

**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 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 resources that may be affected by its actions, in 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 8100-8170); (2) executed a national programmatic agreement in 1997 to help guide the BLM’s planning and decision making as it affects historic properties as defined in the NHPA; and (3) 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 (SHPO), as represented by the National Conference of State Historic Preservation Officers (NCSHPO), have responsibilities under state law as well as under Section 101(b) of the NHPA that include:

- “advise and assist as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;”
- “maintain inventories” of historic properties in cooperation with Federal and state agencies; and
- “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 place. Where the Secretary has approved an Indian 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 ACHP has the responsibility to: (1) administer the process implementing Sections 106, 110(f), and 111(a) of the 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 (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 Section 202(a)(6) of the NHPA.

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. 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 ACHP desire and intend in the public interest to streamline and simplify procedural requirements, reduce unnecessary paperwork, and emphasize the common goal of planning for and managing historic properties under the BLM's jurisdiction and control.

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 NHPA; and

WHEREAS, among other things, the 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 under the 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 consultation with Indian tribes, state and local governments, and the interested public; and (3) 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, 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 preservation-related activities are carried out in consultation with Indian tribes, other Federal agencies, state and local governments, and the interested public; and

WHEREAS the BLM's program also is intended to: (1) ensure that the bureau's procedures for compliance with Section 106 of the NHPA are consistent with regulations issued by the ACHP pursuant to Section 211 of the NHPA (36 CFR 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 SHPOs, Indian tribes, local governments, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and

WHEREAS the 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 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 interests of Indian tribes in lands and resources potentially affected by BLM decisions, affording tribes adequate participation in the process leading up to a BLM decision in accordance with 36 CFR part 800; and

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

WHEREAS, for undertakings not on tribal lands, the BLM follows its 8120 Manual Section and H-8120-1 Handbook to meet its requirements for government-to-government consultation 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 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 this agreement, will enable BLM, SHPO, and ACHP staffs to devote a larger percentage of their time and energies to proactive work, including: (1) analysis and synthesis of data accumulated 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 ACHP coordination, including program monitoring and dispute resolution; and; (7) other activities that will contribute to readily recognizable tribal and public benefits; and

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

NOW, THEREFORE, the BLM, the ACHP, and the NCSHPO mutually agree that the BLM, after completing the actions summarized in paragraph 1. below, will meet its responsibilities under the NHPA through the implementation of the mechanisms described in this agreement rather than by following the procedure set forth in the ACHP'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

This agreement supersedes the 1997 national programmatic agreement. Existing state-specific protocols under the 1997 agreement will remain in 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 Office, will 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 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 pending actions, including land exchanges, available to the public and Indian tribes on a regular basis; and
- 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 will adversely affect properties that are eligible for the National Register;
- e. 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 Director of the BLM will 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 the BLM's policies and procedures for NHPA implementation. Authority, responsibilities, and operating procedures for the Preservation Board are specified in the BLM Manual 8100.04H.

b. The Preservation Board will be chaired by the 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 four line managers (i.e., officials who are authorized by the Director's or State 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 (paragraph 4. below), bureau wide policy implementation (paragraph 4. below), training (paragraph 7. below), certification and decertification of field offices (paragraph 8. below), monitoring of field offices' historic preservation programs (paragraph 10. below), and responses to public inquiries (paragraph 10. below).

d. In addition, the Preservation Board will confer with the ACHP and the NCSHPO, individual SHPOs, 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 tribal entities as have identified themselves to the Board as interested parties, to identify recurrent problems or concerns with state, regional, or national practice, and to create opportunities in general to advance the purposes of this agreement.

4. Cultural Resource Management Procedures

a. 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.

b. Revisions will be consistent with: (1) the purposes of this agreement; (2) the principles and standards contained in the ACHP’s most recent 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; and (5) other applicable standards and guidelines.

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 be government-to-government. Procedures to ensure timely and adequate tribal participation will follow the direction in Sections 101(d)(6) and 110(a)(2)(E) of the NHPA, and BLM Manual Section 8120 and Manual Handbook H-8120-1. 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 36 CFR part 800 as the minimum standard for 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 to those resources. For Indian tribes with historic preservation programs approved by the Secretary under Section 101(d)(2) of the NHPA, THPOs will be involved in place of SHPOs when tribal land would be affected. Such involvement will occur under the ACHP’s and/or the tribe’s procedures in all cases, not under this 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.

5. Thresholds for ACHP Review

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

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

- (1) nonroutine interstate and/or interagency projects or programs;

(2) undertakings adversely affecting National Historic Landmarks or National Register listed properties;

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

(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. The BLM will ensure the following information 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 jurisdiction;
- a current list of Preservation Board members;
- a current list of BLM cultural heritage personnel within each state office’s jurisdiction;
- a map of each state showing BLM field office boundaries and responsibilities.

b. Within 12 months of execution of this agreement, each State Director or his/her designee will meet with each pertinent SHPO to review and consider the need for changes in their state protocol to 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 a 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. Substantive revisions to protocols will be subject to consultation with Indian tribes and appropriate opportunities for public review and comment. The state office will provide the ACHP an opportunity to review and comment on **revised** protocols before execution, and the Preservation Board and the ACHP will be kept informed of the progress of protocol review and revision. Revised BLM/SHPO protocols will be posted on the BLM web site. The SHPO and State Director may ask the NCSHPO, the Preservation Board, and/or the ACHP to assist at any stage in 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 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 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,
- 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 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. 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, will seek, as appropriate, the active participation 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 may influence large-scale decisions and inform the analysis of cumulative effects of more routine decisions before the BLM makes key commitments and protection options are limited.

f. The BLM maintains agreements, consultation protocols and/or other formalized working arrangements with Indian tribes, relative to identifying undertakings, identifying properties, evaluating properties, determining effects, and protecting historic properties. 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.

g. When potentially relevant to the purposes and terms of this agreement, the BLM FPO will forward to the ACHP, NCSHPO, and NATHPO information concerning the following, in a manner that allows for timely briefing and consultation at the 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 budget proposals for BLM historic preservation activities;
- relevant training opportunities; and
- long-range planning and regional planning schedules.

7. Training Program

The BLM will maintain a training program to (a) instruct BLM line managers and cultural heritage specialists on the policies underlying and embodied in this agreement, including tribal consultation, and (b) enhance skills and knowledge of other BLM personnel involved with “Heritage Resource Management” activities, including land use planning and resource management staffs. In cooperation with the ACHP and NCSHPO, the BLM may identify partners, as appropriate, to assist in developing training programs. The BLM will seek the active participation of Indian tribes and individual SHPOs in appropriate training sessions.

8. Professional Development

a. The DPOs, in consultation with supervising line managers and cultural heritage specialists in their state, will document each field office’s preservation professional staffing capabilities in their annual report to the SHPO, consistent with OPM guidance 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, historical landscape architecture, ethnography), the field office manager will 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 in assessing the manager's needs for special skills not presently available on the immediate staff, and the specialist's opportunities for professional development and career enhancement through training, details, part-time graduate education, and other means.

9. Field Office Certification and Decertification

a. The Preservation Board, in consultation with the appropriate SHPO and the ACHP, and with consideration of tribal comments, may choose to review the status of a district's or field office's certification (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 ACHP, the SHPO may request that the Preservation Board initiate a review of a district or field office with which it operates under that protocol. Selecting parties may consider including other legitimate affected parties as participants in the review, as appropriate. The FPO, appropriate DPO(s), SHPO(s), and the ACHP will participate in the review. The Preservation Board will respond in a timely manner to such requests. If a district or field office is found not to have maintained the basis for its certification (e.g., lacks the professional capability needed to carry out these policies and procedures, or is not in conformance with this agreement, a BLM/SHPO protocol, or the procedures developed under 3. above) and the office's manager has not voluntarily suspended participation under this agreement, the Preservation Board will recommend that the State Director decertify the field office. If a suspended or decertified field office is found to have restored the basis for certification, the Preservation Board will recommend that the State Director recertify the office.

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

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

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

10. Accountability Measures

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's content will consist of the BLM Federal Archaeology Report, excepting the law enforcement information, and supplemental information agreed upon by the BLM and SHPO. The report will be made available to affected Indian tribes and the public via the BLM web site.

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 BLM, in consultation with the ACHP and SHPOs, 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 parties as participants in the review, as appropriate. The FPO and the appropriate DPO(s), 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.

e. The FPO and DPOs will prepare responses to public inquiries for the signature of the Director or a State Director regarding inquiries about the BLM's exercise of its authorities and responsibilities under this agreement, such as the identification, evaluation, and protection of resources. 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.

f. Each meeting of the Preservation Board will be documented by a report. The Preservation Board will post a copy of each report on the BLM website.

11. Reviewing and Changing the Agreement

a. The parties to this agreement may agree to revise or amend it at any time. Changes that would substantively affect the opportunity for public participation or tribal consultation will be subject to notice and consultation.

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, all state protocols will be suspended and the BLM will comply with 36 CFR part 800.

d. Within 1 year of the execution of this agreement and every 2 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.

Director, Bureau of Land Management

Date

Chair, Advisory Council on Historic Preservation

Date

President, National Conference of State Historic
Preservation Officers

Date

DRAFT