

f. If the reviewing official determines that the authorized officer's decision is procedurally or substantively flawed, the reviewing official shall consult with the authorized officer, establish a course for correcting the decision, and notify the disputant by mail (return receipt requested).

g. Upon concluding the review, the reviewing official shall return the pertinent file(s) to the authorized officer (i.e., the State Director will return a temporary file to the Field Office manager; the Director will return any file(s) reviewed to the State Director).

h. The authorized officer shall immediately take any corrective actions determined under .34A3f.

4. Record of Review. Record of any reexamination of an authorized officer's decision shall be included in the permanent file.

B. Appeals.

1. Initiated by Disputant. In accordance with 43 CFR 7.36(c) and 43 CFR 7.11, after the dispute opportunities in .34A have been exhausted, the disputant may file a formal appeal with the Interior Board of Land Appeals by following the procedures in 43 CFR Part 4, Subpart E. When the authorized officer finds that suspension of the decision in accordance with 43 CFR 4.21(a) would cause harmful effects to cultural resources, the authorized officer shall apply to the Board for a determination that the decision being appealed, or pertinent parts of the decision, shall stand in full force and effect during the appeal period in the public interest.

2. Initiated by Other Affected Person. Any other affected person wishing to appeal a decision connected with a permit may file a formal appeal with the Interior Board of Land Appeals by following the procedures in 43 CFR Part 4, Subpart E. As necessary, the authorized officer shall apply to the Board for a determination that the decision being appealed shall stand during the appeal period.

C. Departmental Review of Professional Issues. In accordance with 43 CFR 7.36(d), any affected person may request the Departmental Consulting Archeologist's review of any professional issues involved in a BLM permitting decision, such as qualifications, research design, or other professional archaeological matters. The Departmental Consulting Archeologist's final professional recommendation will be made to the Director. The Director shall consider the recommendation, but shall retain the decisionmaking authority.

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.35 Maintaining an Automated Permit Status File. Information on applications, permit issuance, modification, extension, warning, suspension, revocation, or other actions should be entered in an automated permit status file to provide an easily retrieved summary of essential permit information within the State.

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.4 Reporting Results and Protecting Products of Permitted Cultural Resource Work

.41 Reports.

A. Preliminary Report. The permittee shall submit two copies of a preliminary report to the authorized officer within 10 days of completion of any episode of field work, setting out what was done, how it was done, by whom, specifically where, and with what results, including maps, precise and accurate locational data, an approved site form for each newly recorded cultural property, a BLM evaluation form for each cultural property examined, and the permittee's professional recommendations, as results require.

B. Interim Report. Depending on the scope, duration, and nature of the work, the authorized officer may require progress reports, during or after the fieldwork period or both.

C. Final Report. The permittee shall submit two copies of a final report to each the authorized officer and the State Director not later than 180 days after completion of field work. Where a fieldwork episode involved only minor work and/or minor findings, a final report may be submitted in place of the preliminary report.

.42 Management of Collections.

A. Responsibility of Permittee. The permittee shall deposit all artifacts, samples and collections, as applicable, and copies of all records, data, photographs, and other documents, resulting from work conducted under this permit, with the curatorial facility named in the permit, not later than 90 days after the date the final report is submitted to the State Director.

1. Catalog of Artifacts. Not later than 180 days after the final report is submitted, permittee shall provide the State Director with a catalog and evaluation of all materials deposited with the curatorial facility, including the facility's accession and/or catalog numbers.

2. Confirmation of Delivery. The permittee shall provide the State Director with a Confirmation of Museum Collections Deposition Statement (Illustration 4), signed by an authorized curatorial facility official, confirming the date of deposition, type, number and condition of the collected museum objects deposited at the facility. The curatorial facility's own collections receiving form may be substituted if it includes all of the information required in Illustration 4. Collections from each project must be listed separately.

B. Responsibility of Curatorial Facility. Any curatorial agreement between the permittee and the approved curatorial facility must specify that the facility shall manage collections and associated records as United States property in a manner consistent with 36 CFR Part 79, and that the repository will assist the permittee in reporting to the BLM State Director about collections deposited with the facility, including confirmation of receipt, a brief description of the objects received, and the facility's accession and/or catalog numbers for such collections.

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.5 Assessing the Results of Permitted Cultural Resource Work

.51 Assessing Project Results. Following a project, such as a data-recovery excavation, or a set of small but related projects, such as well-pad surveys in a particular well field, the permittee shall be instructed to prepare an assessment as part of the final report. The assessment is intended to give BLM managers a frank, after-the-fact appraisal of what the permitted use of publicly owned cultural resources has returned for the public good. The assessment should describe:

- a. What was done, where, and for what purpose.
- b. What was found, including whether and how finds add to the current body of knowledge.
- c. How the finds fit, or do not fit, land use plans and cultural resource use decisions, including future field inventory priorities.
- d. Whether and why the work was important to the public and worthy of the sponsor's financial support.
- e. What resulting changes should occur in the cultural resource knowledge base, cultural resource management plans, and cultural resource protection priorities.

.52 Assessing Cumulative Results. Where work is permitted generally instead of by individual projects, such as in survey and recordation permits, permittees shall be instructed to prepare at least an annual assessment, as described in .51a-e, due on the permit anniversary, or more frequently as the results of field work merit.

.53 Public Dissemination of Results. The State Director and Field Office manager shall use appropriate means to make the information in permittee's assessments available to the public.

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Glossary of Terms

[Note: The following terms are defined as they apply to this Manual Section. Other definitions may be found in BLM Manual Section 8100.]

- C -

cultural resource: any cultural property, including records and physical remains related to such property.

cultural resource use permit: a land use authorization that the State Director issues to a qualified applicant, pursuant to this Manual Section, for the purpose of carrying out various identification and/or data recovery operations on cultural properties that are located on lands where BLM administers the surface. Such permits are issued partly under the authority of Section 302(b) of FLPMA and the procedures in BLM Manual Section 2920, but in contrast to other "2920 permits," cultural resource use permits are nonexclusive, noncompetitive, minimum impact permits, and are not subject to Notice of Realty Action, filing fees, or cost reimbursement.

- P -

person: "any individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof" (quoted from 43 CFR 7.3(g)). Although any "person" may apply for a permit, applicants and permittees are generally firms or organizations rather than individuals (see .06B, .06C, and .12B2a).

- S -

site of religious or cultural importance: any location identified by an Indian tribe as having such importance. Note that the word "site" as used in Section 4(c) of the Archaeological Resources Protection Act has a broad, general meaning and is not synonymous with "archaeological resource," although an archaeological resource could be, or could coincide in location with, a site* of religious or cultural importance. (See BLM Handbook H-8120-1.)

* A standard rule of legal construction is that any word not defined in the statute is to be understood according to its ordinary dictionary definition. In ARPA, "archaeological resource" is the defined term of art. "Site" is not defined. If the Congress had meant for "site of religious or cultural importance" to mean "archaeological resource of religious or cultural importance," the drafters either would have used that wording or they would have defined "site" to mean the same as "archaeological resource." Since neither of those things occurred, "site" means place or location.

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Glossary of Terms

8170 - INTERPRETING CULTURAL RESOURCES FOR THE PUBLIC – (Public)

.01 Purpose. This Manual Section provides general direction for public outreach and interpretation related to cultural resources including use of volunteers, museum collections, heritage tourism, and heritage education.

.02 Objective. The objectives of the public outreach component of the cultural resource management program are to ensure that BLM Field Office managers--

A. Respond in a legally sufficient and professional manner to the statutory authorities concerning public outreach involving interpretation and education related to cultural resource values.

B. Recognize the potential public uses of cultural resources on the public lands, and manage the lands and cultural resources so that these uses and values are not diminished, but rather are maintained and enhanced.

C. Understand the essential roles that public communication and heritage education play in historic preservation.

D. Acknowledge the responsibility to communicate to the public, both local and universal, about the significance and importance of cultural resources.

E. Protect and preserve in place, and improve access where appropriate, to cultural resources on public lands for the benefit of public use by present and future generations.

F. Enhance and expand interpretation, information, and education about cultural resources through establishment of partnerships, including local communities, and use of volunteers.

G. Establish a variety of heritage education programs that promote the public stewardship of cultural resources.

H. Recognize cultural resources as assets with economic as well as intrinsic value.

I. Make appropriate use of BLM museum collections housed in public and private curatorial facilities to inspire public perceptions of diverse cultural values and foster an appreciation and understanding of our Nation's rich heritage.

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.03 Authority

A. National Historic Preservation Act of 1966 (P.L. 89-665; 80 Stat. 915; 16 U.S.C. 470), as amended, states that it is “the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to ... administer federally owned ... prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations.” It further provides that “The Secretary shall ... develop and implement a comprehensive preservation education and training program,” including increased training opportunities for students.

B. Archaeological Resources Protection Act of 1979 (P.L. 96-95; 93 Stat. 721; 16 U.S.C. 470aa et seq.) as amended (P.L. 100-555; P.L. 100-588) provides that, “Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and ... the need to protect such resources.”

C. Executive Order 13287: Preserve America (March 3, 2003) provides that, “When carrying out its mission, each agency . . . shall seek partnerships with State and local governments, Indian tribes, and the private sector to promote local economic development and vitality through the use of historic properties in a manner that contributes to the long-term preservation and productive use of those properties.”

.04 Responsibility (See BLM Manual Section 8100.04)

.05 References (See BLM Manual Section 8100.05)

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.06 Policy. The BLM's Field Office managers, with the assistance and advice of professionally qualified cultural resource staff, shall--

A. Treat cultural resources as fragile, irreplaceable resources with potential public and scientific uses, representing an important and integral part of our Nation's heritage.

B. Ensure a high quality public visitor experience and enjoyment of cultural resources on the public lands through interpretation programs that are factually accurate, interesting, and appealing.

C. Foster private-public initiatives and investment in the use, reuse, and rehabilitation of cultural resources.

D. Promote community economic development through State and local governments, Indian tribes and private sector partnerships in heritage tourism.

E. Foster an awareness among students and adults of the fragility and importance of cultural resources through heritage education programs.

F. Involve representatives of the local communities and Indian tribes in the formulation of the basic interpretive approach at a site, particularly when the interpretive presentation involves a description of a living local community or Indian tribe and/or its archaeological, historical, cultural, artistic, and ethnic heritage.

G. Develop sustainable and durable heritage tourism opportunities that minimize the negative effects of tourism and, at the same time, maximize the benefits for local communities, States, Indian tribes, and “gateway” communities.

H. Incorporate site-appropriate design principles, for such things as preservation projects, kiosks, walking paths, and information signs, that are sensitive to the character of the site and its surrounding, and that do not endanger the site's long-term preservation.

I. Ensure that BLM cultural specialists, as well as outside scholars and permittees, working on public lands fulfill their responsibility to communicate the significance and meaning of cultural resources to the general public.

J. Maximize efforts to integrate the National Historic Preservation Act and Executive Order 13287 into their program activities.

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

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.1 Public Interpretation and Education.

.11 Program Relationships.

A. Adventures in the Past. Adventures in the Past is the BLM's "umbrella" program for promoting public education and awareness, and for encouraging public participation in the protection of its cultural resources. Adventures in the Past has as its goals increasing public appreciation and knowledge of cultural resources, promoting public stewardship of cultural resources, and reducing the threat to these resources. These goals have their basis in law and Executive Order. (See BLM Manual Section 8100.03.)

B. National Programmatic Agreement. A major purpose of the BLM's national Programmatic Agreement (see BLM Manual Section 8100, Appendix 13) is to create efficiencies in the Section 106 process and to enable the BLM's cultural resource staff and the SHPO's staff to devote a larger percentage of their time and energy to proactive work, including creative public education and interpretation.

C. Heritage Education. BLM's Heritage Education Program includes two primary elements, Project Archaeology and History Mysteries, as well as occasional outreach pieces targeted toward other audiences. Project Archaeology is a collaborative effort between BLM and The Watercourse, an educational non-profit group located at Montana State University. Aimed at teachers and youth leaders, Project Archaeology emphasizes stewardship of cultural resources. Tied to educational standards, it supports the existing elementary and secondary school curriculum by using examples from archaeology and history to facilitate the teaching of history, social studies, science, math, art, and higher order thinking skills, such as problem solving, synthesis, and evaluation. Project Archaeology is delivered through local teacher workshops; local information is provided by the state student handbook series, *Discovering Archaeology*. State and regional partners organize Project Archaeology locally and provide newsletters, and additional learning and teaching opportunities.

History Mysteries seek to stimulate in young people an interest in and appreciation of stories associated with public lands and to foster their commitment to good stewardship of public lands in the United States by exploring unsolved mysteries and lingering questions of broader historical significance regarding the development of the American West. Components include a newspaper, educational trading cards, and a related web page for children and teachers. Other elements of the Heritage Education Program include a series of articles published in the magazine of the National Science Teachers Association, which often draw on Adventures themes; and the BLM cultural web page. Additionally, occasional brochures focusing on a topic, like the effect of fire on cultural resources, are targeted toward adult audiences.

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D. Recreation Management. The cultural resource management program and the recreation management program often share in designing and operating interpretive sites. See BLM Manual Section 8100.08A2.

E. Relationship to Use Allocation. Field Office managers are expected to allocate all cultural properties in a plan area to one or more use categories, including scientific use, conservation for future use, traditional use, public use, and experimental use (see BLM Manual Section 8110.4). In an important sense these use categories are public-benefit categories. Cultural resources are expected to be utilized in ways that reflect the use(s) to which they were assigned during the planning process. Thus, if a cultural property has been allocated to scientific use, it is reasonable to assume that public benefit is realized when this property is scientifically investigated. Similarly, if a property is identified as having interpretive (public use) potential, it can be assumed that an important public benefit is being realized when the property is made accessible and its place in time, culture, and the ecosystem is explained.

.12 Kinds of Benefits.

A. Direct, Indirect, and Multiple Benefits. Benefits from the use of cultural resources may derive directly from the actual places on the public lands, and also indirectly from the information--documents, records, and museum collections--that results when these places are recorded or scientifically investigated. In developing public awareness and outreach efforts, Field Offices should consider giving priority to those that achieve the broadest array of public benefits. In some instances, however, attaining a single public benefit, such as traditional use by a specific sociocultural group, may outweigh projects with multiple benefits.

B. Public Benefit Categories.

1. Information Benefits. Information benefits include the increase in knowledge about past and contemporary cultures as a result of formal archaeological, anthropological, or historical study. Such knowledge may relate to the adaptation and adjustment of cultures to their environments, cultural evolution, the development of political or religious belief systems, the evolution and functioning of complex systems, or other research topics validated by current research paradigms within the fields of archaeology, anthropology, and history. This is the broadest category of public benefits derived from the systematic study of cultural resources. With interpretation, the knowledge gained is often of equal academic and lay interest.

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2. Applied Benefits. Knowledge derived from the study of cultural resources can have application to contemporary issues. For example, the study of past settlements may provide information useful for making decisions about vegetative treatments, zoning policies, the siting of developments, or appropriate land uses. Paleoenvironmental data may provide clues on the role of prehistoric and historic peoples in environmental change, informing contemporary discussions on the subject. Analyses of archaeological data may also yield management benefits. For example, pollen studies may reveal the mix of forbs, trees, and shrubs in a past environment that a Field Office wants to restore for a specific region. Similarly, faunal remains from archaeological sites may indicate suitable habitat for endangered species or former distribution of such species, information useful for reintroducing plants or animals into their former habitats.

3. Sociocultural Benefits. Sociocultural benefits may accrue to the general public and to specific cultural groups as a result of studying or interpreting cultural resources representative of the groups' culture and history. Benefits may include improved recognition of the richness and complexity of a minority group's culture and history, an increase in intercultural tolerance, greater appreciation for multicultural perspectives, and increased economic opportunities. For example, interpreting cultural resources related to a group's ancestral or historical roots may foster acknowledgment in the society at large of the group's contributions to the regional culture, and enhance the group's sense of well-being.

4. Economic Benefits. Economic benefits are the tangible fiscal or economic gains enjoyed by communities as a result of cultural resources, primarily as a result of heritage tourism. Heritage tourism represents a very significant segment of State and local economies in the West, and its significance is expected to grow in the years ahead, according to marketing studies conducted by the tourism industry. Revival of Native American artistic traditions inspired by prehistoric archaeological motifs on prehistoric pottery or rock art, translated into an invigorated market for Native American art and craft items, is another example of an economic benefit and an improved standard of living.

5. Recreational and Inspirational Benefits. Outdoor enthusiasts such as horseback riders, mountain bikers, hikers, and photographers use cultural resources as a focus for their personal recreation. For many of these recreationists, the benefits they derive are an increased sense of place and an increased connectedness to, and appreciation for, their historical roots. Others gain inspiration through museum exhibits and heritage presentations. As with any recreation and tourism attraction there are associated economic benefits.

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6. Educational Benefits. Heritage education benefits people of all ages through their increased knowledge about cultures past and present and special heritage places on public lands. Increasingly, cultural resource materials are being used to improve student reading, writing, mathematics, reasoning, and higher order thinking skills through the development of lesson plans, hands-on activities and multi-media products. Project Archaeology and History Mysteries are a major commitment by the BLM to improve the education of America's youth while exposing them to a conservation message regarding cultural resources. These programs demonstrate that the Nation's educational system can benefit by utilizing the material culture, scientific resources, and environmental data associated with archaeological sites. Local offices and visitor centers provide educational programming and loan kits for the benefit of people of all ages. Heritage education programs serve to inspire and stimulate the public across a broad spectrum of subject areas while improving knowledge and respect for other cultures.

7. Intra- and Intergovernmental Benefits. Improvements in relations with other units of the Federal Government, with State and local governments, with Indian tribal governments, and internationally can result from shared programs of cultural resource study, conservation, and interpretation. Local benefits also accrue through good public relations or economic benefits resulting from effective public outreach projects with local user groups, museums, Indian tribes, or other interested parties.

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Glossary of Terms

-C-

cultural tourism or heritage tourism: means the business and practice of attracting and accommodating visitors to a place or area based especially on the unique or special aspects of that locale's history, landscape (including trail systems), and culture.

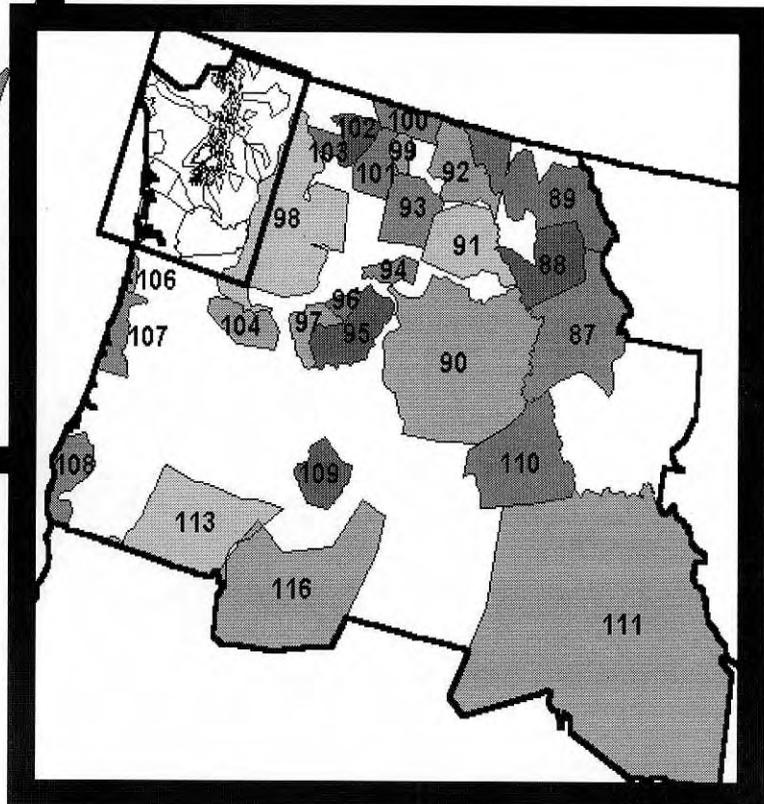
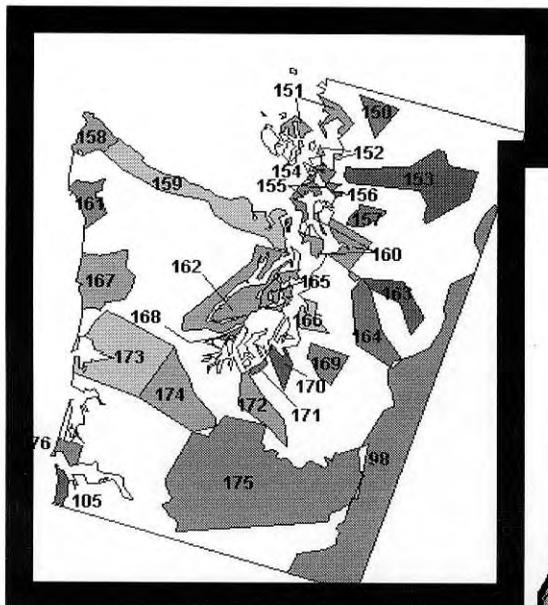
-H-

heritage education: is the formal and informal method and theory about presenting the cultural heritage, particularly the physical past, to the public in order to enhance people's understanding of the past. Specifically, for BLM, it involves formal programs and presentations about the broad context of cultural heritage associated with public lands.

-P-

public interpretation: is the arrangement of information about a particular archaeological or historic site into a meaningful sequence, narrative, or presentation. Public interpretation should strive to contextualize the significance of the site for the visitor, not merely provide disconnected statistics, dates, or technical terms. Its communication medium can range from a text panel, to live guides, to a virtual reality application, although in every case it provides information about the site that would be unavailable through visual inspection alone.

Guidelines for Conducting Tribal Consultation



BLM Manual Handbook

H-8120-1



U.S. Department of the Interior
Bureau of Land Management

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CHAPTER I. Introduction

A. Purpose and Goal of this Handbook. This Handbook replaces H-8160-1 (Rel.8-65; 11/3/94), "General Procedural Guidance for Native American Consultation." Compared to the replaced edition, this Handbook narrows the span of coverage to focus mainly on the "cultural resource" laws, executive orders, and regulations. It also covers new authorities and policies, as does the new Manual Section 8120, "Tribal Consultation under Cultural Resource Authorities." As before, the Handbook's overall purpose is to assist BLM managers and staff members in carrying out their assigned tribal consultation responsibilities and roles. Its goal is to help assure (1) that federally recognized tribal governments and Native American individuals, whose traditional uses of public land might be affected by a proposed BLM action, will have sufficient opportunity to contribute to the decision, and (2) that the decision maker will give tribal concerns proper consideration. The difference is that the new Manual Section and Handbook, unlike the earlier versions, do not endeavor to cover all aspects of BLM-tribal relations under the full range of legal authorities.

B. This Handbook's Place in the BLM Manual System.

1. 8120 Manual: The 8120 Manual consists of Manual Section 8120 ("Tribal Consultation Under Cultural Resource Authorities") and this Handbook, H-8120-1. As a component of the 8100 "cultural resource management" Manual series, the 8120 Manual is primarily aimed toward implementing the tribal coordination and consultation responsibilities that stem from historic-preservation, archaeological resource-protection, and related cultural resource authorities.

2. 1600- and 1700-Series Manuals: As representatives of the United States Government, BLM's line managers maintain ongoing relations with their tribal counterparts and assure adequate and timely tribal involvement in BLM decisions. These are executive rather than technical-program duties. Accordingly, the subject of tribal relations should appropriately be covered in the BLM's broad administrative Manual series, particularly in the Manual Sections and Handbooks dealing with the planning and environmental assessment phases of decision making. Until tribal consultation sections are incorporated in those Manual series, managers and their supporting staffs may use this Handbook for general guidance.

H-8120-1 - GUIDELINES FOR CONDUCTING TRIBAL CONSULTATION – (Public)

C. What is Consultation?**Consultation has 4 essential elements:**

<ul style="list-style-type: none"> • Identifying appropriate tribal governing bodies and individuals from whom to seek input.
<ul style="list-style-type: none"> • Conferring with appropriate tribal officials and/or individuals and asking for their views regarding land use proposals or other pending BLM actions that might affect traditional tribal activities, practices, or beliefs relating to particular locations on public lands.
<ul style="list-style-type: none"> • Treating tribal information as a necessary factor in defining the range of acceptable public-land management options.
<ul style="list-style-type: none"> • Creating and maintaining a permanent record to show how tribal information was obtained and used in the BLM's decisionmaking process.

Who is a tribe? This Handbook frequently uses the terms "Indian tribe" and "tribe" without expanding on the meaning. Either term can be understood to mean a federally recognized tribal government, whether in the Lower 48 or Alaska, whether the people would call themselves American Indians or Alaska Natives. Recognized tribes are self-governing entities that enjoy a government-to-government relationship with the United States. For further definition, see Manual Section 8120.08 and glossary. For the definitive list, see BIA's more or less annual FEDERAL REGISTER listing and occasional FEDERAL REGISTER updates. (Note: At this writing the BIA Web site is closed. When it returns to the Web, it should again publish an up-to-date, Web-accessible list. Meanwhile, several non-BIA Web sites have similar lists that can be used for general information but should not be considered authoritative.)

The U.S. Government's representative. Just as it is important to determine who is empowered to speak for the tribe and to ensure that the BLM is consulting with the appropriate individuals, the BLM owes the tribes the same courtesy. Except when discussions are at the preliminary staff-to-staff stage, the BLM's representative must be authorized to speak for the BLM and must be adequately knowledgeable about the matter at hand. Generally speaking, this will be the appropriate line manager.

CHAPTER II. Consulting under Cultural Resource Authorities

"**Cultural resource authorities**" means the laws and executive orders listed and described in Manual Section 8120.03. Some of these are implemented by regulations listed in Manual Section 8120.05. This chapter characterizes the authorities that most often require cultural resource specialists to consult with tribes. The next chapter, Chapter III, characterizes *general* authorities – *not* cultural resource authorities – two of which (Federal Land Policy and Management Act and National Environmental Policy Act) often provide the procedural and scheduling framework for cultural resource-related consultation.

A. National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to identify and consider potential effects that their undertakings might have on significant historic properties. Specific provisions to consult with Indian tribes during Section 106 compliance were added to the Act through amendments in 1992 (See Manual Section 8100 Appendix 5, Section 101(d)(6)).

Section 101(d)(6) of the National Historic Preservation Act–
<ul style="list-style-type: none"> • Specifies that the traditional or historical importance an Indian tribe attaches to a particular place may make the place eligible* for the National Register of Historic Places (i.e., an "historic property" that is significant for purposes of the Act); and • Directs agencies carrying out Section 106 compliance to consult with any Indian tribe whose tradition or history may contribute to the National Register eligibility* of a potentially affected property.
<hr style="width: 20%; margin-left: 0;"/> <p>* National Register eligibility is determined by evaluating a candidate property's characteristics against the National Register criteria in 36 CFR 60.4. See BLM Manual Section 8110. No property type enjoys categorical eligibility.</p>

FIG. 1. Provisions of Section 101(d)(6) of the National Historic Preservation Act.

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BLM-specific Section 106 compliance procedures. The BLM Director, the Chairman of the Advisory Council on Historic Preservation (Council), and the President of the National Conference of State Historic Preservation Officers approved a national Programmatic Agreement (PA) in 1997 (see Manual Section 8100, Appendix 13, or Manual Section 8140, Appendix 1). The PA authorizes BLM to comply with Section 106 by following its own cultural resource program policies and procedures as found in the BLM 8100-Series Manual Sections and Manual Handbooks. As part of implementing the PA, individual BLM State Directors and SHPOs have executed State-specific protocols that guide how they interact, exchange information, and complement one another's capabilities. The principles of the national PA and BLM-SHPO protocols, and the procedural details in the BLM Manuals and Handbooks replace the Council's regulations (36 CFR Part 800) and associated Council guidance for routine compliance activities. For more complex cases, the Council and SHPO may be asked to assist. (In Eastern States, where BLM holdings are few, no protocols are in effect and compliance follows the provisions of 36 CFR Part 800.)

CONSULTATION FOR SECTION 106 PURPOSES	
BLM consults with–	Purpose of consultation is–
Tribal representative(s) whom the tribal government has designated for this purpose	<ul style="list-style-type: none"> ● To identify tribally significant religious or cultural properties that may be eligible for the National Register of Historic Places
	<ul style="list-style-type: none"> ● To understand tribal concerns sufficiently to take into account the effects that a proposed Federal undertaking might have on eligible properties

FIG. 2. Tribal consultation for purposes of Section 106 of the National Historic Preservation Act.

Traditional Cultural Properties and Eligibility. Eligibility for the National Register of Historic Places is a professional determination based on application of the National Register criteria (36 CFR 60.4). Only those places that fulfill one or more of the National Register criteria may be found eligible. No type of property is automatically, categorically eligible, including traditional cultural properties. All candidate National Register-eligible properties must be evaluated against the criteria. Those that do not meet the eligibility standard are not subject to compliance with Section 106 of the National Historic Preservation Act. This does not mean that they are without protection, only that the NHPA is not the correct legal tool for protecting them.

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Planning. The best time to foresee and forestall potential conflicts between BLM-authorized land uses and tribally significant historic properties is during land use planning and its associated environmental impact review. Planning and environmental review procedures are good ways to elicit information from tribes concerning "traditional cultural properties" (TCPs) and other places with "traditional or historic importance" pursuant to NHPA Sec. 101(d)(6). (See Ch. III.)

Tribal preservation concerns should be identified in spatial and programmatic terms, to address in general the locales and the types of land use activities that would and would not be of further tribal concern. Obtaining sufficient information at this early stage should serve to reduce later project-level consultation. Agreements on criteria and procedures for consulting with tribes about individual land use actions may be discussed at this time.

"Indian tribe" is specified in the Act. Section 101(d)(1) states the purpose "to assist Indian tribes in preserving their particular historic properties." Section 101(d)(6) directs agencies to weigh National Register eligibility for properties important to an Indian tribe, and to consult with the Indian tribe over properties found eligible.

"(A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.
 "(B) In carrying out its responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A)."
 National Historic Preservation Act Sec. 101(d)(6)

The Act is silent on consultation with non-recognized Indian groups and non-recognized Alaska Native entities regarding properties of religious and cultural importance and Section 106.

Consolidating consultation efforts. Under Sec. 101(d)(6)(B) and Sec. 110(E)(ii), tribal consultation may be called for when data recovery is being considered to mitigate adverse effects on a property's scientific importance, if the property also has ascribed religious and cultural significance. Where appropriate, such consultation opportunities may be used to meet the separate consultation requirements of 43 CFR 7.7 and Sec. 3(c) of NAGPRA (see II.B. and C.), as well as those of Sec. 101 and Sec. 110 of NHPA.

However, care must be taken to keep the several Acts' distinct legal purposes separate, so that they do not become blended and confused in the various participants' minds. Losing focus on individual laws' requirements, participants specified, and reasons for obtaining the Native American input can result in omissions, mistakes, inappropriate expectations on the Native Americans' part, and inadvertent noncompliance on the BLM's part.

B. Archaeological Resources Protection Act.

The Archaeological Resources Protection Act (ARPA), Sec. 4(c), requires the responsible Federal land manager to notify the appropriate Indian tribe before approving a Cultural Resource Use Permit (see Manual Section 8150) for the excavation or collection of archaeological resources (see 43 CFR 7.3), *if the Federal land manager* determines that a location with cultural or religious importance to the tribe may be harmed or destroyed by the permitted activity.

<p>Sec. 4 of the Archaeological Resources Protection Act (ARPA)–</p>
<ul style="list-style-type: none"> • Requires the Federal land manager, before issuing a permit to excavate or remove archaeological resources from public land, to notify* the affected Indian tribe when a location having cultural or religious importance to the tribe may be harmed or destroyed by the permitted activity. • Requires Federal land managers to include in the permit any terms and conditions deemed necessary to carry out the purposes of the Act. Sec. 10 links ARPA's implementation and the purposes of the American Indian Religious Freedom Act.
<p>* Uniform regulations at 43 CFR 7.7 recognize that notification logically leads to consultation if the tribe so requests, and require that any terms and conditions agreed to through consultation will be included in the permit.</p>

FIG. 3. Provisions of Section 4 of the Archaeological Resources Protection Act.

Section 4(c). The exact wording of Section 4(c) of ARPA is as follows (emphasis added):

<p>"If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of Section 9." (16 U.S.C. 470cc(c))</p>

The statutory term *site* in the phrase "religious or cultural site" should not be expected to mean the same as the word "site" in the discipline of archaeology, and should instead be understood to refer to a *place* or a *location*, whether archaeological in nature or not. The ARPA regulations provide, for example, that a "Federal land manager may enter into agreement with any Indian tribe . . . for determining *locations* for which such tribe . . . wishes to receive notice under this section" (43 CFR 7.7(b)(3), emphasis added).

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A site "having religious or cultural importance" is probably at least as likely to occur in the absence of archaeological resources as in their presence. If the Federal land manager were to notify tribes only with respect to archaeological resources, a location's religious or cultural importance could go unheeded, and inadvertent harm or destruction could occur.

"Having religious or cultural importance" is an American Indian Religious Freedom Act (AIRFA) concept, not an archaeological resource one. The phrase came into the 1979 ARPA bill after a hearing where testimony was given by advocates for Indian religious freedom and traditional religious practitioners, shortly after the American Indian Religious Freedom Act of 1978 became law. The language in Section 10(a) of ARPA, requiring the rule makers to consider AIRFA when drafting uniform implementing regulations, was included in the ARPA bill at the same time. It reads, "Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat.469; 42 U.S.C. 1996)." The purpose of AIRFA is to ensure access to religious sites and freedom to worship through ceremonials and traditional rites, unhindered by Federal infringement, restriction, or intrusion. (See III.C.)

Therefore, when implementing Section 4(c), the focus of notification and consultation should not be just the archaeological resources that are the subject of a permit application. Rather, we should be considering the **location, nature, scale, and timing of permitted activities** that would occur under the permit – e.g., presence of work crews; surface disturbance – relative to places on the landscape that members of an Indian tribe are known, through consultation, to regard as important for their traditional cultural and religious observances.

Would permitted activities in the area, at the time proposed, hinder or intrude on legally (AIRFA) protected religious use? If the Federal land manager is confident, based on previous consultation, that permitted activities would not hinder such use, there would be no reason to notify an Indian tribe before processing an ARPA permit application.

Would permitted activities in a specific place, including an archaeological site, raise cultural concerns? For example, a ruin that an applicant has selected for excavation might be recognized in cultural tradition as a venerable ancestral home; or an archaeological site might contain features that are always considered important for cultural or religious reasons. Those kinds of concerns should influence the BLM decision about issuing a permit for excavating and/or removing archaeological resources.

Also, a tribe might have concerns about the potential for disturbing human remains and funerary objects. This would be subject to consultation under NAGPRA (see II.C.).

Consultation for ARPA 4(c) purposes	
BLM consults with–	Purpose of consultation is–
<p>Tribal representative(s) whom the tribal government has designated for this purpose</p>	<ul style="list-style-type: none"> ● To consider tribal religious or cultural locations on public lands, which archaeological activities, if permitted, could harm or destroy ● To consider protective terms and conditions that could be put into a permit to protect tribal religious or cultural locations from harm or destruction

FIG. 4. Tribal consultation for purposes of Section 4(c) of the Archaeological Resources Protection Act.

Notifying tribes of potential harm or destruction. The Federal land manager determines, based on information obtained from Indian tribes, whether proposed archaeological activities on public lands (such as specific instances of testing or excavation) could **harm or destroy places** of tribal religious or cultural importance, such as places where members of a tribe conduct cultural activities and religious observances. Because of their nature, scale, or timing, most archaeological proposals have little potential to permanently harm or destroy such places and will not warrant notification.

Non-tribal groups may be notified. The uniform regulations implementing ARPA provide that the Federal land manager may also give notice to any other Native American group known to consider potentially affected locations as being of religious or cultural importance (43 CFR 7.7(a)(2)). Input from non-tribal groups is in the nature of public participation, not government-to-government consultation.

Document unsuccessful efforts. If all efforts to notify and consult with the appropriate Indian tribe(s) prove unsuccessful, the permit application may be processed without further delay. In all cases, documentation of efforts to notify and consult must be included in the permit file. This documentation will serve as evidence of notification and consultation efforts in accord with 43 CFR 7.7.

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Consultation procedures. If the tribe's response to the notification is a request for further information or consultation, then consultation should be expeditiously undertaken consistent with the procedural requirements and timeframes contained in 43 CFR 7.7(a)(3), Manual Section 8150, and Chapter IV of this Handbook.

When permit-related consultation will be taking place, it should be appropriate in most cases to use that opportunity to consult prospectively with regard to NAGPRA (see II.C.), to develop procedures to be followed in case human remains and cultural items are discovered.

Decision and documentation. Following consultation, the Federal land manager determines the nature, location, and timing of the field excavation and analysis methods that will be authorized in a permit. When decisions about field work and laboratory analyses do not conform with the requests of Indian tribes, the manager should always document the reasons in the permit file and notify the tribes of the outcome and its basis.

C. Native American Graves Protection and Repatriation Act.

BLM managers are required to consult with tribes under the Native American Graves Protection and Repatriation Act (NAGPRA) to determine affiliation and disposition of the specific kinds of "cultural items" defined in the Act: Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

Sec. 3(c) and (d) of the Native American Graves Protection and Repatriation Act (NAGPRA)–
<ul style="list-style-type: none">• Require the responsible Federal agency to consult with the affected Indian tribe before issuing a permit to excavate or remove Indian human remains and associated funerary objects from public land.• Require the responsible Federal agency to safeguard Indian human remains and/or funerary objects discovered during an authorized land use, and to halt the land use for as much as 30 days. *
<hr/> <p>* Regulations at 43 CFR 10.4(d)(iv) and .5(b) direct the responsible Federal agency official to consult according to procedures set out in the regulations.</p>

FIG. 5. Provisions of Section 3(c) and (d) of the Native American Graves Protection and Repatriation Act.

1. Intentional removal of human remains and/or funerary objects. A Cultural Resource Use Permit (see Manual Section 8150) or equivalent documentation is required before human remains and artifacts covered by NAGPRA may be intentionally excavated or removed from Federal lands (see section B). The responsible manager must consult with appropriate Indian tribes or individuals prior to authorizing the intentional removal of Native American human remains and funerary objects found with them. This consultation should follow procedures in 43 CFR 10.3, Appendix 1 of this Manual Handbook, and Manual Section 8150. Documentation to show that required consultation has occurred must be included in the decision record, including the responsible manager's choice of field excavation and analysis methods. The Native Americans consulted are notified of the outcome and basis for the recovery plan.

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2. Human remains and/or funerary objects discovered during land use. The BLM's policy is to leave burial sites and their contents undisturbed whenever possible.

When human remains and/or funerary objects subject to NAGPRA, are discovered as a result of a BLM or BLM-authorized activity, such as construction or other land-disturbing actions, they are to be handled in the manner described in the "inadvertent discovery" procedures found at 43 CFR 10.4 and the general procedures of this Manual Section, and the procedures for applicable State laws. Managers should coordinate these and other responsibilities for "inadvertent discovery" under NAGPRA with those under the NHPA, as described in Manual Section 8140.28.

"Inadvertent discovery" procedures in 43 CFR 10 include ceasing activity in the area of the discovery and protecting the NAGPRA materials. The Field Office is required to identify and consult with any lineal descendant or culturally related tribe (or, if no descendant or culturally related tribe is identified, with a tribe for whom the area of the discovery falls within boundaries of their aboriginal land, as determined by a final judgment of the Indian Claims Commission or the U.S. Court of Claims). Consultation should focus on the BLM's plan of action and final disposition of the discovered materials, and must be documented.

If the materials are to be excavated and removed from the public lands, pursuant to the provisions of Section 3(c) of the Act, the Field Office manager follows the provisions in Chapter II.C.1, including publication of a newspaper notice pursuant to 43 CFR 10.6, identifying the tribe that has been determined to be affiliated and to whom ownership of the materials would accrue following their removal. If, in consultation with the descendants or tribes, the Field Office manager determines that excavation and removal from the public lands is not required, the materials remain in the Federal Government's ownership and control.

Where there is a reasonable probability of encountering undetected human remains and associated funerary objects during a proposed land use, discussions with tribes before the project is authorized can provide the manager with general guidance on treatment of any cultural items that might be exposed. During discussions, the manager should explore the possibility of developing agreements on how to respond in advance, to save time and avoid confusion.

3. Reburial of NAGPRA items on public lands is not authorized. Due to the substantial and extensive legal, logistical, and practical problems that would ensue if human remains and other "cultural items" repatriated or transferred to lineal descendants or tribes were to be reburied on public land, the Bureau's policy is:

The BLM's managers shall not directly or indirectly authorize or permit the reburial of repatriated, removed, or transferred human remains and/or other NAGPRA materials, on public lands.

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This policy does not apply to NAGPRA materials that have not been removed from the immediate vicinity of their original location following an inadvertent discovery. It also does not apply to portions of burials that were mistakenly removed in the interests of State health and safety laws (e.g., a hiker takes a skull found eroded from a stream bank to the coroner), or that were taken illegally and have been recovered through law enforcement investigations. In these cases, if the original burial location is known and the location is stable and not currently subject to conflicting uses, and if the affiliated tribe has been consulted and has entered into written agreement, the missing portion of the burial may be reunited with the in situ remainder. The BLM must make it clear to all parties that such restoration of a missing portion of an in situ burial does not affect the Federal Government's ownership or control of the restored burial, nor does it diminish the Bureau's ability to protect the restored burial under Federal law.

Consultation for NAGPRA purposes	
BLM consults with–	Purpose of consultation is–
<p>Lineal descendants, if known, or tribal representative(s) whom the tribal government has designated for this purpose</p>	<ul style="list-style-type: none"> ● To agree in advance how to treat potential NAGPRA issues such as identifying "cultural items" and determining their appropriate treatment and disposition. ● To agree after the fact how to identify inadvertently exposed "cultural items" and to assure that they receive appropriate treatment and disposition.

FIG. 6. Tribal consultation for purposes of Section 3(c) and (d) of the Native American Graves Protection and Repatriation Act.

CHAPTER III. Consulting under General Authorities



"**General authorities**, for purposes of this Handbook, means laws, executive orders, and regulations that are not considered "cultural resource authorities" like those discussed in the preceding chapter. The Federal Land Policy and Management Act (FLPMA) guides all BLM programs, and the National Environmental Policy Act (NEPA) pertains to the entire human environment. The planning and environmental review systems supporting FLPMA and NEPA often provide the procedural and scheduling framework for cultural resource-related consultation. Finally, the American Indian Religious Freedom Act (AIRFA) and the Indian Sacred Sites order (Executive Order 13007) sound as if they might be cultural resource authorities, but they are much more fundame than that, pertaining to the free exercise clause of the First Amendment.

A. Federal Land Policy and Management Act.

The BLM's land use planning process under FLPMA has opportunities for tribes to identify places associated with traditional values, traditional cultural properties, and sacred sites prior to a specific action or proposed land use. The land use planning process is the primary mechanism for complying with the American Indian Religious Freedom Act (AIRFA) and Executive Order 13007. Tribal concerns with regard to places of traditional cultural or religious importance are most effectively identified and accommodated over the extended period of time afforded by the land use planning process and associated environmental review.

Federal Land Policy and Management Act, Title II–
<ul style="list-style-type: none"> • Directs the preparation and continuing maintenance of an inventory of the public lands, their resources, and other values, open to participation of the public and other governments. • Directs that land use plans be developed, maintained, and revised (as needed), open to participation of the public and other governments and in coordination with the policies of approved tribal land resource management programs. • Provides through planning a means to anticipate conflicts between proposed land uses and tribal issues and concerns, to reduce the number and severity of use conflicts at the implementation stage. • Provides for continuing coordination with Indian tribes regarding the consistency of land use plans, guidelines, and rules and regulations on public land and tribal land.

FIG. 7. Provisions of Title II of the Federal Land Policy and Management Act.

In developing Resource Management Plans (RMP) and plan amendments, BLM managers are required to involve others, including Indian tribes, at five specific points: (1) identification of issues; (2) review of proposed planning criteria; (3) review of the draft Resource Management Plan and Environmental Impact Statement (RMP/EIS); (4) review of the final RMP/EIS; and (5) notice of any changes as a result of protests.

Broad information, regarding the general nature of traditional values and the general location of culturally significant traditional places, should be elicited in early planning stages. Going into consultation with knowledge about a group's historic relationship with the land and resources should enable managers to direct their questions in a sensitive and effective way.

Although consultation at the land use planning level should seek as much information as tribes are willing to share with BLM, tribes often withhold specific information unless or until there is a direct threat to traditional values and culturally significant places. Before making project-specific decisions, managers may need to provide additional opportunities for Native Americans to identify their specific concerns at the land use action level.

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Consultation for FLPMA purposes	
BLM consults with–	Purpose of consultation is–
<p>Tribal representative(s) whom the tribal government has designated for this purpose</p>	<ul style="list-style-type: none"> ● To request tribal assistance in identifying and inventorying public land places, resources, uses, and values that are important to the tribe and/or tribal members and should be considered in land use plans ● To coordinate BLM and tribal land use policies and programs, and to seek consistency between land use plans, guidelines, and rules and regulations affecting public land and tribal land

FIG. 8. Tribal consultation for purposes of Title II of the Federal Land Policy and Management Act.

The BLM is obligated in Sec. 202(c)(9) to coordinate all aspects of planning with Indian tribes, to ensure consistency between BLM's and the tribes' land use plans, to the extent consistent with the laws governing the administration of the public lands.

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B. National Environmental Policy Act

The purposes of tribal consultation under the National Environmental Policy Act (NEPA) are to identify potential conflicts that would otherwise not be known to the BLM, and to seek alternatives that would avoid, reduce, or resolve the conflicts.

Indian tribes are not specifically mentioned in the Act, but tribal involvement is specified in the CEQ regulations at 40 CFR §§ 1501.2, 1501.7, 1502.16, 1503.1, 1506.6, and 1508.5. Agencies are advised in § 1501.2 to consult early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations, and in § 1501.7, to invite any affected Indian tribe to participate in scoping.

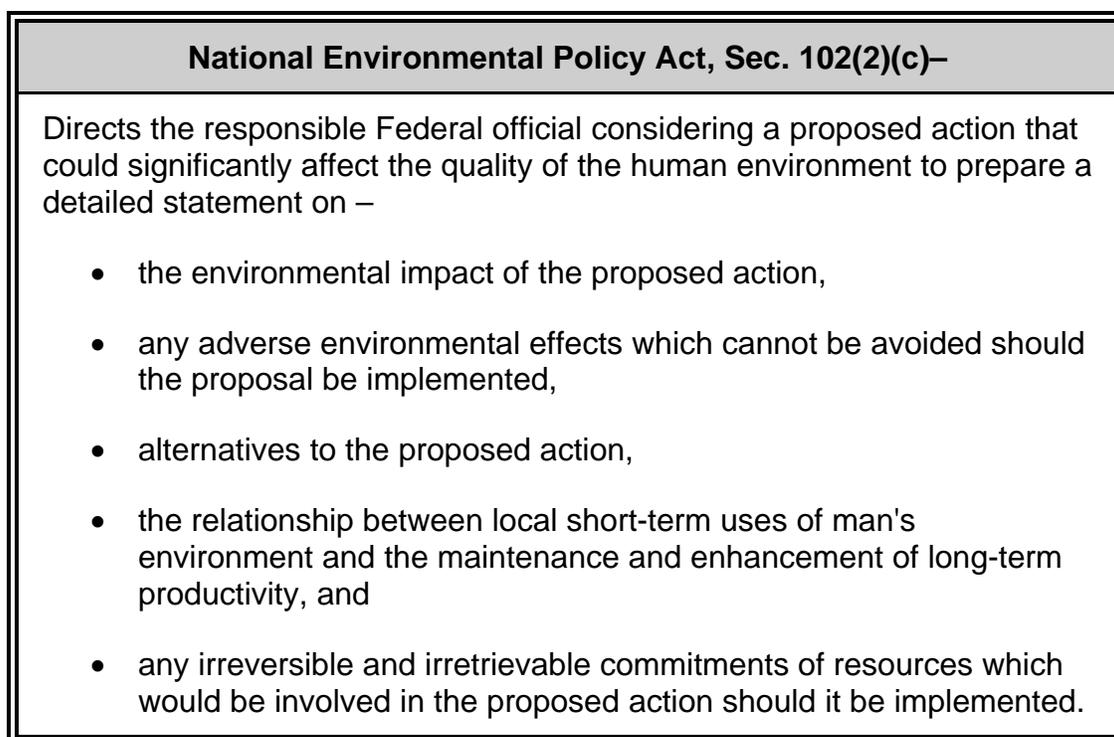


FIG. 9. Provisions of Section 102 of the National Environmental Policy Act.

Tribes must be consulted whenever other governmental entities or the public are formally involved in the BLM's environmental review process (see Manual Handbook H-1790-1). This means that tribes must be consulted for Environmental Impact Statements (EISs), major Environmental Assessments (EAs), or other NEPA documentation that entails public involvement or initial discussions with local or state governments.

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Consultation for NEPA purposes	
BLM consults with–	Purpose of consultation is–
<p>Tribal representative(s) whom the tribal government has designated for this purpose</p>	<ul style="list-style-type: none"> ● To identify a proposed action's potential to conflict with tribal members' uses of the environment for cultural, religious, and economic purposes ● To seek alternatives that would resolve the potential conflicts

FIG. 10. Tribal consultation for purposes of Section 102 of the National Environmental Policy Act.

C. American Indian Religious Freedom Act

The American Indian Religious Freedom Act (AIRFA) was a joint resolution of the two chambers of the Congress. The President adopted the resolution and signed it into law. Because it started out as a statement of the sense of the Congress, AIRFA is mainly a policy instrument. Section 1 reminds Federal agencies that Native Americans enjoy the same Constitutional guarantees under the First Amendment, as do all other people. Section 2 provides that the President will determine whether agency-specific laws and procedures conflict with the policy and need congressional action. The President's determination was made in a report to the Congress 1 year after AIRFA's 1978 enactment.

Case law has established that AIRFA has an ongoing implementation requirement, obligating agencies to consult with tribal officials and tribal religious leaders when agency actions would abridge the tribe's religious freedom by (a) denying access to sacred sites required in their religion; (b) prohibiting the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies; or (c) intruding upon or interfering with ceremonies.

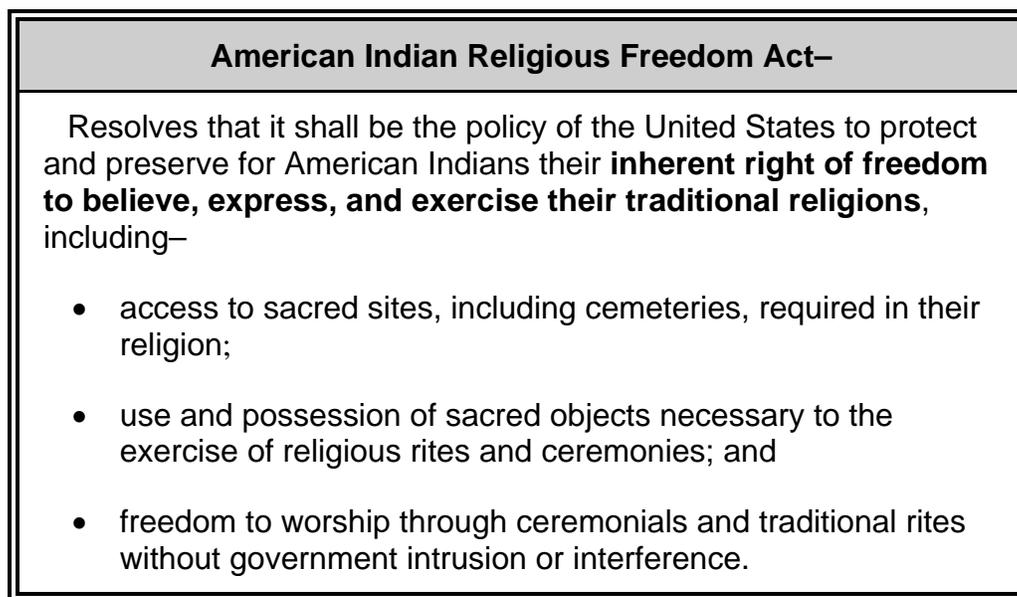


FIG. 11. Provisions of the American Indian Religious Freedom Act.

The BLM's corresponding policy is to avoid infringing on Native Americans' religious rights. Land use allocations, proposed BLM actions and authorizations, and routine management practices that could substantially restrict access or interfere with free exercise must be examined in consultation with tribes.

Consultation for AIRFA purposes	
BLM consults with–	Purpose of consultation is–
<p>Tribal representative(s) and/or native traditional religious leaders whom the tribal government has designated or identified for this purpose</p>	<ul style="list-style-type: none"> ● To identify the potential for land management procedures to conflict with Native Americans' religious observances ● To seek alternatives that would resolve the potential conflicts

FIG. 12. Tribal consultation for purposes of Section 2 of the American Indian Religious Freedom Act.

Not strictly government-to-government. The provisions of AIRFA are not limited to federally recognized Indian tribes. The constitutionally guaranteed freedom to follow the religion of one's choice extends to all Native Americans – as to others – without qualification. The BLM manager's best starting point for consultation purposes, however, is through the government-to-government channels that structure most of BLM's official relations with Indian tribes.

D. Executive Order No. 13007, "Indian Sacred Sites"

Executive Order No. 13007, May 24, 1996, directs Federal land managing agencies to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and to avoid adversely affecting the physical integrity of such sacred sites, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions.

The Order is very explicit about not creating new rights and not limiting duly authorized land uses. It is "not intended to, nor does it, create any right, benefit, trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person" (Sec. 4). Nothing in it is to be "construed to require a taking of vested property interests [nor] shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action" (Sec. 3).

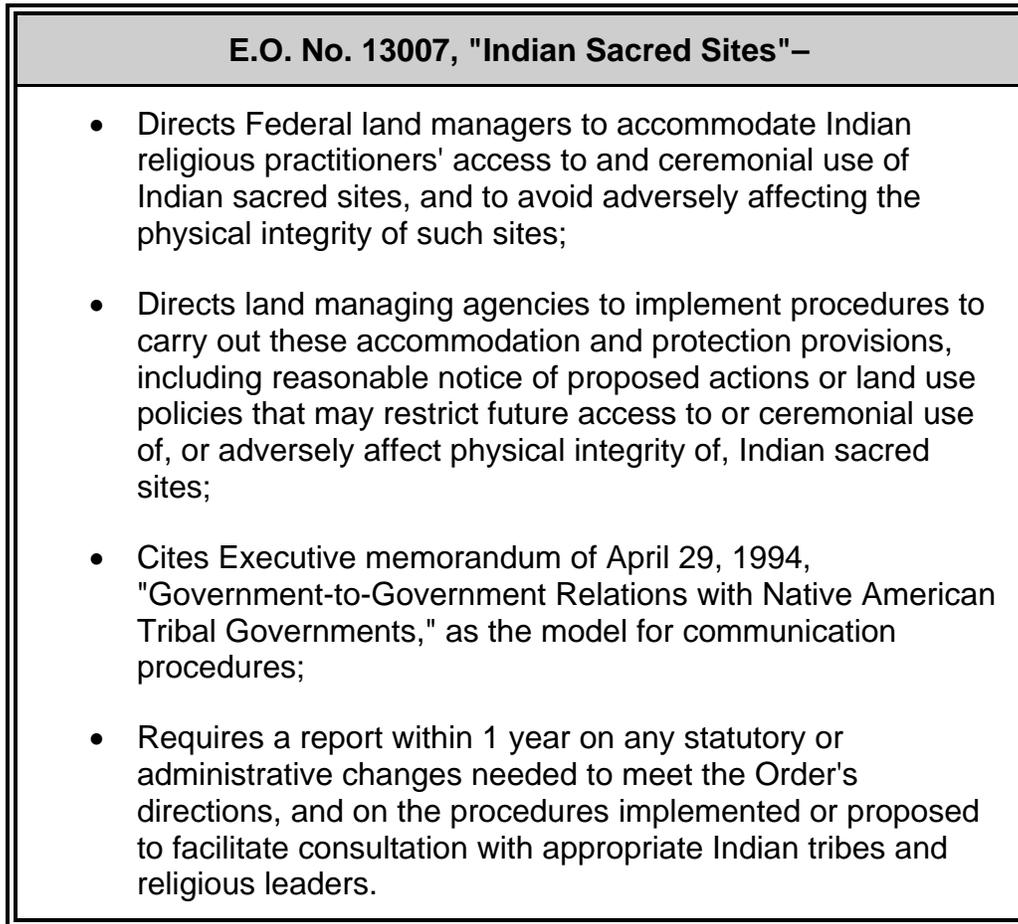


FIG. 13. Provisions of Executive Order No. 13007.

The Order required agencies to report to the President within 1 year addressing changes needed to accommodate access and use of Indian sacred sites on Federal lands, or changes needed to avoid adversely affecting the physical integrity of sacred sites. The Order also required agencies to address in their report the procedures implemented or proposed, "to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites."

The BLM reported that no statutory or administrative changes are needed, and provided copies of Manual Section 8160 (1990) and Manual Handbook H-8160-1 (1994) as its procedures for facilitating consultation.

Consultation for E.O. 13007 purposes	
BLM consults with–	Purpose of consultation is–
<p>Tribal representative and/or appropriately authoritative representative of an Indian religion whom the tribal government has identified for this purpose</p>	<ul style="list-style-type: none"> ● To determine whether proposed land management actions would-- <ul style="list-style-type: none"> ❖ accommodate Indian religious practitioners' access to and ceremonial use of Indian sacred sites on Federal lands; and/or ❖ avoid adversely affecting the physical integrity of Indian sacred sites on Federal lands. ● To seek alternatives that would resolve potential conflicts.

FIG. 14. Tribal consultation for purposes of E.O. No. 13007, "Indian Sacred Sites."

Identifying sacred sites. Only tribal representatives have the knowledge needed to identify a tribe's sacred sites. A tribe may name an appropriately authoritative representative of an Indian religion to provide this information. Federal officials cannot know to accommodate access to and ceremonial use of Indian sacred sites, and to avoid adversely affecting them, unless the tribe identifies them. Identification can only occur by consultation.

Overlap with "TCP's" and "religious or cultural sites." In some cases it may not be possible to differentiate among "sacred sites," "properties of traditional religious and cultural importance" (sometimes called "TCP's") that may be eligible for the National Register of Historic Places, and "sites of religious or cultural importance" subject to ARPA notification.

The similarity among these is that tribal identification is necessary as the beginning point for compliance with the intent of the law or executive order. A difference is that the BLM must apply the criteria in 36 CFR 60.4 to determine the eligibility of a traditional cultural property identified by a tribe. Identification itself does not make a property eligible for the National Register.

CHAPTER IV. Considerations That Apply to Various Authorities

A. Public Land Resources Are Not Indian Trust Assets

"Indian trust assets" means lands, natural resources, money, or other assets held by the Federal Government in trust or restricted against alienation for Indian tribes and individual Indians (Secretarial Order No. 3215, April 28, 2000). Trust is a formal, legally defined, property-based relationship that depends on the existence of three elements: (1) a trust asset (lands, resources, money, etc.); (2) a beneficial owner (the Indian tribe or individual Indian allottee); and (3) a trustee (the Secretary of the Interior). Many things and ideas that are commonly represented in terms of "trust" obligations are not actually part of the Government's trust responsibility toward Indians.

Cultural resources on BLM administered lands are not Indian trust assets. Sacred sites on BLM administered lands are not Indian trust assets. Human remains and cultural items subject to NAGPRA are not Indian trust assets.

B. The Nature of BLM's Tribal Consultation under Cultural Resource Authorities.

Tribes often experience "consultation" as it is conducted by the Bureau of Indian Affairs, whose officials act as agents for the Trustee (the Secretary of the Interior) to assure protection of Indian-owned trust assets. This form of "consultation," confined to issues of land and resource use on Indian land, normally concludes with the outcome that the tribe or individual Indian landowner intended.

In contrast, BLM's tribal consultation under cultural resource authorities generally does not involve either Indian lands or trust assets, and consequently there is no ownership-based presumption that a tribe's input will compel a decision that fulfills the tribe's requests or resolves issues in the tribe's favor. The BLM manager must make an affirmative effort to consult, and must consider tribal input fairly; but decisions are based on multiple-use principles and a complex framework of legal responsibilities, not on property principles and the obligations of the trustee to the trust beneficiary.

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If these distinct meanings of "consultation" are not understood and a BLM decision runs counter to a tribe's requests, the tribe might object that the BLM has not consulted properly. Therefore, a part of consultation must be to make clear to our consultation partners that the BLM is not acting as the Trustee's agent, that trust assets are not involved, and that public-land decision making must consider – but not necessarily conform with – the tribe's requests.

C. Cultural Resource Project Plans.

A tribe shall be consulted when cultural resource project plans are prepared involving resources related to that tribe's heritage. Such plans may be prepared when sites will be stabilized, repaired, or developed for public interpretation and visitation.

D. No Compensation Given for Consultation Per Se

As stated in the 8120 Manual, BLM does not compensate any entity, including Indian tribes, for consultation required by law, regulation, or other authorities, where the consultation is part of BLM administrative processes designed to protect the interests of the consulting entity.

Nothing prevents the BLM from contracting or paying for the services of qualified individuals, firms, or organizations, including tribes and Indian individuals, through BLM procurement procedures, to produce in-depth ethnographic reports, National Register nominations, or other specific products for proactive management uses that are not considered BLM administrative processes designed to protect tribal interests.

This topic is discussed in more detail in Appendix I.

E. Data Security and Confidentiality

The BLM is the sole Federal agency responsible for collecting cultural resource information for the lands it manages. It is also responsible for maintaining that information in a secure environment. This information is used to evaluate the significance of these resources and to develop appropriate protection measures in long-term land-use planning documents and in the environmental documentation supporting multiple use decisions. Access to this information is controlled by 43 CFR Part 7 implementing Section 9 of ARPA and Section 101(d)(6) and 304(a) of NHPA.

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On a project-specific basis, tribes may access this information by executing an agreement with the BLM to facilitate sharing and maintaining information and records related to cultural resources in a manner consistent with ARPA.

Native Americans may be reluctant to share sensitive information regarding resource locations and values with agency officials. This is partly because agencies have been hindered, until recently, from effectively protecting Native American cultural information from public disclosure under the Freedom of Information Act.

Disclosure of sensitive Native American information may be denied if it:

<ul style="list-style-type: none"> • exists only in "working files" i.e., documents that are not formal products of the agency or official correspondence, such as raw ethnographic data or notes (except that if the information is used in making a decision, it must become part of the official decision record and therefore be subject to disclosure); or
<ul style="list-style-type: none"> • pertains to a property listed in or eligible for the National Register of Historic Places and disclosure would risk harm to the property, cause a significant invasion of privacy, or impede the use of a traditional religious site by practitioners; or
<ul style="list-style-type: none"> • pertains to an archaeological resource as defined in 43 CFR Part 7, and disclosure would risk harm to the resource.

Less tangible values, when they coincide in space with historic properties or archaeological resources, could also be protected from disclosure under these authorities. The confidentiality of information less firmly associated with a historic property or archaeological resource, however, is not resolved.

No blanket FOIA exemption exists for NAGPRA related information. Thus, potentially sensitive information such as the specific nature and location of materials subject to NAGPRA consideration, and the identity of descendants or culturally affiliated Indian tribes, may not be automatically withheld from FOIA disclosure. Consequently, the BLM State FOIA officer must evaluate any NAGPRA-related FOIA request, case-by-case, in close consultation with the NAGPRA coordinator and the responsible manager. While BLM managers should make every effort to safeguard sensitive information to the fullest degree possible, information may not be improperly withheld in the face of a lawful FOIA request.

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Managers and staffs carrying out Native American consultation should clearly represent the sort of information they seek, the purposes to which the information will – and will not – be applied, and the limits of the BLM's ability to protect the information from public disclosure. The extent of that ability must not be misrepresented.

All sensitive data should be carefully maintained and securely stored. Offices responsible for gathering sensitive information and conducting consultation should have adequate physical and procedural means to ensure secure file maintenance and management.

F. Whom to Consult under Cultural Resource and General Authorities (Summary)

See Chapters II and III for discussion of the legal authorities, the requirements, and the purposes for consultation.

Whom To Consult	NHPA	ARPA	NAGPRA	FLPMA	NEPA	AIRFA	EO13007
Tribal representative whom the tribal government has designated for this purpose	X	X	X ²	X	X	X	X
Lineal descendant of Native American human remains with established identity			X ¹				
Traditional religious leader whom the tribal government has identified for this purpose						X ³	
Appropriately authoritative representative of an Indian religion							X ³

FIG. 15. Whom to consult depends on the particular legal authority.

¹ Lineal descendants (who need not be tribal members) have legal precedence.

² If no lineal decendants are known, then the tribe is consulted.

³ A tribal government may designate a "traditional religious leader" or an "authoritative representative" as the tribe's representative for consultation under AIRFA or E.O. 13007.

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CHAPTER V. How to Consult**A. General Features of Consultation****Consultation usually demands more effort than routine public participation.**

Tribal consultation means dialogue between a BLM manager and an American Indian or Alaska Native tribal government regarding proposed BLM actions, intended to secure meaningful tribal input and involvement in the decisionmaking process.

As both a precursor to and an ongoing part of consultation, BLM managers are encouraged to visit tribal councils and appropriate tribal leaders on a recurring basis. This face-to-face meeting irrespective of specific issues or proposed actions helps to develop relationships that can reduce the time and effort spent in later consultation on individual projects or actions. Managers are encouraged to take advantage of these meetings to discuss how and when and with whom follow-on consultation would occur with affected tribes and/or their designated representatives. Remember, this is government-to-government consultation and should be treated with appropriate respect and dignity of position. The manager's direct involvement can be key to building a solid working relationship and successful consultation.

When publishing notices and/or open letters to the public, indicating that the BLM is contemplating an action and that comments are welcome, managers should send individual letters, certified mail or delivery confirmed, to tribes requesting their input on actions being considered.

If a timely response is not received to such requests, the manager should follow up with personal telephone calls to tribal officials as part of government-to-government consultation. There may be a variety of reasons why a timely response to a letter is not provided. It is important in opening dialogue with tribal governments to at least initially follow up letters with telephone calls to assure that tribal officials understand the issue and that the BLM manager wants to consult in good faith.

Lack of response might be an issue of sensitive information. Particularly where places of religious importance are involved, tribes may be reluctant to provide specific information, perhaps because it is culturally impermissible to share such information outside the tribe, or because the appropriateness of BLM's use and protection of the information are not certain. Some of the hesitancy to provide specific information early in the planning and project review process may be overcome once an effective working relationship has been built.

On occasion, onsite visits or other face-to-face meetings may be requested by the tribes, or their designated representatives, or initiated by the BLM manager. A reasonable effort should be made to accommodate such requests in as timely a manner as possible.

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For the benefit of both parties, managers are encouraged to strive for the most efficient and effective method of consultation. Whatever method is chosen, all consultation activities should be carefully documented in the official record.

B. Identifying Consultation Partners

Consultation requirements and procedures, including the identification of the appropriate consultation partner, vary according to the legal basis for consultation and any agreements the BLM has executed with tribes, and may require consultation with one or more of the following:

• Officials of federally recognized tribal governments;
• Representatives of non-recognized Indian communities;
• Traditional cultural or religious leaders; and
• Lineal descendants of deceased Native American individuals whose remains are in Federal possession or control.

In some circumstances, others may be designated by tribes or individuals to act as spokespersons.

Specific consultation should focus on groups known to have concerns about the geographic area under consideration and the particular resources and/or land uses involved.

Although consultation partners may vary depending on which statute prompts a particular consultation episode, courtesy and protocol require that tribal governments be notified and given an opportunity to respond whenever the BLM intends to bring a tribal subunit or an individual tribal member into a consultation relationship.

The BLM's consultation partners must be individuals who are authorized to speak for the tribe or group relative to the matter at hand. The BLM may also need to consult with other interested individuals whose participation is not "official" so far as the tribe or group is concerned.

Identifying tribes. The Bureau of Indian Affairs (BIA) publishes an annual list of federally recognized tribes in the FEDERAL REGISTER. This list is the best starting point for identifying recognized tribes with which the United States has a government-to-government relationship. This list is not exhaustive and must be augmented by other sources.

Tribes and groups with historic ties to the lands in question, including those that are no longer locally resident, should be given the same opportunity as resident tribes and groups to identify their selected contact persons and their issues and concerns regarding the public lands.

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In addition to the list of recognized tribes, Area Offices of the BIA produce a supplemental list of non-recognized Indian groups petitioning Federal recognition. The BIA's Area or Agency Offices should be contacted to obtain updated and additional information on tribal governments and other Native American organizations in the general vicinity. (See Manual Section 8120.04D and E.)

Each BLM office should develop and maintain lists of–

- | |
|--|
| <ul style="list-style-type: none">• The tribal officials and traditional religious leaders whom tribal governments have designated to serve as contacts for notification and consultation. |
| <ul style="list-style-type: none">• Other Native American individuals and representatives of non-recognized groups identified as wanting to know about pending BLM actions. |

Identifying tribal contacts. Initial inquiries should be addressed to the presiding government official of the Indian tribe, e.g., the Tribal Chairman. Initial discussions should attempt to determine which individual(s) will be officially authorized to serve as the point of contact and the representative/spokesperson for the tribe for each of the various matters relating to the BLM.

Identifying traditional cultural and religious leaders. Official representatives of the tribe or group should be the first source for identifying traditional cultural and religious leaders and other individuals with specialized knowledge. Names of persons known to be traditional cultural or religious leaders can sometimes be obtained from BIA Area or Agency Offices; other Federal, State, and local government agencies that provide programs and services to Native Americans; local Native American cultural organizations and Native American ombudsman organizations; ethnographers, ethnohistorians, and anthropologists in universities and professional organizations; and other sources.

Identifying lineal descendants. A determination of lineal descent must be based on evidence provided by the person claiming descent. Since the BLM cannot contact such persons directly until they have identified themselves, initial contact should be made through the larger unit of which they are members (tribes, communities, etc.) or through descent records of the appropriate BIA Agency Office. It is not possible to identify lineal descendants when the personal identity of the human remains is not known.

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Consultation roles generally may not be transferred to others. Nonprofit organizations and public assistance agencies that provide services to Native Americans can sometimes facilitate communication with tribes, communities, traditional leaders, etc. (e.g., legal aid, family service, elders' health programs, regional associations). Native American community organizations and ombudsman organizations can also help to identify appropriate parties for consultation.

However, unless they are specifically authorized to do so, such organizations should not be considered to "represent" tribes or groups in an official sense. The BLM's contact with extra-tribal and public assistance groups is not a substitute for consultation with tribes or individuals, nor can these groups take the BLM's part in consultation.

The BLM's responsibility to notify and consult with Native Americans cannot be assigned or delegated to any other party.

Similarly, cultural resource consulting firms working for land use applicants, etc., might appropriately be approved to make contacts and collect information in some circumstances, such as to identify traditional cultural properties for purposes of Section 106 compliance; but they cannot negotiate, make commitments, or otherwise give the appearance of exercising the BLM's authority in consultations.

Summarizing information. Each office may wish to develop maps showing areas where tribes have identified issues or concerns. Maps can depict lands historically occupied or utilized, and can also locate areas identified as having ongoing traditional religious significance and use. However, when information of this extremely sensitive nature is included, maps must be treated as confidential working files and kept from public view. (See IV.E.)

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C. When in the Decision Making Process to Start Consultation

One of a manager's earliest steps in the decision cycle, regardless of the scale of the decision, should be to determine whether the decision could have consequences for Native American issues or concerns. Of course, this entails an information-based judgment, so the degree of effort involved in making the determination will depend on how far along the unit is in gathering information and establishing relationships with Indian tribes and other Native American groups. The less of this that has been done, the more lead-time will be needed to make a good determination.

In any case where it appears likely that the nature and/or the location of an activity could affect Native American issues or concerns, the BLM manager should initiate appropriate consultation with potentially affected Native Americans, as soon as possible after the general outlines of the land use plan or the proposed land use decision can be described.

Owing to their status as self-governing entities, tribes should be notified and invited to participate at least as soon as (if not earlier than) the Governor, State agencies, local governments, and other Federal agencies.

More information to help guide the timing of consultation and the identification of consultation partners can be found in Chapters II and III of this Handbook.

D. Preparing for Consultation

The first step to prepare for consultation is to **identify a clear purpose** for consultation **and identify with whom** such consultation should take place. The second step is to **review the record** of what is already known about the relevant concerns of tribes that might want to have input into the BLM's activities. Recorded sources that should be reviewed include—

✓ previous correspondence with tribes;
✓ records of previous consultation;
✓ public participation records for land use plans;
✓ plan protest records;
✓ transcripts of public hearings;
✓ minutes of public meetings.

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The BLM's and others' cultural resource records, including class I inventories and published and unpublished documentary sources, should be reviewed to identify any previously recorded areas and/or properties of traditional religious or cultural importance, and any traditional values that are closely associated with lands or resources which may be affected by BLM actions. Properties of traditional religious or cultural importance include, among other things, those "traditional cultural properties" that may be eligible for the National Register of Historic Places.

When existing records are being reviewed, special attention should be paid to places that Native Americans are likely to perceive as culturally sensitive in contemporary traditional cultural practice (human burial sites, shrines, prayer sites, rock art, natural features traditionally used for religious purposes, etc.).

E. Initiating Native American Contacts

After establishing a need and a purpose for consulting and determining with whom to consult, managers must make good faith efforts to elicit information and views directly from affected Native Americans.

An initial contact should be made with all potentially concerned tribal governments and other Native American groups, by letter and telephone, explaining the reason for the contact; requesting their direct participation and input in the decision making process; and asking them to identify any traditional cultural or religious leaders and practitioners who they think should also be contacted.

When a manager knows that tribal issues and concerns would be affected by a decision, tribes and groups that live near or use the lands in question should be contacted and given an opportunity to participate. Tribes that reside elsewhere, but have known historic ties to the land, may have issues or concerns that could be affected by a decision. In cases where the manager can reasonably anticipate that such tribes would have issues and concerns with the effects of a proposed decision, these tribes should be contacted also.

For any Indian tribe that may be expected to have issues and concerns about a proposed decision, the initial point of contact should be the tribal chief executive, except in cases where another tribal official has already been designated as the BLM's contact.

Tribal government officials are the appropriate spokespersons where proposed actions might affect tribal issues and concerns. It is their responsibility to identify any tribal members who may have pertinent information concerning cultural and religious values or concerns.

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If the BLM has established a consultation relationship with traditional leaders through previous contacts, these individuals should be contacted at the same time as tribal government officials are contacted. If there is no existing consultation relationship with traditional leaders, tribal government officials should be asked to identify individuals who might have special knowledge related to traditional uses of BLM lands.

F. Legally Required Notification

A specific legal requirement to notify Native Americans (e.g., pursuant to ARPA Sec. 4(c)) can generally be met through certified mail, return receipt requested, or delivery confirmation from a delivery service.

Where legally required notification is delivered through certified mail or delivery service, a return receipt or delivery confirmation is adequate demonstration that BLM has satisfied the notification requirement. With some tribes and individuals, however, a notice may not be deliverable for a variety of reasons. Obviously, a receipt or report showing that delivery was not made is clear indication that the BLM's requirement has not been met.

To avoid false starts and delays, BLM managers and staffs should select a notification strategy that has a high expectation of success.

G. Legally Required Consultation

Notification can be satisfied through simple one-way written means. *Consultation* is generally construed to mean direct, two-way communication.

While statute and case law do not provide the methods of communication needed to constitute legally required consultation, the legal standard is a "good faith effort." Two White House documents guide agencies in meeting this standard:

The Sacred Sites Executive Order, E.O. 13007 in Section 2(a), charges land managing agencies to "promptly implement procedures . . . to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, 'Government-to-Government Relations with Native American Tribal Governments.'"

The referenced April 29, 1994, memorandum states: "(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals."

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H. Correspondence Content

Whether correspondence is meant to serve as notification or as a written precursor or supplement to direct, person-to-person consultation, there are certain correspondence guidelines that apply in either case.

In general, correspondence should—

- identify the purpose of the letter (i.e., the action being proposed and the specific legal/regulatory basis for writing);
- identify a BLM contact person and how to reach him/her (if for consultation, note that a call or visit will follow);
- specifically request the kind of Native American input needed (such as identification of potential cultural concerns);
- provide an opportunity for a meeting; and
- solicit the names and addresses of other persons who should be notified or consulted.

Some additional clauses that might be appropriate under certain circumstances include:

- Referrals: "If you are not the appropriate individual to receive this request, please advise whom we should contact."
- Flexible meeting proposals: "If this time and location are not appropriate, please contact [_____] within [___] days prior to the scheduled meeting to make alternative meeting arrangements."
- Documentation requests: "Please indicate on the enclosed map, if possible, areas of specific concern," or "Please provide or refer us to any available information that would help us to understand the significance and nature of traditional cultural concerns in the [area of proposed action] for the [proposed action] for the [group or tribe name]."

If a letter is returned as undeliverable, include the canceled, unopened letter in the official file and, if appropriate, begin more direct (and documented) attempts to carry out the notification or consultation.

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I. Documentation of Notification and Consultation

Include notification and consultation documents in the permanent decision record.

Evidence of notification and consultation (or of the failure of diligent efforts) is to be included in the official file and provided to the authorized officer in support of a proposed decision. The names of preparers should appear on all notification and consultation materials. The consultation record must show that the decision maker made a good faith effort to obtain and weigh tribal input in decision making. If a decision does not conform with the tribe's requests, the consultation record must explain the manager's basis for reaching a different outcome.

Managers are to take an active role in consultation efforts and should accustom themselves to looking for evidence of notification or consultation (or unsuccessful good faith efforts) before making a decision. If no notification or consultation is needed, the staff person preparing the material for the manager should include a note to this effect.

Telephone contact. All attempts to establish telephone communication, and a record of all conversations conducted by telephone, should be documented by a signed and dated note to the files, to be included in the permanent record. Copies of relevant emails are to be included as well.

Meetings and direct consultation. The purpose of meetings and direct consultation is to elicit specific information to be integrated into the body of data submitted to the authorized officer as a basis for decision making.

Consultation and coordination meetings should be narrowly focused on the proposed BLM action, or the planning area involved, with the goal of developing: (1) a specific description of the places and/or values at issue; and (2) potential management options to avoid or minimize any negative consequences to Native American cultural and religious values and practices.

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J. How Much Consultation to Do

There is no simple measure of sufficiency of Native American consultation efforts. On a case-by-case basis, unless there is a valid consultation agreement with the tribe, Field Managers should evaluate the amount of consultation necessary based on the:

- potential harm or disruption a proposed action could cause;
- alternatives that would reduce or eliminate potential harm or disruption;
- completeness and appropriateness of the list of Native American groups and individuals consulted;
- nature of the issues raised;
- intensity of concern expressed;
- legal requirements posed by treaties (if any);
- potential to resolve issues through further discussions; and
- need for further consultation.

All such judgments should be well documented to assure a complete record of the authorized officer's good faith efforts to identify, contact, consult, and respond to Native American cultural concerns before reaching a decision.

In general, enough information should be developed to document how decisions were reached when they may potentially affect Native American values associated with BLM-administered lands and resources. It is important to keep in mind that many, perhaps most, specific issues of Native American concern will *not* be issues associated with cultural resources such as archaeological sites. (Rather, Native American cultural concerns are likely to center on issues of access, collection and use of plants and animals, protection of religious places, and incompatible land and resource uses.)

A good way to gauge whether consultation efforts have been sufficient is to consider the degree to which an objective review of the decision record would find a good faith effort to identify, notify, involve, and respond to all Native Americans potentially affected by a proposed decision.

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K. Use of Information Gained Through Consultation

The BLM manager must give tribal concerns and preferences due consideration and make a good faith effort to address them as an integral part of the decision making process. Final decisions may not always conform with the preferences and suggestions of the tribes. How tribal issues were addressed must be documented as part of the decision record (see I. in this chapter).

L. Conclusion of Consultation

In all cases, the tribes that have participated in consultation should be notified of the BLM's decision.

This notification should specifically include a discussion of the BLM's basis for its decision, relationship to the tribal concerns raised in consultation, and the avenues available for protest or appeal of the decision.

This correspondence should be sent certified mail or delivery service and a copy included in the permanent decision record.

APPENDIX 1: Policy on Compensation to Native Americans for Their Participation in the BLM's Administrative Process

Issue Summary:

Native American individuals and organizations sometimes ask the BLM for payment or other compensation in return for bringing Native American issues to the BLM's attention and providing the BLM with information on Native American interests and concerns that relate to the BLM's land use planning, environmental review, and other legal-regulatory administrative requirements.

Policy:

The BLM does not compensate individuals or organizations – including Native American individuals, Indian tribes, Indian communities, and Indian organizations – for contributing information or comments as input into the BLM's administrative process.

Background:

Purpose of input. In the regular course of business, the BLM frequently invites input from Indian tribal officials, members of Native American communities, and practitioners of traditional culture and religion, as well as from other potentially affected parties and members of the general population. The BLM requests this input to satisfy legal requirements aimed at ensuring balance of perspectives in protecting the greater public interest. The input that Native Americans choose to provide may benefit their particular interests relative to future BLM actions or decisions. As with other participants, Native Americans' contributions to the BLM administrative process are a form of voluntary participation.

Ambiguous terminology. Some misunderstanding seems to result from use of the term "consultation." As used in this context, the term means conducting a dialogue, exchanging information. A participant in this kind of consultation is not a "consultant" in the way that a contractor who provides technical services might be called a consultant. Accordingly, "consultants' fees" are never appropriate to this kind of consultation.

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Basis for Consultation:

Legal Requirements. Requirements to notify and consult with Native Americans under specific circumstances are included in the Archaeological Resources Protection Act (P.L. 96-95), the Native American Graves Protection and Repatriation Act (P.L. 101-601), the National Historic Preservation Act (P.L. 89-665), and regulations implementing these laws. (See Chapter II.)

Native American coordination and consultation are also regularly conducted to address the more general requirements in the American Indian Religious Freedom Act (P.L. 95-341), the National Environmental Policy Act (P.L. 91-190), the Federal Land Policy and Management Act (P.L. 94-579), and pertinent regulations.

Component of Normal Administrative Process. Inviting Native Americans to identify and address issues of particular concern to them is a regular component of the BLM's administrative process. BLM Manual Section 8120 and Handbook H-8120-1 contain guidance for conducting Native American coordination and consultation. As expressed and expanded on in the Manual Section, the BLM's basic policy is to "consult with affected tribes to identify and consider their concerns in BLM land use planning and decision making, and [to] document all consultation efforts" (BLM Manual Section 8120.06E).

The Character of Consultation. Consultation consists of (a) identifying appropriate tribal governing bodies and individuals from whom to seek input; (b) conferring with appropriate tribal officials and/or individuals and asking for their views regarding land use proposals or other pending BLM actions that might affect traditional tribal activities, practices, or beliefs relating to particular locations on public lands; (c) treating tribal information as a necessary factor in defining the range of acceptable public-land management options; and (d) creating and maintaining a permanent record to show how tribal information was obtained and used in the BLM's decision making process." (BLM Handbook H-8120-1, I.C.).

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The BLM Should Accommodate Participation:

Avoid creating attendance difficulties. It is neither feasible nor appropriate for the BLM to undertake the level of personal financial review set forth by the Comptroller General to determine if compensation would be appropriate every time consultation with Native Americans is required. Rather, the BLM should seek to avoid creating circumstances where compensation for expenses might be requested.

Attempt to accommodate participation whenever possible. For example, the BLM should routinely make efforts never to schedule public meetings on matters potentially affecting Native Americans in places where it would be difficult for potentially affected Native Americans to attend.

Broad Public Interest. A wide range of input is sought on the full spectrum of BLM land use planning, environmental review, and proposed actions. It is essential to the broad public interest that the BLM obtain full and substantive input as a basis for its decisions. It is also important for the BLM to minimize controversy based on a perception of partiality, or on an impression that opinions and information the BLM receives might be colored by the BLM's compensation to a participant.

The BLM May Contract for Services:

Reports or other specific products. Nothing prevents the BLM from contracting for the services of qualified Native American individuals, firms, or organizations, through the BLM acquisition and procurement procedures, to produce in-depth ethnographic reports or other specific products. Such services would not constitute "consultation" as used in the BLM 8120 Manual and this issue analysis.

The BLM manager must fully comply with all Federal procurement rules. Care must be exercised to prevent any expectations on the part of tribal officials, tribal elders, or individual tribal members that BLM will routinely pay for input from such parties. Where BLM's contract costs would be reimbursable, any form of payment to Indian tribes should be coordinated with any affected project applicants beforehand. The BLM does not request project applicants to contract directly with Native American individuals, firms, or organizations. All payment should be directed through the BLM using appropriate Federal procurement procedures.

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The following four examples illustrate situations for which payment for services may be considered:

1. BLM requests assistance in documenting and evaluating a place used for traditional purposes. An Indian tribe has informed BLM of a specific place where its members have conducted traditional ceremonies for generations (i.e., a "traditional cultural property"). From the information provided by the tribe, BLM determines that the property meets the National Register criteria but requests assistance in more thoroughly documenting and evaluating the property in the field to meet broader responsibilities under the Federal Land Policy and Management Act. The tribe offers the expertise of a traditional practitioner who agrees to accompany BLM personnel to the property and assist in its documentation, but only if he is paid for his time and travel. In such a case, BLM payment for the services rendered by the traditional expert may be appropriate.

2. BLM requests assistance in analyzing or interpreting cultural materials. An archaeological site identified during a field inventory contains artifacts unfamiliar to the archaeologist. The archaeologist shows the artifacts to local Native Americans who recognize them as similar in appearance to objects they use in traditional activities. The Native Americans offer to explain the manner in which they use such objects if they are paid for this information. If BLM requests such information, payment may be appropriate.

3. BLM requests information about traditional practices. An interdisciplinary management plan is being developed for an area. In assessing current conditions, questions are raised about how long the current plant species composition has existed and how past land uses may have reduced or increased various species. The BLM decides to gather information to better understand how humans have changed the environment. Elders of the Indian tribe that historically occupied the area agree to share their knowledge of traditional agricultural and horticultural practices if they are paid for it. Payment for such information may be appropriate.

4. BLM requests tribal participation in preparing written reports or other products. An archaeological site is excavated. During consultations with a local Indian tribe prior to the excavation, BLM learns that the site figures prominently in the tribe's oral histories and determines that the tribe's perspective would be a valuable addition to the excavation report. The tribe is willing to assist in writing or providing information for the report if it is paid for doing so. If BLM asks the tribe to participate, payment to the tribe may be appropriate.

COVER IMAGES are adapted from “Indian Land Areas Judicially Established 1978,” by Frederick L. Briuer, Ph.D., and Gary A. Hebler, U.S. Army Engineer Waterways Experiment Station, U.S. Army Corps of Engineers, based on the similarly named U.S. Geological Survey map that “portrays results of cases before the U.S. Indian Claims Commission or the U.S. Court of Claims in which an American Indian tribe proved its original tribal occupancy of a tract within the continental United States.” See http://www.wes.army.mil/el/ccspt/natamap/usa_pg.html .