

STATE PROTOCOL AGREEMENT  
 BETWEEN THE  
 MONTANA STATE DIRECTOR, BUREAU OF LAND MANAGEMENT  
 AND THE  
 MONTANA STATE HISTORIC PRESERVATION OFFICE  
 REGARDING THE MANNER IN WHICH THE  
 BUREAU OF LAND MANAGEMENT WILL MEET ITS RESPONSIBILITIES UNDER  
 THE NATIONAL HISTORIC PRESERVATION ACT AS PROVIDED FOR IN THE  
 NATIONAL PROGRAMMATIC AGREEMENT

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**PURPOSE.** This State Protocol Agreement (Protocol) implements the Bureau of Land Management's (BLM) National Programmatic Agreement (NPA) by describing how the Montana State Historic Preservation Office (SHPO) and the BLM will interact and cooperate under the NPA (Appendix 1). The goal of this Protocol and the NPA is a meaningful and productive partnership between the BLM (also referred to as the BLM Montana State Office and the BLM Field Offices and the SHPO that will enhance the management of the process under which cultural resources are administered by the BLM. Unless otherwise indicated, all definitions in this Protocol comport with 36 CFR Part 800.16.

**I. RELATIONSHIP TO OTHER AGREEMENTS**

Other Programmatic Agreements (PA) and Memoranda of Agreement (MOA) may be developed as needed or required to meet BLM's requirements under Section 106 of the National Historic Preservation Act (NHPA). Circumstances which may require the development of other PAs and MOAs include but are not limited to:

A. Multiple Federal Agencies.

- a. If BLM accepts lead responsibility for Section 106 compliance, when more than one federal agency is involved, the BLM and the SHPO may agree to either follow the procedures of the NPA or the BLM may develop a separate MOA or PA in accordance with 36 CFR Part 800.
- b. If a Federal agency other than BLM takes lead responsibility for Section 106 compliance, a separate PA or MOA may be developed specific to that undertaking and, if BLM is a Signatory, BLM will follow the provisions of that agreement or 36 CFR Part 800.
- c. Where other federal and state agencies projects impact BLM managed lands and there is no PA or MOA, BLM and the Montana SHPO agree to the following provision. In the case of negative reports or where no cultural resources are located on BLM managed surface, BLM would provide the SHPO a copy of their letter to the lead agency. For positive reports, the procedures under Section VII of

this agreement would be followed. The SHPO shall provide BLM a copy of any letters and correspondence concerning project effect and eligibility when it involves sites on BLM managed lands.

- B. Where a PA or MOA is requested by BLM or SHPO regarding specific land use decisions in a Resource Management Plan (RMP) (e.g., Travel Management Allocations implemented by a Record of Decision (ROD) for the RMP).
- C. Garnet Ghost Town PA. The Garnet Ghost Town PA (BLM-MOU-MT070-103), regarding building stabilization and visitor use facilities in the Garnet Historic District will remain in full force and effect.
- D. BLM/United States Forest Service (USFS) Historic Placer and Lode Mining PA. When this Protocol is signed the procedures cited here in the Protocol will be used in place of provisions contained in the BLM/USFS Historic Placer and Lode Mining PA.
- E. Program Alternatives. For the development and approval of Program Alternatives, including project-specific PAs, BLM will follow the process under 36 CFR Part 800.14.

## **II. PROGRAMMATIC SHPO INVOLVEMENT IN BLM MANAGEMENT PROCESSES**

### **A. Land Use Planning.**

- a. Scoping. Each BLM field office responsible for preparing a land use plan at the regional or local level will invite, in writing, the SHPO to participate in scoping for the purpose of identifying issues to address in the plan. In writing, the BLM will invite the SHPO to comment on any proposed cultural resource use allocations, whether these are made in regional, local, or project plans. BLM Field Offices will send all draft and final land use plans and cultural resource project plans to the SHPO for review and comment.
- b. Planning Effort. Each field office responsible for preparing a land use plan or significant amendments or revisions at the regional or local level will invite SHPO, in writing, to participate in the planning effort (BLM Manual 8130), and seek SHPO comment on proposed resource use allocations.

The SHPO may elect to participate in the specific land use planning efforts noted above. If the SHPO does not respond within sixty (60) days, it will have, by default, elected not to participate. The BLM will consider the views of the SHPO on specific land use planning efforts when those views are expressed in writing. A PA or MOA specific to the land use planning effort may be requested by either party. Completion of the consultation process for planning will be indicated by the BLM Field Office's written response to the SHPO's comments on the draft land use or cultural resource project plans. No decision documents for

land use or cultural resource project planning will be issued by the BLM prior to completion of the consultation.

- B. Field Tours. The SHPO may participate in public field tours or other field examinations as requested by the SHPO or as invited by the BLM relating to land use planning efforts or specific undertakings whenever management of the cultural resources is involved. When the request for a field tour is initiated by the SHPO, the SHPO will be responsible for its expenses associated with the tour.
- C. Annual Work Plans. BLM field offices will transmit copies of annual work plans to the SHPO as they are developed through the budget process. The SHPO, at its discretion, may request to meet with a BLM field office regarding work identified in annual work plans. The BLM will address concerns raised by the SHPO and will welcome suggestions to facilitate heritage preservation goals.
- D. Meetings. The SHPO is encouraged to meet with the BLM Montana State Office, a Field Manager, or Field Office personnel at any time to discuss annual work plans, specific undertakings, outreach efforts, or other issues related to cultural resources including those under Sections 106 and 110 of the NHPA.
- E. Informal Consultation. The SHPO, the BLM Deputy Preservation Officer, and Field Office personnel may consult informally at their discretion on specific undertakings or any aspect of the BLM's cultural resource management program including, but not limited to, site identification, evaluation, and treatment strategies. Such consultation is encouraged to take full advantage of the SHPO's experience with a broad range of Federal agencies and historic preservation efforts statewide.
- F. Internal BLM Field Office Program Review. The Montana State Office will invite SHPO participation in internal Field Office program reviews and will provide reports of reviews, exclusive of findings and recommendations specific to personnel matters. Consistent with provisions of the NPA, the BLM Deputy Preservation Officer will regularly review and determine whether BLM Field Offices are maintaining an appropriate level of technical capability and performance to meet the requirements of the NPA and Protocol. Review will also consider whether there are necessary procedures and commitments in place to manage cultural resources in accordance with BLM manuals and handbooks.

The BLM Deputy Preservation Officer will document the findings of BLM Field Office Program Reviews and the BLM State Director will submit these reports for SHPO review and written recommendations. When SHPO's recommendations are accepted by the BLM State Director, implementation of such recommendations will become the responsibility of each BLM Field Manager, who will be required to initiate corrective

actions within sixty (60) days from the date the recommendations are accepted by the BLM State Director. Failure to initiate corrective actions within the specified time or failure to correct the deficiencies will require the BLM State Director to consider, in consultation with the BLM Deputy Preservation Officer and SHPO, actions under Stipulation XIII of this Protocol.

The SHPO may, at their initiative, and after providing notice in writing to BLM, conduct structured on-site compliance reviews of BLM Field Offices. The scope and content of the review will be developed by the SHPO in consultation with BLM. The review will afford both parties the opportunity to examine the aspects of cultural resource management in each Field Office. BLM will make available the BLM Deputy Preservation Officer, the Field Manager, and the Cultural Resource Specialist during these reviews. BLM will also provide pre-visit information to the SHPO as requested in written format. The format and content of such pre-visit information requests will be determined through consultation between BLM and the SHPO.

- G. Review of Undertakings. SHPO will participate in reviews of undertakings per Stipulations VII and VIII.
- H. Training. The BLM will provide an internal training program to instruct BLM line managers and cultural resource specialists on the policies underlying and embodied in the NPA and this Protocol. This training program will be provided to both existing and new managers and cultural resource specialists as needed to ensure compliance with the NPA and this Protocol. The BLM will request participation and assistance of the SHPO in training sessions.

### **III. COOPERATIVE INFORMATION DEVELOPMENT & MANAGEMENT EFFORTS**

- A. Shared Data. Each BLM Field Office will send the SHPO copies of all cultural resource inventory reports, site forms, treatment plans, and excavation/treatment reports and any documentation resulting from original research. The SHPO Cultural Resource Annotated Bibliography System (CRABS) data entry forms will be included with each submittal. Both hard copies and digital copies of reports and site forms along with Geographic Information System (GIS) shape files for inventory areas and site boundaries will be included by the BLM Field Office. BLM Field Offices will provide these documents, transmitted under the field manager's signature or designee to the SHPO as they are completed to assist in the compliance process and/or to keep the State repository files current.

The BLM and the SHPO will continue to work together under an Assistance Agreement or comparable instrument to manage and develop a secure online cooperative data sharing geo-database project. This project has resulted in and will continue to provide site and inventory data access for each BLM Field Office with enhanced GIS capability

for both BLM and the SHPO. Each BLM Field Office will sign a SHPO Digital Data and Information Use Agreement outlining the conditions for using and protecting digital cultural resource information.

- B. Preservation Planning. The BLM and SHPO will work together to develop historic contexts, as needed, for historic properties located on public lands. BLM will update Class I overviews as part of the planning process. Overviews will synthesize available data from all sources including published and unpublished resources. These overviews will be made available to the SHPO, Indian tribes, and the interested public.

#### **IV. COOPERATIVE PUBLIC EDUCATIONAL OR RESEARCH OUTREACH**

Where appropriate and in concordance with BLM and SHPO preservation goals and mandates the BLM and SHPO will participate in avocational initiatives and encourage interest in history and archaeology on public land:

- A. Project Archaeology. The BLM and SHPO will support the continued integration of archaeological based concepts and preservation ethics in Montana schools.
- B. Archaeology Week/Month. The BLM and SHPO will participate on an annual basis in Archaeology Week/Month activities including poster production and distribution, public presentations, field tours, and exhibits.
- C. Avocational Initiatives: The BLM and SHPO will participate in avocational initiatives and encourage interest in history and archaeology on public lands.
- D. Section 110 and Archeological Resource Protection Act (ARPA). Permitted activities (including field schools) will require advance notice by the BLM to the SHPO of the proposal. The BLM will submit a project report to the SHPO within a year of project activities and copies of all additional reports thereafter. For multi-year projects a progress report will be submitted each year in lieu of a project report. Where reporting requirements are not met, BLM will consider terminating any future work by the proponent.

#### **V. NATIVE AMERICAN PARTICIPATION AND TRIBAL CONSULATION**

The special legal status of Indian tribal governments requires that the BLM's official interactions with them, including consultation, will be carried out in accordance with Government-to-Government procedures to ensure that tribal participation occurs pursuant to the statutory and regulatory directives in Sections 101(d) (6) and 110(a) (2) (E) of the NHPA and 36 CFR Part 800.2(c) (2). Consistent with those directives and Department of the Interior's tribal consultation policy, the BLM will consult with the tribal government's official designee in accordance with the following polices for cultural resources. All Federally-recognized Indian tribes with

aboriginal claims in Montana are invited to review and comment on this Protocol as invited signatories.

- A. The BLM State Director, District Managers, and Field Managers, as appropriate, will represent the United States in Government-to-Government meetings with Indian tribes.
- B. Field managers and BLM staff will establish working relationships with tribal officials comparable to their working relationships with State and local government officials.
- C. Field Managers or District Managers, as appropriate, should plan to schedule at least one annual meeting with tribes to discuss upcoming projects for the year. To the degree possible the topics at such meetings should include a description and general location of the undertakings, likely identification efforts by the BLM for these projects, and tribal interest in additional consultation on these undertakings.
- D. Field managers and BLM staff will recognize that traditional tribal practices and beliefs are an important, living part of our national heritage and seek to avoid to the degree possible under existing law and regulation their potential disruption as a consequence of proposed BLM land use decisions.
- E. Field managers and BLM staff will 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 regulations. Field Offices will maintain the confidentiality of sacred sites to the degree possible under existing law and regulation.
- F. Field managers and BLM staff will consider and consult with Indian tribes regarding whether a proposed undertaking may inhibit or destroy tribal access to public lands for the purposes of religious use and other traditional users, such as gathering natural resources, and will, consistent with Executive Order 13007, seek to accommodate access to and ceremonial use of sacred sites, as well as avoid unnecessary interference with or adverse effects to traditional religious and cultural properties.
- G. Field Managers and BLM staff will consult with Indian tribes to identify and consider tribal concerns related to the identification and management of historic properties in BLM planning and decision-making, and will document all consultation efforts.
- H. Field Managers and BLM staff will ensure that information on tribal religious and cultural issues receives good faith consideration during decision-making and that, to the extent consistent with the law and regulation, BLM decisions do not substantially burden the pursuit of traditional religious and cultural practices.

- I. Field Managers will document tribal consultation findings in planning documents, National Environmental Policy Act (NEPA) documents, and eligibility determinations and effect findings submitted to the SHPO. If written tribal comment is received it will be included in the submittal to the SHPO. If the Field Office has a separate tribal consultation protocol which precludes sharing that information (generally or for specific undertakings), the tribal protocol will take precedence; however its use will be documented with the SHPO.

## **VI. PUBLIC AND INTERESTED PARTY INVOLVEMENT**

BLM will involve and inform the public and tribes on a continuous basis regarding federal undertakings through the NEPA process, NEPA logs for each field office hosted on MT BLM's web sites, and through the BLM Planning system.

- A. Interested Parties. Interested parties will be invited by BLM, in writing, to consult early in the review process if they have expressed an interest in a BLM undertaking or action subject to the Protocol. Such interested parties may include, but are not limited to: local governments; grantees, permittees, or owners of affected lands or land surfaces; Indian tribes, organizations, families and individuals; and those seeking to participate as consulting parties in a particular undertaking.
- B. Public Involvement. The BLM will invite the public to express views by seeking out and providing opportunities for public involvement and comment. The manner in which BLM seeks out and considers the views of the general public should reflect the nature and complexity of the undertaking and its effects on historic properties; the likely interest of the public in the effects on historic properties; confidentiality concerns of private individuals and businesses; and the relationship of the BLM's involvement in the undertaking. The BLM will encourage productive public involvement in a consultative process that seeks to accommodate historic preservation concerns with the needs of the BLM.

## **VII. TERMS OF THE PROTOCOL FOR REVIEW OF UNDERTAKINGS**

For undertakings that do not meet the thresholds for case-by-case SHPO review (see Stipulation VIII), the Field Manager, with the assistance of qualified professional staff (36 CFR 61) and in consultation with the SHPO, Indian tribes, interested parties, and the public will assess the effects of the BLM's proposed actions on historic properties as follows:

- A. Planning. BLM Field Managers will consult with Indian tribes, interested parties, and the public at the outset of planning and environmental review for undertakings to seek information regarding historic properties in the Area of Potential Effect (APE), specifically to:



- (1) Identify properties of religious and cultural significance to Indian tribes and properties that may be eligible for listing in the National Register of Historic Places (NRHP). Where applicable, the National Register Bulletin series, the Secretary of the Interior's Standards for the Treatment of Historic Properties, and the attendant guidelines published by the National Park Service (NPS) will serve as the authority in matters concerning the eligibility and treatment of resources eligible for the NRHP;
- (2) Sufficiently understand the concerns of Indian tribes and other interested parties and the effects that the undertakings might have on historic properties; and
- (3) Consider comments provided, as described herein, in making decisions on the undertakings, and notify consulted parties of the relevant final undertaking planning decisions.

B. Identification. Prior to initiating or authorizing a proposed action that meets the definition of “undertaking” in 36 CFR Part 800.16(y) and is a type of activity that has the potential to cause effects to historic properties (with the assumption that historic properties are present), the responsible BLM Field Manager will:

- (1) Determine the undertaking APE, to include both direct and indirect effects and which may involve historic properties that are large cultural landscapes or traditional cultural properties.
  - a. Special Historic Mining Property Consideration. For undertakings within large unidentified and/or unevaluated historic lode or placer mining districts, the APE will focus on potentially affected mine properties and features, not on the entire mining district.
- (2) Review existing information on historic properties potentially affected by the undertaking, including existing documentation on cultural resources and inventory, and BLM documentation of previous tribal consultation;
- (3) Consult and seek information in accordance with BLM land use planning and environmental review processes from SHPO and Indian tribes and other consulting parties likely to have knowledge of, or concerns with, historic properties in the area, particularly properties of traditional religious and cultural significance;
- (4) Determine the need for further actions, such as field surveys and predictive modeling to identify potential historic properties in the APE. The BLM will

consider potential direct, indirect, and cumulative effects to historic properties and their associated settings as applicable, regardless of land ownership. In cases where the APE is subject to question or there are multiple jurisdictions, split estate or ownership or where less than 100% Class III Intensive Inventory is being considered, the Field Manager will seek the opinion of the SHPO in the early planning stages.

- (5) No Inventory Decision. All undertaking decisions where no inventory occurs will be documented with rationale in the annual report (see Stipulation XI) as a No Inventory Decision.
- (6) Make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking as described in 36 CFR Part 800.4(b) (1). All surveys and other efforts to identify historic properties will be documented according to standards set forth by the Secretary of the Interior, the BLM 8100 Manual, Handbook H-8110-1 Appendices 4-6 and the SHPO (including electronic pdf copy of reports and forms as well as all shape files). Prior surveys may be accepted as adequate inventory for all or part of a project APE based on review by the Field Office cultural staff and completion of documentation of such review with careful consideration of possible changes in standards, new information, and passage of time particularly for reports ten (10) or more years old.
- (7) Negative Inventory. Following a 100% Class III Intensive Inventory of the entire APE, without exception for ownership or jurisdiction, which locates no cultural resource properties or only properties previously determined not eligible for reasons other than age, the Field Office Manager may approve and implement the undertaking. The negative inventory will be documented to standards agreed upon in this Protocol and submitted to the SHPO within 180 days. Negative inventory reports will not be submitted together with positive inventory reports or in groups of more than ten (10) at one time. Note that if cultural resource properties are located in the APE, but no historic properties affected or avoidance is proposed, proceed under Stipulation VII(D)(1)(a)). Class II inventory cannot generally be used as an indicator of site absence unless the APE was surveyed in its entirety at a Class III level.

C. Eligibility. In the event that cultural resource properties exist in the APE and may be affected, the Field Manager will:

- (1) Determine, in consultation with Indian tribes and other interested parties, as necessary, if any properties identified within the APE, including properties of traditional religious and cultural significance to an Indian tribe, meet one or

more eligibility criteria specified in 36 CFR Part 60.4.

- (2) Submit all eligibility assessments to the SHPO with correspondence indicating eligibility review/concurrence is requested. Effect findings (Stipulation VII (D)) may be made in conjunction with eligibility findings.
  - a. If the Field Manager determines that a property does not meet the eligibility criteria in 36 CFR Part 60.4 they will provide such documentation to the SHPO no less than thirty (30) days prior to approval of the undertaking or its implementation. SHPO will concur or disagree in writing within fifteen (15) days. If the SHPO disagrees with the findings made by the Field Office Manager within fifteen (15) days, the BLM will reconsider its original finding, consult further with the SHPO, or submit documentation to the Keeper of the NRHP for a formal determination of eligibility. If SHPO does not respond within fifteen (15) days the Field Manager may assume agreement.
  - b. If the Field Office Manager determines that a property does meet one or more eligibility criteria in 36 CFR Part 60.4, the property will be considered eligible for listing in the NRHP for purposes of complying with Section 106 of the NHPA. The Field Office Manager will provide such documentation to the SHPO no less than thirty (30) days prior to approval of the undertaking or its implementation. SHPO will concur or disagree in writing within fifteen (15) days. If the SHPO disagrees within fifteen (15) days the BLM will reconsider its original finding, consult further with the SHPO, or submit documentation to the Keeper of the NRHP for a formal determination of eligibility. If the SHPO does not respond within fifteen (15) days the Field Manager may assume agreement.
- (3) Changes in Eligibility. If the BLM or SHPO find it appropriate to change the eligibility determination of a previously concurred upon cultural resource or historic property, they must formally consult to seek concurrence on the changed determination, and must include justification for the proposed determination change. If the SHPO presents the change, they will write an email or letter to the respective Field Office with a justification for the change and request that BLM initiate consultation. If BLM presents the change, they will mail the report, site forms, and other documentation to the SHPO and will include justification for the change and initiate consultation. If either party does not respond within fifteen (15) days the other party may assume concurrence with the change in eligibility. Any consulting parties involved will be informed of the potential change in eligibility and provided the

opportunity to comment. Previously unevaluated sites and sites without previous SHPO concurrence are not subject to this stipulation. If the Keeper of the National Register has formally determined a property eligible for the National Register, but the property has not been listed, BLM will contact the Keeper of the Register with a formal request to change the eligibility of the site. BLM will provide any documents and justification for the change, including any correspondence with the SHPO, consulting parties, and Indian tribes concerning the site. Once the Keeper has reached a finding BLM will notify the SHPO, consulting parties, and Indian tribes on the Keeper's decision.

- (4) Special Historic Placer and Lode Mining Property Considerations. If the property is located within a large undefined and/or unevaluated historic lode or placer mining district where a determination of eligibility of the entire district cannot be practically made, recordation and evaluation of individual features or sites within the district will take precedence. As time and resources allow, the BLM will identify and evaluate historic lode or placer mining districts on BLM lands, noting such activities in the Annual Report.

#### D. Effect

The Field Manager, upon determining that NRHP-listed properties, eligible historic properties, or unevaluated cultural resources exist within the APE of an undertaking, will determine whether those properties may be affected by the undertaking, consulting with SHPO, Indian tribes, consulting parties and the public.

- (1) No Historic Properties or Unevaluated Cultural Resources Affected. If the Field Manager finds that the undertaking will not affect those characteristics of an eligible historic property that qualify it for listing in the NRHP or will avoid unevaluated cultural resources located within the APE, the Field Manager will document this finding and provide documentation of "No Historic Properties or Unevaluated Cultural Resources Affected" to the SHPO no less than thirty (30) days prior to approval or implementation of the undertaking. Such reports will be submitted individually with correspondence indicating that an effect finding review and concurrence is requested. Eligibility findings (Stipulation VII(C)) may also be requested in conjunction with effect findings. The SHPO will concur or disagree with the finding(s) within fifteen (15) days. If the SHPO disagrees within fifteen (15) days, the BLM will reconsider its original finding, consult further with the SHPO, or submit documentation to the Advisory Council on Historic Preservation (ACHP) with a request for comment. If the SHPO does not respond within fifteen (15) days the Field Manager may assume agreement.

(2) No Adverse Effect. The Field Manager will apply the Criteria of Adverse Effect, pursuant to 36 CFR Part 800.5(a) (1), to determine whether the proposed undertaking may, directly or indirectly, diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling, or association. If the Field Manager finds that the undertaking will not have an adverse effect on a historic property or BLM will modify the undertaking to avoid adverse effects, per 36 CFR Part 800.5(b), and that the undertaking does not meet the threshold for SHPO case-by-case review (see Stipulation VIII) the Field Manager will document this finding and report to the SHPO no less than thirty (30) days prior to BLM's approval or implementation of the undertaking. Such reports will be submitted individually with correspondence indicating that a no adverse effect finding review and concurrence is requested. The SHPO will concur or disagree with the finding within fifteen (15) days. If the SHPO disagrees within fifteen (15) days, the BLM will reconsider its original finding, consult further with the SHPO, or submit documentation to the ACHP with a request for comment. If the SHPO does not respond within fifteen (15) days the Field Manager may assume agreement.

a. Special Historic Mining Considerations. For certain types of undertakings involving a historic property that is a historic placer or lode mining property that do not meet the threshold for ACHP notification, as listed below (Stipulation IX.) and in the NPA, BLM will pursue a no adverse effect determination with the SHPO. The Field Manager shall submit a letter justifying a no adverse effect finding with documentation demonstrating that an appropriate level of recordation of the historic placer or lode mining property has occurred. These types of undertakings are as follows:

- i. Closure of mine openings by filling, plugging, capping, installing barriers or gating; and
- ii. Removal of waste rock and/or tailing piles.

Additional types of undertakings may be added to this list by mutual agreement of the signatories pursuant to Stipulation XIV. There is the potential that an undertaking that meets the description of the above-listed types of undertakings could require additional mitigation depending on the undertaking scope, the significance of the site, and the anticipated effects. In such cases, the Field Manager should refer to Stipulation VII (D) (3) (c).

(3) Adverse Effect. If the BLM Field Manager determines that the undertaking

will have an adverse effect on historic properties, BLM will make a reasonable and good faith effort to avoid, minimize, or mitigate adverse effects in consultation with the SHPO and with Indian tribes, consulting parties, and the public, as appropriate. The Field Manager will consider the nature of the adverse effects and the characteristics and qualities that lend the historic property its significance and integrity. Agreed-upon minimization or mitigation measures will be implemented through either a Two-Party MOA, a Three-Party MOA, or proceed in accordance with 36 CFR Part 800.

- a. Two-Party MOA. For undertakings that do not meet the threshold for ACHP notification (see Stipulation IX), a Two-Party MOA will be developed between the BLM Field Manager and the SHPO to treat adverse effects to historic properties. Indian tribes and other consulting parties will be invited to participate, in writing by BLM. Upon execution of the MOA, the Field Manager will file the MOA with the ACHP. If the BLM Field Manager and SHPO cannot agree on an MOA, the Field Manager will proceed in accordance with 36 CFR 800.7 (Stipulation IX (D)).consult directly with the ACHP (Stipulation IX (D)).
- b. Three-Party MOA. For undertakings that do meet the threshold for ACHP notification, the BLM will proceed in accordance with 36 CFR Part 800.6.
- c. Special Historic Mining Considerations. If BLM and SHPO are unable to reach consensus on a no adverse effect determination for a historic property that is a placer or lode mining property as described in Stipulation VII (D)(2)(a) , the BLM Field Manager will consult with the SHPO to develop appropriate treatment measures acceptable to both parties. Agreed-upon treatment measures will be implemented through either a Two-Party MOA or a Three-Party MOA (see Stipulation VII (D) (3) (a-b)).

## **VIII. THRESHOLDS FOR CASE-BY-CASE SHPO REVIEW OF UNDERTAKINGS**

BLM will follow the procedures set forth in 36 CFR Part 800 in lieu of the Protocol (Stipulation VII) in the following specific situations:

- A. Anticipated Adverse Effect on a National Historic Landmark (NHL). Where undertakings are anticipated by BLM to have an adverse effect as defined by 36 CFR Part 800.5(a) (1), on an NHL.

- B. Unanticipated Adverse Effects. Where unanticipated, potentially adverse effects are discovered by BLM after completing the procedural steps at Stipulation VII of this Protocol.
- C. Multi-State Jurisdiction. Where the BLM acts either as lead federal agency on behalf of other federal agencies or in cooperation with other federal agencies for undertakings that may have effects on historic properties beyond the boundaries of the State of Montana and which involve other State Historic Preservation Officers. In such cases, BLM will consult with the respective SHPOs and Federal or State agencies regarding an appropriate compliance process in accordance with 36 CFR Part 800.
- D. Less Than 100% Inventory. Where an undertaking has the potential to affect Historic Properties or unevaluated cultural properties and the BLM proposes to complete less than a 100% BLM Class III Intensive Inventory of the affected lands, including when such a proposal is a result of multiple jurisdiction, ownership and or split estate, or special circumstances.
- E. Large Land Transfer. Where a BLM undertaking involves a transfer or allocation of public lands exceeding 10,000 acres regardless of the BLM survey class.
- F. Transfer of Land to the State of Montana. Where the BLM undertaking proposes to transfer lands to the State of Montana absent a separate SHPO agreement document governing the undertaking.
- G. Specialized Expertise. Where professional expertise necessary to implement this Protocol is unavailable to a Field Office.
- H. Resource Management Plans and Phased Identification. Where phased identification may be proposed for RMPs, supplements to RMPs, travel plans or major non-routine projects such as interstate major infrastructure and other complex undertakings requiring EA/EIS BLM will consult with SHPO on mutually agreeable strategies for phased identification.
- I. Internal BLM Disagreement. Where unresolved disagreements or disputes concerning BLM determinations exist between cultural resource staff and BLM Field Managers concerning an undertaking, an APE, an eligibility determination, or an effect finding.
- J. Potential Incompatibility with the BLM Manual or Policy. Where protocols and procedures in the BLM 8100 Manual procedures may conflict with the procedures established in 36 CFR Part 800.

- K. Supplemental Requirements for Consultation. Where supplemental BLM procedures that may be appended to this Protocol require consultation.

## **IX. THRESHOLDS FOR ACHP NOTIFICATION**

At a minimum, the BLM will request the ACHP's participation for the following types of undertakings:

- A. Non-routine interstate and/or interagency projects or programs. Examples are interstate pipelines or transmission lines which involve multiple jurisdictions and require the preparation of NEPA Environmental Impact Statements (EIS).
- B. Undertakings involving NHLs or historic properties of national significance;
- C. Undertakings that the BLM determines are highly controversial and are likely to involve significant disputes and substantive disagreements concerning potential adverse effects to historic properties;
- D. Undertakings that will have an adverse effect to historic properties, which cannot be resolved through formal agreement (i.e. MOA or PA) between the BLM and SHPO; and
- E. Unresolved disagreements between the BLM and SHPO regarding the application of the Protocol (other than eligibility findings).

The ACHP reserves the right to participate, on its own initiative or at the request of the SHPO, an Indian tribe, a local government, an applicant, or other consulting party, in any proceeding taking place in fulfillment of the BLM's NHPA Section 106 responsibilities under the regulations, the BLM NPA, or this Protocol, in a manner consistent with its role under 36 CFR Part 800 and the criteria under Appendix A of 36 CFR Part 800, and will notify the BLM and SHPO.

## **X. OBTAINING SPECIALIZED EXPERTISE**

When the BLM is involved in an undertaking requiring expertise not adequately possessed by available BLM staff (e.g., architectural history, historic architecture, historic archaeology and traditional cultural properties) it will obtain that expertise for the purposes of determining NRHP eligibility, and for determining effects and applying appropriate treatment to the historic properties in question. The BLM may request the assistance of SHPO staff in such cases or may obtain the necessary expertise through contracts, BLM personnel from other states, or



cooperative arrangements with other agencies.

## **XI. ANNUAL REPORT (SEE APPENDIX 2)**

The BLM Montana State Office will provide an annual fiscal year report to the SHPO containing narrative and statistical information from each Field Office for activities conducted under the Protocol. The format and content of this report will result from BLM and SHPO consultation efforts but will include information currently collected for the BLM National Cultural Resource Program Annual Report. The annual report will be submitted to the SHPO by December 15th of each year. By mutual consent the BLM and Montana SHPO may extend the deadline due to unforeseen circumstances such as government wide shut down or loss of key personnel. If BLM requests the extension, it will notify the SHPO in writing of the request, explain the circumstances of the request, and provide a date when the report will be finished. Any questions the SHPO may have about the information in this report will be answered by the BLM Montana State Office or appropriate BLM Field Office

## **XII. RESOLVING ISSUES**

If, at any time, the BLM or SHPO questions an action taken by the other party under this Protocol, they will consult to resolve the issue. If the issue concerns an action taken by a BLM Field Office, the SHPO will consult with the Field Manager to resolve it. If the issue cannot be resolved, the questioning party will request the BLM Deputy Preservation Officer or the BLM Preservation Board to assist in resolving it. If the issue still cannot be resolved, the BLM Deputy Preservation Officer will refer it to the ACHP. Upon full consideration of all issues, concerns, and recommendations, the BLM State Director will make the final decision and provide a rationale.

If a member of the public or an Indian tribe objects at any time to the manner in which this Protocol is being implemented, the BLM and SHPO will together consult with the objecting party to resolve the issue. If the BLM, SHPO and objecting party are unable to resolve the objection, the BLM will refer the issue to the ACHP. Upon full consideration of all issues, concerns, and recommendations, the BLM State Director will make the final decision and provide a rationale.

## **XIII. DECERTIFICATION OR SUSPENSION OF FIELD OFFICES**

If as a result of the Field Office Operations Review by the BLM Deputy Preservation Officer or as initiated by the SHPO (see Stipulation II(F)), or through other means (e.g. losses in key personnel), a Field Office cannot demonstrate continued capability to operate under the Protocol that office will be decertified or suspended by the BLM State Director. The Field Office will subsequently operate under regulations found at 36 CFR Part 800. If a suspended or decertified Field Office is found to have restored the basis for certification, the BLM Deputy Preservation Officer will recommend that the BLM State Director, with SHPO concurrence, recertify the

office.

#### **XIV. AMENDING THE PROTOCOL**

If the BLM or SHPO proposes to amend this Protocol at any time, they will consult with the other party to consider requested changes. Amendments will become effective when signed by both parties and reviewed by the ACHP.

#### **XV. TERMINATING THE PROTOCOL**

Either the BLM or SHPO, or both, may terminate this Protocol by providing notice ninety (90) days prior to the termination date to the other party, providing that they consult during this period to seek agreement on amendments or other actions that would avoid termination. The BLM Deputy Preservation Officer may request the assistance of the BLM Preservation Board, the National Conference of State Historic Preservation Officers (NCSHPO), or the ACHP in the consultation. If the Protocol is terminated, the BLM will resume operating under the provisions of 36 CFR Part 800.

#### **XVI. OTHER STATE-SPECIFIC PROCEDURES.**

In addition to the procedures described in national BLM directives and manuals, the Montana BLM State Office will be guided by manual supplements, handbooks, and Instruction Memorandums (IM) issued by the Montana BLM State Office. Currently, these consist of Montana Manual Supplements 8111 (Inventory and Evaluation), 8143 (Avoidance and/or Mitigation of Adverse Effects to Cultural Properties), and the Handbook H-8110-1. The BLM will update these manual supplements and handbook as needed to conform to national BLM directives and manuals, policies issued by the BLM State Director, National Register Bulletins, new laws, and new regulations. The SHPO will be provided an opportunity to participate in revising the Manual Supplements and Handbooks.

#### **XVII. EXPIRATION**

This protocol will expire in ten (10) years from the day of the last signature of BLM and SHPO unless renewed by consensus by both BLM and SHPO.

#### **Approved by:**

*Acting*  
*Rachel P. Kitchell*  
Montana State Director, Bureau of Land Management

*2/3/15*  
Date

*Stam Wilmoth, Deputy SHPO*  
State Historic Preservation Officer

*2/15/15*  
Date

**Appendices:**

1. Bureau of Land Management National Programmatic Agreement
2. Annual Report Format
3. SHPO Digital Data and Information Use Agreement

Appendix 1: Bureau of Land Management National Programmatic Agreement

**PROGRAMMATIC AGREEMENT  
AMONG  
THE BUREAU OF LAND MANAGEMENT,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING  
THE MANNER IN WHICH 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 of Section 106 of the NHPA 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 the NHPA, the BLM has: (1) developed policies and procedures through its directives system (BLM Manual Sections 8100-8170); (2) executed a national programmatic agreement (PA) 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 the BLM’s statutory authorities.

**State Historic Preservation Officers.** State Historic Preservation Officers (SHPO) are represented by the National Conference of State Historic Preservation Officers (NCSHPO) for the purpose of negotiating and executing this agreement, and 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 [the NHPA] on Federal undertakings that may affect historic properties, and the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties.”

In addition, under Section 110(a)(2)(D) and Section 110(a)(2)(E) of the NHPA, Federal agencies are required to consult with the SHPO 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 place of the SHPO. Where the Secretary of the Interior 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 or all SHPO functions with respect to tribal lands, defined as all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities, consistent with 36 CFR 800.16(x). A certified local government 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 800.3(c)(4)), 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) of the NHPA 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.

**Indian Tribes.** This agreement is entered into pursuant to the NHPA, which specifically requires that agencies consult with federally recognized tribes as defined in that Act so that these Indian tribes may: (1) identify their concerns about historic properties, including those of traditional religious and cultural significance to them; (2) advise agencies on the identification and evaluation of historic properties; (3) articulate their views on the potential effects of an undertaking; and (4) participate in resolving adverse effects. The BLM consults with Indian tribes on a government-to-government basis consistent with the Department of the Interior’s tribal consultation policy. While the BLM may initiate consultation under multiple authorities at one time, this agreement governs compliance with the NHPA and in no way supersedes the BLM’s other treaty, trust, and consultation responsibilities to Indian tribes under multiple other authorities.

**Consulting Parties.** Consulting parties include representatives of local governments, applicants, and certain individuals and organizations with a demonstrated interest in the undertaking due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking’s effects on historic properties (36 CFR 800.2(c)(3-5)). In consultation with the SHPO/THPO, the BLM shall identify consulting parties and invite them to participate in consultation and shall consider all written requests of individuals and organizations to participate as consulting parties (36 CFR 800.3(f)).

**The Public.** The views of the public are essential to informed Federal decision-making, and the BLM shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties. The BLM must also provide the public with information about an undertaking and seek public comment and input (36 CFR 800.2(d)). Pursuant to 36 CFR 800.2(d)(3), the BLM may use its agency procedures as contained in the BLM-SHPO protocols or BLM NEPA procedures to involve the public.

**The BLM, NCSHPO, and the ACHP**—in consultation with Indian tribes 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 historic properties as defined by the NHPA; and

WHEREAS, among other things, the BLM’s historic preservation program, established in response to Section 110(a)(2) of the NHPA and related authorities provides a systematic basis for: (1) identifying, evaluating, and nominating historic properties under the BLM’s jurisdiction or control to the National Register of Historic Places (National Register); (2) 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, local governments, consulting parties, and the interested public; and (3) giving 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 will be carried out in consultation with Indian tribes, other Federal agencies, local governments, consulting parties, 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 current regulations issued by the ACHP pursuant to Section 211 of the NHPA (36 CFR part 800, “Protection of Historic Properties”); (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, consulting parties, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered and resolved; and

WHEREAS the BLM recognizes that the 1997 PA and resulting internal BLM formal guidance do not incorporate the current 36 CFR Part 800 definition of “adverse effect” and role

of “consulting parties” in the NHPA Section 106 process, and the BLM will initiate revision of the relevant manual sections upon 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 acknowledges that Indian tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them in accordance with 36 CFR Part 800.4(c)(1), and;

WHEREAS the BLM’s programs benefit from consultation with Indian tribes in BLM’s identification and management of properties of religious and cultural significance and will ensure that its NHPA Section 106 procedures recognize the interests of Indian tribes in historic properties potentially affected by BLM decisions and afford tribes 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, with respect to which the BLM will comply with the regular Section 106 process under 36 CFR 800.3 through 800.7, the process under 36 CFR 800.8(c), or an applicable program alternative under 36 CFR 800.14, and;

WHEREAS, for undertakings not on tribal lands, the BLM employs the basic principles of government-to-government consultation with Indian tribes under cultural resources authorities including the NHPA as reflected in this PA; and consults with the tribal representatives designated by the tribal governments for the purpose of identifying properties of religious and cultural significance that may be eligible for listing on the 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 the 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 the 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) National Register nominations; (5) planning- and priority-based historic resource management; (6) creative public education and interpretation; (7) more efficient and effective BLM, SHPO, tribal, and ACHP coordination, including program monitoring and dispute resolution; and (8) 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, consistent with the provisions of Component 1 of this PA below, will meet its responsibilities under the NHPA through this agreement as provided for in 36 CFR 800.14(b), rather than by following the procedure set forth in 36 CFR 800.3 through 800.7. 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, National Environmental Policy Act (NEPA), other statutory authorities, and executive orders and policies.

The BLM shall ensure that the following components are carried out:

### *Components of Agreement*

#### **1. Applicability**

This agreement supersedes the 1997 PA. Existing state-specific BLM-SHPO protocols under the 1997 agreement will remain in effect until the respective BLM state director executes a successor BLM-SHPO protocol with each state per Component 6 of this agreement or until terminated. No existing informal and formal agreements between the BLM and an Indian tribe or tribes will be altered by this agreement. Any state not operating under a BLM-SHPO protocol will operate under 36 CFR 800.3 through 800.7, 36 CFR 800.8(c), or an applicable program alternative under 36 CFR 800.14.

#### **2. BLM Consultation Responsibilities with SHPOs and the ACHP under this Agreement**

a. This agreement encourages:

- (1) BLM state directors and SHPOs to develop mutually agreed upon two-party BLM-SHPO protocols regulating their relationship and how consultation will take place;
- (2) BLM state directors and SHPOs to establish streamlined (as opposed to case-by-case) consultation on evaluation of cultural resources for National Register eligibility and for no-historic-properties-affected, no-adverse-effect, and adverse-effect determinations when BLM and SHPO reach agreement on resolving the adverse effect(s);
- (3) BLM state directors to make a schedule of pending actions, including land exchanges, available to the public and Indian tribes on a regular basis;
- (4) BLM state directors to contact on a regular basis Indian tribes affected by undertakings within his or her jurisdiction and develop tribe-specific procedures for tribal consultation; and
- (5) BLM state directors to use phased identification and evaluation as described in 36 CFR 800.4(b)(2) as a strategy for meeting the BLM's NHPA Section 106 responsibility for programs implemented through a phased decision making process beginning with land use planning designations that may affect large land areas. A phased compliance process requires that the bureau demonstrate that it has taken some steps to take into account the effect of the undertaking on potentially eligible sites in each phase, and that until a reasonable effort has been made to identify all potentially eligible sites, the bureau retains the ability to modify the project, if

necessary, e.g., through no-surface-occupancy or other stipulations, or specific permit restrictions or covenants.

b. This agreement requires:

- (1) the BLM to follow the process at 36 CFR 800.3 through 800.7, 36 CFR 800.8(c), or another applicable program alternative under 36 CFR 800.14, for undertakings within any state that does not have a BLM-SHPO protocol under this agreement and for undertakings on or affecting tribal lands;
- (2) the BLM to consult with the relevant SHPO, Indian tribes (see Component 6.c), and other consulting parties for all undertakings that will adversely affect properties that are eligible for listing in the National Register, and for the development of any procedures such as project-specific PAs;
- (3) the BLM to invite the ACHP to participate in consultation when undertakings meet the thresholds in Component 5 of this agreement; and
- (4) the BLM to follow the process at 36 CFR 800.6(b)(2) or 800.14(b) to resolve adverse effects whenever the ACHP formally participates in the resolution of adverse effects for an undertaking.

### **3. Operation of the BLM's Preservation Board**

a. The BLM Director 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.

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. Field management 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 resource specialists will be represented by two members. Line manager and field office cultural resource 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 (Component 4 below), bureau-wide policy implementation (Component 4 below), training (Component 7 below), certification and decertification of district or field offices (Component 9 below), monitoring of district and field offices' historic preservation programs (Component 10 below), and responses to public inquiries (Component 10 below).

d. In addition, the Preservation Board shall meet with the ACHP and NCSHPO on a regular basis. In coordination with individual BLM DPO(s) and/or BLM Tribal Coordinator(s), as appropriate, the Preservation Board will address formal communications it receives from the ACHP and the NCSHPO, individual SHPOs, local governments, preservation and professional associations, individual tribes, and other tribal entities that have identified themselves to the Board as interested parties, regarding recurrent problems or concerns with state, regional, or national practice, and will otherwise seek to create opportunities to advance the purposes of this agreement.

#### **4. Cultural Resource Management Procedures for Consideration of the Effects of the BLM's Undertakings on Historic Properties**

As required by the NHPA Section 106 process and this agreement, the field manager—with the assistance of qualified professional staff and in consultation with the SHPO according to the process in the BLM-SHPO protocol, and with Indian tribes and consulting parties—identifies, evaluates, and assesses effects of the BLM's proposed actions on historic properties. This Component sets out the alternative framework, which, at a minimum, must be reflected in BLM-SHPO protocols or reflected with respect to individual projects utilizing this agreement to comply with Section 106.

a. Consultation with Indian tribes and the SHPO at the outset of land use planning is a vital part of identification and management of historic properties. 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 and will afford the best opportunity to foresee and avoid potential conflicts between BLM-authorized land uses and significant historic properties. District and Field office managers will seek information in accordance with BLM land use planning and environmental review processes and the tribal consultation policies outlined in Section f of Component 4 below, from Indian tribes and other parties likely to have knowledge of or concerns with historic properties in the area to:

- (1) Identify properties of religious and cultural significance that may be eligible for listing in the National Register of Historic Places;
- (2) Understand tribal and other parties' concerns sufficiently to better understand the effects that potential future Federal undertakings might have on eligible properties; and
- (3) Consider comments provided in making decisions on the land use plan, and notify consulted parties of the relevant final land use planning decisions.

b. Prior to initiating or authorizing a proposed action that meets the definition of "undertaking" in 36 CFR 800.16(y) and is a type of activity that generically has the potential to cause effects to historic properties (with the assumption that historic properties are present), the responsible district or field office manager shall:

- (1) Determine the undertaking's area of potential effects;
- (2) Review existing information on historic properties potentially affected by the undertaking, including documentation of previous tribal consultation;
- (3) 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 historic properties, particularly properties of traditional religious and cultural significance, in the area;
- (4) Determine the need for further actions, such as field surveys and predictive modeling to identify historic properties in the area;
- (5) Make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking as described in 36 CFR 800.4(b)(1); and

(6) Determine if any properties within the area of potential effect, including properties of traditional religious and cultural significance to an Indian tribe, meet one or more eligibility criteria specified in 36 CFR 60.4 (association with events; association with lives of significant persons; embodiment of distinctive characteristics of a type, period, or method of construction or possessing high artistic value; have yielded or are likely to yield important data), while acknowledging that a formal determination of eligibility may be requested from the Keeper of the National Register pursuant to 36 CFR 800.4(c)(2) and 36 CFR part 63.

(i) If the BLM field manager determines, consistent with the process in the State's BLM-SHPO protocol, that a property does not meet the eligibility criteria in 36 CFR 60.4, he or she will provide documentation to the SHPO according to the reporting schedule in the State's BLM-SHPO protocol, and the property shall be considered not eligible for listing in the National Register and therefore not subject to further consideration under Section 106 and this PA.

(ii) If the field manager determines, consistent with the process in the State's BLM-SHPO protocol, that a property meets one or more eligibility criteria in 36 CFR 60.4, the property shall be considered eligible for listing in the National Register for purposes of complying with Section 106 of the NHPA and this PA (i.e., an "historic property").

c. The field manager, upon determining that National Register-listed or eligible historic properties may be affected by an undertaking, shall determine whether those properties may be affected, giving consideration to the views of the interested public and any consulting parties, including, but not limited to Indian tribes.

(1) If the field manager finds that the undertaking will not affect those characteristics of the property that qualify it for listing in the National Register, the field manager will document this finding, proceed with the undertaking, and provide documentation of "no historic property affected" to the SHPO in accordance with the reporting schedule specified in the State's BLM-SHPO protocol.

(2) If the field manager finds that the undertaking may affect those characteristics of the property that qualify it for listing in the National Register, the field manager will apply the Criteria of Adverse Effect to determine whether the proposed undertaking may alter, directly or indirectly, those characteristics in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association (36 CFR 800.5(a)(1)) and will document this finding. If the field manager finds that the effect is not to be adverse or the undertaking is modified to avoid adverse effects, per 36 CFR 800.5(b), and does not meet the threshold for case-by-case review in the State's BLM-SHPO protocol or the threshold for ACHP notification, the field manager will document this finding, proceed with the undertaking, and report it to the SHPO according to the BLM-SHPO protocol.

d. When a proposed agency decision or undertaking meets the threshold for case-by-case review in accordance with the BLM-SHPO protocol and/or the threshold for ACHP notification as specified in this PA (see Component 5), the field manager shall consult with the SHPO to determine the specific process to be followed in that case including, as appropriate:

(1) Additional actions necessary to identify historic properties;

- (2) National Register-listed or eligible historic properties affected by the undertaking;
- (3) Effects the undertaking would have on National Register-listed or eligible historic properties; and
- (4) Methods for avoiding, minimizing, or mitigating adverse effects.

e. If the field manager finds the effect to be adverse and decides to proceed with the undertaking, he or she shall make a reasonable and good faith effort to avoid, minimize, or mitigate adverse effects to the most reasonable and fitting extent, in consultation with the SHPO, Indian tribes, and other consulting parties, considering the nature of the effects and the characteristics and qualities that lend the property its significance.

f. The special legal status of tribal governments requires that the BLM's official interactions with them, including consultation, will be carried out in accordance with government-to-government procedures to ensure that tribal participation occurs pursuant to the statutory and regulatory directives in Sections 101(d)(6) and 110(a)(2)(E) of the NHPA and 36 CFR 800.2(c)(2). Consistent with those directives and Department of the Interior tribal consultation policy, the BLM will consult with the tribal government's official designee in accordance with the following policies.

- (1) BLM State directors, and district and field office managers, as appropriate, shall represent the United States in government-to-government meetings with Indian tribes.
- (2) District and/or field managers shall establish working relationships with tribal officials comparable to their working relationships with State and local government officials.
- (3) District and/or field managers and staffs shall recognize that traditional tribal practices and beliefs are an important, living part of our Nation's heritage and seek to avoid to the degree possible under existing law and regulation their potential disruption as a consequence of a proposed BLM land use decision.
- (4) District and/or field 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. District and field offices shall maintain the confidentiality of sacred sites to the degree possible under existing law and regulation.
- (5) District and/or field managers and staffs shall consider and consult with Indian tribes regarding whether a proposed undertaking may inhibit or destroy tribal access to public lands for the purposes of religious use and other traditional uses, such as gathering natural resources, and, shall, consistent with Executive Order 13007, seek to accommodate access to and ceremonial use of sacred sites, as well as avoid unnecessary interference with or adverse effects to traditional religious and cultural properties.
- (6) District and/or field managers and staffs shall consult with affected Indian tribes to identify and consider tribal concerns related to the identification and management of historic properties in BLM land use planning and decision-making, and shall document all consultation efforts.

- (7) District and/or field managers and staffs shall ensure that information on tribal religious and cultural issues receives good faith consideration during decision-making, and that, to the extent consistent with the law, BLM decisions do not substantially burden the pursuit of traditional religious and cultural practices.

## **5. Thresholds for ACHP Notification**

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

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

- (1) nonroutine interstate and/or interagency projects or programs;
- (2) undertakings adversely affecting National Historic Landmarks;
- (3) undertakings that the BLM determines to be highly controversial; and
- (4) undertakings that will have an adverse effect and with respect to which disputes cannot be resolved through formal agreement between BLM-SHPO, such as a memorandum of agreement.

c. The development and approval of program alternatives, including project-specific PAs, will follow the process under 36 CFR 800.14.

d. The ACHP reserves the right to participate, on its own initiative or at the request of the SHPO, an Indian tribe, a local government, an applicant or other consulting party, in any proceeding taking place in fulfillment of the BLM's NHPA Section 106 responsibilities under the regulations, this agreement, or BLM-SHPO protocols, in a manner consistent with its role under 36 CFR Part 800 and the criteria under Appendix A of 36 CFR Part 800 and will notify the responsible BLM state director, and/or district or field office manager and the Director when it decides to participate.

## **6. Cooperation and Enhanced Communication**

This section establishes how the BLM will implement the alternate process afforded by Component 4 above with respect to potential and/or existing BLM-SHPO protocols. It also establishes how the BLM will develop cooperation and enhanced communication with the States and with Indian tribes potentially affected by BLM undertakings.

a. Information on the Web. The BLM will ensure the following information is available on the national BLM web site and will widely publicize this availability:

- (1) copy of this revised agreement;
- (2) reference copy of the existing BLM internal guidance, including Manual Sections and Manual Handbooks related to "Cultural Resource Management;"
- (3) copy of existing BLM-SHPO protocols under the 1997 agreement, used by the BLM within an individual state office's jurisdiction;

- (4) current list of Preservation Board members;
- (5) list of BLM DPOs and BLM tribal contacts for each state office;
- (6) map of each state showing BLM district and field office boundaries;
- (7) annual BLM Washington Office reports; and
- (8) BLM's Preserve America Section 3 report.

b. BLM-SHPO Protocols

Within 12 months of execution of this agreement, each BLM state director or his/her designee will meet with each relevant SHPO to review and consider the need for changes in the BLM-SHPO protocol for that state to meet the minimum requirements specified in this component and notify the ACHP of the results of their review. The state director may request ACHP assistance in identifying specific changes needed in the State's BLM-SHPO protocol prior to the state director initiating any changes associated with implementation of this agreement. BLM-SHPO protocols determined to require revision must be changed within 24 months of the date of this agreement.

The SHPO or BLM state director may ask the NCSHPO, the Preservation Board, and/or the ACHP to assist at any stage in revising BLM-SHPO protocols. The Preservation Board and the ACHP will be kept informed of the progress of protocol review and revision, and the BLM state office will provide the ACHP an opportunity to review and comment on revised protocols before execution. The state director will also provide the Preservation Board, ACHP, and NCSHPO with an information copy of any signed revision and post it on the BLM web site for that state.

Recognizing that BLM-SHPO protocols implement this agreement, any revisions to BLM-SHPO protocols that alter the process for complying with Section 106 specified in this agreement and any BLM-SHPO protocol that was executed or last revised 10 or more years prior to the date of this agreement, will be subject to consultation requirements as set forth in 36 CFR 800.14, including, in particular, the tribal consultation requirements under 36 CFR 800.14(f).

At a minimum, BLM-SHPO protocols will incorporate the framework outlined in Component 4 of this agreement and address the following:

- (1) a means for making a schedule of pending undertakings, including land transfers, available to the public and Indian tribes on a regular basis
- (2) a commitment to fulfill tribal consultation obligations;
- (3) the manner in which public participation is addressed for protocol-guided compliance processes;
- (4) the manner in which the involvement of consulting parties is addressed for protocol-guided compliance processes;
- (5) data sharing, including information resource management development, support and security—at a minimum annual transmittal of all site forms and project reports;

- (6) data synthesis, including geographical and/or topical priorities for reducing the backlog of un-synthesized site location and report information, and data quality improvement;
- (7) public education and community involvement in preservation;
- (8) preservation planning;
- (9) cooperative stewardship;
- (10) agreement as to the types of properties for which BLM may determine ineligibility without seeking SHPO agreement. Eligibility determinations regarding possible traditional cultural properties will continue to require SHPO agreement and consultation with tribes.
- (11) agreement as to types of undertakings and classes of affected properties that will trigger case-by-case review, including all undertakings that will have an adverse effect on historic properties, as well as any development of alternative procedures such as project-specific PAs, and how this review will proceed, consistent with Component 4 above;
- (12) manner in which the BLM will ensure that appropriate professional expertise will be obtained or made available for specific types of undertakings or historic properties;
- (13) provisions for resolving disagreements and amending or terminating the BLM-SHPO protocol;
- (14) circumstances under which the BLM and/or SHPO may choose to operate under 36 CFR 800.3 through 800.7 in place of the BLM-SHPO protocol;
- (15) the substance and format of supplemental information to the BLM annual report that the state director will prepare 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 state BLM website. Supplemental information shall include information on BLM actions relative to undertakings and classes of affected properties that did not trigger case-by-case review; and
- (16) training of a new manager or archaeologist with Section 106 responsibilities in a state that operates under this PA within 90 days of his or her report date in the procedures outlined in the PA and appropriate BLM-SHPO protocol.

c. BLM-Tribal Relations

BLM shall consult with Indian tribes on individual undertakings in the context of an ongoing government-to-government relationship sustained through regular periodic meetings supplemented by additional undertaking-specific consultation. Within 12 months following execution of this agreement, each state director will have begun contacting Indian tribes that are affected by BLM undertakings within his or her jurisdiction on a regular basis for the purpose of initiating a discussion about ways in which BLM and each Indian tribe can foster better communication. This discussion between the appropriate BLM and tribal representatives is an



opportunity to establish effective methods for meeting tribal consultation requirements regarding identification and evaluation of historic properties, including traditional cultural properties, and for the resolution of adverse effects of undertakings. This process should be carried out in coordination with other state directors, as appropriate, and should seek to:

- (1) identify geographic areas, types of historic properties, and undertakings of concern to Indian tribes;
- (2) identify confidentiality issues;
- (3) answer questions on the existing BLM-SHPO protocol;
- (4) provide a tribal point of contact for the state office and each district and field office within his or her jurisdiction;
- (5) develop a process for providing information and schedules of pending actions, including land exchanges, permits, and approvals on a regular basis; and
- (6) offer Indian tribes the opportunity to establish a formal ongoing relationship through an agreement for conducting the consultation required under the NHPA Section 106 within the framework of the BLM's government-to-government relationship with Indian tribes and other authorities.

d. The state director, will seek, as appropriate, the active participation of SHPOs, Indian tribes, and the interested public in BLM land-use planning and associated resource management activities consistent with section 202 of FLPMA, 43 U.S.C. § 1712, and implementing regulations at 43 CFR 1610.2. This participation will be sought so that historic preservation considerations may influence large-scale decisions and inform the analysis of cumulative effects of more routine decisions, before the BLM makes key commitments and its management options are limited.

e. If deemed helpful and appropriate by the Indian tribe and the BLM, the BLM will seek to establish agreements and/or other formalized working arrangements with Indian tribes, relative to identifying undertakings, identifying properties, evaluating properties, determining effects, and protecting historic properties. All existing project and special purpose agreements with Indian tribes will function normally according to their terms.

f. When potentially relevant to the purposes and terms of this agreement, the BLM FPO will forward to the ACHP and the NCSHPO, in a manner that allows for consultation at their request, information concerning the following:

- (1) major policy initiatives;
- (2) proposals for new BLM regulations;
- (3) proposals for organizational change potentially affecting relationships addressed in this agreement;
- (4) the Administration's budget proposal for BLM historic preservation activities, following its submittal to Congress;
- (5) relevant training opportunities; and

(6) long range planning and regional planning schedules.

## **7. BLM Staff Training Program**

The BLM will maintain an internal 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 state specific BLM-SHPO protocol implementation; 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 may seek the active participation of Indian tribes and individual SHPOs in training sessions.

## **8. Professional Development**

a. The DPOs, in consultation with supervising line managers and cultural heritage specialists in their state, will document each district and field office’s preservation professional staffing capabilities in their annual report to the SHPO. Documentation will include any recommended limitations on the nature and extent of authorized functions. Where a field 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 manager will seek specialized expertise from outside the immediate staff.

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. District or Field Office Certification and Decertification**

a. The Preservation Board, in coordination with the appropriate DPO, SHPO, and the ACHP, and with consideration of tribal comments, may choose to review the status of a district or field office’s certification to employ BLM-SHPO protocols developed pursuant to this agreement; or the district or field manager, the state director, the ACHP, or the SHPO, may request that the Preservation Board initiate a review of a district or field office’s certification.

b. If a review is being conducted, the FPO, appropriate DPO(s), SHPO(s), the ACHP, and the Preservation Board will participate in the review, and the BLM may consider including other legitimate affected parties as participants in the review, as appropriate.

(1) 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 proceeding in contravention of its BLM-SHPO protocol or BLM internal guidance), and the office’s manager has not voluntarily suspended participation under this agreement, the Preservation Board will recommend that the state director decertify the district or field office. If a suspended or decertified district or field office is found to have restored the basis for certification, the Preservation Board will recommend that the state director recertify the district or field office.

- (2) A state director may ask the Director to review the Preservation Board's decertification recommendation, in which case the Director may request the ACHP's participation in the review.
- (3) The Preservation Board will notify the appropriate SHPO(s), the ACHP, and the review requestor, of the findings of the review, including any recommended changes to the certification status of the office.
- (4) When a district or field office is suspended or decertified, the district or field manager will follow the procedures of 36 CFR 800.3 through 800.7, or 36 CFR 800.8(c), or an applicable program alternative under 36 CFR 800.14, to comply with Section 106.

c. If the Preservation Board receives a request to perform a review and decides not to conduct the review, it will provide a response to the requester, including the rationale for its decision.

## **10. Accountability Measures**

a. It will be the Preservation Board's duty in accordance with Component 3.c and 3.d above to foster consistency and conformity with BLM policies and procedures. Where problems with implementation are found, it will be the Preservation Board's duty to move promptly toward effecting correction of the problems, in coordination with the individual DPO.

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 will be consistent with the BLM's annual Washington Office reporting requirements, and will include supplemental information agreed upon by the BLM and SHPO. The state reports will be made available to the public via the BLM state web sites, and BLM will notify the ACHP of their availability via email.

c. Annually, each state director that maintains a BLM-SHPO protocol pursuant to this agreement or his/her designee will meet with the SHPO to review the implementation of that BLM-SHPO protocol.

d. The Preservation Board or the BLM Washington Office, in consultation with the ACHP and SHPOs, may select one or more certified state, district, or field offices for a detailed field review of this agreement's implementation. The FPO and the appropriate DPO(s), SHPO(s), and the ACHP will participate in the review and may include other parties as appropriate. Findings and recommendations based on this field review will be provided to the participants, 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 management of resources. Responses will include establishing the facts of the situation and, where needed, recommendations to the Director or state director for 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 national BLM web site.

## 11. Reviewing and Changing the Agreement

a. The signatories to this agreement may agree to revise or amend it at any time. Changes that would affect the opportunity for public participation or tribal consultation will be subject to public notice and tribal consultation. An amendment will go into effect when signed by all the signatories.

b. Should any signatory to this agreement object to any matter related to its implementation, the signatories will meet to attempt to resolve the objection. If a signatory determines that such objection cannot be resolved, BLM will:

1. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the other signatories. The signatories shall provide BLM with their response to the BLM's proposed resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the signatories, and provide them with a copy of this written response. BLM will then proceed according to its final decision.

2. If the signatories do not provide their advice regarding the dispute within the thirty (30) day time period, BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, BLM shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the agreement, and provide them with a copy of such written response.

3. BLM's responsibility to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute remain unchanged.

c. Any signatory to this agreement may terminate it by providing 90 days notice to the other signatory, provided that the signatory 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-specific BLM-SHPO protocols developed under the authority of this agreement and/or the 1997 PA will be terminated, and the BLM will comply with Section 106 through the process in 36 CFR 800.3 through 800.7, or 36 CFR 800.8(c), or an applicable program alternative under 36 CFR 800.14.

d. Within 1 year of the execution of this agreement and every 2 years thereafter, the signatories to this agreement will meet to review its implementation.

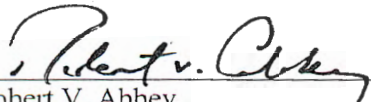
e. Specific references to 36 CFR Part 800 are to the regulations that became effective on August 5, 2004. Generic references to 36 CFR Part 800 in this agreement may be read in the future as referencing the version that is in effect at the time of reading.

f. This agreement will be in effect for a period of 10 years from the date of execution, with an option for renewal in 2-year increments with agreement of its signatories.

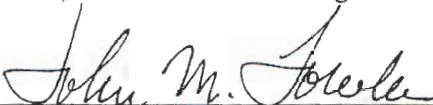
### *Affirmation*

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 Section 106 and serve as partial satisfaction of the BLM's obligations under Sections 110(f) and 111(a) of the National Historic Preservation Act.

  
\_\_\_\_\_  
Robert V. Abbey  
Director, Bureau of Land Management

2-9-12  
Date

  
\_\_\_\_\_  
John M. Fowler  
Executive Director, Advisory Council on Historic Preservation

2/9/12  
Date

  
\_\_\_\_\_  
Ruth Pierpont  
President, National Conference of State Historic  
Preservation Officers

2/9/12  
Date

**Questions and Answers**  
**Revised Programmatic Agreement**  
**February 9, 2012**

**What requirements exist for the BLM's historic preservation responsibilities?**

An extensive collection of laws helps safeguard the places that reflect our Nation's rich cultural heritage. The National Historic Preservation Act (NHPA) is the most significant for protection of significant historic places, including properties of traditional religious and cultural importance to an Indian tribe. A part of NHPA, Section 106 requires Federal agencies to consult with Indian tribes, the States, local governments, and others that attach significance to properties in a project area before they authorize activities on or off public lands. Other provisions require agencies to act as stewards to inspire present and future generations to do the same.

**How does the BLM meet its responsibilities under Section 106 of the NHPA?**

BLM has chosen to develop a program alternative to the standard 106 process. This alternative is called a programmatic agreement and it is allowed under NHPA. In 1997, BLM, the ACHP, and the NCSHPO entered into a national Programmatic Agreement (PA) pursuant to the ACHP's regulations, "Protection of Historic Properties." This agreement restructured the BLM preservation program and authorized the development of protocols between BLM and SHPOs that outline specific measures for the protection of historic properties in eleven western states. The revised PA makes some changes to the BLM's alternative process and will require review of existing BLM-SHPO protocols.

**What BLM activities affect Native American communities?**

The BLM is responsible for managing approximately 255 million acres of public land, located mostly in the American West and Alaska, and about 700 million acres of subsurface mineral estate nationwide. The agency mission is to manage these lands with the goal of multiple use and sustained yield. Tribal lands can be involved in commercial uses (oil and gas drilling, mining, grazing, and forest management), recreational opportunities, and historic preservation requirements. These activities may also affect properties of religious and cultural significance to tribes, on or off tribal lands. The BLM's alternative process under the PA and BLM-SHPO protocols only applies to the BLM's activities on public, private, and state land and not to tribal lands. The Bureau of Indian Affairs is the surface management agency responsible for NHPA Section 106 compliance on tribal lands. Where the BLM assumes responsibility for compliance with Section 106 on tribal lands, it follows the standard 36 CFR part 800 process.

**What guidance does the BLM follow to carry out its tribal consultation requirements under NHPA?**

The BLM Manual Section 8120, "Tribal Consultation under Cultural Resource Authorities," provides basic policy direction on the Bureau's responsibilities under cultural resource-related laws and executive orders to address cultural, historical, and religious concerns of Native Americans. Handbook H-8120-1, "Guidelines for Conducting Tribal Consultation," assists the

BLM managers and staff in carrying out assigned tribal consultation responsibilities and roles. The Department of the Interior's (DOI) December 2011 tribal consultation policy requires each bureau within the DOI to review its existing policies and make necessary revisions to bring them into conformance with the DOI policy. The BLM is just beginning that assessment process.

### **What are the main changes between the 1997 PA and the 2012 revision?**

The key changes proposed in the draft revised PA:

1. The revised PA incorporates specific steps in the NHPA Section 106 process rather than referencing the relevant Manual Sections or BLM-SHPO protocols.
2. The revised PA makes a commitment to initiate a revision of relevant manual sections to be consistent with the definitions of "adverse effect" and "consulting parties" in the 2004 36 CFR part 800 regulations. This change will eliminate the provision that an undertaking otherwise found to be adverse may be considered not adverse, when a 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.
3. The revised PA establishes a requirement for the BLM to consult with the relevant SHPO, Indian tribes and other consulting parties for all undertakings that will adversely affect properties that are eligible for listing in the National Register of Historic Places (National Register), and for the development of any procedures such as project-specific PAs.
4. The revised PA establishes a requirement to invite the ACHP's participation for:
  - a. Non-routine interstate and/or interagency projects or programs;
  - b. Undertakings adversely affecting National Historic Landmarks;
  - c. Undertakings that the BLM determines to be highly controversial; and
  - d. Undertakings that will have an adverse effect and with respect to which disputes cannot be resolved through formal agreement between BLM-SHPO, such as a memorandum of agreement.
5. The revised PA gives the ACHP authority to participate on its own initiative or at the request of the SHPO, an Indian tribe, a local government, an applicant or other consulting party, in a manner consistent with its role under 36 CFR part 800, and criteria under Appendix A of 36 CFR Part 800.
6. The revised PA establishes a requirement that the BLM follow the process under 36 CFR 800.14 for the development and approval of program alternatives, including project-specific PAs.
7. The revised PA establishes the requirement that BLM-SHPO protocols implementing this agreement must address the following new items:

- a. A means for making a schedule of pending undertakings available to the public and Indian tribes on a regular basis;
  - b. The manner in which public participation and involvement of consulting parties is addressed for protocol-guided compliance processes; and
  - c. A commitment to fulfill tribal consultation obligations;
  - d. Provisions for resolving disagreements between the BLM and SHPO;
8. The revised PA adds the BLM national tribal liaison to the Preservation Board.

**What did the BLM do with the information it received from Tribes at listening sessions, during government-to-government consultation, in responses to letters from Tribes and others?**

The revised PA responds to the results of government-to-government consultation and comments from tribes and others as described in detail in the Director's letter and attachments, posted on the BLM web site December 16, 2011. In addition to the key revisions in the PA noted above, consultation and comments addressed policies and procedures that are outside the purview of the PA. The new DOI tribal consultation policy and Secretarial Order will provide additional opportunities for the BLM to consider many of the other comments received during the BLM's tribal outreach and consultation process.

**Will the revised PA require that BLM-State protocols be revised?**

Under the revised PA, BLM State Offices that maintain BLM-SHPO protocols will review them within 12 months to determine whether they meet the minimum requirements of the revised PA. The ACHP will then be notified of the results. If the BLM determines that the BLM-SHPO protocol requires revision, any revision that alter the compliance process specified in the PA or is more than 10 years older than the PA is subject to consultation requirements as set forth in 36 CFR Part 800.14.

**Are the BLM-Tribal Relations requirements under the PA consistent with the new DOI tribal consultation policy?**

The actions required by the BLM-Tribal Relations in Section 6 c of the revised PA support the core principles of the new DOI tribal consultation policy. That DOI policy directs government decision makers to seek to establish ongoing relationships on which to carry out tribal consultation on specific projects. The revised PA requires that the BLM state directors, in consultation with other State Directors, as appropriate, begin contacting Tribes within 12 months of the agreement's execution to initiate a discussion about ways to improve communication. The discussion should seek to identify areas of concern, answer questions on the existing BLM-SHPO protocol, establish a point of contact for Tribes, and develop a process for making information on pending actions available.



Appendix 2: Annual Report Format

## CULTURAL RESOURCE ANNUAL REPORT

Complete sections I through XI. Field offices/units/NLCS units transmit their responses to the appropriate State Office. The State Office consolidates the field response into one State Office report. The consolidated State Office report is transmitted to the Washington Office (240). The Washington Office consolidates the State Office responses.

Unless instructed otherwise, provide the information requested as totals completed during the reporting year.

	<b>FISCAL YEAR</b>
<b>REPORTING OFFICE/UNIT</b>	Montana
<b>I. Inventory (8110)</b>	
A. Total number of proposed undertakings for which literature searches were performed for BLM or non-BLM lands to standards in BLM Manual Section 8110.21A.2, regardless of whether BLM or non-BLM entities performed the search.	
B. Number of undertakings on BLM and non-BLM lands for which Class III field inventories were completed.	
C. Number of Class I Regional Overviews performed to standards in BLM Manual Section 8110.21A.1.	
D. Total acres of BLM-administered surface inventoried at the Class III level, regardless of whether BLM or non-BLM entities performed the inventories.	
E. Total acres of non-BLM-administered surface (i.e., split estate; non-BLM surface in areas of "checkerboard" [mixed] land ownership pattern) inventoried at the Class III level, regardless of whether BLM or non-BLM entities performed the inventories.	
F. Total number of cultural properties recorded on BLM-administered surface for which site records were completed. Include only newly reported properties (i.e., updating or otherwise modifying existing inventory records should not be reported).	
G. Total number of cultural properties recorded on non-BLM administered surface for which site records were completed. Include only newly reported properties (i.e., updating or otherwise modifying existing inventory records should not be reported).	
H. Total number of locations of the cumulative number of archaeological sites discovered to date are mapped using a GIS or CAD system.	
	GIS
	CAD

I. Number of archaeological properties listed on the National Register that passed out of control of the reporting Federal agency during the reporting period.	
<b>II. National Register of Historic Places (8110) (FOR REPORTING YEAR)</b>	
A. Total number of BLM "historic properties" (sites, districts, and discontinuous districts) listed in the National Register of Historic Places (NRHP) during the reporting year.	
B. Total number of "contributing properties" included in II.A. that were listed on the National Register during the reporting year.	
C. Total number of properties that were determined eligible for the NRHP by the Keeper of the Register, through agency-SHPO concurrence, or under the National Programmatic Agreement.	
1. BLM	
2. Non-BLM	
D. Total number of properties that were determined not eligible for the NRHP by the Keeper of the Register, through agency-SHPO concurrence, or under the National Programmatic Agreement.	
1. BLM	
2. Non-BLM	
E. Number of archaeological sites under Federal control that were formerly but are no longer listed on the National Register because of natural causes or human induced destruction.	
Natural Destruction	
Human Induced Destruction	

### III. Physical and Administrative Protection (8120) (FOR REPORTING YEAR)

Provide the following information for physical and administrative measures protecting cultural resources. Note that specific properties may be counted in more than one protection measure if several measures are used. Only properties that receive direct and site-specific protection should be included.

<p>A. Total number of cultural resources directly protected by one or more of the protection measures listed below in sections III.A. 1 through 6. Report each cultural resource protected only once, even though it may be included in more than one protection category.</p>	
<p>1. Monitoring: Number of cultural properties visited on-the-ground for the purpose of monitoring property condition, that resulted in at least minimal level of documentation (i.e., updating baseline data or existing site records). (sum of a + b)</p>	
<p style="text-align: center;">a. Number of monitored properties in stable condition</p>	
<p style="text-align: center;">b. Number of monitored properties noticeably deteriorating</p>	
<p>2. Signing: Number of anti-looting/anti-vandalism signs installed specifically to protect cultural resources.</p>	
<p>3. Fencing/Gating: Number of properties enclosed or otherwise specifically protected by permanent fencing/gating projects.</p>	
<p>4. Stabilization or Restoration: Number of properties on which actions were taken to maintain them in their present condition and/or to arrest natural and human-caused deterioration.</p>	
<p>5. Ongoing Protection Measures: Number of protection efforts or efforts directed toward maintenance or upkeep of existing protection strategies (e.g., number of damaged signs replaced, number of previously installed fences repaired, number of treatments maintained, such as reapplying mud to seal adobe walls or refilling holes dug by vandals).</p>	
<p>6. Administrative Measures: Number of cultural resources protected by administrative measures taken for the express purpose of directly benefitting cultural resources (e.g., closure to off-highway vehicles and other use restrictions, withdrawal from mineral entry, ACEC designations). Count only known sites that receive protection from the administrative measure.</p>	

**IV. Avoidance, Mitigation, and/or Data Recovery (8130) (FOR REPORTING YEAR)**

Provide information for all undertakings or actions involving avoidance, mitigation and/or data recovery of effects on cultural properties for the purpose of complying with Section 106 of the National Historic Preservation Act. The undertakings or actions may involve either BLM- or non-BLM-administered lands.

A. Total number of properties where potential adverse effects of actions were avoided during the reporting year regardless of the reason for the avoidance (e.g., properties avoided by project redesign).	
B. Total number of completed data recovery projects for purposes of complying with Section 106. Report all data recovery efforts including recordation, surface collection and excavation conducted to mitigate effects to a cultural property threatened by destruction or disturbance. Do not include data recovery projects on unanticipated cultural properties discovered subsequent to completion of the Section 106 review process.	
1. Number of cultural properties involved	
2. Number of properties from which collections were made and deposited in repositories.	
C. Total number of archaeological data recovery projects in progress during this reporting year.	
D. Total number of properties that were recorded but allowed to be damaged or destroyed without further mitigation.	
E. Total number of undertakings resulting in the discovery of unanticipated cultural properties subsequent to completion of the Section 106 review process.	
1. Number of cultural properties involved	
F. Total number of undertakings resulting in the discovery of unanticipated cultural properties that required data recovery.	
1. Number of cultural properties involved	
2. Number of properties from which collections were made and deposited in repositories	
G. Total number of completed non-Section 106 data recovery projects (e.g., research proposals).	
1. Number of cultural properties involved	
2. Number of properties from which collections were made and deposited in repositories	

**V. Cultural Resource Use Permits**

A. Total number of permits in effect during the reporting year (including any that expired prior to or at the end of the year).

B. Total number of permits under which work was conducted during the reporting year.

C. Total number of permittees whose work was field-checked.

D. Total number of Repository Receipt for Collections (Confirmation of Museum Collections Deposition) received.

E. Total number of permit applications received.

F. Total number of ARPA notifications to Indian tribes or Alaska Native groups of proposed work (i.e., work to be done under permit, by agency or under contract that may possibly harm or destroy properties having religious or cultural importance for the tribes). Report the number of individual actions for which Indian tribes were notified, not the actual number of tribes notified.

## VI. Enforcement

Note: States are required to collect data on archaeological enforcements and prosecutions from their field offices and compile it for their States. Please coordinate, as necessary, with your Special-Agent-in-Charge in the completion of this section.

**Provide the following totals for actions taken only during the reporting year pursuant to the Archaeological Resources Protection Act (ARPA).**

A. Number of incidents detected.	
B. Number of incidents where individual(s) were arrested.	
C. Number of individual(s) arrested.	
D. Number of cases that individual(s) were guilty or liable.	
E. Number of cases that individual(s) were not guilty or liable.	
F. Number of individual(s) convicted of a felony.	
G. Number of individual(s) convicted of a misdemeanor.	
H. Number of individual(s) convicted of a petty offense (citations).	
I. Number of individual(s) found liable (civil penalty).	

**Provide the following totals for actions taken only during the reporting year under other laws.**

J. Number of individual(s) convicted of a misdemeanor.	
K. Number of individual(s) convicted of a felony.	
L. Number of individual(s) found not guilty of charges.	
M. Total fines to Treasury.	
N. Total restitution to agency (includes civil penalties).	
O. Total forfeitures.	
P. Total rewards.	
Q. Cost of restoration and repair in site damage assessment.	
R. Value of damaged archaeological resources (for each incident use the greater of commercial value or archaeological value, but do not use both values).	
S. Amount spent on law enforcement for archaeological resource protection.	
T. Total amount of restitution imposed or ordered, including civil penalties.	
U. Total summed estimated costs of restoration and repair in site damage assessments.	
V. Total commercial value of personal property and artifacts seized and either retained or sold.	

**VII. Public and Professional Outreach and Education (FOR REPORTING YEAR)**

Note: Units are not the same as quantity. For example, one new brochure is 1 unit, but the number printed (quantity produced) could be 1,000.

A. Total number of public presentations (e.g., on-site or off-site, avocational meetings, community groups, classroom, fairs, etc.).	
B. Total number of people directly contacted by (or in the audience for) the above presentations.	
C. Total number of K-12 or youth group presentations (e.g., on-site or off-site, classroom visits, youth groups, science fairs).	
D. Total number of students directly contacted by (or in the audience for) the above presentations.	
E. Total number of college presentations or field schools hosted.	
F. Total number of college students directly contacted by (or in the audience for) the above presentation.	
G. Total number of professional conference presentations and articles published in professional journals.	
H. Total number of cultural properties for which public enhancement projects were completed. (This includes on-the-ground measures which increase public awareness and appreciation for cultural properties such as interpretive signing, visitor trails, kiosks, brochures, CDs, and other media. Many of these measures may be done in conjunction with the recreation program). List in your narrative the actual cultural properties for which these actions were completed by site name or number.	
I. Total number of educational or interpretive projects created (This includes curricula or lesson plans, artifact kits, loan trunks, and non-site specific museum or booth exhibits created). List in your narrative the actual projects for which these actions were completed by project or site name or number.	
J. Total number of new web pages uploaded.	
K. Total number of updated web pages.	
L. Total number of popular media presentations and articles (e.g., press releases, magazine articles, radio or TV presentations, newsletters. Do NOT include public notices.).	
M. Total number of poster or event calendar units created.	



### VIII. Native American Consultation

A. Total number of face-to-face consultation meetings and, in the case, of Alaska, phone contacts between BLM and representatives of governments of Federally recognized Indian tribes, including Alaska Native villages and corporations.	
B. Total number of face-to-face consultation meetings between BLM and representatives and governments of non-Federally recognized Indian tribes.	

### IX. Native American Graves Protection and Repatriation Act Activities (revised in 2014 - see also NEW Form on Status of Repatriations (Attachment 6))

<b>A. Intentional Excavations and Inadvertent Discoveries</b>	
1. Number of intentional excavations of Native American human remains.	
2. Number of inadvertent discoveries of Native American human remains.	
a. Number stabilized	
b. Number excavated	
3. Number of Notices of Intended Disposition published in newspapers.	
a. number of individuals	
b. number of funerary objects	
c. number of sacred objects	
d. number of objects of cultural patrimony	
4. Number of transfers of custody to claimant Indian tribes .	
a. number of individuals	
b. number of funerary objects	
c. number of sacred objects	
d. number of objects of cultural patrimony	
<b>B. NAGPRA Collections</b>	
1. Number of NAGPRA summaries completed or updated.	
2. Number of NAGPRA inventories completed or updated.	
3. Federal Register Notices (new)	
a. Notices of Inventory Completion	
b. Notices of Intent to Repatriate	

**X. Paleontological Localities in Good Condition (8270)**

(revised in 2014)

A paleontological locality is in good condition when it is subject to normal erosion and natural processes. A paleontological locality is not in good condition when it is threatened, gone, or unknown.

A. Number of recorded paleontological localities in normal or <b>good</b> condition.	
B. Number of recorded paleontological localities in <b>threatened</b> condition.	
C. Number of recorded paleontological localities that are <b>gone</b> or no longer exist.	
D. Number of recorded paleontological localities with an <b>unknown</b> condition (not evaluated in past 5 years).	
E. Total number of recorded paleontological localities (sum of A-D)	

**XI. Paleontological Resource Use Permits (revised in 2014)**

**A. Number of new permits issued during the reporting period.**

Survey	
Excavation	
Consulting	

**B. Number of permits renewed, reissued or extended during the reporting period.**

Survey	
Excavation	
Consulting	

**C. Number of active multi-year permits not reported in A or B in effect during the reporting period.**

Note: The grand total of the three columns should be equal to the total number of permits in effect for the reporting period.

Survey	
Excavation	
Consulting	

Survey	
Excavation	
Consulting	

**E. Number of Repository Receipt for Collections waived (because no collections were made).**

Survey	
Excavation	
Consulting	

**XII. Museum Collections**

Refer to the IM and Attachment 5 for reporting on museum collections.

**Annual Report to the State Historic Preservation Office**

(1) List of Projects where a file search was completed but an on-the ground survey was not conducted.

Project Name	Justification for No Additional Work	Date of Decision

(2) List of Projects Processed under our Protocol using standard procedures and where a survey was conducted (if no sites were found please indicate (NA)).

Report Name	Report Number	Site Number	Determinations of Eligibility	Determinations of Effect/Finding	Date Report and Findings Transmitted to the SHPO

(3) List of Projects Processed under the Case-by-Case provisions of our protocol

Report Name	Report Number	Site Number	Determinations of Eligibility	Determinations of Effect/Finding	Date Report and Findings Transmitted to the SHPO

(4) List of Section 110 Inventories

Report Name	Report Number	Site Number	Date Report Transmitted to the SHPO

(5) List of Projects where BLM was not the lead federal agency

Report Name	Report Number	Site Number	Determination of Effect Finding	Date Report and Findings Transmitted to SHPO

Appendix 3: SHPO Digital Data and Information Use Agreement

**Montana State Historic Preservation Office  
Digital Data and Information Use Agreement**

The Montana State Historic Preservation Office (SHPO) maintains the State Antiquities Database, which contains digital data and information on known historic, archaeological, and paleontological properties as well as previously conducted cultural resource inventories. The information contained in the State Antiquities Database is protected and restricted per the National Historic Preservation Act of 1966 (NHPA), the Archaeological Resource Protection Act of 1979 (ARPA), the Native American Graves Protection and Repatriation Act (NAGPRA), as well as the Montana State Antiquities Act, and other federal and state statutes. This information is to be used in compliance with applicable federal, state, and local laws.

The Montana SHPO State Antiquities Database contains information and data in the form of documents, maps, spatial, and other digital data. In requesting and using this information and data, I understand and agree that the following conditions apply:

- 1) This information is restricted. It may be released to property owners, but may not be copied or released, without prior approval of the State Historic Preservation Office, to individuals who do not meet or work under the direct supervision of someone who meets the Secretary of the Interior's Professional Qualifications Standards (48 FR 44716).
- 2) Any information relating to the location or character of historic, archaeological, and paleontological properties will not be disclosed in a manner that may create a substantial risk of harm, theft, or destruction to the properties or to the locations where the properties are located.
- 3) Specific locational information regarding archaeological, paleontological and sensitive historic properties will not be disclosed in public media (such as Environmental Assessments, Environmental Impact Statements, or Planning Studies).
- 4) Information and digital data on historic, archaeological, and paleontological properties on federal or tribal land will not be obtained or used without permission from the federal agency or tribe.
- 5) There are no guarantees as to the data's accuracy or completeness. The data is dynamic, and periodic updates will occur that may impact previously requested information. Any known data issues (typos, errors, updates) should be reported to the Montana SHPO Cultural Records Manager.
- 6) The information provided by the SHPO represents only the information that has been formally recorded and documented with the Montana SHPO. Lack of information concerning properties in a location may be due to the lack of cultural resource inventories completed in that area.
- 7) Questions regarding the use, distribution and disclosure of information and data from the State Antiquities Database will be resolved with the Montana SHPO Cultural Records Manager.

Please complete this Digital Data and Information Use Agreement for each individual within an organization, institution, or agency that is requesting digital data from the Montana SHPO.

Organization Name:	
Address:	City:
State:	Zip:
Phone:	Email:
Authorized Organizational Representative:	
Signature:	Date: