

Protocol for Managing Cultural Resources on Lands Administered by the Bureau of Land Management in Alaska

Purpose: This Protocol implements the Bureau of Land Management's (BLM) 2012 revised *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* (national PA) in Alaska by describing how the Alaska State Historic Preservation Officer (SHPO) and the BLM will interact and cooperate under that agreement. The goal of this Protocol and the PA is to forge a more meaningful and productive partnership with the SHPO that will enhance the management of cultural resources under the BLM's jurisdiction.

Relationship of this Protocol to the prior Protocol and existing Memoranda of Understanding (MOUs), Memoranda of Agreement (MOAs), and Programmatic Agreements (PAs): The prior Alaska Protocol between the BLM and SHPO signed April 17, 1998 will be terminated and replaced by this new Protocol when signed.

The PAs BLM-Alaska negotiated at earlier times with the Advisory Council on Historic Preservation (ACHP), the SHPO, and other respective parties would remain in effect and unmodified by the terms of the national PA or this Protocol. Any revisions to these would be done by specific later agreements. These existing PAs are regarding: 1) Alaska Native Allotments (signed April 15, 1988); 2) Revocation of Withdrawals for Lands Selected by the State under the Alaska Statehood Act of 1958 (signed July 9, 1991); 3) Congressionally-Authorized land transfers to the State of Alaska (signed September 20, 2002); and 4) Consideration and management of historic properties affected by operations and maintenance activities along the Trans-Alaska Pipeline System (TAPS) (signed Oct. 14, 2005).

Other PAs or MOAs may be developed when specific agreement documents are needed to define procedures for Section 106 compliance. When more than one other federal agency is involved in an undertaking, or an agency other than BLM takes lead responsibility for Section 106 compliance, the BLM's national PA will not apply.

Opportunities for Involvement in BLM Management Processes: To encourage broader and more proactive participation by the SHPO in BLM's management activities, the BLM offers the following opportunities:

Planning Efforts: Each Field Office responsible for preparing or amending a land use plan/resource management plan (RMP) or an Environmental Impact Statement (EIS) will, when beginning its planning effort, invite the SHPO to participate for the purpose of identifying issues that should be addressed. 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. Field Offices will send all draft and final RMP's, plan amendments, EIS's, and activity plans which involve or affect cultural resources to the SHPO for review and comment.

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. The SHPO is also welcome to visit field and district offices as well as the Alaska State office.

Annual Work: Each Field Office Manager and/or cultural resource program manager will, at the discretion of the SHPO, meet with the SHPO to discuss the major tasks planned by that Field Office that are likely to affect cultural resources. The BLM will make every effort to answer any questions the SHPO has and will welcome any suggestions the SHPO offers to facilitate the accomplishment of these tasks in ways that meet heritage preservation goals. Such meetings may be at the State Historic Preservation Office or the BLM Field Office, or elsewhere as agreed between the Field Office Manager and the SHPO.

Meetings: The BLM State Director or designee will meet with the SHPO annually to discuss annual work plans, specific undertakings, outreach efforts, or other issues related to the BLM's management of cultural resources. The BLM will make every effort to arrange such meetings in a timely manner and to provide information requested by the SHPO. The purpose of such meetings with BLM's management/leadership team is to provide an opportunity for the SHPO to provide historic preservation considerations on large scale decisions and on the cumulative effects of the more routine decisions.

Informal Consultation: The SHPO and Field Office personnel may consult informally at their discretion on specific undertakings or any aspect of the BLM's cultural resource management program. Such consultation is encouraged to take full advantage of the SHPO's experience with a broad range of agencies and historic preservation efforts statewide.

Cooperative Efforts: The BLM and the SHPO recognize the advantages of working together on a wide range of heritage preservation activities and will cooperatively pursue the following efforts:

Sharing and Facilitating the Use and Synthesis of Data: Each Field Office will ensure that records for cultural resources under its jurisdiction are entered into the statewide automated cultural resource database called the Alaska Heritage Resources Survey (AHRs). See Appendix 3 for standards.

In addition, the BLM and the SHPO will continue working together on an interagency cooperative data sharing project to develop further Geographic Information System (GIS) capability for the AHRs, as needed, which will better serve the needs of agencies, academia, and the private sector. Both parties will ensure that all shared data will be

compatible, so that all BLM submissions will be transportable into the AHRS. If funding is available in FY 2014 and later years, the BLM will enter into an assistance agreement with the SHPO to facilitate development and cooperative use of this statewide AHRS database with GIS capabilities. Once the expanded AHRS with GIS capabilities is operational, allowing data entry through BLM Field Office computer terminals, and Field Office personnel are trained in its use, each Field Office will ensure that its cultural property records are entered into the AHRS-GIS database. This applies to cultural resources recorded by contractors as well BLM personnel. Each Field Office will also ensure that the boundaries of areas inventoried for cultural properties are entered into the AHRS-GIS database. The BLM will not enter into the AHRS-GIS database information about traditional cultural places identified by Alaska Natives as sensitive.

The BLM and SHPO will also collaborate on ways to synthesize and use BLM data to meet mutual goals. For example, BLM data might be used in developing historic contexts to assist in evaluating and treating cultural resources.

Preservation Planning: The BLM and SHPO will continue to work together on preservation planning efforts, such as BLM participating in work groups or other forums whenever possible. Also work may include other forms of preservation planning, as may be beneficial to either party.

Public Outreach: The BLM and SHPO will continue to work together on various public outreach efforts, including, but not limited to, the following:

- *Project Archaeology:* Support Alaska Project Archaeology as a component of BLM's Heritage Education Program, with the goal of integrating the teaching of archaeological concepts and preservation ethics in Alaska schools statewide.
- *Archaeology Month:* Participate in Archaeology Month activities, including public presentations, publicity, outreach to schools, field tours, and exhibits, where possible.
- *Adventures in the Past:* Interpret cultural properties appropriate for use as exhibits-in-place, when funds are available, consistent with BLM's Adventures in the Past initiative and emphasis on Heritage Tourism.
- *Iditarod National Historic Trail:* Participate in Iditarod National Historic Trail projects, including interpretation, National Register of Historic Places documentation, Iditarod Trail to Every Classroom, and other Trail-related work, as appropriate.

Other Cooperative Work: The BLM and SHPO are further encouraged to work together, as appropriate, on other matters of joint interest and mutual benefit. An example would be that BLM and SHPO will continue to cooperate in the management of the State and federal portions of the Tangle Lakes Archaeological District. Such work may include, but is not limited to, cooperative signage efforts and inventories, and other projects or actions that help protect or enhance the understanding and enjoyment of its cultural resources.

Public Participation and Native American Participation: The BLM will solicit public participation including from Native Americans, as guided by BLM's land use planning and environmental review processes for actions subject to Section 106 of the National Historic Preservation Act. In addition, the BLM will be guided by the following documents, handbooks, or authorities, which include procedures and requirements not only for consultation with the public but also with consulting parties, Alaska Native tribes following government-to-government conventions, and Alaska Native Corporations, as appropriate:

- BLM's 2012 revised *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* (national PA) – Note: Requirements for consultation found in this agreement are included in Appendix 4 of this Protocol for convenience and as standards that BLM will apply in Alaska regarding consultation with the public, Alaska tribes, and consulting parties.
- 36 Code of Federal Regulations Part 800
- Protecting Historic Properties: A Citizen's Guide for Section 106 Review.
- BLM Handbook H-1601: Land Use Planning Handbook
- BLM Handbook H-1790: National Environmental Policy Act Handbook
- BLM Manual 8120, Native American Coordination and Consultation
- BLM Handbook H-8120-1, General Procedural Guidance for Native American Consultation.
- National Historic Preservation Act, Sections 101(d)(6) and 110(a)(2)(E)
- Secretary of the Interior Order No. 3317 (signed 12/1/2011): Department of the Interior Policy on Consultation with Indian Tribes
- Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporation (signed 8/10/2012)

Consultation Protocol:

Case-By-Case Review: The BLM will request the SHPO's review, in accordance with the standard review process outlined at 36 Code of Federal Register (CFR) Part 800, for the following kinds of undertakings. This would be done at a time early enough in the process for the undertaking to allow the SHPO's recommendations to have a meaningful role in that process, including a reasonable expectation that such recommendations concerning historic preservation would be seriously considered and implemented, where feasible. To facilitate review, the BLM will provide the SHPO with the associated environmental document for all such undertakings.

1. Non-routine international and/or interagency projects or programs, as determined by either the BLM or the SHPO. Examples are interstate Pipelines or transmission lines which involve multiple jurisdictions and require the preparation of Environmental Impact Statements.
2. Undertakings directly and/or indirectly adversely affecting properties on or determined eligible to the National Register of Historic Places in Alaska, including ones agreed to for the purposes of Section 106 as eligible to the National Register by Agency-SHPO agreement.
3. Undertakings when ACHP review is requested by the BLM, the SHPO, an Alaska Native tribe, a local government, an applicant for a BLM authorization, or a member of the public who has a concern for an undertaking's effect on specific historic properties.
4. Undertakings where the ACHP has requested the BLM or SHPO to become involved, or where the ACHP under terms of the national PA at Part 5 is to be notified, whereby the BLM will request the ACHP's participation in certain classes of undertakings identified in the national PA.
5. Land disposals exceeding 640 acres of public land when the BLM proposes to do less than a Class III survey as defined in BLM 8110 manual to identify cultural resources. In such cases, the BLM will consult with the SHPO to ensure that the survey will adequately characterize past human use of the area and address relevant research questions.

Undertakings Not Subject to Further Section 106 Review: (See Appendix 2)

Determinations of Eligibility to the National Register: The BLM is required to consult with, and request the concurrence of, the SHPO on all determinations of eligibility to the National Register of Historic Places. The SHPO will provide technical assistance as needed. For all undertakings, whenever a BLM cultural resource specialist concludes that a proposed undertaking will have a significant probability of impacting cultural resources, each site within the area of potential effect of the undertaking will be evaluated for National Register eligibility in consultation with the SHPO prior to making a determination of effect. The level of documentation will, of course, vary with the complexity of the site but at a minimum will include the information necessary to fill out an AHRS form plus a discussion of the criteria under which each site is eligible or why it is not eligible. National Register Bulletin 15 should be consulted for guidance as well as BLM's 8110.3 manual section on Evaluating Legal Significance.

Obtaining Specialized Expertise: When the BLM is involved in an undertaking requiring expertise not possessed by available BLM staff (e.g., architectural history, Native American oral traditions), it will obtain that expertise for the purpose of determining National Register eligibility, effects and treatment for 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.

Professional Qualification Standards and Training of Professional, Technical, and Field Staff: BLM field office archaeologists will meet federal Office of Personnel Management Standards appropriate to their level of work authority. If such work were ever to exceed the qualifications of a field office archaeologist, the office would obtain the needed specialized expertise as described in the prior section. Also, the BLM, through its Deputy Preservation Officer, will provide training to a new manager or archaeologist with Section 106 responsibilities within 90 days of his or her report date in the procedures outlined in the PA and appropriate BLM-SHPO Protocol.

Annual Report: Each Field Office will send the SHPO an annual report of its cultural resources work performed during each federal fiscal year (FY) by December 10th of the following FY. The report will contain items identified in Appendix 1 ("SHPO Annual Report"), a brief program overview, plus copies of the following documents:

1. New or updated Alaska Heritage Resources Survey Site forms for site discoveries or updates in a FY.
2. New or updated Assessment Reports done for Section 106 compliance in a FY. Note: Appendix 1 provides standards for these and other reports.
3. Project reports for work started and completed within a FY.
4. Status Reports for multi-year projects ongoing but not completed within a FY.
5. Final Reports for multi-year projects completed within a FY.
6. Copies of reports for work completed by contractors or other non-BLM employees within a FY.
7. Treatment Reports documenting treatments to historic properties performed by BLM within a FY.

Following BLM's submission of its Annual Report, the SHPO will acknowledge each Field Office's submission with comments, as appropriate, within 60 days of receipt of the report. A copy of the correspondence will be sent also to the BLM State Office Cultural Heritage Specialist. If no comments are received from the SHPO within 60 days, the reports will be presumed acceptable.

Resolving Issues: If, at any time, the BLM or the SHPO question an action taken by the other under this Protocol, they will consult to resolve the issue. If the issue concerns an action taken by a Field Office, the questioning party will consult with the Field Manager to resolve it. If the issue cannot be resolved, the questioning party will request the Deputy Preservation Officer to assist in resolving it. If the issue still cannot be resolved, the Deputy Preservation Officer will refer it to the BLM Preservation Board. The BLM Preservation Board will provide recommendations to the State Director, who will make a final decision.

If the BLM and SHPO do not agree on the National Register eligibility of a cultural resource, the question will be sent to the Keeper of the National Register for resolution.

If a member of the public or an Alaska Native tribe objects at any time to the manner in which this Protocol is being implemented, the BLM and the 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 BLM Preservation Board.

The BLM Preservation Board will provide recommendations to the State Director, who will make a final decision. In accordance with the 36 CFR 800 regulations, any member of an Alaska Native tribe or corporation or group, or the interested public may request the ACHP to review determinations made by the BLM or SHPO on a specific undertaking before the final decision has been made.

Decertification or Suspension of Field Offices: If a field office cannot demonstrate continued capability to operate under the national Programmatic Agreement or this Protocol, that office shall be decertified or suspended in accordance with procedures identified in the national PA. The field office would subsequently operate under regulations found at 36 CFR Part 800 until it can demonstrate to the satisfaction of the SHPO and Deputy Preservation Officer that it can resume operation in accordance with procedures identified in the national PA and this Protocol. When that occurs, the Deputy Preservation Officer will recommend that the State Director recertify the office, also in accordance with the national PA.

Reviewing the Protocol: The BLM and SHPO will consult every three years to review and update the Protocol, as may be needed.

Amending the Protocol: If the BLM or the SHPO wish to amend this Protocol at any time, they will consult to consider requested changes. Substantial changes, such as those that would affect the opportunity for public participation or tribal consultation, will be subject to public notice and tribal consultation. Amendments will become effective when signed by both parties.

Terminating the Protocol: The BLM or the SHPO may terminate this Protocol by providing a ninety (90) day notice to the other party, providing that they consult during this period to seek agreement on amendments or other actions that would avoid termination. The Deputy Preservation Officer may request the assistance of the BLM Preservation Board, National Conference of State Historic Preservation Officers, or the ACHP in the consultation. If the Protocol is terminated, the BLM will return to operating under the provisions of the ACHP's regulations found at 36 CFR Part 800.3-7 in place of the Protocol.

Other State-Specific Procedures: The BLM will be guided by procedures described in Bureau-wide directives, including the BLM Manual 8100 series for the management of cultural resources. Also, if needed, BLM may develop state-specific manual supplements to incorporate policies issued by the Alaska State Director, new laws, and new regulations. The SHPO would be invited to participate in the development of all state-specific manual supplements to BLM's 8100 manual series.

Appendices:

1. SHPO Annual Report
2. Undertakings Not Subject to Further Section 106 Review
3. Standards for Transmittal of Data to the Alaska State Historic Preservation Officer
4. Consultation Standards for Cultural Resource Management

Approved by:



Alaska State Director, Bureau of Land Management

Date: Feb. 5, 2014



Alaska State Historic Preservation Officer

Date: Feb 5, 2014

Appendix 1

SHPO Annual Report

Annual Reports to the SHPO are completed by each field office under the authority of the manager of that office. Annual reports allow the SHPO to understand how field office managers carried out their responsibilities under the national PA and this Protocol, including what decisions and recommendations were made.

What to submit

- All reviews of actions completed during the year, including both on-the-ground surveys and actions reviewed without further survey. Each report should include a map showing the area surveyed or the area of potential effects and the total number of acres surveyed.
- A brief description of and current status report on any non-106 inventory efforts, excavations, research projects, stabilization or restoration projects, or any other efforts involving cultural resources.
- A brief description of planned projects for the coming year.
- Completed AHRS site data in electronic format.

Content of examination reports

The following specifies minimum requirements for examination reports submitted as part of the annual report. In specific situations, additional information may be necessary or useful.

No specific format is required for examination reports. Individuals or offices may develop forms if they find them useful and if they otherwise meet the requirements of the protocol.

Multiple undertakings may be combined into a single report where the individual undertakings are located near enough to one another that it is logical and efficient to combine them into one records check and literature review. However, as needed, the effects of individual undertakings may require separate reporting and consultation.

All reports

Unless the information is not relevant to a particular report, all reports should contain:

1. BLM serial number
2. Environmental Assessment number
3. Date
4. Name of the applicant
5. Description (preferably a legal description) of the location of the action
6. Description of the proposed undertaking in sufficient detail so as to allow a reviewer a reasonable chance of determining the nature of cultural resources within the APE, the likelihood of and the extent of surface disturbance, and the potential for effects.
7. Name and signature of the individual completing the review.

Office reviews

The purpose of an office review is to document the rationale for not recommending an on-the-ground survey. All reports should additionally provide whatever information is relevant and in sufficient detail so that a non-specialist can understand the reasoning.

8. Existing data. Provide a review of existing data on cultural resources located in the area of potential effects. At a minimum, this should entail consulting the AHRS database.
9. Prior survey work. Describe past survey work done in the area.
10. Conclusions. Explain the rationale supporting all conclusions.
11. Recommendations. Include an explicit recommendation under the authority of the field office manager regarding the need (or lack thereof) for on-the-ground survey, and for any mitigating measures or stipulations that should be included in or attached to the proposed action.

Field exams

In addition to documenting the work done in response to a specific undertaking, a field exam report should provide enough detail to allow a future cultural resource specialist to determine if the completed inventory can be used to meet his/her needs. To do this, the field exam report would include the following:

12. Description of the area surveyed. At a minimum, provide a description of the extent and nature of ground cover so that the survey methodology can be evaluated. Include total number of acres surveyed.
13. Survey methodology (i.e., transect width, number of field personnel, nature and extent of subsurface testing, etc.).
14. Results of survey. Whether any sites were found, and if so, descriptions of those sites.
15. Impacts. Will discovered sites be disturbed by the proposed action, or can the action be modified to avoid impacts?
16. National Register eligibility. If impacts cannot be avoided, then are the sites either eligible for the National Register or likely to be eligible? Summarize the significance of the site(s), citing one or more of the National Register Criteria listed in 36 CFR 60.4. (Note: See consultation requirements with the SHPO regarding determinations of eligibility.)

Appendix 2

Undertakings Not Subject to Further Section 106 Review

Purpose: The purpose of the following list is to identify Bureau of Land Management activities which may meet the technical definition of "Undertaking" contained in Section 301(7) of the National Historic Preservation Act (NHPA), or within 36 CFR Part 800, but which have little potential to affect historic properties. By mutual agreement of the parties signatory to this Protocol, undertakings identified as belonging to this class, through application of the review process set forth in the BLM manuals, are exempt from further review under Section 106 of the NHPA.

Undertakings Not Subject to Further Section 106 Review:

1. Activities that involve less than one square meter (11 square feet) of cumulative ground disturbance in one area provided the activity is not taking place on a National Register listed or eligible property. Examples include many permits issued to hunting guides where land disturbance if any is negligible.
2. Tenant-type maintenance of administrative sites, buildings, recreation sites, ranger vessels. Tenant-type maintenance is routine maintenance and repair of facilities, entailing no structural change or any change of form, function, or materials.
3. Activities taking place on glacial ice, permanent snowfields, tundra bogs, and slopes steeper than 30 degrees except in historic mining areas where adits or historic structures may be found. This does not apply to melting snowfields areas identified as snow patches where recent research has determined that cultural resources may be present.
4. Routine trail maintenance in previously inventoried areas, including the posting of signs.
5. Routine road maintenance in previously inventoried areas.
6. Activities in locations where previous natural or human disturbance has modified the landscape so extensively that the likelihood of finding cultural resources is negligible. A cultural resource survey may be needed to verify this condition and to determine if the disturbance itself is of historic importance. Examples include expansion of vertical quarries, activities on actively-changing river courses that are carried out within active stream beds.
7. Heavy maintenance, reconstruction, or replacement of existing facilities in previously inventoried areas, provided that the facility has been determined not eligible for listing on the National Register of Historic Places. Examples may include fish ladders, bridges and culverts, fences, cabins, and facilities in developed recreation sites.

Appendix 3

Standards for Transmittal of Data to the Alaska State Historic Preservation Officer

The BLM will transmit site records for inclusion in the Alaska Heritage Resources Survey (AHRS) in an electronic form determined agreeable between the SHPO and BLM. Also, information on areas surveyed will be electronically transferred to the SHPO in shapefiles that can be similarly incorporated into the AHRS.

- I. New site number requests will be submitted via email to the AHRS unit manager at SHPO. The following information will be provided at the time of the request:
 - a. Temporary number
 - b. USGS quad (for assigning trigraph)
 - c. Site name
 - d. Brief site description
 - e. Brief location description
 - f. Latitude/Longitude in decimal degree if the site will be recorded as a point
 - g. If the site is a polygon or a line, a site map or a shapefile will be submitted
- II. For site number requests that exceed two at a time, request will be submitted via email to the AHRS unit manager with an accompanying Excel spreadsheet. A template for this spreadsheet is provided on the SHPO website.
- III. Once a final report or AHRS card is completed and sent to SHPO, the existing record is updated by SHPO staff with the most recent information.
- IV. Completed site information may be submitted on an AHRS card by email to the AHRS unit manager and as needed, editing privileges may be assigned to BLM users to remotely edit site cards.
- V. AHRS site card information may also be submitted annually with each Field Office's annual report or as needed throughout the year.
- VI. A fillable AHRS site card is available on SHPO's website for BLM personnel to use if desired (requires Adobe Acrobat Professional) or the form may be submitted as a Word document or standard Portable Document File (PDF) (also available on SHPO's website).
- VII. SHPO is in the process of developing a new map interface that will allow for import of site and survey area shapefiles directly into the AHRS database. SHPO will continue to work directly with BLM to develop a standardized process for submitting this information.

Appendix 4

Consultation Standards for Cultural Resource Management

Introduction and Purpose: The following information is found in Component 4 of the 2012 revised National Cultural Resources Programmatic Agreement (PA). It is included here for convenience and as standards that BLM will apply in Alaska regarding consultation with Alaska tribes, consulting parties, and the public when considering the effects of BLM's undertakings on historic properties.

As required by the National Historic Preservation Act (NHPA) Section 106 process and the 2012 revised PA, the field manager—with the assistance of qualified professional staff and in consultation with the SHPO according to the process identified 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. Involved 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 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;
- (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 Part 60.4, he or she will provide documentation to the SHPO according to the reporting schedule 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 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 (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 find 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 an 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 government requires that the BLM's official interactions with them, including consultations, 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 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.