

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 **THE** 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~~ 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~~ resources that may be affected by its actions, in ~~those and other States, including its approval for Federal mineral resource exploration and extraction, under compliance with~~ the National Environmental Policy Act, (NEPA), the National Historic Preservation Act of 1966 (NHPA), ~~and implementing regulations at 36 CFR part 800,~~ 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 (EO) 13007 (“Indian Sacred Sites”), EO 13287 (“Preserve America”), EO 13175 (“Consultation and Coordination with Indian Tribal Governments”), and related authorities.

In carrying out its responsibilities ~~specific to NHPA,~~ the BLM has: (1) developed policies and procedures through its directives system (BLM Manual Sections 8100-~~8160~~8170); (2) ~~executed a national programmatic agreement in 1997~~ to help guide the ~~BLM's~~ BLM’s planning and decision making as it affects historic properties ~~and other cultural properties, and has~~ defined in the NHPA; and (3) assembled a cadre of cultural heritage specialists to advise the ~~BLM's~~ BLM’s managers and to implement cultural heritage policies consistent with these statutory authorities.

State Historic Preservation Officers. State Historic Preservation Officers (~~SHPOs~~SHPO), as represented by the National Conference of State Historic Preservation Officers (NCSHPO), have responsibilities under ~~State~~ state law as well as under Section 101(b)(3) of the ~~National Historic Preservation Act~~ NHPA that include ~~to:~~

- “advise and assist as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities,” ~~and to;~~”

- “consult with the appropriate Federal agencies in accordance with [NHPA] on Federal undertakings that may affect historic properties, and the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties.”

In addition under Section 110(a)(2)(D) and Sec. 110(a)(2)(E), Federal agencies are required to consult with SHPOs to identify and evaluate historic properties for listing in the National Register of Historic Places (National Register), and on the development and implementation of agreements regarding the means by which adverse effects on such properties will be considered.

In certain cases others may be authorized to act in the ~~SHPO's~~ SHPO's place. Where the Secretary has approved an Indian ~~tribe's~~ tribe's preservation program pursuant to Section 101(d)(2) of the NHPA, a Tribal ~~Historic~~ Preservation Officer (THPO) may perform some SHPO functions with respect to tribal lands: ~~as defined by the NHPA~~. 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 ~~Advisory Council on Historic Preservation (ACHP)~~ may at times act in lieu of the SHPO.

Advisory Council on Historic Preservation. The ~~Advisory Council on Historic Preservation (Council)~~ ACHP has the responsibility to: (1) administer the process implementing Sections 106, 110(f), and 111(a) of the ~~National Historic Preservation Act, NHPA~~; (2) 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~~ “(3) 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~~ **Federally Recognized Tribes.** Federal agencies have treaty, trust, and consultation responsibilities to tribes under multiple authorities. This agreement is pursuant to NHPA, which specifically requires that agencies consult with federally recognized tribes (Indian tribes). Agencies consult so that tribes may: (1) identify their concerns about historic properties, including properties of traditional religious and cultural importance to tribes; (2) advise agencies on the identification and evaluation of historic properties; (3) articulate their views on an undertaking's potential effects; (4) and participate in resolving adverse effects.

The BLM, NCSHPO, and the ACHP – in consultation with tribal governments and interested parties – now wish to ensure that the BLM will organize its programs to operate efficiently, effectively, according to the spirit and intent of Section 106 of the NHPA, and in a manner consistent with 36 CFR ~~Part~~ 800; ~~and~~. The parties also wish to ensure 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~~ ACHP desire and intend in the public interest 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~~ 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~~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 NHPA; and

WHEREAS, among other things, the ~~BLM's~~BLM's program, established in response to Section 110(a)(2) of NHPA and related authorities provides a systematic basis: (1) for identifying, evaluating, and nominating ~~historic properties~~ to the National Register ~~historic properties~~ under the ~~bureau's~~BLM's jurisdiction or control; ~~including but not restricted to archaeological sites, historic and prehistoric structures, properties of traditional religious, and cultural importance to Indian tribes, historic landscapes, and relevant segments of National Historic Trails;~~ (2) for managing and maintaining properties listed in or eligible for the National Register in a way that considers the preservation of their archaeological, historical, architectural, and cultural values and the avoidance of adverse effects in ~~light of the views of local communities,~~consultation with Indian tribes, ~~state and local governments, and the interested persons, and the general public;~~ and (3) that gives special consideration to the preservation of such values in the case of properties designated as having ~~National~~national significance; and

WHEREAS the ~~BLM's~~BLM's program, as authorized by this agreement, has guidance in its 8100 Manual Sections and handbook supplemented by Instruction Memoranda regarding the process for meeting its requirements under various cultural resource authorities including NHPA; and state offices have state-specific manuals, handbooks, and ~~instruction memoranda;~~ and

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

WHEREAS the ~~BLM's~~BLM's program also ~~has as its purpose~~is intended to: (1) ensure that the ~~bureau's~~bureau's procedures for compliance with Section 106 of the NHPA are consistent with regulations issued by the ~~Council~~ACHP pursuant to Section 211 of the NHPA (36 CFR ~~Part~~part 800, "Protection of Historic Properties"); and (2) 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~~SHPOs, Indian tribes, 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~~BLM recognizes that recent changes in the 36 CFR part 800 regulations have not been incorporated into the 8140 Manual Section as revised in December 2004, regarding the definition of "adverse effect" and role of "consulting parties" in the NHPA Section 106 process and will initiate revision of the relevant manual sections within six months of execution of this agreement; and

WHEREAS individual SHPOs, particularly those in states containing a high percentage of public land under the BLM's jurisdiction and control, have a great interest in forming a cooperative relationship with the BLM to facilitate a more effective and efficient Section 106 consultation process, and promote activities of mutual interest, and:

WHEREAS the BLM's program ~~also benefits from coordination with Indian tribes on the identification and protection of properties of religious and cultural significance and cooperation on historic preservation programs of mutual interest, and the BLM intends to ensure that its NHPA 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(e) of the Native American Graves Protection and Repatriation Act, process leading up to a BLM decision in accordance with Section 110(a)(2)(E)(iii) of the NHPA~~ 36 CFR part 800; and

WHEREAS this agreement will not apply to ~~proposed BLM undertakings located on or affecting historic properties on tribal lands, but rather, a proposed BLM undertaking~~ and such actions will follow 36 CFR part 800 and;

WHEREAS, for undertakings not 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~~, the BLM follows its 8120 Manual Section and H-8120-1 Handbook to meet its requirements for government-to-government 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~~ with tribes under cultural resources authorities including NHPA; and consults with the tribal representative designated by the tribal government for the purpose of identifying tribally significant religious and cultural properties that may be eligible for listing on the National Register of Historic Places (National Register) and to understand tribal concerns; and

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

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

WHEREAS Indian tribes, especially those whose present or ancestral lands are located in areas where the BLM has surface or subsurface management responsibilities, may enter into formal or informal agreements with the BLM regarding consultation procedures under NHPA Section 106 and that some tribes may want to form a cooperative relationship with the BLM in a manner consistent with the purposes of this agreement to achieve a more effective and efficient Section 106 consultation process; and

WHEREAS the parties intend that efficiencies in the NHPA Section 106 process, realized through

decades of Section 106 compliance; (2) historic property identification where information is needed, not just in reaction to proposed undertakings; (3) long-term preservation planning; (4) purposeful National Register ~~nominations~~; planning- and priority-based historic resource protection; (5) creative public education and interpretation; (6) more efficient ~~and effective~~ BLM, SHPO, tribal, and ~~Council~~ ACHP coordination, including program monitoring and dispute resolution; and; (7) other activities that will contribute to readily recognizable ~~tribal and 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)~~ Indian tribes and the ~~National Conference of State Historic Preservation Officers (NCSHPO)~~ interested public regarding ways to ensure that ~~BLM's~~ the BLM's planning and management ~~shall~~ will be more fully integrated and consistent with the above authorities, requirements, and objectives;

NOW, THEREFORE, the BLM, the ~~Council~~ ACHP, and the NCSHPO mutually agree that the BLM, after completing the actions summarized in ~~paragraph~~ 1. below, will meet its responsibilities under ~~Section 106, 110(f), and 111(a)~~ the NHPA through the implementation of the mechanisms ~~agreed to~~ described in this agreement rather than by following the procedure set forth in the ~~Council's~~ ACHP's regulations (36 CFR ~~Part~~ 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~~ This agreement supersedes the 1997 national 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~~ agreement. Existing state-specific ~~BLM/SHPO operating protocols; and trained all field managers and their cultural heritage staffs under the 1997 agreement will remain in the operation of the policies, procedures, and protocols. Field offices under a State Director's jurisdiction (effect until the respective State Director executes a successor protocol. No existing informal and formal agreements between the BLM and an Indian tribe or tribes will be altered by this agreement. Any state without a protocol, including those under the jurisdiction of the BLM Eastern States Director) Office, will not begin to employ~~ operate under 36 CFR part 800 or agreed upon alternative procedures.

2. BLM Consultation Responsibilities under this Agreement

This agreement encourages:

- a. the BLM and the SHPO to develop two-party state protocols regulating their relationship and how consultation will take place;
- b. the BLM and the SHPOs to establish streamlined procedures ~~developed pursuant to this agreement until the Director has certified~~ for handling no potential to effect, no adverse effect, and adverse effect determinations for which consulting parties strive to reach agreement regarding mitigation treatments. Procedures will include a mechanism to make a schedule of

- c. the BLM to use phased identification and evaluation as described in 36 CFR Part 800.4(b)(2).

This agreement requires:

- d. the BLM to consult with the SHPO for all undertakings or alternative procedures that ~~the State Director's organization is appropriately qualified to do so~~ will adversely affect properties that are eligible for the National Register;
- e. ~~2. Establishment of~~ the BLM to invite the ACHP to participate in consultation when undertakings meet the thresholds in component 5 of this agreement;
- f. the BLM to follow the regulations at 36 CFR part 800 for undertakings within any state that does not have a two-party state protocol under this agreement and for undertakings on or affecting tribal lands; and
- g. the BLM to follow the process at 36 CFR part 800.6(b)(2) or 800.14(b) to resolve adverse effects whenever the ACHP formally participates in consultation for an undertaking.

3. Operation of BLM's Preservation Board

a. The ~~BLM's~~ Director of the BLM will ~~establish~~ maintain a Preservation Board to advise the BLM Director, Assistant Directors, State Directors, and ~~district and~~ field- office managers in the development and implementation of ~~BLM's~~ the BLM's policies and procedures for ~~historic properties.~~ NHPA implementation. Authority, responsibilities, and operating procedures for the Preservation Board ~~will be~~ specified in the BLM Manual 8100.04H.

b. The Preservation Board will be chaired by the ~~BLM's~~ BLM's Federal Preservation Officer (FPO) designated under Section 110(c) of the NHPA, and will include a professionally qualified Deputy Preservation Officer (DPO) from each State Office- ~~and the BLM national Tribal Coordinator as ex officio members.~~ The field management organization will be represented by at least ~~three~~ four line managers (i.e., officials who are authorized by the ~~Director's~~ Director's or State ~~Directors'~~ Directors' delegation to make land-use decisions). ~~Field office cultural heritage specialists will be represented by two members. Line manager and field office specialist positions will be term positions.~~

c. The Preservation Board will perform primary staff work and make recommendations to the BLM Director and State Directors concerning policies and procedures (~~3~~ paragraph 4. below); ~~bureauwide program consistency (3),~~ bureau wide policy implementation (paragraph 4. below); training (~~6~~ paragraph 7. below); certification and decertification of field offices (paragraph 8. below); monitoring of field ~~offices'~~ offices' historic preservation programs (~~9~~ paragraph 10. below); and responses to public inquiries (~~9~~ paragraph 10. below).

d. In addition, the Preservation Board will confer ~~regularly~~ with the ~~Council~~ ACHP and the NCSHPO ~~and involve them in its activities, as appropriate, including the development of the items listed in 2.e. The Preservation Board will also confer regularly with,~~ individual SHPOs ~~and such,~~ local governments, preservation and professional associations, and, in coordination with the BLM Tribal Coordinator, with individual tribes, the National Association of Tribal Historic Preservation Officers (NATHPO), and other ~~parties~~ tribal entities 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 practices to identify program problems or~~

~~— 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~~ **4. Cultural Resource Management²² 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: The BLM 8100 Manual Sections contain detailed policies and procedures. Within 6 months from execution of this agreement, the Preservation Board will begin to revise Manual Sections 8140.2 and 8140.5 to incorporate changes to the 36 CFR part 800 regulations with respect to the definition of “adverse effect” and the role of “consulting parties” in the Section 106 process; integrate the use of phased identification and consultation; and specify procedures for undertakings that exceed the threshold for triggering ACHP involvement under this agreement.~~

~~— 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. Manual Revisions 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: (1) the purposes of (1) this agreement;; (2) the principles and standards contained in the Council’s ACHP’s most recent regulations, “Protection of Historic Properties” (36 CFR Partpart 800); (3) the Secretary of the Interior’s Interior’s Standards and Guidelines for Archeology and Historic Preservation regarding identification, evaluation, registration, and treatment;; (4) the Office of Personnel Management’s 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~~

~~———— e. The BLM will provide Indian tribes and other Native American groups with appropriate opportunities for involvement~~

c. The BLM will ensure that revision of Manual Sections 8140.2 and 8140.5 and all future revisions to the BLM's 8100 Manual Section are undertaken consistent with the BLM's government-to-government tribal consultation and public participation responsibilities, as appropriate to the subject matter.

d. 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~~ tribal participation will follow the direction in Sections 101(d)(6) and 110(a)(2)(E) of the NHPA, and BLM Manual Section ~~81608120~~ and Manual Handbook H-~~81608120-1~~, ~~as revised pursuant to a. and b. above. Revisions to the 8160~~. Consistent with that guidance, the BLM will consult with the tribal government's designee and facilitate tribal participation consistent with H-8120-1, Appendix A. Future revisions to the 8120 Manual Section and Manual Handbook will treat the cited ~~NHPA direction~~ 36 CFR part 800 as the minimum standard for ~~Indian tribes' and other Native American groups' opportunities to be involved. Provisions for Native American participation in BLM's procedures for historic property identification, evaluation, and consideration of involving Indian tribes to identify properties of traditional religious and cultural importance to Indian tribes that may be eligible for the National Register and seek ways to avoid, minimize, or mitigate adverse effects will be incorporated in BLM/SHPO protocols under 5. below to those resources.~~ For Indian tribes with historic preservation programs approved by the Secretary under Section 101(d)(2) of the NHPA, ~~Tribal Preservation Officers~~ THPOs will be involved in place of SHPOs when tribal land would be affected. Such involvement will occur under the ~~Council's~~ ACHP's and/or the ~~Tribe's~~ tribe's procedures in all cases, not under this ~~programmatic agreement~~ or state protocols. When tribal lands will be affected and there is no THPO, the SHPOs will be consulted in addition to the tribe's designated representative.

~~———— 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.~~

5. Thresholds for ~~Council's~~ ACHP Review

a. The BLM procedures will identify ~~specific~~ circumstances ~~calling~~ and conditions that, when met, call for the ~~Council's~~ ACHP's review.

b. At a minimum, the BLM will request the ~~Council's~~ ACHP'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~~ listed properties ~~of national significance~~;

— (3) highly controversial undertakings, when ~~Council's~~ ACHP review is requested by the BLM, ~~and~~ SHPO, an Indian tribe, a local government, ~~or~~ an applicant for a BLM authorization, ~~or other consulting party~~;

5 (4) undertakings that will have an adverse effect and cannot be resolved through agreement, such as a Memorandum of Agreement between the BLM, SHPO and consulting parties; and

(5) program alternatives, including programmatic agreements, as they allow parties to follow a process that may deviate from that prescribed in 36 CFR 800.4 – 800.6.

c. The ACHP will apply the criteria under Appendix A of 36 CFR part 800 to determine whether its participation is warranted and notify the responsible agency official and the Director when it decides to participate.

d. The ACHP reserves the right to participate in any proceedings taking place in fulfillment of the BLM's NHPA Section 106 responsibilities under the regulations, this agreement, or state protocols, in a manner consistent with its role in 36 CFR part 800.

6. Cooperation and Enhanced Communication

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

- _____ a copy of this revised agreement;
- a reference copy of the existing BLM Manual Sections and Manual Handbooks related to “Cultural Resource Management;”
- _____ a copy of the any Handbook, Manual Supplement, or other standard procedure for “Cultural Resource Management” including existing protocols under the 1997 agreement, used by the BLM within an individual State Office's state office's jurisdiction;
- _____ a current list of Preservation Board members;
- _____ a current list of BLM cultural heritage personnel within each State Office's state office's jurisdiction;
- _____ a map of the State each 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 612 months after revised policies and procedures become available of execution of this agreement, each State Director or his/her designee will meet with each pertinent SHPO to develop areview and consider the need for changes in their state protocol specifyingto specify how they will operate and interact under this agreement. The State Director may request the ACHP's assistance in identifying specific changes needed in the state's protocol prior to the State Director initiating any changes associated with implementation of this agreement. Where a State Director has few interactions with ana 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 Partpart 800. Adoption of protocols, as formalized by the State Director's and SHPO's signatures, will be a prerequisite

provide the ACHP an opportunity to review and comment on revised protocols before execution, and the Preservation Board and the ~~Council~~ACHP will be kept informed of the progress of protocol development, review and ~~will receive an information copy of any signed~~revision. Revised BLM/SHPO ~~protocol~~protocols will be posted on the BLM web site. The SHPO and State Director may ask the NCSHPO, the Preservation Board, and/or the ~~Council~~ACHP to assist at any stage in ~~developing~~revising protocols.

At a minimum, ~~BLM-state~~ protocols will address the following:

- a mechanism to make a schedule of pending undertakings, including land transfers, available to the public and Indian tribes on a regular basis;
- the manner in which ~~the State Director will ensure the SHPO's involvement in the BLM State management process;~~tribal consultation is addressed for protocol-guided compliance processes;
- the manner in which public participation is addressed for protocol-guided compliance processes through NEPA scoping or other mechanisms;
- data sharing, including information resource management development and support ~~and security;~~
- 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 at a minimum include all~~ undertakings that the BLM finds will ~~adversely~~ affect historic properties, including adverse effects to archaeological sites proposed for mitigation through data recovery; 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;
- ~~the manner in which the BLM informs SHPOs about Section 106-related tribal consultation;~~
- provisions for resolving disagreements and amending or terminating the protocol; and,
- ~~relationship of the protocol to 36 CFR Part 800.~~
- consistency with 36 CFR part 800, and statement on when the BLM may operate under 36 CFR part 800, as agreed to under this agreement and/or the implementing protocol in the involved state; and
- substance and format of any supplemental information to the BLM Federal Archaeology Report that the State Director will prepare on an annual basis in satisfaction of component 10b of this agreement and the manner in which the report will be made available to affected Indian tribes and the public via the BLM website.

c. As agreed under the protocol ~~and consistent with a current data sharing agreement~~, 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~~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~~state inventories and comprehensive plans as well as to BLM land

—d. Within 12 months following execution of this agreement, each State Director will contact Indian tribes within his or her jurisdiction that are affected by BLM undertakings on a regular basis, and:

- commit to a process that provides Indian tribes the opportunity to consult on identification, evaluation of historic properties, and on resolution of adverse effects in a timely manner;
- identify geographic areas and types of properties of concern to Indian tribes;
- identify confidentiality issues;
- answer questions on the existing BLM-state protocol;
- provide a tribal point of contact for the state office and each district and field office within his or her jurisdiction;
- seek a mechanism to make a schedule of pending actions, including land exchanges, available on a regular basis; and
- inform the tribe of opportunities to establish a consultation protocol or other agreement for conducting consultation as required under NHPA Section 106.

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

—e. Relevant streamlining provisions of BLM Statewide programmatic

f. The BLM maintains agreements ~~currently in force in Arizona, California, Colorado, Nevada, New Mexico, and Wyoming (and other programmatic agreements and/or, consultation protocols and/or other formalized working arrangements between BLM and SHPOs in any State~~ with Indian tribes, 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. All project and special purpose programmatic agreements will function normally according to their terms. If deemed helpful and appropriate by the tribe and the BLM, these may be incorporated into BLM/tribe protocols consistent with the purposes of this agreement.

fg. When potentially relevant to the purposes and terms of this agreement, the BLM FPO will forward to the ~~Council~~ ACHP, NCSHPO, and NATHPO information concerning the following, ~~early enough to allow~~ in a manner that allows for timely briefing and consultation at the ~~Council's~~ ACHP's, NCSHPO's and NATHPO's election:

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

~~In cooperation with the Council and the NCSHPO, and with the active participation of individual SHPOs, the Preservation Board will develop and implement~~ The BLM will maintain a training program to (a) instruct BLM line managers and cultural heritage ~~program personnel~~ specialists on the policies underlying and embodied in this agreement, ~~as well as specific measures that must be met prior to its implementation~~ including tribal consultation, and (b) enhance skills and knowledge of other BLM personnel involved with “~~Cultural Heritage~~ 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~~ In cooperation with the ACHP and NCSHPO, the BLM may ~~be involved in the implementation of this agreement. The BLM may, where feasible and~~ identify partners, as appropriate, ~~reimburse the Council for assistance~~ to assist in developing training programs. The BLM will seek the active participation of Indian tribes and individual SHPOs in appropriate training sessions.

78. Professional Development

a. The ~~Preservation Board~~ DPOs, in consultation with ~~the~~ supervising line ~~manager~~ managers and cultural heritage ~~specialists~~ specialists in their state, will document each ~~specialist's individual attainments as a field office's~~ preservation professional staffing capabilities in their annual report to the SHPO, 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~~ manager's immediate staff does not possess the necessary qualifications to perform specialized preservation functions (e.g., historical architecture, historical landscape architecture, ethnography), the ~~documentation~~ field office manager will ~~identify available sources of~~ seek specialized expertise from outside the immediate staff, such as from other BLM offices, the SHPO, other Federal agencies, ~~Indian tribes~~, or non-governmental sources.

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

8. State 9. Field 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~~ ACHP, 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~~ consideration of tribal comments, may choose to review the status of a district's or field ~~office's~~ office's certification status. ~~The (8100.13E) to employ alternative procedures developed pursuant to this agreement; or a district or field office's manager, the State Director, District Manager, the Council, or~~ ACHP, the SHPO may request that the Preservation Board initiate a review, ~~in~~ of a district or field office with which ~~ease the~~ it operates under that protocol. Selecting parties may consider including other legitimate affected parties as participants in the review, as

district or field office is found not to have maintained the basis for its certification (e.g., lacks the professional capability needed to carry out these policies and procedures ~~is no longer available, or the office, or~~ is not in conformance with ~~thethis agreement, a BLM/SHPO protocol, or the procedures developed under 3. above, or this agreement~~) and the ~~office'soffice's~~ manager has not voluntarily suspended participation under this agreement, the Preservation Board will recommend that the State Director decertify the field office. If a suspended or decertified field office is found to have restored the basis for certification, the Preservation Board will recommend that the State Director recertify the office.

~~e~~ b. A State Director may ask the Director to review the Preservation ~~Board'sBoard's~~ decertification recommendation, in which case the Director will request the ~~Council'sACHP's~~ participation in the review.

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

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

9.10. Accountability Measures

~~a~~ a. It will be the Preservation Boards ~~duty in accordance with 3.c and d. above to ensure that the field offices are following the policies and procedures, as revised pursuant to this section. Where problems with implementation are found, it will be the Preservation Board's duty to move promptly toward effecting correction of the problems.~~

b. Each State Director will prepare an annual report in consultation with the appropriate SHPO(s), outlining the preservation activities conducted under this agreement. The annual ~~report'report's~~ content will ~~be specified in~~ consist of the ~~revised Manual~~ BLM Federal Archaeology Report, excepting the law enforcement information, and supplemental information agreed upon by the BLM and SHPO. The report will be ~~provided to the Council and~~ made available to affected Indian tribes and the public via the BLM web site.

~~b~~ c. Every 5 years, at a minimum, each State Director that maintains a protocol with a SHPO pursuant to this agreement or his/her designee will meet with the SHPO to review the implementation of that protocol.

~~d~~. Once each year, the ~~CouncilBLM~~, in consultation with the ~~BLM, SHPOS, ACHP and interested parties, and with assistance from the BLM SHPOs~~, may select a certified ~~Statestate~~ or ~~States,states~~ or field offices within a ~~State, 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 OfficerFPO~~ and the appropriate ~~Deputy Preservation OfficerDPO(s) and~~, SHPO(s)), and the ACHP 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.

President, National Conference of State Historic
Preservation Officers

Date

DRAFT