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**STATE PROTOCOL  
BETWEEN  
THE NEW MEXICO BUREAU OF LAND MANAGEMENT  
AND  
THE NEW MEXICO STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE MANNER IN WHICH BLM  
WILL MEET ITS RESPONSIBILITIES UNDER  
THE NATIONAL HISTORIC PRESERVATION ACT  
IN NEW MEXICO**

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## **Preamble**

On February 9, 2012, the Bureau of Land Management (BLM), the Advisory Council on Historic Preservation (ACHP) and the National Conference of SHPOs (NCSHPO) entered into a national Programmatic Agreement (nPA) that details the manner in which the BLM will meet its responsibilities under Sections 106, 110 (f) and 111 (a) of the National Historic Preservation Act (NHPA or the Act). The nPA can be found online at: [http://www.blm.gov/wo/st/en/prog/more/CRM/blm\\_preservation\\_board/prog\\_agreement.html](http://www.blm.gov/wo/st/en/prog/more/CRM/blm_preservation_board/prog_agreement.html).

Through the provisions built into the nPA, the BLM, NCSHPO, and the ACHP—in consultation with Indian tribes, consulting parties and the public—ensure that the BLM will organize its programs to operate efficiently and effectively, according to the spirit and intent of Section 106 of the NHPA, and in a manner consistent with 36 CFR Part 800. The BLM will integrate its historic preservation planning and management decisions with other policy and program requirements to the maximum extent.

This State Protocol (Protocol) between the New Mexico BLM and the New Mexico State Historic Preservation Officer (SHPO) tiers off of the nPA and describes the manner in which the New Mexico BLM and the SHPO will interact and cooperate under the nPA. The BLM and the SHPO intend to streamline and simplify procedural requirements, and emphasize the common goal of planning for and managing historic properties under the BLM’s jurisdiction and control in the public interest. This Protocol supersedes the 2004 Protocol Agreement between the New Mexico BLM and SHPO.

### ***Bureau of Land Management***

The BLM, consistent with its authorities and responsibilities under the Federal Land Policy and Management Act of 1976 (FLPMA) (P.L. 94-579) (43 USC Part 1701 *et seq.*), is charged with managing public lands in New Mexico in a manner that will, among other things, “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)(P.L. 91-190, as amended, 42 USC 4321 *et seq.*), the National Historic Preservation Act of 1966 (NHPA)(P.L. 89-665, 16 U.S.C. 470 *et seq.*) and implementing regulations of Section 106 of the NHPA at 36 CFR Part 800, the Archaeological Resources Protection Act (ARPA)(P.L. 96-95, as amended, 16 USC 470aa *et seq.*) and implementing regulations at 43 CFR Part 7, the Native American Graves Protection and Repatriation Act (NAGPRA) (P.L. 101-601, 32 USC 3001 *et seq.*) and implementing regulations at 43 CFR Part 10, the Historic Sites Act of 1935 (16 USC 461 *et seq.*), the American Antiquities Act

of 1906 ( 16 USC 431 *et seq.*), the American Indian Religious Freedom Act (AIRFA)(P.L. 95-341, as amended), 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 an nPA in 1997 and revised in 2012 to help guide the BLM’s planning and decision making 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.

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 NRHP, and on the development and implementation of Memoranda of Agreement (MOAs) and Programmatic Agreements (PAs) regarding the means by which adverse effects on such properties will be considered.

#### ***State Historic Preservation Officer***

The New Mexico State Historic Preservation Officer (SHPO) has responsibilities under Section 101(b) of the NHPA that include:

1. advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;
2. identify and nominate eligible properties to the NRHP and otherwise administer applications for listing historic properties on the NRHP;
3. in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties; and
4. 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.

#### ***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);

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, and
4. the ACHP, may at times, act in lieu of the SHPO, pursuant to the regulations implementing Section 106 of the NHPA (36 CFR 800.3(c)(4)).

### ***Indian Tribes***

The NHPA specifically requires that federal agencies consult with federally recognized Indian 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 Protocol 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 may include representatives of local governments, state agencies or departments, Indian tribes, project proponents, land owners, applicants for federal assistance, permits, licenses and other approvals, and certain 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)). The BLM, in consultation with SHPO, will identify consulting parties and invite them to participate in Section 106 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 procedures to involve the public as described in this document or through its established NEPA procedures.

### ***Basis for Protocol***

Proceeding from these responsibilities, goals, and objectives, the BLM and SHPO will follow the nPA in its entirety and 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 NRHP; (2) managing and maintaining properties listed in or eligible for the NRHP 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, applicants, 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 its preservation-related activities will be carried out in consultation with Indian tribes, other Federal agencies, State agencies, local governments, consulting parties, and the interested public; and

WHEREAS the BLM's program also is intended to: (1) ensure that the BLM'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 NRHP 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 SHPO, has an interest in continuing its cooperative relationship with the BLM to facilitate a more effective and efficient Section 106 consultation process, and promote activities of mutual benefit; 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 800.4(c)(1); and

WHEREAS the BLM's programs benefit from consultation with Indian tribes, including BLM's identification and management of properties of religious and cultural significance, and the BLM will ensure that its NHPA Section 106 procedures recognize the interests of Indian tribes in



historic properties potentially affected by BLM decisions and will afford Indian tribes participation in the process leading up to a BLM decision, in accordance with 36 CFR Part 800; and

WHEREAS this Protocol 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 the nPA; 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 NRHP 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 Indian tribes may want to form a cooperative relationship with the BLM in a manner consistent with the purposes of the nPA to achieve a more effective and efficient Section 106 consultation process; and

WHEREAS the BLM has consulted on the development of this Protocol and continues to consult regarding heritage issues with the Apache Tribe of Oklahoma, the Comanche Nation, the Fort Sill Apache Tribe of Oklahoma, the Hopi Tribe, the Jicarilla Apache Nation, the Kewa Pueblo (formerly Santo Domingo Pueblo), the Kiowa Tribe of Oklahoma, the Mescalero Apache Tribe, the Navajo Nation and affected Chapters, the Ohkay Owingeh (formerly the Pueblo of San Juan), the Pawnee Nation of Oklahoma, the Pueblo of Acoma, the Pueblo of Cochiti, the Pueblo of Isleta, the Pueblo of Jemez, the Pueblo of Laguna, the Pueblo of Nambe, the Pueblo of Picuris, the Pueblo of Pojoaque, the Pueblo of San Felipe, the Pueblo of San Ildefonso, the Pueblo of Sandia, the Pueblo of Santa Ana, the Pueblo of Santa Clara, the Pueblo of Taos, the Pueblo of Tesuque, the Pueblo of Zia, the Pueblo of Zuni, the Pueblo of Ysleta del Sur, the White Mountain Apache Tribe, the San Carlos Apache Tribe, the Southern Ute Tribe, and the Ute Mountain Ute Tribe, and the BLM takes into consideration tribal comments in BLM's planning in management decisions; and

WHEREAS, due to their previous and ongoing demonstrated interest in historic preservation in New Mexico, the BLM and SHPO have consulted and will continue to consult regarding development of this Protocol and historic preservation matters in BLM's planning and management decisions with the following parties: the Archaeological Society of New Mexico (ASNMM), the Chaco Alliance, the El Camino Real de Tierra Adentro Trail Association (CARTA),

the Historical Society of New Mexico, the National Trust for Historic Preservation, the New Mexico Archaeological Council (NMAC), the New Mexico State Land Office, the Old Spanish Trail Association (OSTA), the San Juan Citizens Alliance, and the SRI Foundation; and

WHEREAS, the BLM and SHPO had a public comment period during the Protocol revision process and solicited comments and input from various interest groups and industries, including the Independent Petroleum Association of New Mexico and the New Mexico Oil and Gas Association; and

WHEREAS the BLM and SHPO intend that efficiencies in the NHPA Section 106 process, realized through this Protocol, will enable the BLM and SHPO staffs to devote a larger percentage of their time and energies to proactive work, including: (1) focus on complex and priority undertakings; (2) analyze and synthesize data accumulated through decades of Section 106 compliance; (3) identify historic properties where information is needed, not just in reaction to proposed undertakings; (4) plan for long-term preservation; (5) nominate properties to the NRHP; (6) manage historic properties in a planned and priority-based way; (7) engage in creative public education and interpretation; (8) engage in more effective tribal consultation and public outreach; and (9) embark on other activities that will have readily recognizable tribal and public benefits.

NOW, THEREFORE, the BLM and the SHPO mutually agree that the BLM, consistent with the provisions of this Protocol, will meet its responsibilities under the NHPA 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.

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

## *Stipulations*

### **I. BLM RESPONSIBILITIES AND GENERAL PROCEDURES**

To the extent of its legal authority, and in coordination with the SHPO, the BLM shall ensure that the measures in this Protocol are implemented. The Protocol establishes a streamlined consultation process for most BLM undertakings but includes provisions to follow the process in 36 CFR Part 800 or other agreement documents. It is a two-party agreement between the BLM and SHPO that specifies the manner in which the BLM works with SHPO and how the BLM consults with Indian tribes, consulting parties and the public in considering the effects of BLM's actions on historic properties and in its management of cultural resources under BLM jurisdiction.

#### **A. BLM Decisions and Responsible Officials**

- i. BLM agency officials who take responsibility for Section 106 compliance include Field Office Managers, District Managers, Deputy State Directors, and the State Director. Only these individuals have approval authority for undertakings.
- ii. As acknowledged in the BLM 8100 Manuals and Handbooks, the NHPA, 36 CFR 800, and the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation and Federal Agency Historic Preservation Programs*, BLM decisions regarding identification, determinations of eligibility, and treatment must be conducted by professionally qualified individuals. Those individuals within the BLM are the cultural resource specialists.
- iii. If BLM agency officials disagree with the advice provided to them by their cultural resource specialists, they may consult with the SHPO and/or the ACHP concerning these disagreements.

#### **B. BLM Project Planning**

Each Field Office is responsible for preparing land use planning documents such as Resource Management Plans (RMP), RMP amendments and RMP revisions. When beginning an Environmental Impact Statement or programmatic Environmental Assessment level planning effort, Field Offices will invite the SHPO, Indian tribes, consulting parties, and other interested parties to participate in scoping for the purpose of identifying issues that should be addressed in the plan.

To facilitate broader and more proactive participation by SHPO, Indian tribes and other interested parties in BLM's management activities relating to cultural resources, the BLM will invite these parties to comment on any cultural resource use allocations, whether they

are made in regional, local, or project plans. Recommended topics for discussion include: cultural resource identification, evaluation, nomination, condition, protection, maintenance, use, research, interpretation, consultation, public outreach, and community partnerships/heritage tourism opportunities.

In preparing planning documents, BLM will utilize all relevant information tools including SHPO records and documents, BLM Government Land Office (GLO) documents, municipal and county records, and electronic databases including the New Mexico Cultural Resource Information System (NMCRIS). The *User's Guide to the New Mexico Cultural Resource Information System: Guidelines for Submitting Cultural Resource Records* is available from the SHPO web site at

<http://www.nmhistoricpreservation.org/documents/arms-documents.html>.

### **C. BLM Handbooks**

The BLM shall continue to manage historic properties in accordance with national BLM policies and procedures developed through its directives system (BLM Manual and Handbook Sections 8100-8170, and Instruction Memoranda). While the BLM's manuals and memoranda help guide decision-making, more precise standards and procedures applicable to New Mexico will continue to be found in the most current version of H-8100-1 *Procedures for Performing Cultural Resource Fieldwork on Public Lands in the Area of New Mexico BLM Responsibilities*. The handbook may be accessed at [http://www.blm.gov/pgdata/etc/medialib/blm/nm/programs/more/cultural\\_resources/cultural\\_docs.Par.77051.File.dat/H-8100-1\\_manual\\_final\\_V\\_8-21\\_.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/nm/programs/more/cultural_resources/cultural_docs.Par.77051.File.dat/H-8100-1_manual_final_V_8-21_.pdf). Copies of any proposed amendments to the manuals and handbooks will be forwarded to the SHPO, the ACHP, Indian tribes, consulting parties, and interested parties. These parties will be provided a minimum of 30 calendar days to comment on proposed changes. The BLM will take comments received during the review period into consideration in the final amendment. Copies of the final amendment will be provided to SHPO and all other parties.

### **D. Relationship of the Protocol to Other Agreements**

- i. Several Memorandums of Agreement (MOA) and Programmatic Agreements (PA) agreements are listed in Appendix A; these will remain in effect indefinitely and are incorporated into this Protocol. Until they are modified to conform to this Protocol, compliance steps elaborated in these agreements will be followed even though they may vary somewhat from the procedures outlined in this Protocol.
- ii. No existing agreements between the BLM and an Indian tribe or tribes will be altered by this Protocol.

- iii. Other PAs and MOAs may be developed when needed to define procedures that are not covered under the nPA or this Protocol. Agreement documents negotiated under this Protocol will be listed in Appendix A when signed and will be clearly differentiated from documents executed under the previous Protocol or under 36 CFR Part 800.

**E. When to Use the 36 CFR Part 800 Regulations in Lieu of the Protocol**

The regulations at 36 CFR 800.3 through 800.7, 800.8(c), and 800.14 will be followed in lieu of this Protocol in the following situations:

- i. Whenever the ACHP formally participates in the resolution of adverse effects for an undertaking;
- ii. When there are adverse effects to National Historic Landmarks (NHLs);
- iii. Multi-state programs or projects;
- iv. Large or complex, multi-agency or multi-phased undertakings;
- v. If a field or District Office is decertified, that office will not follow this Protocol while it is in a decertified status;
- vi. When developing program alternatives, including project-specific PAs;
- vii. If the BLM or the SHPO terminates this Protocol;
- viii. If the national Programmatic Agreement is terminated or suspended for any reason; if this situation arises, this Protocol will continue in use for an additional one hundred twenty (120) days, allowing time for BLM and SHPO to prepare and sign a separate agreement;
- ix. For Resource Management Plans (RMPs) and RMP Amendments;
- x. Undertakings that are determined by the BLM or the SHPO to be subject to unusual public attention or involve strongly opposing viewpoints; and
- xi. At its discretion, the BLM may consult on individual undertakings of any kind with SHPO, tribes, and consulting parties by following 36 CFR 800.3 through 800.7 if it is deemed that doing so is in the best interest of the BLM. If this option is used the BLM will cite this clause and the Appendices will still be applicable.

## **F. Multi-Federal Agency Undertakings**

- i. If an undertaking will affect lands administered within New Mexico by more than one federal agency, or funding or licensing is provided by another federal agency and the BLM is the lead agency for Section 106 and the situations at Stipulation I.E. do not apply:
  - a. The BLM will utilize the Protocol for the entire undertaking if this is acceptable to the other federal agencies and Indian tribes. BLM will notify the SHPO of the decision to use the Protocol within 30 days, and the BLM will provide SHPO with documentation that the other federal agencies have agreed to follow the Protocol. Each land managing agency remains responsible for making determinations of NRHP eligibility for resources it manages.
  - b. BLM will indicate on its initial submission that they are the lead federal agency and include a copy of the agreement with the other agency.
- ii. Where undertakings will affect lands within New Mexico administered by more than one federal agency, or funding or licensing is provided by another federal agency and another federal agency is the lead, consultation procedures used by the lead agency will be followed for the entire undertaking if this is acceptable to the BLM and other federal agencies and Indian tribes.
- iii. Where undertakings will affect lands within New Mexico administered by more than one federal agency without a federal agency taking the lead, and the situations at Stipulation I.E. do not apply, the BLM will follow the Protocol for lands under its jurisdiction. The BLM will indicate on its initial submission to SHPO that this is a multi-federal agency undertaking submitted without a federal lead.

## **G. BLM Responsibilities on Non-Federal Lands**

- i. The intent of the NHPA is to consider the effects of federal decision-making on historic properties regardless of land status. Therefore, the BLM will assure that its actions and authorizations are considered in terms of their effects on cultural resources located on non-federal as well as federal lands (16 U.S.C. 470h-2). The extent of BLM's responsibility for identifying and treating adverse effects to non-federal historic properties is based on the BLM 8110 Manual and other guidance and includes an evaluation of the following factors:
  - a. Would the project remain viable if the federal authorization or funding were not provided?
  - b. How likely are historic properties to exist in the area of potential effects (APE)?

- c. To what degree will the BLM authorizations affect the location of surface disturbing activities on non-Federal lands?
  - d. The amount of BLM land involved.
- ii. The BLM will conduct, or cause to be conducted, an inventory for and evaluation of cultural resources on non-federal lands within the APE, or in response to a land use application in accordance with Stipulations IV. and V. In making NRHP evaluations for cultural resources on state land, the BLM will take into account the views of the state land owner.
  - iii. The BLM will consider the effects of its decision-making upon historic properties following Stipulation VI, and will resolve adverse effects to non-federal historic properties that would result from land uses carried out by or authorized by the BLM in accordance with Stipulation VIII. BLM will notify and consult with the non-federal land owners.
  - iv. When treatment involves data recovery, adequate time will be allocated for the analysis of the artifacts, samples, and collections recovered from non-federal lands and for report preparation. The artifacts, samples, and collections, recovered from non-federal lands remain the property of the non-federal landowner unless donated to the federal government for curation. The BLM must receive complete and original copies of field notes, maps, records of analyses, photographs, other data, and reports for work conducted on behalf of the federal government. Reports resulting from work on non-federal land will be made available to the land owner. The treatment and disposition of any human remains and associated funerary objects and materials found during data recovery on state and private land will follow New Mexico state law.
  - v. Identification and/or mitigation of adverse effects may be required as a condition of a lease, permit, or license issued by BLM, whether federal or non-federal lands are involved.
  - vi. Because local regulations or state law, such as the New Mexico Cultural Properties Act, as amended (N.M. Stat. §§ 18-6-1 et seq.), may still apply to the non-Federal portions of an undertaking, the BLM and SHPO will attempt to clarify for project sponsors the circumstances under which state, federal, or other laws and regulations apply.

## **II. BLM CONSULTATION WITH OTHER ENTITIES UNDER THIS PROTOCOL**

In order to allow an opportunity for interested parties to comment on the BLM undertakings subject to Section 106 review, the BLM will maintain an online list containing basic information

about upcoming projects. This is currently called the NEPA Log and it is found at [http://www.blm.gov/nm/st/en/prog/planning/nepa\\_logs.html](http://www.blm.gov/nm/st/en/prog/planning/nepa_logs.html). Interested parties should contact the Field Office contact person listed in the NEPA Log to obtain additional information about an undertaking in which they may have an interest. Additionally, each Field Office at [www.blm.gov/nm](http://www.blm.gov/nm) has a webpage that includes telephone numbers and email addresses for additional public contacts.

#### **A. Advisory Council on Historic Preservation**

The BLM will invite the Advisory Council on Historic Preservation (ACHP) to participate in consultation when undertakings meet the thresholds listed below and will 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. Any BLM field office correspondence with the ACHP should be coordinated with the BLM State Office.

- i. Thresholds for ACHP Notification:
  - a. interstate and/or non-routine interagency projects or programs;
  - b. undertakings adversely affecting National Historic Landmarks (NHLs);
  - c. undertakings that the BLM determines to be highly controversial;
  - d. undertakings that will have an adverse effect and those adverse effects cannot be resolved through formal agreement between BLM and SHPO;
  - e. the development and approval of program alternatives, including project-specific PAs; and
  - f. the BLM and SHPO may choose to consult to identify specific circumstances and conditions that, when met, call for the ACHP's notification.
- ii. The ACHP may enter into consultation at any time, per the nPA section 5.d.
- iii. At any point in the Section 106 process, the BLM, SHPO or other consulting party may request the ACHP's guidance or participation. The ACHP may or may not elect to participate.

#### **B. Indian Tribes**

- i. The BLM will consider the effects of its undertakings on historic properties significant to Indian tribes because of the association with tribal history, including those of traditional religious and cultural importance to a tribe. For specific undertakings, the BLM will consult on a government-to-government basis. Where appropriate the BLM will coordinate Section 106 consultation with the NEPA process. The BLM shall assure that Indian tribes have the opportunity to identify historic property concerns and to participate as consulting parties in all aspects of



consultation for projects that are of interest to them. In consulting with Indian tribes or authorized tribal representatives, the BLM will be guided by the following:

- a. BLM Manual 8120, *Tribal Consultation under Cultural Resource Authorities*
  - b. BLM Handbook H-8120-1, *Guidelines for Conducting Tribal Consultation*
  - c. Executive Order No. 13007, Indian Sacred Sites
  - d. Executive Order 13175 Consultation and Coordination with Indian Tribal Governments
  - e. National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties
  - f. 2011 DOI Tribal Consultation Policy and companion Secretarial Order 3317
  - g. 36 CFR Part 800 and ACHP Office of Native American Affairs policy and guidance (see [www.achp.gov](http://www.achp.gov))
  - h. National Environmental Policy Act (NEPA)
  - i. Native American Graves Protection and Repatriation Act (NAGPRA)
  - j. Archaeological Resource Protection Act (ARPA)
  - k. BLM Manual 1780 – Tribal Relations
- ii. The NEPA and Section 106 project file shall include a list of Indian tribes contacted and documentation of the tribal concerns and recommendations derived from the consultation process, consistent with the confidentiality considerations in II.B.vi.
  - iii. General notification will occur as early as possible in the planning process, but no later than the identification stage. The BLM will seek information from Indian tribes about any historic properties of traditional cultural or religious significance which may be present within an undertaking's area of potential effect. The BLM State Office and Field Offices will ensure that Indian tribes have access to NEPA lists of proposed actions as posted on the NM BLM web site at [www.blm.gov/nm](http://www.blm.gov/nm) and that current contacts for Indian tribes are maintained on NEPA mailing lists. In addition, the BLM shall utilize periodic meetings, supplemental project lists, and project-specific consultation requests as needed to assure that Indian tribes have the opportunity to identify tribal concerns and to participate as consulting parties in all aspects of projects that are of interest to them. Indian tribes contacted and tribal concerns and recommendations derived from the consultation process shall be documented and addressed in the NEPA and Section 106 project file, consistent with the confidentiality considerations in II.B.vi.
  - iv. When it is determined that an undertaking may affect an historic property identified by an Indian tribe as having traditional cultural or religious significance, the BLM shall consult further with the tribe regarding the identification, evaluation, assessment of effects, and the resolution of adverse effects, if applicable, with respect to the property.

- v. In accordance with 36 CFR 800.2(c)(2)(ii)(E), BLM will work towards developing consultation Memoranda of Understanding (MOU) with Indian tribes, or at a minimum, a consultation process that meets the needs of both the Tribe and BLM. Such MOUs will recognize government-to-government relationships and will specify how individual Indian tribes wish to be consulted in the Section 106 process. Copies of signed MOUs, or documentation of the agreed upon consultation process, will be provided by BLM to the Indian tribe, the SHPO and the ACHP.
- vi. The BLM shall be sensitive to tribal concerns and rights regarding confidentiality and privacy and shall protect sensitive information to the fullest extent permitted by law, using applicable provisions and exemptions of Section 304 of NHPA, Section 9 of ARPA, and Section (b) of the Freedom of Information Act.
- vii. If a THPO/Indian tribe does not concur with BLM's determination of effect, the BLM will continue to consult with these parties to attempt to achieve concurrence. If these consultation efforts fail, then the procedures at 36 CFR 800.5(c)(2)(i) through (iii) will be followed.

### **C. Consulting Parties**

Consulting parties include the SHPO, THPO, Indian tribes, local governments, applicants for federal assistance, permits, licenses and other approvals (see 36 CFR 800.2(c)). The BLM in consultation with SHPO will identify additional consulting parties for individual undertakings based on the parties' demonstrated interest. A "demonstrated interest" may be indicated by an organization that focuses on historic preservation, as exhibited in their mission statement, charter or bylaws, their legal or economic relation to the undertaking or affected properties or their concern with the undertaking's potential effects on historic properties. .

The BLM shall invite potential consulting parties to participate, or consulting parties may request to participate in the Section 106 consultation process (Sections IV through VIII below) if they have a demonstrated interest in a BLM undertaking or its effects on historic properties. Any confidentiality concerns of Indian tribes, private individuals and businesses shall be addressed.

If a consulting party does not concur with BLM's determination of effect, the BLM will continue to consult with the party to attempt to achieve concurrence. If these consultation efforts fail, then the procedures at 36 CFR 800.5(c)(2)(i) through (iii) will be followed.

### **D. The Public**

The BLM will seek out and consider the views of the public when carrying out actions under the terms of this Protocol. The BLM shall notify the public of proposed undertakings in a manner appropriate to the nature, complexity, and significance of historic properties likely

to be affected by the undertaking, and the likely public interest. The BLM will solicit such input through the public participation opportunities afforded by BLM's land use planning and environmental review processes established under NEPA and FLPMA, and in accordance with regulations at 43 CFR 1610.3 and BLM will consider comments or objections by members of the public in a timely manner. The BLM will also coordinate NEPA and NHPA to the extent possible.

The BLM shall ensure that environmental documents include information on historic properties that may be affected by the proposed action and alternatives. The public will have access to findings made pursuant to this Protocol, consistent with the confidentiality requirements in the NHPA, Section 304, and the ARPA, Section 9(a), and all other applicable laws, regulations and executive orders.

### **III. BLM CONSULTATION RESPONSIBILITIES WITH SHPO UNDER THIS PROTOCOL**

#### **A. Formal Consultation**

- i. Formal consultation shall occur between the SHPO and the BLM as outlined in the procedures in Sections IV through VIII of this document. Formal consultations are completed by a letter on BLM letterhead and may be sent electronically. The purpose of formal consultation is to afford SHPO the opportunity to comment and for BLM to make informed decisions while building BLM's administrative record for the undertaking. SHPO's formal response will be on SHPO letterhead or by signed stamp and will include the SHPO tracking number. This response may be sent electronically.
- ii. Field Managers may provide early notification to the SHPO about upcoming projects likely to have an adverse effect on known historic properties, National Historic Landmarks (NHLs), National Historic Trails (NHTs), properties of religious and cultural significance to Indian tribes, traditional cultural properties (TCPs), and known resources that have not been fully evaluated for inclusion in the NRHP. Field Managers should use their best judgment in determining what projects should be brought to the SHPO's attention early in the process. The agency official should plan notifications appropriate to the scale of the undertaking and the scope of Federal involvement.

#### **B. Meetings and Other Communication**

- i. The SHPO and the BLM (state office, district manager or a field manager and/or staff) may meet at any time to discuss annual work plans, specific undertakings, outreach efforts, or other issues related to the BLM's management of cultural resources. Both parties will make every effort to arrange such meetings in a timely

manner and to provide information requested. The SHPO and Field Office personnel are encouraged to discuss specific undertakings prior to formal consultation or any aspect of BLM's cultural resource management program. Unless a topic falls under the category of formal consultation, BLM and SHPO may communicate via telephone and email.

- ii. SHPO and BLM Deputy Preservation Officer (DPO) will meet with field office cultural staff and management on an as-needed basis to conduct site visits, and to discuss projects and any issues concerning performance under this Protocol (e.g., differences between BLM and SHPO in NRHP eligibility evaluations or effect findings, etc.). Face-to-face meetings are preferred, but alternative meeting arrangements can be made to conduct the field office review in an interactive format.
- iii. Under special conditions, such as staffing shortages, unforeseen events, or non-discretionary actions, specified time frames for SHPO review may be extended or shortened through mutual agreement between SHPO and a BLM Field Office or the BLM State Office. Changes in review timeframes will be documented in writing, usually via email, and can be requested by SHPO or BLM.
- iv. The BLM may determine that large projects can be more efficiently completed if cultural resource survey is phased. If survey for a project is to be phased, the SHPO shall be notified in advance. The notification will include a brief description of the overall project. SHPO and BLM tracking numbers shall be referenced by the BLM and SHPO in all subsequent documentation relating to all phases of the project.
- v. Any meetings specifically designed to discuss agreement documents must be coordinated with the BLM State Office.

#### **IV. IDENTIFICATION OF HISTORIC PROPERTIES**

##### **A. Undertakings**

"Undertakings" are defined in 36 CFR 800.16(y) to mean a project, activity or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

The BLM cultural resource specialist will, after reviewing a proposed action, determine if the proposed action is an Undertaking, regardless of whether the environmental consequences of the proposed action will be analyzed in a Categorical Exclusion, Determination of NEPA Adequacy, Environmental Assessment, or Environmental Impact Statement.

## **B. Area of Potential Effect**

“The area of potential effect (APE) means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking” [36 CFR 800.16(d)].

In defining the APE, the BLM will consider potential direct, indirect, and cumulative effects to historic properties and their associated settings when setting is an important aspect of integrity, as applicable. The introduction of physical, visual, audible, or atmospheric elements has the potential to affect the historic setting or use of historic properties including but not limited to properties of religious and cultural significance to Indian tribes, and the BLM will take this into account in defining the limits of an APE for indirect effects. The BLM will consult with SHPO on undertakings for which a standard APE (see Appendix B) has not been developed, where the APE is smaller than those covered in the appendix, or where defining the APE is complicated or controversial (e.g. undertakings involving multiple agencies, multiple states, multiple applicants, and/or multiple Indian tribes).

The BLM will submit the APE documentation (maps and narrative explanation) to SHPO for a 10-day formal review, which can be transmitted electronically. The BLM may assume concurrence with the APE determination if SHPO does not respond within 10 days.

### **i. APE for Direct Effects:**

The BLM will follow the established guidance on standard direct APEs for certain types of projects in *Appendix B*. The BLM cultural resource specialists will determine what portion of the APE will be subject to Class III inventory, including standard buffers. All cultural resources within the direct APE will be recorded and will be evaluated for NRHP eligibility.

### **ii. APE for Indirect Effects:**

The indirect APE shall include known or suspected historic properties and their associated settings where setting is an important aspect of integrity. Identification efforts outside of the APE for direct effects shall be at the approval of the BLM field manager, taking into account the recommendations of the BLM cultural resource specialist and the SHPO.

## **C. Undertakings Not Requiring SHPO Consultation**

- i. The BLM and SHPO have identified specific projects or activities that are undertakings that do not have the potential to cause effects to historic properties.

These undertakings are listed in Appendix C: Undertakings Not Requiring SHPO Consultation. The BLM and SHPO, in consultation with Indian tribes and other consulting parties and seeking the views of the public, may agree that other classes of actions may be added to Appendix C by mutual agreement.

- ii. The BLM cultural resource specialist will determine if the undertaking is identified in Appendix C.
- iii. If the undertaking is identified in Appendix C, the BLM has no further obligations to consult with the SHPO under Section 106 or this Protocol.
- iv. BLM will contact SHPO if there is a question on whether a proposed action constitutes an undertaking that might affect historic properties. The SHPO will provide comments within 10 calendar days of receipt of the request. The SHPO's comments and the BLM's agreement or disagreement with the comments will be made part of the records for the proposed action.

#### **D. Determine Information Needs**

The BLM cultural resource specialist will, during the earliest feasible planning stage of any undertaking, determine the information needed to identify historic properties (i.e., including but not limited to archeological sites, historic structures, engineering features, districts, properties of religious and cultural significance, TCPs, rural historic districts, ethnographic landscapes, and historic trails) situated within APE for both the direct and indirect effects. Such determinations may be based on a file search of the SHPO and BLM cultural resource records, aerial photographs, GLO records, BLM land records, consultation with Indian Tribes and consulting parties, resource management plans, and project-specific NEPA documents of the proposed project. The BLM will take cumulative effects into consideration.

- i. **Previous Adequate Inventory:** The BLM cultural resource specialist will determine whether the existing inventory of the entire APE, or portion of the APE, is appropriate for the current undertaking. A BLM decision to accept the results of past inventory efforts will be based on the geomorphological stability of the APE, the field methods used, the adequacy of the historic property documentation, and confidence derived from field monitoring of the results of other surveys by the investigators involved. This will include an assessment of need for further consultation with Indian tribes, or site updates and/or reevaluations. The BLM may consult with SHPO to determine whether existing inventory is sufficient for the current undertaking. If the BLM determines that additional inventory is not necessary, the BLM shall document this finding (providing references to prior reports) and will assess effects and consult following the procedures in Section VI.

- ii. Level of Inventory: BLM will complete a reasonable and good faith effort to identify historic properties within the APE for undertakings it authorizes, licenses, or approves that have the potential to affect historic properties. When determining the level of inventory, the BLM will consider direct, indirect and cumulative effects.
  - a. If the BLM determines that a Class III inventory of the APE is necessary, the BLM will not seek the SHPO's views on identification efforts.
  - b. If the BLM determines to conduct an inventory at less than a Class III level (except as specified in Section IV.D.iii and iv below), BLM will discuss the adequacy of the inventory design with SHPO prior to initiating the inventory or authorizing the proposed undertaking, unless specifically addressed in an appendix to this Protocol. The BLM will address SHPO comments in making a final determination of the inventory design. Alternative identification strategies, such as oral history interviews, background research, or Class II sample surveys may be sufficient to identify historic properties within the APEs for certain classes of undertakings. Less than Class III inventory may also be warranted when the conduct of such inventory would pose a health risk to the crew.
  - c. The BLM may determine that inventory for large projects should be phased. The BLM shall notify the SHPO by letter in advance and will provide a brief description of the project and the rationale for phasing. SHPO and BLM tracking numbers shall be referenced by the BLM and SHPO in all subsequent documentation related to all phases of the project.
  - d. The BLM may develop programmatic inventory strategies for certain classes of undertakings in consultation with the SHPO, Indian tribes, and consulting parties in addition to those already in use (see BLM 8110 Manual). Once an inventory strategy has been approved by the above parties, the strategy will be added to the Protocol as an appendix. The BLM may apply that programmatic inventory strategy to applicable undertakings without additional consultation with the SHPO.
- iii. Disturbed Areas: The BLM cultural resource specialist will determine whether previous ground disturbance has modified the surface so extensively that the probability of finding intact cultural resources within all or part of the APE for direct effects is negligible. If such disturbance has occurred within the APE, these areas may be exempt from inventory. Indirect and cumulative effects of the undertaking shall still be considered.
- iv. Areas of Low Probability for Cultural Resources: The BLM may determine that specific geographical or environmental settings do not need to be inventoried because current information suggests the area has little or no probability to contain cultural resources. Exemption of a geographical or environmental setting is generally based on an analysis of existing survey data using modeling or other analytical tools

used in combination with field testing the conclusions that indicates a low probability of finding significant cultural resources in such settings (see BLM 8110 Manual). Determinations regarding the applicability of low probability indicators may be made only by BLM cultural resource specialists following the consultation requirements below. Low probability for cultural resources due to environmental factors or other conditions may allow some lands to be exempted from inventory. For example, BLM may exclude steep slopes (slopes of 30% or more) with no probability for sites such as rock art or rock shelters. If low probability areas for cultural resources occur within a field office, BLM will consult with SHPO, Indian tribes, and other consulting parties to determine whether or not these areas will be exempted from inventory. Areas exempted for low probability will be negotiated between BLM and SHPO, Indian tribes, and other consulting parties and will be appended to this Protocol. Other indicators of low probability may be agreed upon as developed jointly by BLM and SHPO.

## V. DETERMINATIONS OF ELIGIBILITY

### A. Agency Determinations

- i. BLM will determine if there are historic properties within the APE by applying all of the NRHP criteria and criteria considerations found at 36 CFR 60.4 All identified cultural resources including but not limited to archaeological sites, historic buildings and structures, engineering features, properties of religious and cultural significance and TCPs will be evaluated. NRHP evaluations will be guided by the *Secretary's Standards and Guidelines for Evaluation*, the National Register Bulletin *How to Apply the National Register Criteria for Evaluation*, other National Register bulletins and appropriate historic contexts. The integrity of location, setting, design, materials, workmanship, feeling, and association will be considered as part of the evaluation, taking into account the nature of the property and its setting where setting is an important aspect of integrity.
- ii. When the BLM is the only federal agency or lead federal agency and the undertaking affects cultural resources on lands owned or managed by another federal agency or state agency or department (e.g., State Land Office, New Mexico State Parks, New Mexico Department of Game and Fish, etc.), the BLM will seek the views of the agency.
- iii. Details of the NRHP eligibility evaluations shall be discussed and included in the report and on the appropriate NMCRIS forms. BLM's determinations shall be entered into NMCRIS.
- iv. If a property's NRHP eligibility remains uncertain after the inventory, that property



will be treated as eligible for purposes of the BLM making an initial effect determination. If the property will be affected by the undertaking, the BLM will conduct additional studies as appropriate to make a final determination of NRHP eligibility.

- v. If the BLM finds it appropriate to change the eligibility of a previously documented cultural resource or historic property from eligible to not eligible or from undetermined to not eligible, they must consult to seek SHPO concurrence on the changed determination. The BLM shall submit changes in eligibility as a separate SHPO consultation.
  - a. The BLM will forward the report, site forms, and other documentation as appropriate to the SHPO and include a justification for the change and initiate consultation.
  - b. If SHPO does not respond within 10 days or within a mutually agreed period (if SHPO needs additional time), the BLM may assume concurrence with the change in eligibility.
  - c. If concurrence cannot be achieved through further discussions, the BLM shall follow the steps in V.B.i.
  - d. The BLM and SHPO, in consultation with Indian tribes and other consulting parties, and seeking the views of the public, may develop an appendix to this Protocol that identifies the types of properties (site types or site condition) for which the BLM may determine ineligibility without seeking SHPO agreement. The appendix will specify documentation standards for the properties by type, including property characteristics, condition and integrity. The BLM will reference the appendix in the report and on the appropriate NMCRIS forms.

## **B. SHPO Involvement**

- i. The SHPO will monitor a sample of determinations of eligibility and complete the SHPO block in NMCRIS for the sample monitored. If SHPO disagrees with a BLM determination of eligibility, the SHPO will provide comments immediately to the BLM Field Office upon review.
  - a. If the project has been authorized, the BLM will take the SHPO's comments on eligibility into consideration on future determinations of like properties and, if the property has not been completely destroyed by the undertaking, the property's eligibility will be undetermined for future undertakings until the BLM consults with SHPO on eligibility following the process in V.B.i.b.
  - b. If the project has not been authorized, the BLM and SHPO will consult to reach consensus on the determination of eligibility in a timely manner. If the field office and the SHPO cannot agree through further discussions on the eligibility of a

cultural resource, they will seek assistance from the BLM state office to help reach agreement. If agreement cannot be reached, then the BLM will follow the process in V.B.iii. BLM cannot proceed with a final determination of effect until the eligibility of a property has been resolved or the adverse effects to that property have been avoided.

- ii. If the SHPO identifies patterns in differences in eligibility determinations (e.g., for specific types of properties or aspects of integrity), the SHPO will contact the BLM to discuss the matter further. The SHPO and BLM may conduct onsite meetings, contact the BLM state office, or implement other measures as appropriate to resolve the matter and improve BLM-SHPO agreement on eligibility evaluations.
- iii. If agreement on eligibility cannot be reached, then the BLM will request a formal determination of eligibility from the Keeper of the National Register of Historic Places (Keeper), pursuant to 36 CFR 800.4(c)(2). The process detailed in 36 CFR Part 63, the National Park Service (NPS) regulations on Eligibility for Inclusion in the NRHP will be followed. The Keeper's determination will be final.
- iv. The BLM and SHPO will collaborate on initiatives to improve eligibility determinations in New Mexico, including but not limited to preparing new historic contexts for specific property types, periods of significance, or under-researched areas; writing guidance for improving documentation for specific property types; establishing a workgroup to address a particular problem or issue; and holding workshops on various topics.

## **VI. ASSESSMENT OF EFFECT**

The BLM cultural resource specialist will assess the effects of an undertaking or project on historic properties, including effects to the setting, feeling, association, location, design, materials, and workmanship. The assessment of effect shall consider reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative. If setting is a contributing aspect of integrity, the BLM will take measures to document the effects of the undertaking on the setting, e.g. view shed or other appropriate visual analyses. The BLM will consider atmospheric and auditory effects, when appropriate.

The BLM will avoid or minimize effects to historic properties where possible during project design by integrating standard measures and/or best management practices (BMPs). The final project design must incorporate all agreed upon standard measures and these will be included in the stipulations (e.g. Conditions of Approval) of the relevant authorization (e.g. Approved APD, ROW, Grants, etc.). Standard measures and BMPs are avoidance and minimization measures, and are not mitigation measures for resolving adverse effects.

The BLM will make a finding of effect for the undertaking, taking into account comments provided by Indian tribes and other consulting parties, if participating in the consultation. The BLM will submit the effect finding and associated documentation and consult with the SHPO as described in this section.

**A. No Historic Properties Affected**

- i. The BLM will consider the following guidance when determining whether a finding of “No Historic Properties Affected” is appropriate. If the inventory does not find cultural resources of any kind, and/or only identifies isolated manifestations (isolated occurrences), or only finds ineligible sites, buildings, structures or objects, then a determination of “No Historic Properties Affected” is appropriate. If historic properties are present in the APE but will not be affected by the undertaking, then a determination of “No Historic Properties Affected” is appropriate. If a setting analysis is completed, and a proposed project will not be visible from the historic property, then a determination of “No Historic Properties Affected” is appropriate. A determination of “No Historic Properties Affected” is generally not appropriate when the undertaking involves ground disturbance within the boundaries of a historic property.
- ii. For “No Historic Properties Affected” findings, the BLM will notify the SHPO as follows:
  - a. When only isolated manifestations (isolated occurrences) or no cultural resources of any kind are identified by the inventory, the NIAF will be used to document the undertaking, the APE, and the results of the survey. The BLM will upload their review documentation (e.g. record of review, cover letter) into NMCRIS after determining the NIAF meets NMCRIS standards. A list of No Historic Properties Affected undertakings and copies of the NIAFs, if applicable, will be submitted monthly to SHPO. The BLM will notify consulting parties, if participating, and may proceed with the undertaking.
  - b. When the inventory identifies ineligible sites, buildings, structures or objects and/or all effects to historic properties are avoided; the BLM will upload their review documentation into NMCRIS after determining the NMCRIS forms and report meet standards, and completing determinations of eligibility. Copies of the applicable reports and NMCRIS forms will be submitted monthly to SHPO. The BLM will notify consulting parties, if participating, and may proceed with the undertaking.
- iii. The SHPO will review a sample of the BLM’s “No Historic Properties Affected” findings, reports and forms. If SHPO has questions about the documentation or the findings, they will provide comments to the BLM immediately upon review. The BLM

will take these comments into consideration on future similar cultural resources and/or projects. If the SHPO identifies a pattern indicating that the BLM is not taking SHPO comments into consideration, the SHPO will contact the BLM to discuss the matter further to reach consensus if possible. The SHPO and BLM may conduct onsite meetings, contact the BLM state office, or implement other measures as appropriate to improve BLM-SHPO agreement.

**B. No Adverse Effect**

- i. The BLM will consider the following guidance when determining whether a finding of “No Adverse Effect” is appropriate.
  - a. If a historic property is being affected by a proposed undertaking, but the effect will not diminish the aspects of integrity nor alter, directly or indirectly, any of the characteristics that make the property eligible for listing in the NRHP, then a finding of “No Adverse Effect” is appropriate as defined in 36 CFR 800.5(b). This applies to all historic properties located within the APE.
  - b. If it can be demonstrated that the portion of the property that will be affected, directly or indirectly, lacks integrity, then a finding of “No Adverse Effect” is appropriate. For archaeological sites this will usually involve documentation on how the archaeological site has been disturbed and a discussion of how the integrity of the deposits has been compromised.
  - c. If setting, feeling and/or association are contributing aspects of integrity for any historic property, and a proposed undertaking will be visible from the historic property, but the project elements will not dominate the setting or attract the attention of the casual observer, the BLM will document the decision and a finding of “No Adverse Effect” is appropriate as provided in 36 CFR 800.5(b).
  - d. If the BLM proposes preservation, stabilization, rehabilitation, or reconstruction of NRHP eligible sites, buildings, structures, or objects, and the work is consistent with the Secretary of Interior’s Standards for the Treatment of Historic Properties (SOI Standards), or the BLM modifies the undertaking or imposes conditions on the undertaking to ensure consistency with the SOI Standards, a finding of “No Adverse Effect” is appropriate as provided in 36 CFR 800.5(b).
- ii. If the BLM makes a finding of “No Adverse Effect” and the undertaking affects historic properties, eligible only under Criterion D, then the BLM will upload their review documentation (e.g. record of review, cover letter) into NMCRIS after determining the NMCRIS forms and report meet standards and completing determinations of eligibility in NMCRIS. A list of No Adverse Effect findings and copies of the applicable reports and NMCRIS forms will be submitted monthly to SHPO. The BLM will notify consulting parties and may proceed with the undertaking.

- a. The SHPO will review a sample of the BLM’s “No Adverse Effect” findings, reports and forms for undertakings that only involve historic properties eligible under Criterion D. If SHPO has questions about the documentation or the findings, SHPO will provide comments to the BLM immediately upon review. The BLM will take these comments into consideration on future similar historic properties and/or projects. If the SHPO identifies a pattern indicating that the BLM is not taking SHPO comments into consideration, the SHPO will contact the BLM to discuss the matter further to reach consensus, if possible. The SHPO and BLM may conduct onsite meetings, contact the BLM state office, or implement other measures as appropriate to improve BLM-SHPO agreement.
  
- iii. If undertakings affect historic properties eligible under Criterion A, B, and/or C or multiple criteria, the BLM will submit the BLM’s finding and project report to the SHPO, within 30 days after determining the report meets standards and completing determinations of eligibility in NMCRIS. The project report and NMCRIS recording forms must discuss how the effect to the property or the portion of the property will not diminish the aspects of integrity nor alter the characteristics that make the property eligible for the NRHP. The BLM will notify Indian Tribes and other consulting parties of the BLM’s finding and documentation if they are participating in the consultation.
  
- iv. The SHPO, the Indian tribes and other consulting parties, if participating in the consultation, will have the opportunity to review and comment on the effect determination within 30 days of receipt of the documentation. If the SHPO does not respond within 30 days, the BLM may proceed with the undertaking in accordance with the proposed conditions or standard treatment measures, provided there are no unresolved objections from Indian tribes or other consulting parties. The BLM may request a shorter timeframe for SHPO review.
  
- v. If the SHPO objects to BLM’s No Adverse Effect determination, the SHPO and the BLM will consult to resolve the objection. If the objection cannot be resolved, or if the SHPO does not respond and unresolved objections from other consulting parties exist, the BLM shall seek the views of the ACHP to resolve the objection per the dispute resolution process in Section XIV.

**C. Adverse Effect**

- i. Per the Section 106 regulations at 36 CFR 800.5(a)(1), “An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the NRHP in a manner that would diminish the integrity of the property’s location, design, setting, materials,

workmanship, feeling, or association.” Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the NRHP. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

- ii. If there are historic properties which may be affected by the undertaking, the BLM cultural resource specialist shall apply the criteria of adverse effect and will request and incorporate comments of appropriate Indian tribes and/or consulting parties in making its finding. In addition the BLM will consider the following guidance when determining whether a finding of “Adverse Effect” is appropriate.
  - a. If setting, feeling and/or association are contributing aspects of integrity for any historic property, and a proposed undertaking will be visible from the historic property, and the project elements dominate the setting, a finding of “Adverse Effect” is appropriate as provided in 36 CFR 800.5(a)(1).
  - b. If the proposed undertaking, including research excavation projects, will result in the physical destruction of or damage to all or part of the historic property, a finding of “Adverse Effect” is appropriate as provided in 36 CFR 800.5(a)(1).
- iii. If the BLM determines that the undertaking will have an “Adverse Effect” on historic properties, they will document this finding and notify SHPO, Indian tribes, consulting parties and the public pursuant to 36 CFR 800.6(a) and will follow the procedures in Section VIII of the Protocol.

For Adverse Effect findings BLM will submit the project report and NMCRIS forms to the SHPO within 30 days after determining the report meets standards. The SHPO will provide comments within 30 days of receipt of the report and forms. When the inventory report, NMCRIS forms and the data recovery plan or other treatment plan are submitted together, the SHPO may request a longer timeframe. If SHPO does not respond within the agreed-upon timeframe, BLM may assume concurrence with determinations of eligibility and effect. The BLM will proceed with the resolution of adverse effect procedures in Section VIII of this Protocol.

#### **D. Non Concurrence with Determination of Effect**

- i. If the SHPO disagrees with the BLM’s determination of effect as outlined above, the SHPO and the BLM will consult to resolve the objection. If the objection cannot be resolved, or if the SHPO does not respond and unresolved objections from other consulting parties exist, the BLM shall seek the views of the ACHP to resolve the objection per the dispute resolution process in Section XIV.

- ii. If the Indian tribe or any consulting party disagrees with BLM's determination of effect as outlined above, the procedures at 36 CFR 800.4(d)(1)(ii) through (iii); or 36 CFR 800.5(c)(2)(i) through (iii) will be followed.

## **VII. REPORTING STANDARDS AND SUBMITTALS**

### **A. Reporting and Documentation Standards**

- i. The BLM will ensure that all reports completed by BLM staff and by contractors permitted by the BLM to work in New Mexico will be prepared according to the latest guidance provided in H-8100-1 *Procedures for Performing Cultural Resource Fieldwork on Public Lands in the Area of New Mexico BLM Responsibilities* (H-8100-1).
- ii. The BLM will ensure that cultural resource investigations are registered in NMCRIS and that all identified sites, buildings, structures, objects and districts are documented online using the appropriate NMCRIS forms, including but not limited to the NMCRIS Investigation Abstract Form (NIAF), the Laboratory of Anthropology (LA) site record, the Historic Cultural Property Inventory Form (HCPI) and other specialized statewide forms. These forms will be prepared according to the current *User's Guide to the New Mexico Cultural Resource Information System: Guidelines for Submitting Cultural Resource Records*.
- iii. BLM and SHPO will collaborate on the development of revised standards for preparing inventory and treatment reports, including the review and modification of the NM BLM 8100.1 Handbook. BLM and SHPO will set a goal of revising the Handbook within two years of signature of this Protocol, in consultation with cultural resource professionals permitted, or who may seek to be permitted, by the BLM to work in the state of New Mexico, Indian tribes, and interested parties. All future changes or amendments to the Handbook procedures will be made in consultation with the SHPO.
- iv. The BLM field offices may issue additional guidance to supplement the BLM 8100.1 Handbook. The BLM Deputy Preservation Officer (DPO) and the SHPO will have an opportunity to review and comment on the guidance prior to the guidance going into effect. The field offices will take the comments into consideration in the final guidance document.

### **B. Completion of Cultural Resource Reports**

- i. The BLM will not allow projects to be completed without adequate provisions for

the timely completion of all reports and associated records generated under the terms of this Protocol.

- ii. All BLM-prepared inventory reports will be submitted to the SHPO within 6 months of completion of fieldwork, if possible. If additional time is needed, the BLM will notify the SHPO and provide a date when the report(s) will be submitted.
- iii. The BLM may utilize contracts or other means of obtaining services to complete the preparation of all backlogged reports and associated forms for submittal to SHPO and NMCRIS. Backlogged reports are older than one year and not currently associated with an active project. Documentation of backlogged reports shall include reports, NMCRIS forms (NIAF, LA site records and other NMCRIS forms) and locational data on inventory area and site location(s) to the degree possible according to the information known about the past project that generated the inventory.

### **C. Consultation Submittals**

BLM and SHPO will continue to collaborate to develop and implement a system for the electronic submission of records. The purpose of this system is to track agency actions as well as to facilitate the submission of report and site records electronically into NMCRIS, which will greatly increase the efficiency of data management, review, and annual reporting. BLM and SHPO will work to insure that this system meets agency and SHPO needs.

Until the electronic tracking and submittal system is established, the BLM will ensure that all reports and associated documents are submitted in a timely manner either monthly or within 30 days after making an effect finding, completing determinations of eligibility in NMCRIS and determining the report meets the appropriate standards.

Once the BLM has determined the eligibility of all identified cultural resources and made a decision about the effect of the undertaking, in consultation with Indian Tribes, consulting parties and the public as appropriate, the BLM will report the determinations to the SHPO and consult with SHPO to seek concurrence as delineated in VI.A. through VI.C.

## **VIII. RESOLUTION OF ADVERSE EFFECTS**

The BLM will resolve adverse effects through one of two processes, with (see VIII.B.) or without an agreement document (see VIII.A.). The BLM will notify Indian tribes, consulting parties and the public of their adverse effect determinations and will invite their comments. If an Indian tribe, consulting party (including applicants, state agencies, lessees and others, as appropriate) or the interested public wishes to participate in the resolution of adverse effects, the BLM will



follow the process outlined in 36 CFR 800.6. If no Indian tribe, consulting party or member of the public wishes to participate in the resolution of adverse effects, BLM and SHPO will follow a streamlined process as described in this section. The BLM field offices will prepare an annual list of adverse effect findings resolved using the streamlined process. This list will be included in BLM's annual report.

Based on the effect of the undertaking on the historic property and the historic property's NRHP criteria, BLM will resolve adverse effects by developing and implementing a treatment plan to avoid, minimize and mitigate the adverse effect as appropriate. Treatment measures may include data recovery, Historic American Buildings Survey/Historic American Engineering Record/Historic American Landscapes Survey (HABS/HAER/HALS) documentation, archival research, public education and outreach, and/or compensatory mitigation. Public education and outreach should be included in any treatment plan, commensurate with the public's interest and the scale of the undertaking's effects. Current guidance and best practices will help guide the development of treatment plans (e.g., see "A Strategy for Improving the Mitigation Policies and Practices of the Department of Interior.")

#### **A. Resolutions of Adverse Effects Not Requiring an Agreement Document**

If no Indian tribes or other consulting parties wish to participate in the resolution of adverse effects, the BLM will consult with SHPO as described in this section to resolve adverse effects.

- i. **Data Recovery and Research Excavation:** When the BLM proposes to resolve adverse effects through data recovery, then the BLM will prepare, or cause to be prepared, a data recovery plan and the BLM will implement the procedures as follows. This plan most often involves properties eligible under Criterion D only, but could include properties eligible under D and other criteria. The actions carried out to resolve adverse effects will not, in themselves, be considered additional adverse effects.
  - a. **Data Recovery Plan:** The BLM field office will submit the treatment plan to BLM's Data Recovery Review Team (DRRT). The DRRT is the group of senior BLM cultural resource specialists including the DPO, the BLM Permit Administrator, and the designated individuals from the Farmington, Albuquerque, Pecos, and Las Cruces districts. The DRRT comments on and suggests improvements to testing, data recovery and other mitigation proposals and communicates any needed changes to the BLM Field Office archeologists within 15 days of receipt of all materials.

Once the plan is accepted by DRRT, the BLM field office will send the plan to SHPO for review and comment. The SHPO will provide comments to the BLM within 10 days of receiving the data recovery plan. If the SHPO does not respond within 10 days, the BLM may assume SHPO concurrence with the plan. Comments submitted by the SHPO shall be taken into consideration by BLM and the data recovery plan

revised, if necessary. BLM will submit a written response to comments to SHPO prior to the start of data recovery.

Compliance with the approved data recovery plan will be included in the project Conditions of Approval in the ROW grant or Record of Decision. Objection to or failure to implement or comply with the approved data recovery plan by the project proponent will require consultation with SHPO to determine BLM's next steps.

- b. Data Recovery Reports: Preliminary (status) reports, if prepared, and draft final data recovery reports will be provided to the SHPO within 30 days of BLM review and acceptance. The SHPO will provide comments within 30 days of receipt of the draft. The BLM may request a shorter timeframe depending on the complexity of the project. If the SHPO does not intend to provide comments, the SHPO will notify the BLM immediately upon making this decision. Comments submitted by the SHPO shall be taken into consideration by the BLM and the draft data recovery report will be revised, if necessary.

Final data recovery reports will be provided to the SHPO within 30 days of BLM review and acceptance. The BLM will concurrently submit the documentation (report and updated site forms) to NMCRIS. The SHPO may review the BLM's final reports. If SHPO has concerns regarding the report, the SHPO will provide comments to the BLM Field Office. The BLM will take these comments into consideration on future data recovery projects.

- ii. Other Treatment Plans: If there are historic properties within the APE that will be adversely affected and data recovery is not the only treatment measure or is not the appropriate treatment measure, BLM will prepare, or cause to be prepared, a treatment plan. BLM is encouraged to discuss treatment measures with SHPO prior to preparation of the plan, particularly when any of the affected historic properties are eligible under criterion C. The BLM field office may submit the plan to the DRRT for review.

- a. Treatment may include but are not limited to the following:

- 1. Historic American Buildings Survey/Historic American Engineering Record/Historic American Landscapes Survey (HABS/HAER/HALS). Typically HABS/HAER documentation will be prepared for buildings and structures eligible only under Criterion C. Any HABS/HAER/HALS projects should be coordinated with the NPS HABS/HAER/HALS Program ;
- 2. Preservation, Rehabilitation, Restoration or Reconstruction. Treatment plans involving preservation (including stabilization), rehabilitation,

- restoration or reconstruction will follow the Secretary of Interior's standards and guidance found in <http://www.nps.gov/history/tps/>;
3. Archival Research. Treatment may involve researching the history of the historic property and/or the region and its people to address research themes. This may include primary research at sources including national, state or local archives, university collections, museum collections, HABS/HAER documentation, census data, General Land Office (GLO) records, local newspapers, family histories, land deeds, photos, maps, regional and economic data on precipitation averages, livestock and cash crop prices;
  4. Oral Histories. Treatment plans involving oral history should follow the guidance found in the Handbook for Oral History-NPS, 2004 by Janet A. McDonnell (31 pages): <http://www.cr.nps.gov/history/oh/oralh1.htm>; and Oral History Association: Principles and Best practices, 2009: <http://www.oralhistory.org/about/principles-and-practices/>;
  5. Ethnography. Treatment plans involving ethnography should follow the guidance found in NPS Essential Competencies for an Ethnography; American Anthropological Association's statement on Ethnography: <http://www.aaanet.org/stmts/irb.htm>; NPS NRHP Bulletin 38-TCPs, Appendix II, Professional Qualifications for Ethnography: <http://www.nps.gov/nr/publications/bulletins/nrb38/nrb38%20apendix%202.htm>;
  6. Translations. Treatment may involve translation of documents to English, Spanish or other languages as appropriate; and
  7. Public Education and Outreach. Treatment may involve workforce training and education on cultural sensitivity; preparation of papers, brochures, articles, books or booklets, web-based digital and video materials written for the general public in jargon-free language and include professional quality photographs and/or drawings as appropriate; preparation of a curriculum for use in schools; a public interest story to be posted on the BLM's web site, press release, article for NewsMAC; and exhibits, including formal displays, posters, wayside exhibits, etc.
- b. SHPO Review of Treatment Plan: BLM will submit the treatment plan to SHPO for review and comment. If the SHPO does not respond within 30 days, BLM may assume concurrence with the proposed treatment plan. Comments provided by the SHPO shall be taken into consideration by the BLM and the treatment plan revised, if necessary. The BLM will submit a written response to the comments to SHPO prior to implementation of the plan. Compliance with the approved treatment plan will be included in the project's Conditions of Approval. Objection to or failure to comply with the approved treatment plan by the project proponent will require consultation with SHPO and negotiation of a MOA.

- c. Draft and Final Reports: Preliminary (status) reports (if necessary) and draft final reports will be provided to the SHPO within 30 days of BLM review and acceptance. The SHPO will provide comments within 30 days of receipt of the draft. The BLM may request a shorter timeframe. If the SHPO does not intend to provide comments, the SHPO will notify the BLM immediately upon making this decision. Comments submitted by the SHPO shall be taken into consideration by the BLM and the draft report will be revised, if necessary.

Final data recovery reports will be provided to the SHPO within 30 days of BLM review and acceptance. The BLM will ensure that the documentation (report and updated site forms) are concurrently submitted to NMCRIS. The SHPO may review the BLM's final reports. If SHPO has concerns regarding the report, the SHPO will provide comments to the BLM Field Office. The BLM will take these comments into consideration on future data recovery projects.

## **B. Resolution of Adverse Effects Requiring an Agreement Document**

If an Indian tribe or consulting party wishes to participate in the resolution of adverse effects, the BLM will follow the process outlined in 36 CFR 800.6 and will prepare an agreement document. Upon receipt of SHPO concurrence of a determination of adverse effect, BLM will continue consultation with SHPO, Indian tribes and consulting parties, and as appropriate, the ACHP (if the undertaking meets the thresholds at II.A.i), to develop an agreement document. Standard measures and BMPs are not mitigation measures for resolving adverse effects, but must be applied prior to making a determination of effect.

- i. Parties to the Agreement:
  - a. Any meetings specifically designed to discuss agreement documents must be coordinated with the BLM State Office cultural staff. There are three formal types of consulting parties as set forth in 36 CFR 800.6(c)(1-3): Signatories, Invited Signatories and Concurring Parties.
  - b. Signatories: Signatories are the BLM, the SHPO and the ACHP (if they are participating). The signatories have sole authority to execute, amend or terminate the agreement.
  - c. Invited Signatories: The BLM authorized officer may invite additional parties to participate as Invited Signatories and will invite any party with responsibilities under the agreement, such as the applicant, to participate in the agreement. Any Invited Signatory that signs the MOA or PA shall have the right to seek amendment or termination of the MOA/PA. The refusal of any Invited Signatory to sign a MOA or PA does not invalidate the MOA or PA. Parties assuming responsibilities under the MOA or PA must sign or those responsibilities will be reassigned to another

signatory.

- d. Concurring Party: The BLM authorized officer may invite other consulting parties to concur. A consulting party invited to concur has no responsibility under the agreement, but may be invited to sign the agreement as a Concurring Party. The refusal of any Concurring Party invited to sign a MOA or PA does not invalidate that MOA or PA.

## ii. Agreement Document Process

Preparation of an MOA/PA follows consultation between all consulting parties. Unless otherwise agreed upon, the BLM is responsible for preparing the MOA/PA. Stipulations included in the MOA/PA shall come from consultation among all consulting parties and will be incorporated into BLM's stipulations for the undertaking. Generally the MOA/PA will be drafted by the responsible BLM Field Office, and the BLM State Office will always participate. Refer to Section I.E of this Protocol to determine if an agreement document needs to be written under this Protocol or under the Regulations at 36 CFR Part 800. The detailed process for an MOA/PA is outlined in Appendix D. Appendix E has template agreement documents.

## iii. Compensatory Mitigation

Compensatory mitigation, or compensating for an effect by replacement or providing substitute resources or environments, can occur at, or immediately adjacent to, the area affected but can also be located anywhere in the same general geographic area or, in the case of linear properties (e.g. NHTs), at other places along that specific resource.

Compensatory mitigation may include, but is not limited to: educational materials, completion of NRHP nominations, professional publications, web-based digital and video materials, acquisition of conservation easements containing historic properties, development of interpretation plans, physical restoration of NHT segments, removal or modification of modern developments in settings of historic properties to restore integrity, acquisition of land or a historic property, through exchange or another process, where public access is possible, and/or stabilization of an associated property (e.g. a stage station along the trail).

Any compensatory mitigation must result from consultation among BLM, SHPO, ACHP (if participating), the applicant, and other consulting parties. Compensatory mitigation generally provides a public benefit and must be appropriate to the scale and scope of the effect being mitigated. Compensatory mitigation may be offered voluntarily by a project applicant for consideration by the consulting parties. If accepted by the Signatories, it will be incorporated into the agreement document and as a condition of the BLM authorization. In other cases, the BLM may find it necessary to advise the

applicant that the project proposal cannot be approved without additional compensatory mitigation. Field Offices shall notify the DPO as soon as they recognize that a proposed undertaking may require consideration of compensatory mitigation. The DPO will monitor the use of compensatory mitigation for consistency of application by the BLM statewide.

## **IX. DISCOVERY SITUATIONS**

### **A. Standard Discovery Plan**

BLM and SHPO have agreed upon a standard discovery plan which is attached to this Protocol as *Appendix F*. A field office may use this discovery plan without additional SHPO consultation.

### **B. Undertaking-Specific Plans**

The BLM encourages development of undertaking-specific discovery plans for large and complex undertakings and location specific plans for areas known to contain buried archaeological sites following the guidance in *Appendix F*. Undertaking-specific and/or location-specific discovery plans will be forwarded to the SHPO for a 30 day review along with BLM's determination of effect for the undertaking unless the discovery plan has been included as part of a treatment plan reviewed under Section VIII.A or VIII.B. When a discovery plan has been accepted by BLM and SHPO, the BLM will follow the plan when cultural resources are discovered during implementation of an undertaking. The BLM shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties until treatment is completed in accordance with the discovery plan.

## **X. EMERGENCIES**

When a formal state of emergency is declared, the BLM will follow 36 CFR 800.12(b)(2). Every effort will be made to avoid adversely effecting historic properties.

For emergencies such as wildland fire suppression or hazardous materials incidents the BLM will notify SHPO/THPOs, and any Indian Tribe likely to be affected, as soon as possible about the emergency; and, the BLM will meet its Section 106 obligations in the following manner. The BLM will notify the SHPO/THPOs, any Indian tribe that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and will afford them an opportunity to comment within seven days of notification. If the agency official determines that circumstances do not permit seven days for comment, the BLM official shall notify the SHPO/THPO and the Indian tribe and invite any comments within the time available.

To the extent that such actions do not compromise agency personnel or public safety or immediately threaten property, BLM will evaluate effects on known historic properties and newly discovered sites or historic structures for NRHP eligibility prior to continuing emergency operations. The BLM will make reasonable efforts to avoid, minimize, or mitigate adverse effects of emergency operations to any historic properties discovered. Such evaluations should occur within 48 hours of discovery, but if that cannot be accomplished all sites or structures will be treated as eligible. For eligible properties, the preferred course of action will be to identify and implement tactics so that adverse effects to historic properties are avoided. If adverse effects cannot be avoided, the BLM will insure that a treatment plan is prepared and executed so long as these actions will not compromise agency personnel or public safety or immediately threatened property.

The above notification applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. BLM may request an extension of the period of applicability from the ACHP prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 and this section of this agreement. A complete report on any emergency situations, any affected historic properties, and any data recovery carried out will be provided by the BLM to the SHPO.

If the BLM managers delegate authority for managing an emergency situation to an Incident Command Team (ICT), BLM retains responsibility for Section 106 compliance on BLM lands. The process will follow the above procedures so long as the delegation of authority includes reference to this agreement and assigns a resource advisor to the ICT.

## **XI. STAFFING AND OBTAINING SPECIALIZED CAPABILITIES**

### **A. Staffing**

The BLM will allow identification and evaluation of cultural resources only by, or under the direct supervision of, senior specialists who are classified in the appropriate Office of Personnel Management professional series (e.g. Series 0193 for archaeologist), and who are at grades appropriate to the level and complexity of the work entailed (e.g. GS-9, GS-11, GS-12, or GS-13). Specialists at the GS-5 and GS-7 levels are considered to be performing duties in a trainee or developmental capacity. Reports prepared by GS-5 and GS-7 specialists, or any cultural resource consultant, must be reviewed and submitted to the SHPO by a GS-9 or higher-graded cultural resource specialist. New specialists at a GS-9 grade or higher who have not received training on this Protocol must follow the procedures required of a GS-7 cultural resource specialist until Protocol training is accomplished. To be certified under this protocol, field offices will have staff at the appropriate levels consistent with the complexity of the field office's cultural resource program; at a minimum, a GS-9 is required (see XI.A).

## **B. Training in the Use of This Protocol**

The DPO, with SHPO's assistance, shall provide training and orientation on the Protocol to facilitate implementation of this Protocol. The training will include detailed explanation of the procedures in the Protocol and the roles of the consulting parties. Orientation and/or training will be initiated within 3 months from the effective date of the Protocol for BLM managers with cultural resources responsibilities (including, but not limited to, District Managers, Field Managers, Assistant Field Managers, Supervisory Natural Resource Specialists, or Deputy State Director for Resources) and cultural resource staff. Indian tribes will be invited to participate in the training to facilitate future coordination and consultation. Training for SHPO Section 106 review staff will be completed within 3 months.

When new BLM managers or cultural resource specialists are hired, the BLM will ensure that they receive training on the implementation of this Protocol within 3 months of starting work. It shall be the responsibility of the DPO, with SHPO participation, to provide appropriate orientation. Once orientation is completed, the DPO will formally notify the SHPO and BLM field offices, and the newly trained staff will be certified and allowed to follow the procedures of this Protocol.

In addition to the Protocol training, newly hired BLM cultural resource specialists will conduct work under the Protocol in one of two ways until they are certified by the DPO, or their Field Office's highest graded cultural resource specialist, to follow the procedures of this Protocol independently, usually within 3 months after beginning their employment. The new cultural resource specialist may either consult with SHPO on NRHP eligibility and effect or, for those offices with more than one cultural resource specialist, the individual can make preliminary determinations of each step in the process defined in this Protocol that are reviewed and co-signed by another of the Field Office's cultural resource specialists.

The SHPO, with DPO participation, will ensure all new SHPO staff hired to conduct Section 106 reviews receive training in this Protocol within 3 months of starting work. The SHPO shall provide documentation to the BLM field offices when the training has been completed.

## **C. Specialized Capabilities**

When the BLM is involved in an undertaking requiring expertise not possessed by available BLM staff (e.g., architectural history, historic architecture, landscape architecture, ethnology, etc.), it will obtain the necessary expertise through contracts, BLM personnel from other states, qualified volunteers, or cooperative arrangements with other agencies for the purpose of determining NRHP eligibility, effects, and treatment for the cultural properties in question. The BLM may request the assistance of SHPO staff in such cases. Volunteers who meet the Secretary of Interior's Standards and Guidelines –Professional



Qualifications Standards (36 CFR 61) may be used with prior approval of the BLM cultural resource specialist.

#### **D. Professional Development**

It is recognized that participation of BLM and SHPO cultural resource staff in professional societies and annual meetings (e.g. Society for American Archaeology, Society for Historical Archaeology, Register of Professional Archaeologists, Society for Applied Anthropology, Society for Architectural Historians, Alliance for Historic Landscape Preservation, Southwest Symposium, Pecos Conference, Mogollon Conference or the Jornada Mogollon Conference, etc.) is integral to staying abreast of developments and advances in the discipline and for enhancing the requisite professional knowledge and skills.

## **XII. SUPPORTING PROGRAMS AND ACTIVITIES**

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:

### **A. Data Sharing and Information Management**

#### **i. Data System Management**

- a. The SHPO will maintain a statewide-automated cultural records database that is accessible to the cultural resource specialists from all BLM Field Offices. The BLM and SHPO will continue to collaborate on ways to synthesize and use the automated cultural resource data to develop and enhance Geographic Information System (GIS) capabilities. The BLM and the SHPO will continue to cooperate in this endeavor by providing financial, personnel, hardware and software resources as funding becomes available, including the contracting of services.
- b. The BLM and the SHPO recognize the importance of GIS and tabular cultural resources data available in real time and will work cooperatively to enter backlog data and legacy data into their shared system. The BLM will share data developed to address NMCRIS backlog issues, and the SHPO will work with BLM to find ways to resolve the backlog.

### **B. Public Outreach and Heritage Education**

The BLM and SHPO will cooperate to obtain funding through grants and partnerships to develop heritage education programs and public outreach materials, either by BLM and SHPO staffs or through contracts through the following programs:

- i. Historic Preservation Month and Archaeology Month: The BLM and the SHPO will participate in and support financially, as funding permits, Historic Preservation Month activities, including public presentations, field tours and excavations, exhibits, archaeology fairs, posters, brochures, and educational activities.
- ii. Adventures in the Past/Heritage Education: The BLM and SHPO may, as funding permits, cooperatively work on the development of interpretation of cultural resources through a variety of media including, but not limited to, exhibits, brochures, lectures, radio and television promotions, Internet web pages, and interpretive signs.
- iii. Archaeological Society of New Mexico and Local Archaeological and/or Historical Societies: The BLM and SHPO are encouraged to work cooperatively with the New Mexico Archaeological Society and individual chapters to promote preservation ethics, good science, and professional standards statewide to amateur archaeologists and historians by participating in society meetings, serving as chapter advisors, providing presentations and demonstrations, and other assistance as appropriate.
- iv. Professional Organizations: The BLM and SHPO cultural resource specialists are encouraged to participate in and work cooperatively with professional historic preservation organizations (e.g., New Mexico Archaeological Council) to promote preservation ethics, good science and good history, professional standards statewide, and open dialogue regarding historic preservation issues.
- v. Site Stewardship: The BLM will support the SHPO's coordination and leadership in the New Mexico Site Watch program, as funding and staff availability permit, to recruit and train members of the public to serve as monitors and stewards of New Mexico's cultural resources on public lands, and to assist with educational and other activities involving cultural resources. BLM and SHPO will cooperate in efforts to obtain funding and other resources, such as grants and partnerships, for these activities.
- vi. Public Dissemination of Information: When appropriate, the BLM, SHPO, or a project proponent will fund the development and distribution of brochures, monographs, or other media for the general public. These products can be stipulated in treatment plans or other agreement documents either as part of the Section 106 compliance responsibility or Section 110 research on public lands.

### **C. State-Level Historic Preservation Training and Workshops**

The BLM and the SHPO will cooperate and participate in the training of BLM managers, BLM cultural resource staff, SHPO staff, relative to the implementation of this Protocol (see Section XI.B). Orientation meetings on this Protocol for cultural resource permittees, public land users, and other interested parties will be arranged upon request.

Other training and workshops may include, but are not limited to, the NM BLM 8100.1 Handbook, NMCRIS User Guide, BLM planning documents, and statewide historic context documents, writing and negotiating agreement documents and treatment plans, Visual Resource Management, etc. Review of training needs and/or additional workshops will occur on a yearly basis at the annual cultural resource staff meeting. Emphasis will be on professional development training to expand professional skills of BLM and SHPO cultural resource staff.

### **D. Historic Context Development**

Increased emphasis will be given to the development of historic contexts to provide guidance to identify and evaluate specific or problematic property types. The BLM and the SHPO will cooperatively recommend statewide priorities for historic context development for newly identified resources. Recommendations will be considered in the BLM budget process as a statewide benefiting program. Field Offices may also develop project-specific contexts as mitigation measures or as funding allows. In addition, the BLM will cooperate with the SHPO in the pursuit of funding to support the development of historic contexts through grant proposals. All historic contexts must be consistent with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716)*. Historic contexts which define site eligibility criteria, levels of adequate inventory, site documentation requirements, standards for assessment of effects, and/or appropriate treatment of historic properties shall require SHPO concurrence on those aspects.

## **XIII. ADMINISTRATIVE INTERACTION/ANNUAL MEETINGS**

### **A. BLM Annual Report**

The BLM will prepare an annual report that outlines the preservation activities conducted under the nPA and the Protocol. 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 annual report with supplement will be made available to the public on the BLM New Mexico website.

The BLM will provide SHPO with a copy of their Cultural Resource Program Annual Report submitted to BLM's Washington Office at the end of the fiscal year and a supplemental report including succinct information on the following:

- i. List of adverse effect undertakings resolved using the streamlined process (Section VIII.B);
- ii. List of agreement documents executed during the fiscal year;
- iii. Post-review discoveries;
- iv. Discussion of BLM and SHPO NRHP eligibility evaluations and effect determinations, and recommendations to improve consensus, if necessary;
- v. Suggestions concerning additional training needed for BLM staff to fulfill their responsibilities under this Protocol; and
- vi. Recommendations for any amendments to improve the effectiveness of the Protocol including the addition or revision of appendices.
- vii. List of backlogged reports completed and number of reports remaining in backlog.

#### **B. SHPO Annual Report**

The SHPO will provide an annual report to the BLM at the end of each calendar year. At a minimum, it will specifically address the following:

- i. Suggestions for improving the 106 process as defined by the Protocol;
- ii. Discussion of BLM and SHPO NRHP eligibility evaluations and recommendations to improve consensus, if necessary;
- iii. Discussion of SHPO monitoring of No Historic Properties Affected and No Adverse Effect findings and recommendations, if necessary;
- iv. Suggestions concerning additional training for SHPO staff needed to fulfill their responsibilities under this Protocol. Identified areas of weakness may become the subject of joint NM BLM-SHPO sponsored training courses; and
- v. Recommendations for any amendments to improve the effectiveness of the Protocol including the addition or revision of appendices.

#### **C. Administrative Meetings**

The BLM and SHPO will hold meetings annually at mutually agreed upon dates, to discuss issues related to this Protocol.

- i. The first meeting will include BLM Field Office and State Office cultural resource staff and SHPO staff. BLM will develop an agenda that includes SHPO input and SHPO will participate. A primary purpose of this meeting will be to prepare briefing papers, summaries, and recommendations for the BLM and SHPO executive management meeting to follow.

- ii. The second meeting will coincide with the first Executive Management Team (EMT) meeting following the annual cultural resource meeting, and may consist of a presentation at the EMT meeting by the DPO and/or the SHPO. This meeting will specifically discuss procedures, policies, amendments to the Protocol, or other matters as warranted. BLM and SHPO executive management will determine the agenda and representation at this meeting.
- iii. Additional meetings may be set up by the BLM management team, BLM cultural resource staff and SHPO staff at any time to review the effectiveness of or discuss any issues pertaining to the Protocol.

#### **XIV. DISPUTE RESOLUTION**

##### **A. Disputes on Eligibility**

Disputes on eligibility are handled under Section V.B.i.b of this Protocol. Disputes on effect and all other types of disputes, disagreements or objections not explicitly addressed in this Protocol will be handled according to the Regulations at 36 CFR 800.4 through 800.6. The resolution will be documented in writing.

##### **B. Disputes Regarding Specific Undertakings**

Disputes regarding specific undertakings must be resolved prior to approval of the undertaking. Approval of an undertaking prior to resolution of the dispute may constitute a foreclosure and will require notification of the ACHP. All dispute resolutions will be documented in writing and will be distributed to all consulting parties. If the undertaking has already been approved and there is a case-specific dispute, the undertaking may continue, provided that no actions are taken which would adversely affect the properties involved in the dispute.

##### **C. Disputes Involving BLM and SHPO**

- i. If the BLM or the SHPO disagree on an undertaking/action proposed or taken by the other pursuant to this Protocol, or on how this Protocol is being implemented, they will consult with one another to resolve the issue. If the disagreement is about an action in a BLM Field Office, the field manager will notify the DPO and will consult with the SHPO to resolve it. If the disagreement is with the State Office, or the matter is referred to the State Office by a field manager or the SHPO, the DPO, the SHPO, the field manager, and the district manager (if warranted) will consult to resolve the issue. If the dispute cannot be adequately resolved at this level, the objecting party shall notify the other party in writing. Within ten (10) calendar days following receipt of notification, the parties shall initiate a formal 45 calendar-day

consultation period to resolve the objection. If the objection is resolved within this time frame, the parties shall proceed in accordance with the terms of that resolution.

- ii. If the dispute cannot be resolved through XIV.C.i above, and the parties have not agreed to extend the consultation period, the DPO shall refer the dispute to the BLM Preservation Board (the Board), which will provide the State Director with its recommendations, per Component 3 of the nPA. If the State Director accepts the Board's recommendations, the State Director shall promptly notify the SHPO of such acceptance, provide a copy of the Board's recommendations, and afford the SHPO 30 calendar days following receipt of the notification to comment on the recommendations. If the SHPO concurs in the Board's recommendations within this time frame, the State Director and the SHPO shall proceed in accordance with the Board's recommendations to resolve the objection.
- iii. If either the State Director or the SHPO rejects the Board's recommendations after a period of consideration not to exceed 30 calendar days, the State Director shall promptly notify the Board in writing of the rejection, and immediately thereafter submit the dispute, including copies of all pertinent documentation, to the ACHP for comment in accordance with Component 5 of the nPA. Within 30 calendar days following receipt of any ACHP comments, the State Director shall take into account any comments received from the Board, the SHPO, and the ACHP pursuant to this stipulation and make a final decision regarding resolution of the dispute. The State Director shall notify in writing the Board, the SHPO and the ACHP of that decision. The dispute shall thereupon be resolved.
- iv. The BLM's responsibilities to carry out all other actions subject to the terms of this Protocol that are not the subject of the dispute remain unchanged.

#### **D. Disputes Brought by Non Signatories**

If any Indian tribe or any member of the public objects at any time to the process by which this Protocol is being implemented, the BLM and the SHPO will consult with the objecting party to resolve the issue. If the BLM, the SHPO, and the objecting party are unable to resolve the issue, the BLM will refer the matter to the Preservation Board or the ACHP, whichever is appropriate.

- i. The BLM will forward all documentation relevant to the dispute, including the proposed resolution to the Preservation Board or the ACHP.
  - a. When resolving a dispute with the Preservation Board, the parties shall follow the process outlined above in Section XIV.C.ii through iv.
  - b. When the ACHP is involved in the resolution of a dispute, they shall provide BLM

with its advice on the 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 ACHP and other consulting parties, and provide them with a copy of this written response. BLM will then proceed according to its final decision. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the BLM may make a final decision on the dispute and proceed accordingly.

- ii. The BLM's responsibilities to carry out all other actions subject to the terms of this Protocol that are not the subject of the dispute remain unchanged.

## **XV. LEVELS OF CERTIFICATION**

### **A. Certification**

Certification of Field Offices allows them to use this Protocol rather than 36 CFR 800.3 through 800.7. Field Offices will be certified under this Protocol after undergoing orientation by the DPO and SHPO in the components/terms of this agreement. To be certified a field office will have cultural resource staff that are at the appropriate grade levels consistent with the level of complexity of the cultural resource program of that field office; staff at the GS-9 level is the minimum for certification under this protocol.

### **B. Program Review**

If the SHPO documents persistent problems in complying with the terms of this Protocol, the dispute resolution procedures at Section XIV of the Protocol will be followed. If a pattern of failure to comply with the terms of this Protocol can be demonstrated, a field manager, the DPO, the SHPO, or the ACHP may, upon written notification to the BLM State Director, request a review of a Field Office's status and its capability for carrying out the terms of the nPA and this Protocol. The State Director may request a review and recommendations from appropriate staff, and/or the Preservation Board, and/or the ACHP. Based on the review, the DPO will make a recommendation to the State Director to resolve issues that could include the development of a provisional status or a decertification action plan, or the recommendation could be that the issues are not significant enough to warrant the development of an Action Plan.

### **C. Action Plans**

The DPO, SHPO, or the ACHP may recommend that the State Director place a Field Office on a provisional status or be decertified based on findings from a review. The BLM, in consultation with the SHPO, and the ACHP (if they are participating), shall develop an action plan to be followed by the Field Office in order to bring that office into compliance with this Protocol. After the involved Field Office can demonstrate it has completed all of the actions specified in the plan, it will notify the DPO who will review compliance with the action plan

with SHPO and the ACHP if they are participating. The DPO will inform the State Director of the action plan compliance to determine Field Office status.

#### **D. Provisional Status**

A BLM Field Office is under provisional status when designated as such by the State Director. Provisional status may extend from six months to two years, although the term of the provisional status shall be a matter of agreement between the parties involved and shall reflect the complexity of the deficiencies identified. The involved BLM office will continue to operate generally under terms of the Protocol until deficiencies are corrected within the terms and time limits set under the Action Plan (for example, review times may be different, “notify and proceed” submissions may not be allowed). While on provisional status, a Field Office will work to correct the deficiencies identified during the review. After the Field Office can demonstrate it has completed the actions specified in the plan, it will notify the State Director through the DPO. If all parties agree that the problems have been corrected, the State Director will notify the affected field manager, SHPO and the ACHP (if they are participating) in writing that the Field Office is once again in compliance and restored to full status. If the provisional status time period is about to expire and the Field Office has made significant progress but has not met the full terms of the action plan, the DPO and the SHPO may recommend that the State Director extend the provisional status time period. Should the parties determine that significant deficiencies remain uncorrected, or if new significant deficiencies are identified, the findings shall be conveyed and decertification shall be recommended to the State Director by the DPO.

#### **E. Decertification**

Decertification may occur if: (1) the Field Office has failed to comply with the provisional status action plan, or (2) findings from a Field Office review indicate that immediate decertification is warranted. Only the State Director may decertify a Field Office from operating under the terms of this Protocol. Decertification from this Protocol will require that the affected Field Office comply with Section 106 of the NHPA by following the most current implementing regulations at 36 CFR Part 800. The BLM, in consultation with the SHPO, and the ACHP (if they are participating) shall develop an action plan to bring any decertified office into compliance with this Protocol. Decertification does not have a pre-established time frame. A Field Office is decertified until it is found to have restored the basis for certification.

The district or field manager, the DPO, the SHPO, or the ACHP may request that the Preservation Board review a district or Field Office’s certification status. The Preservation Board will respond under the terms of the nPA at Component 9. If the Preservation Board finds that a BLM office does not maintain the basis for its certification (e.g., the professional capability needed to carry out these policies and procedures is no longer available, or the



office is not in conformance with this Protocol), and the BLM field or district manager has not voluntarily suspended participation under this Protocol, the Preservation Board will recommend that the State Director decertify the district or office, per the nPA.

#### **F. Recertification**

A Field Office may ask the State Director to review the Preservation Board's decertification recommendation, in which case the State Director may request the ACHP's participation in the review. After the affected BLM office believes that it has completed the actions specified in the plan, it will notify the State Director through the DPO. All parties will review the documentation and will make a recommendation to the State Director. If the problems have been corrected, and the SHPO concurs, the State Director will notify in writing the affected field manager, SHPO and the ACHP (if participating) that the Field Office is once again in compliance and restored to certified status. If the Field Office is found to not have resolved the issues, it will continue to operate under the 36 CFR Part 800 regulations. If a decertified Field Office is found to have restored the basis for certification, the Preservation Board will recommend that the State Director recertify the office. Recertification of the affected Field Office, which will allow that office to resume operating under the terms of this Protocol, will occur at the discretion of the BLM State Director after consultation with the SHPO and the ACHP (if they are participating). The State Director will notify the Field Office, the SHPO and the ACHP (if they are participating) in writing when the Field Office is recertified.

### **XVI. AMENDMENTS TO THE PROTOCOL**

If the BLM or the SHPO wish to amend this Protocol at any time, they will consult with Indian tribes and other consulting parties to consider requested changes. During the amendment process, the BLM, SHPO, and the consulting parties may identify specific sections and/or appendices that are subject to amendment. Amendments will become effective when signed by both parties.

#### **A. Changes to NHPA or 36 CFR Part 800**

Should changes occur to the National Historic Preservation Act or its regulations at 36 CFR Part 800, the SHPO and the BLM will meet and discuss the need to amend this document to reflect changes in the authorities under which the Protocol functions.

#### **B. Review of the Protocol**

Five years from the last signature date of this Protocol, the parties will formally review its terms and propose any needed revisions.

## **XVII. TERMINATION**

The BLM or the SHPO may terminate this Protocol by providing 90 days' 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 DPO may request the assistance of the BLM Preservation Board, the National Conference of State Historic Preservation Officers, or the ACHP in the consultation process. If the Protocol is terminated, the BLM will be required to comply with Section 106 of the NHPA by following the implementing regulations at 36 CFR Part 800.

## **XVIII. ANTI-DEFICIENCY**

The Anti-Deficiency Act, 31 U.S.C. §1341, prohibits federal agencies from incurring an obligation of funds in advance of or in excess of available appropriations. Accordingly, the parties agree that any requirement for obligation of funds arising from the terms of this agreement shall be subject to the availability of appropriated funds for that purpose, and that this agreement shall not be interpreted to require the obligation or expenditure of funds in violation of the Anti-Deficiency Act.

If compliance with the Anti-Deficiency Act alters or impairs the BLM's ability to implement the stipulations of this Protocol, the BLM shall consult with SHPO to determine a temporary solution and avoid foreclosure of the Section 106 compliance process.

## **XIX. APPENDICES**

Several appendices are attached and incorporated into this Protocol. New appendices may be added and existing appendices may be modified as needed, in consultation with Indian tribes and other consulting parties, upon written concurrence of the Signatories.

**SIGNATURES**

/s/ Robert A. Casias (acting)

12/17/2014

\_\_\_\_\_  
Jesse Juen,  
State Director, New Mexico Bureau of Land Management

\_\_\_\_\_  
Date

/s/ Jeff Pappas

12/17/2014

\_\_\_\_\_  
Jeff Pappas,  
New Mexico State Historic Preservation Officer

\_\_\_\_\_  
Date

**NEW MEXICO STATE PROTOCOL  
APPENDIX A  
EXISTING PROGRAMMATIC AGREEMENTS  
AND MEMORANDA OF AGREEMENT  
TIERED TO THE PROTOCOL**

Pursuant to Section I.D of the State Protocol, the following special purpose Programmatic Agreements (PA) and Memoranda of Agreement (MOA) continue to be in effect. Implementation of procedures and reporting requirements under these agreements are independent of the State Protocol. Other PAs (see Protocol Stipulation I.D.iii) and MOAs may be developed when deemed necessary to define special purposes or procedures not covered in the national Programmatic Agreement or the State Protocol. This appendix will be reviewed and updated annually at the Protocol meeting.

**National/Multi-State Agreements**

1. Federal Coal Management Program PA (executed 5/20/1980; no expiration date)
2. Interagency Agreement-Interstate Natural Gas Pipeline (with FERC as lead agency for 106) (see WO IM 2003-197)(executed 5/2002; no expiration date)
3. Memorandum of Understanding between BLM and Nuclear Regulatory Commission (NRC) (executed 2/14/2013; no expiration date)
4. Western Area Power Administration regarding routine maintenance of transmission lines, substations, and other facilities PA (executed 2/2002; expires 2014; BLM NM will not resign)
5. Four Corners Power Plant PA (OSM, BLM, Navajo Nation and others; in preparation/draft)

**Statewide/Multiple Field Office Agreements**

1. NM BLM-SHPO Private Land Exchanges or Sales MOA
2. NM BLM-SLO-SHPO MOU on Land Exchanges
3. Navajo-Gallup Water Supply Project PA (Bureau of Reclamation (BOR), BLM, Navajo Nation and others) (Farmington, Rio Puerco)

**Carlsbad Field Office**

1. Permian Basin PA

**Farmington Field Office**

1. Navajo Mine PA (OSM, BLM, Navajo Nation and others)

**Roswell Field Office**

1. Permian Basin PA

**NEW MEXICO STATE PROTOCOL  
APPENDIX B  
STANDARD APEs FOR DIRECT EFFECTS**

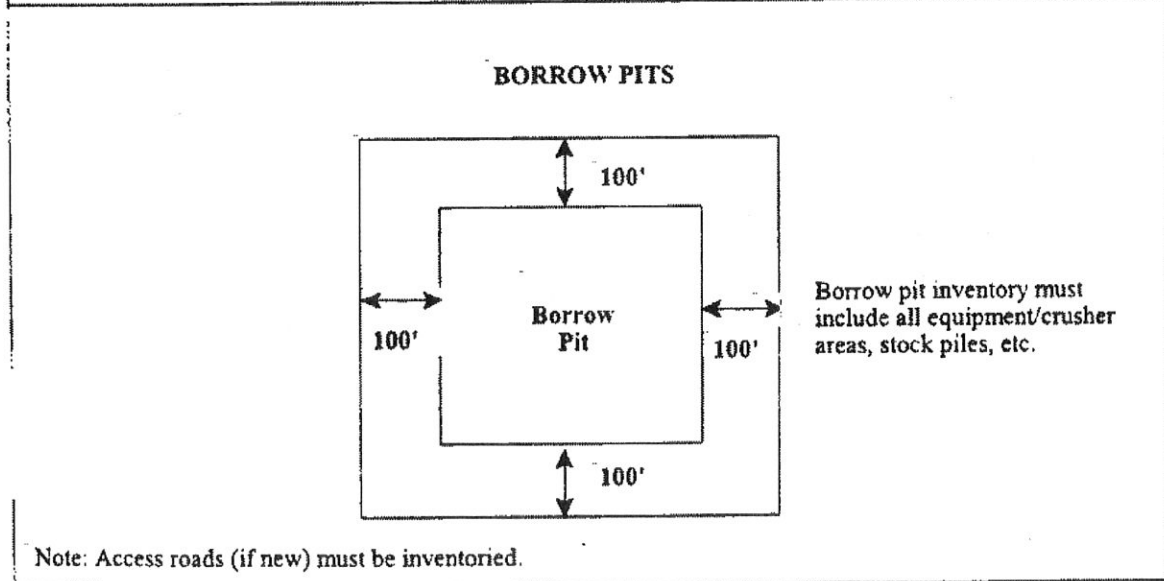
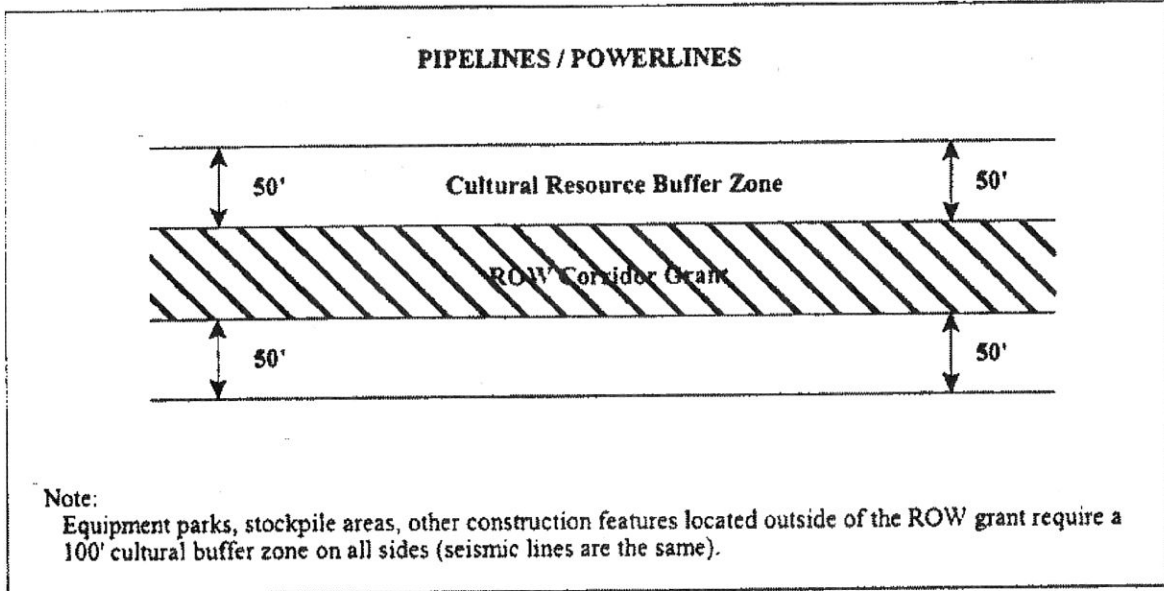
Pursuant to Section IV.B of the State Protocol, BLM and SHPO have consulted on the following standard Areas of Potential Effect (APEs) for common types of undertakings. The standard APEs listed below and shown on the attached diagrams are **minimum** APE sizes for evaluating direct effects. In certain circumstances, even though an undertaking may have a standard APE listed below, the Field Manager, at the recommendation of the cultural resource specialist, may have justification to require a larger APE. If an APE larger than the minimums below is being recommended, SHPO consultation is not required. For actions where a field office is suggesting a smaller APE for an undertaking listed below, SHPO consultation will be required pursuant to Section IV.B. For any other APEs (i.e. undertakings not listed here, visual effects APE, etc.), the BLM cultural resource specialist will consult with SHPO pursuant to Section IV.B. The inventory area is the entire direct APE, unless there is previous adequate inventory, previously disturbed areas, etc. as discussed in the Protocol, Section IV.D. All cultural resources within the APE must be evaluated for NRHP eligibility.

Diagrams of the standard APEs for the following undertakings are included in this appendix:

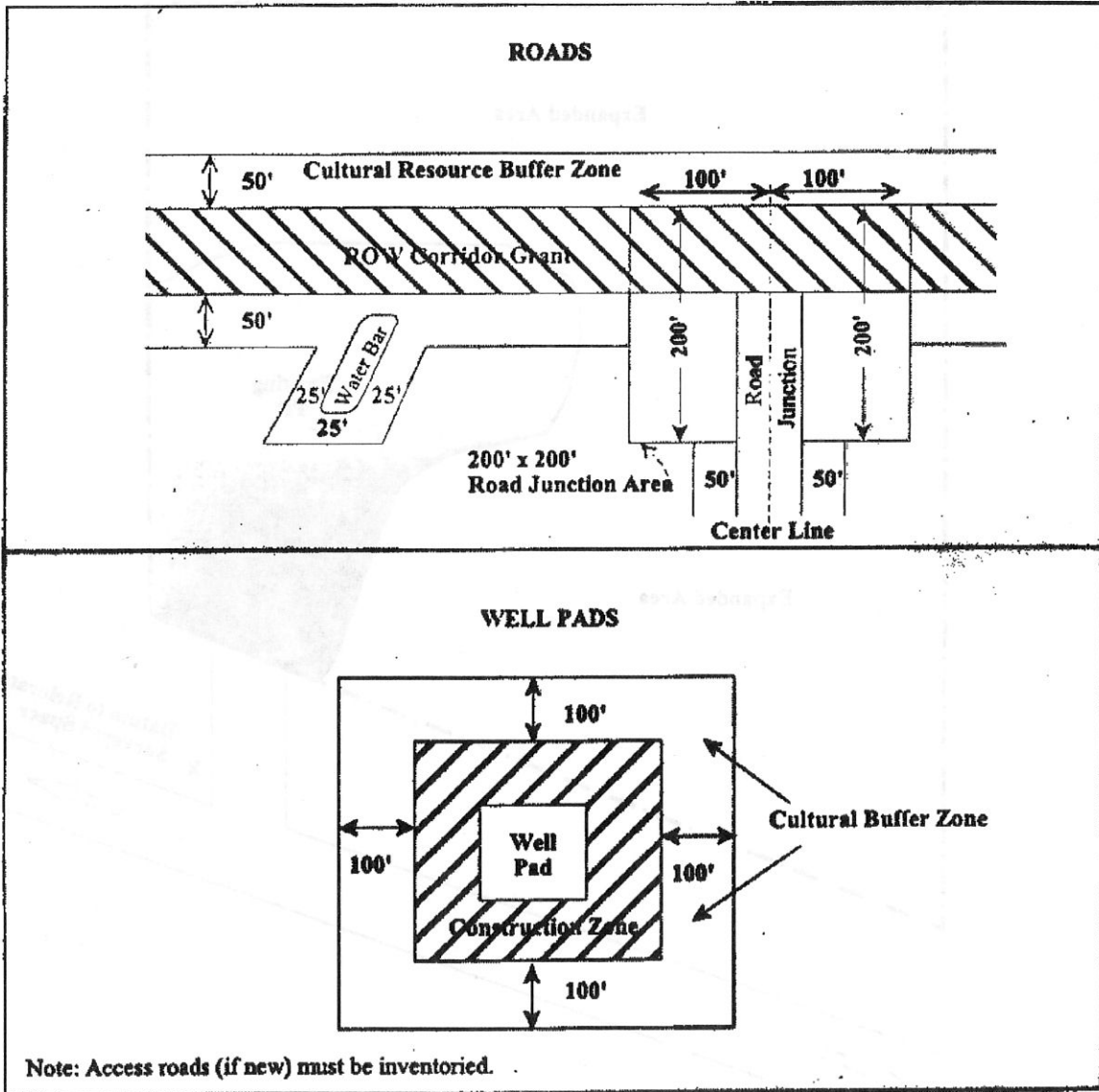
- Pipelines/Power lines-the width of the right of way corridor plus 50' from the edge of the right of way
- Borrow Pits-the borrow pit plus 100' on each side from the edge of the pit
- Roads-the right of way corridor plus 50' on each side from the edge of the right of way, 200' on each side of any road junctions and 25' on every side of proposed water bars.
- Well Pads-the well pad and construction zone plus 100' on each side from the edge of the construction zone
- Temporary Use Area-50' from the edge of the cultural buffer for a linear right of way or 100' for an area isolated from the right of way.
- For low to moderate ground disturbing vegetation and fuels treatments (including lop and scatter, prescribed fire, fuel wood areas not covered under Appendix C, and mastication), the standard APE for direct effects is the exterior perimeter of the project area plus a minimum 50' buffer.

A field office may, in consultation with SHPO, modify the standard APEs that follow, or create new standard APEs suitable to common types of undertakings in their specific areas. These modified or additional standard APEs will then be appended to Appendix B.

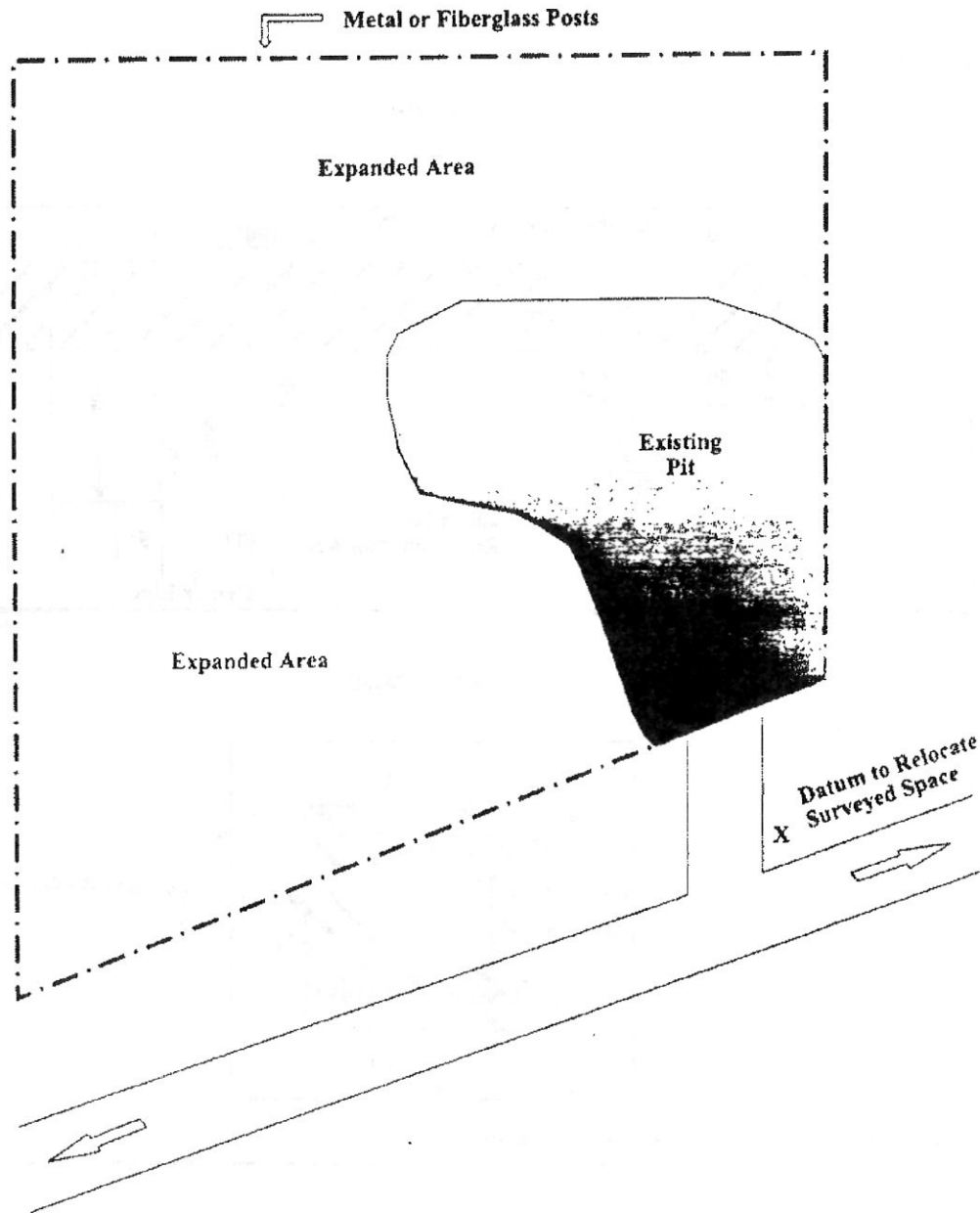
H-8100-1 - PROCEDURES FOR PERFORMING CULTURAL RESOURCE FIELDWORK  
ON PUBLIC LANDS IN THE AREA OF NEW MEXICO BLM RESPONSIBILITIES



H-8100-1 - PROCEDURES FOR PERFORMING CULTURAL RESOURCE FIELDWORK  
ON PUBLIC LANDS IN THE AREA OF NEW MEXICO BLM RESPONSIBILITIES



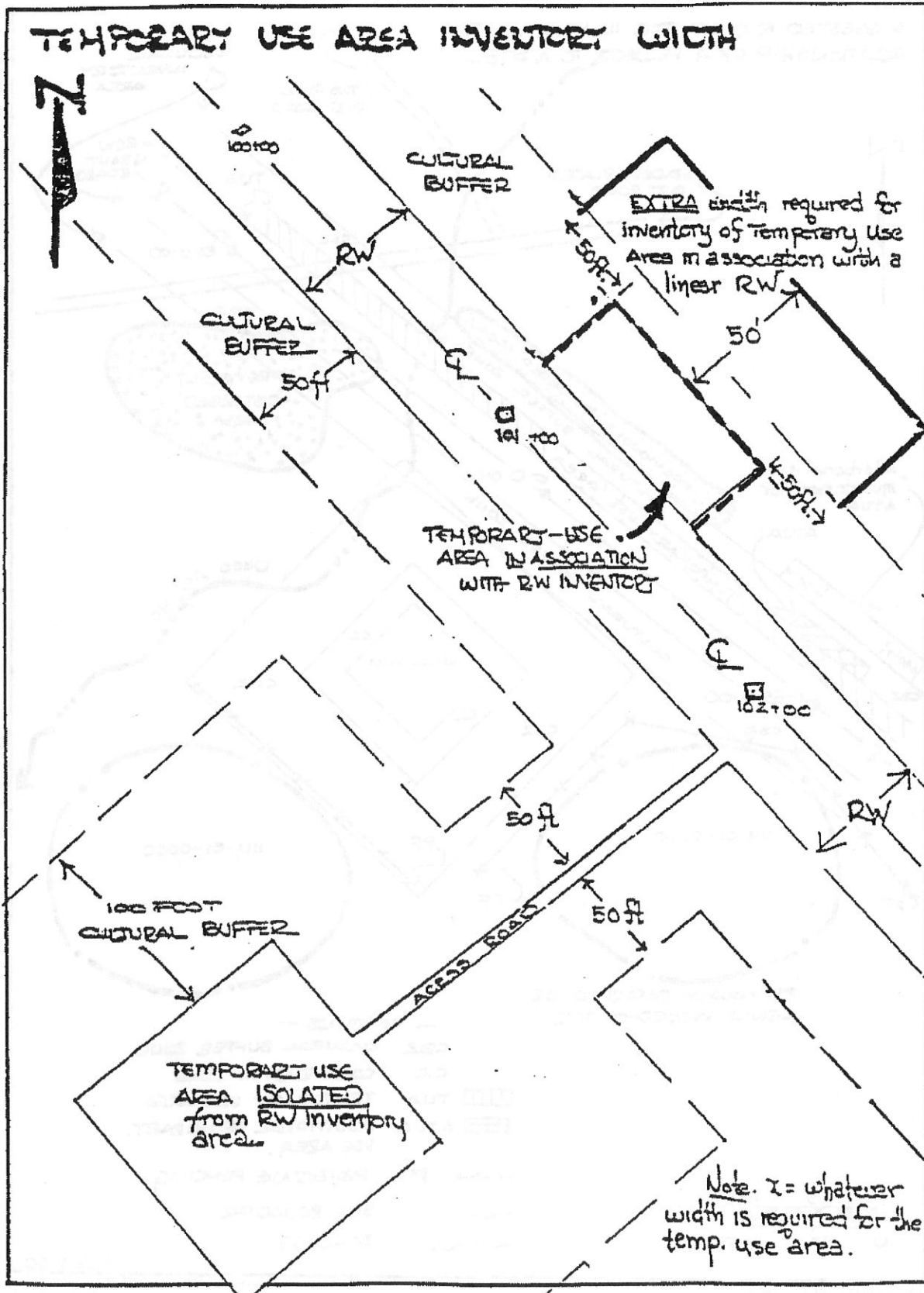
**Pit Diagram for New Survey Standards**



**(No buffer considered here.)**



H-8100-1 - PROCEDURES FOR PERFORMING CULTURAL RESOURCE FIELDWORK  
ON PUBLIC LANDS IN THE AREA OF NEW MEXICO BLM RESPONSIBILITIES





**NEW MEXICO STATE PROTOCOL**  
**APPENDIX C**  
**UNDERTAKINGS NOT REQUIRING SHPO CONSULTATION**

Pursuant to Section IV.C. of the State Protocol, the BLM cultural resource specialist will, after determining information needed to identify and evaluate cultural resources, determine if specific projects or activities do not require SHPO consultation. **In certain circumstances, the cultural resource specialist may recommend that the Field Manager require an inventory and evaluation of cultural resources, even though the action is listed below.** In most circumstances the following actions do not require SHPO consultation:

I. General

- a. Issuing leases, easements, rights-of-way, permits (excluding grazing permit, see IV), or other authorizations or approvals that do not authorize surface disturbance or are consistent with I.d below.
- b. Legislation which specifically excludes consideration of cultural resources.
- c. Land allocations which do not authorize surface disturbing projects, such as environmental education areas, Wilderness Areas, Wilderness Study Areas, or Areas of Critical Environmental Concern.
- d. Activities that involve less than two (2) square meters of cumulative ground disturbance and no more than one (1) square meter of contiguous disturbance in any given location (such as paleontological surface collecting), unless within known National Register listed, eligible or unevaluated properties.

II. Realty

- a. Acquiring lands and easements.
- b. Issuing or renewing mineral withdrawals.
- c. Revoking withdrawals, unless the withdrawal was specifically for the protection of cultural resources.
- d. Transferring lands or interest in lands to other Federal agencies where future management will be subject to the Section 106 process.
- e. Authorizing new or upgraded lines or antennae on existing overhead structures when there is no change in pole or tower configuration and no new surface disturbance, including access routes, or is consistent with I.d above.
- f. Issuing rights-of-way for existing authorized developments or renewal, assignment, or conversion of existing rights-of-way except where operations, maintenance or

State Protocol Between the New Mexico Bureau of Land Management and the New Mexico State Historic

Preservation Officer: Appendix C

abandonment activities might result in new surface disturbance, or is consistent with I.d above.

### III. Recreation and Transportation

- a. Designating areas closed to vehicles (including Off Road Vehicles) or areas limited to travel only on existing roads and trails.
- b. Temporary road closures.
- c. Maintenance of crowned or ditched road(s) that does not widen or otherwise extend surface disturbance, unless archaeological deposits are exposed.
- d. Installing signs and markers adjacent to existing roads, or placing recreational, special designation or information signs, visitor registers, kiosks, or portable sanitation devices unless within known NRHP listed, eligible or unevaluated properties. Disturbance cannot exceed the exemption allowed in I.d above.
- e. Installation or repair of routine signs, markers, or cattle guards on or adjacent to existing roads if within existing disturbed ground and which is not within the boundaries of a known historic property.
- f. Dispersed noncommercial recreation activities such as rock collection, Christmas tree cutting, and pine nut or other plant gathering.
- g. Issuance of special recreation permits along rivers, trails, and other specified areas where use is similar to previous permits for which environmental documents have been prepared and when there will be no new surface disturbance, or the action is consistent with I.d above.

### IV. Other

- a. Renewal of grazing leases/permits. The cultural resource specialist must document in the case file why any potential increase in numbers or types of livestock or changed seasons of use will not adversely affect historic properties.
- b. Repair and/or minor modifications to existing fence lines that do not require disturbance beyond placement of posts and hand removal of vegetation, and the action will not result in concentrations of animals or creation of two track trails from vehicles.
- c. Maintenance of existing facilities (i.e. pipelines, reservoirs, cattle guards, gates, fences, stock tanks, etc.) that does not involve new ground disturbance, or which is consistent with I.d above, and the facilities themselves are not historic properties and when no historic properties are within the APE.

- d. Animal traps and corrals in use for three days or less. Case-by-case review by the field office cultural resource specialist may be needed to assess potential effects prior to the undertaking.
- e. Herbicide application, including application by off-road all terrain vehicle (ATV), where it would be unlikely to affect cultural resources.
- f. Modification or structural repairs to structures less than 40 years old, unless the structure is of exceptional significance, and the action does not entail new ground disturbance, or is consistent with I.d above.
- g. Minor, routine, or preventive operations and maintenance activities on BLM facilities, lands, and resource developments requiring no new surface disturbance and where facilities being maintained are less than 40 years old and, if older, are not historic properties.
- h. Activities limited within active stream channels, not including terraces or cut banks.
- i. Personal use fuel wood permits that do not concentrate use.
- j. Removing modern materials and trash scatters less than 50 years old and not associated with a larger cultural resource or historic property. Abandoned vehicles and equipment, and modern trash dumps are included in this class.
- k. Continued development of borrow sources which have previously removed all Holocene and Pleistocene sediments and will not extend into any area which contains Holocene and Pleistocene sediments.
- l. Geophysical activities limited to existing disturbance and/or pedestrian traffic only.
- m. Routine law enforcement activities that do not involve surface disturbance or which is consistent with I.d above.
- n. Cadastral survey.
- o. The removal of unexploded ordnance (UXO) when done by UXO specialists and for safety concerns.

**NEW MEXICO STATE PROTOCOL  
APPENDIX D  
AGREEMENT DOCUMENT PROCEDURES AND CHECKLIST**

Project Name: \_\_\_\_\_

NOTE: Please use the appropriate Agreement Document Template found in Appendix E. Preparation of a MOA or PA follows consultation among the Signatories, Invited Signatories and the Concurring Parties. Generally the MOA/PA will be drafted by the responsible Field Office, who will also keep all parties apprised of the document's progress, and will schedule any necessary meetings and calls.

**Before starting the Agreement Document process:**

<b>Action</b>	<b>YES</b>	<b>NO</b>	<b>Dates/Comments</b>
Work with SHPO to obtain an initial list of consulting parties and Indian tribes	<input type="checkbox"/>	<input type="checkbox"/>	
Identify potential consulting parties no later than SHPO concurrence on adverse effect determination	<input type="checkbox"/>	<input type="checkbox"/>	
Do Indian Tribes or other consulting parties wish to participate in the resolution of adverse effects?	<input type="checkbox"/>	<input type="checkbox"/>	
Has SHPO concurred with BLM's determination of eligibility and adverse effect?	<input type="checkbox"/>	<input type="checkbox"/>	
Has SHPO concurred that a formal agreement document is required?	<input type="checkbox"/>	<input type="checkbox"/>	
Review the thresholds for ACHP participation-are they met? If thresholds are met, invite ACHP via formal letter, including the information required at 800.11(e)	<input type="checkbox"/>	<input type="checkbox"/>	
Is ACHP participating?	<input type="checkbox"/>	<input type="checkbox"/>	

**MOA or PA**

	<b>Comments</b>
Does this agreement need to be a Memorandum of Agreement (MOA) or a Programmatic Agreement (PA)? [see 36 CFR Part 800.6(c) and 800.14(b)].	
<b>MOA</b>	
Records the terms and conditions agreed upon to resolve the adverse effects of an undertaking on historic properties; and lays out how the undertaking will avoid, minimize, and/or mitigate those known effects.	
<b>An MOA is appropriate when:</b>	
1. There is a discrete undertaking;	
2. An inventory is complete and all historic properties have been evaluated for eligibility and effect, and BLM has SHPO concurrence on both.	
3. A treatment plan is necessary.	

<b>PA</b>	
Records the terms and conditions agreed upon to resolve the potential adverse effects of an agency program, complex undertakings or other situations in accordance with 800.14(b); and lays out processes to determine eligibility, effects and ways to avoid, minimize and mitigate effects.	
<b>A PA is appropriate when:</b>	
1. It is a complex undertaking;	
2. It is a phased undertaking;	
3. Effects cannot be determined in advance	
4. Effects on historic properties are similar or repetitive, or are multi-state or regional in scope	
5. Nonfederal parties are delegated major decision making responsibilities	
6. Routine management activities are undertaken at Federal installations, facilities, or other land management units	
7. Other circumstances warrant a departure from the normal section 106 process	
8. May incorporate provisions from the State Protocol	
9. Will likely require a Historic Properties Treatment Plan	

**Setting up the Agreement Document:**

<b>Action</b>	<b>YES</b>	<b>NO</b>	<b>Dates/Comments</b>
Send letters inviting potential consulting parties/Tribes to participate in the resolution of adverse effects (give them a deadline by which to respond )	<input type="checkbox"/>	<input type="checkbox"/>	
Compile lists of consulting parties who have and have not agreed to participate	<input type="checkbox"/>	<input type="checkbox"/>	
Has the appropriate SHPO/THPO been consulted?	<input type="checkbox"/>	<input type="checkbox"/>	
Send invitations out for first meeting/conference call	<input type="checkbox"/>	<input type="checkbox"/>	
At first meeting: try to set a standard day/time and conference line/passcode numbers for each subsequent meeting /call	<input type="checkbox"/>	<input type="checkbox"/>	
Provide frequent drafts to all participants, and continue to do so throughout the consultation process to reach consensus to the extent possible and until all signatories approve document	<input type="checkbox"/>	<input type="checkbox"/>	
All parties will consult to reach consensus to the extent possible and until the signatories approve the document. Accept comments/edits during the meetings and in writing on drafts of the document	<input type="checkbox"/>	<input type="checkbox"/>	

**The Agreement Document:**

<b>Topic/Section</b>	<b>YES</b>	<b>NO</b>	<b>Dates/Comments</b>
<b>Title, Preamble:</b>			
Are all Signatories named in the title? (e.g. Federal Agencies, SHPO/THPO, Applicant/s, ACHP, if participating, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	
Is the entire undertaking and the nature of the Federal involvement described?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the responsible Federal agency identified?	<input type="checkbox"/>	<input type="checkbox"/>	
If a multi-agency undertaking, has BLM been identified as the lead Federal agency? Identify the roles of other delegating agencies (see 36 CFR Part 800.2(a)(1)).	<input type="checkbox"/>	<input type="checkbox"/>	
Is an applicant for Federal permits, licenses, grants, or other assistance identified? Make sure to describe their roles and responsibilities clearly.	<input type="checkbox"/>	<input type="checkbox"/>	
Has the appropriate SHPO/THPO been identified?	<input type="checkbox"/>	<input type="checkbox"/>	
Are all other consulting parties identified? (see 36 CFR Part 800.2)	<input type="checkbox"/>	<input type="checkbox"/>	
Have the historic properties affected by the undertaking been identified?			
If doing a PA with phased identification, is the need for such an approach described?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the preamble acknowledge historic properties will or may be adversely affected?	<input type="checkbox"/>	<input type="checkbox"/>	
Is a reference included to the agency's public involvement efforts?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Stipulations:</b>			
Are the stipulations preceded by a clear statement that the Federal agencies shall ensure that these terms are carried out?	<input type="checkbox"/>	<input type="checkbox"/>	
Are all of the provisions agreed upon during consultation included? Make sure they are grouped logically.	<input type="checkbox"/>	<input type="checkbox"/>	
Does each stipulation clearly identify who is responsible to carry it out?	<input type="checkbox"/>	<input type="checkbox"/>	
Do all tasks have clear time frames for initiation and completion?	<input type="checkbox"/>	<input type="checkbox"/>	
Are all stipulations written in the active voice?	<input type="checkbox"/>	<input type="checkbox"/>	
Are tasks assigned only to those parties that will sign the agreement (Signatories and Invited Signatories)?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the use of qualified professionals been stipulated where appropriate?	<input type="checkbox"/>	<input type="checkbox"/>	
If archaeological data recovery is stipulated, is the data recovery plan attached to or referenced in the document?	<input type="checkbox"/>	<input type="checkbox"/>	



Is the process for a post-execution decision making described in a complete, logical and organized way? (Who makes what decisions? Who is consulted with? When do decisions need to be made? What information is needed?)	<input type="checkbox"/>	<input type="checkbox"/>	
Are procedures for consulting party involvement included for any ongoing reviews carried out according to the agreement's terms?	<input type="checkbox"/>	<input type="checkbox"/>	
Are procedures for responding to the unanticipated discovery of historic properties or adverse effects to identified historic properties included?	<input type="checkbox"/>	<input type="checkbox"/>	
Is a dispute resolution procedure included?	<input type="checkbox"/>	<input type="checkbox"/>	
Are procedures for monitoring and reporting on agreement implementation included as appropriate to the project?	<input type="checkbox"/>	<input type="checkbox"/>	
Are provisions for the amendment or termination of the agreement included?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the duration specified, and does it allow adequate time for the terms to be completed?	<input type="checkbox"/>	<input type="checkbox"/>	
Is there an agreement execution statement?	<input type="checkbox"/>	<input type="checkbox"/>	
Do the stipulations conclude with an affirmation statement consistent with the template agreement document?	<input type="checkbox"/>	<input type="checkbox"/>	

**Completing the Agreement Document (housekeeping, approval, signatures):**

Action	YES	NO	Dates/Comments
<b>Housekeeping:</b>			
Are all parties that have assigned responsibilities in the agreement document either a Signatory or Invited Signatory?	<input type="checkbox"/>	<input type="checkbox"/>	
Does each signature line include the printed name, title, agency/organization and date of signature?	<input type="checkbox"/>	<input type="checkbox"/>	
Are Signatories, Invited Signatories and Concurring Parties clearly separated from each other?	<input type="checkbox"/>	<input type="checkbox"/>	
Have all terms and references been used correctly and accurately?	<input type="checkbox"/>	<input type="checkbox"/>	
Are all acronyms and abbreviations identified and used consistently?	<input type="checkbox"/>	<input type="checkbox"/>	
Double check spelling, grammar, formatting, pagination, section numbers, etc. including Appendices; remove all "draft" notations	<input type="checkbox"/>	<input type="checkbox"/>	
Are all attachments and appendices cited correctly, and are they attached?	<input type="checkbox"/>	<input type="checkbox"/>	
Could a "cold reader" understand the agreement and	<input type="checkbox"/>	<input type="checkbox"/>	

what it requires?			
Email to SHPO for review and approval	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Approvals/Signatures:</b>			
All Signatories have reviewed the document and approved it	<input type="checkbox"/>	<input type="checkbox"/>	
As applicable, email to DOI solicitors (SOL) for review and approval (through FM or DM) (if they make changes, send it back out to all parties for review and approval)	<input type="checkbox"/>	<input type="checkbox"/>	
Email to SHPO for approval (if they make changes, send it back out to all parties for review and approval)	<input type="checkbox"/>	<input type="checkbox"/>	
Send "Draft Final" document back out to all parties for one more look, request they respond via email/in writing of their approval (specify timeframe)	<input type="checkbox"/>	<input type="checkbox"/>	
Make enough originals to send around for signature for primary parties to keep (SHPO, company/ies, Field Office and ACHP, if participating), all others will receive a copy including the signatures	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Order of Signatures:</b>			
BLM Field Manager	<input type="checkbox"/>	<input type="checkbox"/>	
BLM District Manager, as appropriate	<input type="checkbox"/>	<input type="checkbox"/>	
Applicant/s	<input type="checkbox"/>	<input type="checkbox"/>	
All other Invited Signatories	<input type="checkbox"/>	<input type="checkbox"/>	
Any Concurring Party that wants to sign (they do not <i>have</i> to sign)	<input type="checkbox"/>	<input type="checkbox"/>	
Send to State Office to obtain the following signatures:	<input type="checkbox"/>	<input type="checkbox"/>	
DSD for Resources Policy and Management	<input type="checkbox"/>	<input type="checkbox"/>	
Other federal agencies, if appropriate	<input type="checkbox"/>	<input type="checkbox"/>	
SHPO	<input type="checkbox"/>	<input type="checkbox"/>	
ACHP (if participating)	<input type="checkbox"/>	<input type="checkbox"/>	
Once all signatures are obtained, NMSO or ACHP (if participating) will scan the document and send originals back to Field Office for distribution.	<input type="checkbox"/>	<input type="checkbox"/>	
Once the document is fully signed/executed, then Section 106 has been completed. Any decision document (e.g. ROD/DR, FONSI, CX, etc.) can then be signed and shall reference the agreement document.	<input type="checkbox"/>	<input type="checkbox"/>	
Even if the ACHP did not participate, the Field Office shall send a copy of the fully executed document to them	<input type="checkbox"/>	<input type="checkbox"/>	

Tips:

Do not include information that is not relevant to Section 106

Do reference other laws as needed, but don't go into detail about how they will be carried out

Bind sidebar agreements (e.g. HPTPs) to ROD/DR

**NEW MEXICO STATE PROTOCOL  
APPENDIX E.1  
MEMORANDUM OF AGREEMENT DOCUMENT TEMPLATE**

MEMORANDUM OF AGREEMENT  
AMONG  
BUREAU OF LAND MANAGEMENT, OTHER FEDERAL AGENCIES, NEW MEXICO STATE HISTORIC  
PRESERVATION OFFICER, ADVISORY COUNCIL ON HISTORIC PRESERVATION (if involved), OTHER  
SIGNATORIES,  
REGARDING [insert project name and location]

WHEREAS, the Bureau of Land Management (BLM) plans to ["carry out" or "fund" or "approve"/"license"/"permit" or other appropriate verb] the [insert project name] (the Undertaking) pursuant to the [insert name of the substantive statute authorizing the Federal BLM involvement in the undertaking], [insert legal cite for that statute]; and

WHEREAS, the BLM, the Advisory Council on Historic Preservation (ACHP) and the National Conference of SHPOs entered into a national Programmatic Agreement that details the manner in which the BLM will meet its responsibilities under Sections 106, 110 (f) and 111 (a) of the National Historic Preservation Act (NHPA); and

WHEREAS, this Memorandum of Agreement (MOA) is consistent with the national Programmatic Agreement; and

WHEREAS, the undertaking consists of [insert a brief explanation of the undertaking]; and

WHEREAS, BLM has defined the undertaking's area of potential effect (APE) as [insert written description and/or "described in Attachment XXX"]; and

WHEREAS BLM has determined that the undertaking has/may have an adverse effect on [insert name of historic property(ies)], which ["is" or "are"] ["listed in" or "eligible for listing in"] the NRHP, and has consulted with the [insert name of State or Tribe] ["State" or "Tribal"] Historic Preservation Officer (["SHPO" or "THPO"]) pursuant to 36 C.F.R. Part 800, of the regulations implementing Section 106 of the NHPA (16 U.S.C. § 470f); and

[WHEREAS, any other whereas clauses as needed (determinations of effect, etc.); and]

WHEREAS, the BLM has consulted with SHPO pursuant to 36 CFR Part 800.2(c)(1); and

WHEREAS, in accordance with 36 C.F.R. Part 800.6(a)(1), BLM has notified the ACHP of its adverse effect determination with specified documentation and the ACHP has chosen to participate/not to participate in the consultation pursuant to 36 CFR Part 800 Appendix A; and

WHEREAS, the regulations at 36 CFR Part 800.6(c)(1-3) recognizes three types of signatories to this agreement: Signatories, Invited Signatories and Concurring Parties, which are referred to collectively as the Parties. Signatories and Invited Signatories may include any party who assumes responsibilities under this agreement. Concurring Parties have a demonstrated interest in the undertaking or its effects on historic properties, but do not assume responsibilities under the agreement. Concurring Parties may participate in development of the document and may concur with this agreement. The refusal of any Invited Signatory or Concurring Party to sign does not invalidate the PA. Concurring Parties cannot amend or terminate this agreement; and

WHEREAS BLM has consulted with the [insert name of Tribe(s) and has invited the Tribe[s] to sign this MOA as a an Invited Signatory [Insert this whereas clause if appropriate]; and the [insert name of Tribe(s)] have agreed/declined to sign the MOA; and

WHEREAS, BLM has consulted with [insert names of other consulting parties, if any] regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as a ["Invited Signatory(ies)" or "Concurring Party(ies)"].

NOW, THEREFORE, BLM [add other federal agencies, if any], and the SHPO/THPO [add ACHP, if participating, and invited signatory(ies), if any] agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

#### STIPULATIONS

BLM shall ensure that the following measures are carried out:

[I.-III. (Or whatever number of stipulations is necessary) Insert negotiated measures to avoid, minimize, or mitigate the adverse effects on historic properties.]

#### IV. CONFIDENTIALITY OF CULTURAL RESOURCE DATA

Consistent with the NHPA, Section 304, and the Archaeological Resources Protection Act, Section 9(a), and all other applicable laws, regulations and executive orders, cultural resources data from BLM lands will be treated as confidential by all Parties. The Signatories to this agreement will determine what information may be released to the other Parties. Duplication or distribution of cultural resource data from BLM lands by any Signatory requires written authorization from the BLM.

#### V. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, or, if human remains, suspected human remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered, the BLM shall implement the discovery plan included as the attachment [insert number of attachment] of this MOA.

[Insert this stipulation if there is an indication that historic properties are likely to be discovered during

implementation of the undertaking.]

[Insert this stipulation or a separate stipulation if there is an indication that human remains are likely to be discovered during implementation of the undertaking.]

## VI. MONITORING AND REPORTING

Each [insert a specific time period] following the execution of this MOA until it expires or is terminated, BLM shall provide all parties to this MOA ["and the ACHP," if participating] a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in BLM's efforts to carry out the terms of this MOA.

## VII. DISPUTE RESOLUTION

Should any Signatory \* to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, BLM shall consult with such party to resolve the objection. If BLM determines that such objection cannot be resolved, BLM will:

A. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the ACHP. The ACHP shall provide BLM with its advice on the 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 ACHP, Signatories and Concurring Parties, and provide them with a copy of this written response. BLM will then proceed according to its final decision.

B. If the ACHP does not provide its 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 and Concurring Parties to the MOA, and provide them and the ACHP with a copy of such written response.

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

## VIII. AMENDMENT

This MOA may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

## IX. TERMINATION

If any Signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days (or another time period agreed to by all

Signatories) an amendment cannot be reached, any Signatory or Invited Signatory may terminate the MOA upon written notification to the other Signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, BLM must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. BLM shall notify the Signatories as to the course of action it will pursue.

#### V. DURATION

This MOA will expire if its terms are not carried out within five (5) years [or specify other appropriate time period] from the date of its execution. Prior to such time, BLM may consult with the other Signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

In witness whereof, the Parties to this MOA through their duly authorized representatives have executed this MOA on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this PA as set forth herein.

The effective date of this MOA is the date of the last Signatory signature affixed to these pages.

#### SIGNATORIES:

[insert BLM name]

\_\_\_\_\_ Date  
[insert BLM official name and title]

[insert name of State or Tribe] ["State" or "Tribal"] Historic Preservation Officer

\_\_\_\_\_ Date  
[insert name and title]

[insert name of ACHP Executive Director, if ACHP participating]

\_\_\_\_\_ Date  
[insert name and title]

INVITED SIGNATORIES:

[insert invited signatory name]

\_\_\_\_\_ Date  
[insert name and title]

CONCURRING PARTIES:

[insert name of concurring party]

\_\_\_\_\_ Date  
[insert name and title]

Notes:

*\* This document assumes that the term "Signatory" has been defined in the agreement to include both Signatories and Invited Signatories.*

*\*\* Remember that the BLM must submit a copy of the executed MOA, along with the documentation specified in Sec. 800.11(f), to the ACHP prior to approving the undertaking in order to meet the requirements of section 106. 36 CFR Part 800.6(b)(1)(iv).*

**NEW MEXICO STATE PROTOCOL  
APPENDIX E.2  
PROGRAMMATIC AGREEMENT DOCUMENT TEMPLATE**

PROGRAMMATIC AGREEMENT  
AMONG

BUREAU OF LAND MANAGEMENT, OTHER FEDERAL AGENCIES, NEW MEXICO STATE HISTORIC PRESERVATION OFFICER, ADVISORY COUNCIL ON HISTORIC PRESERVATION (if involved), OTHER SIGNATORIES, REGARDING \_\_\_\_\_(insert NAME AND LOCATION OF PROJECT)

WHEREAS, the Bureau of Land Management (BLM) plans to ["carry out" or "fund" or "approve"/"license"/"permit" or other appropriate verb] the [insert project name] (undertaking) pursuant to the [insert name of the substantive statute authorizing the BLM involvement in the undertaking], [insert legal cite for that statute]; and

WHEREAS, the Bureau of Land Management (BLM), the Advisory Council on Historic Preservation (ACHP) and the National Conference of SHPOs entered into a national Programmatic Agreement that details the manner in which the BLM will meet its responsibilities under Sections 106, 110 (f) and 111 (a) of the National Historic Preservation Act (NHPA).

WHEREAS, this programmatic Agreement (PA) is consistent with the national Programmatic Agreement; and

WHEREAS, the undertaking consists of [insert a brief explanation of the undertaking]; and

WHEREAS, the BLM has defined the undertaking's area of potential effect (APE) as [insert written description and/or "described in Attachment XXX"]; and

WHEREAS, 1) BLM has determined that the undertaking has/may have an adverse effect on [insert name of historic property(ies)], which ["is" or "are"] ["listed in" or "eligible for listing in"] the NRHP, and has consulted with the [insert name of State or Tribe] ["State" or "Tribal"] Historic Preservation Officer ("SHPO" or "THPO") pursuant to 36 C.F.R. Part 800, of the regulations implementing Section 106 of the NHPA (16 U.S.C. § 470f); and

OR 2) WHEREAS, Other reason for PA; and

[WHEREAS, add any other whereas clauses as needed (determinations of effect, etc.); and]

WHEREAS, the BLM has consulted with SHPO pursuant to 36 CFR Part 800.2(c)(1); and

WHEREAS 1) the BLM has notified the ACHP according to 36 CFR Part 800.14(a)(1) and the ACHP has elected to participate/not participate OR 2) WHEREAS, the BLM has determined that this undertaking does not meet the thresholds for ACHP participation as found at 36 CFR 800 Appendix A OR Part 5.b. in the national PA; and

WHEREAS, the regulations at 36 CFR Part 800.6(c)(1-3) recognizes three types of signatories to this agreement: Signatories, Invited Signatories and Concurring Parties, which are referred to collectively as

State Protocol Between the New Mexico Bureau of Land Management and the New Mexico State Historic Preservation Officer: Appendix E.2



the Parties. Signatories and Invited Signatories may include any party who assumes responsibilities under this agreement. Concurring Parties have a demonstrated interest in the undertaking or its effects on historic properties, but do not assume responsibilities under the agreement. Concurring Parties may participate in development of the document and may concur with this agreement. The refusal of any Invited Signatory or Concurring Party to sign does not invalidate the PA. Concurring Parties cannot amend or terminate this agreement; and

WHEREAS BLM has consulted with the [insert name of Tribe(s)] and has invited the Tribe[s] to sign this PA as a an Invited Signatory [Insert this whereas clause if appropriate]; and the [insert name of Tribe(s)] have agreed/declined to sign the PA;

WHEREAS BLM has consulted with [insert names of other consulting parties, if any] regarding the effects of the undertaking on historic properties and has invited them to sign this PA as a ["Invited Signatory(ies)" or "Concurring Party(ies)"].

NOW, THEREFORE, BLM [add other federal agencies, if any], and the SHPO/THPO [add ACHP, if participating, and invited signatory(ies), if any] agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

#### STIPULATIONS

BLM shall ensure that the following measures are carried out:

[I.-III. (Or whatever number of stipulations is necessary) Insert negotiated measures to avoid, minimize, or mitigate the adverse effects on historic properties.]

#### IV. CONFIDENTIALITY OF CULTURAL RESOURCE DATA

Consistent with the NHPA, Section 304, and the Archaeological Resources Protection Act, Section 9(a), and all other applicable laws, regulations and executive orders, cultural resources data from BLM lands will be treated as confidential by all Parties. The Signatories to this agreement will determine what information may be released to the other Parties. Duplication or distribution of cultural resource data from BLM lands by any Signatory requires written authorization from the BLM.

#### V. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, or, if human remains, suspected human remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered, the BLM shall implement the discovery plan included as the attachment [insert number of attachment] of this PA.

[Insert this stipulation if there is an indication that historic properties are likely to be discovered during implementation of the undertaking.]

[Insert this stipulation or a separate stipulation if there is an indication that human remains are likely to be discovered during implementation of the undertaking.]

## VI. MONITORING AND REPORTING

Each [insert a specific time period] following the execution of this PA until it expires or is terminated, BLM shall provide all parties to this PA ["and the ACHP" if desired] a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in BLM's efforts to carry out the terms of this PA.

## VII. DISPUTE RESOLUTION

- A. Should any Signatory to this PA provide notice to the BLM of its objection to an action under this PA, or implementation of the measures stipulated in this PA, within 30 days of becoming aware of an action, the BLM shall consult with the Parties to this PA to resolve the objection, unless otherwise specified in this document. If the BLM determines that the objection cannot be resolved, the BLM shall forward all documentation relevant to the dispute to the ACHP. The objecting party must provide reasons for, and a justification of, its objection at the time it initially submits its objection to the BLM. Within 30 days after receipt of all pertinent documentation, the ACHP shall either:
1. Provide the BLM with recommendations, which the BLM shall take into account in reaching a final decision regarding the dispute; or
  2. Notify the BLM that it will comment within an additional 30 days. Any ACHP comment provided in response to such a request will be taken into account, and responded to by BLM with reference to the subject of the dispute.
- B. The BLM responsibility to carry out all other actions under this PA that are not the subject of the dispute will remain unchanged.

## VIII. AMENDMENT

Any Signatory or Invited Signatory to this agreement may request that the other Signatories consider amending the agreement if circumstances change over time and warrant revision of the stipulations of the agreement. Except in the case of amendments addressing resolution of disputes pursuant to Section V of this PA, amendments shall be executed in writing and shall be signed by all Signatories in the same manner as the original PA.

## IX. TERMINATION

Any Signatory or Invited Signatory to this PA may initiate termination by providing written notice to the other Signatories of their intent. After notification by the initiating party, the remaining Signatories and Invited Signatories shall have 90 business days to consult to seek agreement on amendments or any other actions that would address the issues and avoid termination. In the event of termination, the BLM shall refer to 36 CFR Part 800 to address any remaining adverse effects.

## X. DURATION

This PA shall remain in effect for XX years after the date of execution hereof. The BLM and NMSHPO shall re-evaluate the PA every XX years. The BLM shall ensure the PA will be re-evaluated and amended, to accommodate any changes to the terms. All Signatories will be consulted during the amendment process (See Section Vi).

In witness whereof, the Parties to this PA through their duly authorized representatives have executed this PA on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this PA as set forth herein.

The effective date of this PA is the date of the last Signatory signature affixed to these pages.

SIGNATORIES:

Bureau of Land Management, \_\_\_ Field Office

\_\_\_\_ Field Manager Date

Bureau of Land Management, New Mexico State Office

\_\_\_\_ Deputy State Director Date  
Resource Policy and Management

Any other federal agencies

\_\_\_\_ Other Federal Agency Officials Date

New Mexico State Historic Preservation Officer

\_\_\_\_, SHPO Date

Advisory Council on Historic Preservation

\_\_\_\_, Executive Director Date

*(Other signature lines as needed (applicant, consulting parties, etc.))*

Invited Signatories:

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Name and title	Date
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Concurring Parties:

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Name and title	Date
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List of Appendices as needed.

**NEW MEXICO STATE PROTOCOL  
APPENDIX F  
STANDARD DISCOVERY PLAN**

**INTRODUCTION**

This appendix serves as a basic Discovery Plan for federal undertakings authorized by the BLM, and may be used if there are unanticipated discoveries or as guidance if developing an undertaking specific discovery plan. This standard Discovery Plan is optional and may not be applicable in all circumstances or for all BLM undertakings. The Plan is intended for federal undertakings authorized by the BLM, and may be used if there is no undertaking-specific Discovery Plan.

Surface disturbing activities have the potential to affect historic properties though unanticipated discoveries. Unanticipated discoveries typically occur when previously undetected cultural resources are exposed during construction or other permitted surface disturbing activities, but after the federal agency has completed the Section 106 process. Cultural resources may be discovered by construction personnel, an archaeological monitor, a BLM inspector, or others who may be present during construction activities.

This Discovery Plan is intended to address typical cultural resources such as archaeological sites, historic buildings and structures, artifacts, as well as the discovery of a previously unknown portion of a historic property or other cultural materials that are most likely to be discovered during surface disturbing activities. Discoveries can also take other forms including activities that go beyond permitted boundaries and encroach upon a historic property or an unevaluated site, and/or activities that cause unexpected additional effects (physical, visual, audible, or atmospheric effects) to a historic property.

**A. Undertaking Specific Discovery Plan**

- i. The BLM encourages development of undertaking-specific discovery plans for large and complex undertakings and those involving land disturbance in areas suspected to contain buried cultural resources. Undertaking-specific discovery plans will be forwarded to the SHPO for a 30-day review along with BLM's determination of effect for the undertaking as specified in Section VI of this Protocol. These plans will typically be developed by the archeological consultant.
- ii. Undertaking-specific discovery plans must include at a minimum the following components:
  - A. Discussion of the methods that will be used during monitoring;
  - B. Process the consultant will follow in the event of a discovery to notify BLM;
  - C. Testing and evaluation strategy;
  - D. Human remains discovery strategy; and
  - E. Reporting methods.
- iii. When an undertaking-specific discovery plan has been accepted by the BLM and SHPO, the BLM will reference the plan in the project stipulations (conditions of approval, terms and conditions, etc.) The BLM will follow the plan when cultural resources are discovered during implementation of the undertaking. The BLM shall take prudent and feasible steps to ensure

State Protocol Between the New Mexico Bureau of Land Management and the New Mexico State Historic  
Preservation Officer: Appendix F

that the undertaking does not further harm the cultural resource until treatment is completed in accordance with the Discovery Plan.

B. Discoveries

i. If cultural remains, or possible cultural remains, are discovered during surface disturbing activities, all construction activities will be halted immediately within a minimum of 100 feet of the discovery and the BLM Authorized Officer will be notified within 24 hours. The BLM will notify the SHPO of the discovery by telephone and/or email as soon as possible, but no later than 48 hours after receiving the initial notification. The discovery will be secured until it can be evaluated by the BLM Cultural Resource Specialist or a BLM-permitted archaeological consultant. The project applicant is responsible for informing all persons employed directly or indirectly by the applicant that they must not knowingly disturb historic or archaeological sites, or collect artifacts. Construction activities may continue in other areas of the project beyond a minimum of 100 feet from the discovery, but may be subject to an archaeological monitor at the BLM authorized officer's discretion.

ii. The BLM Cultural Resource Specialist or a BLM-permitted archaeological consultant will determine if the discovery is cultural and, if so, record and evaluate the discovery and make a recommendation of NRHP eligibility and effect. BLM will consult with appropriate Indian tribes and consulting parties at this time. The discovery will be evaluated under all four criteria eligibility and all seven aspects of integrity. Evaluative testing may be necessary to determine the nature and extent of the cultural materials. Consultation with the applicable field office will occur to determine the level of permit necessary for the evaluative testing. Evaluative testing will follow the *Procedures for Performing Cultural Resource Fieldwork on Public Lands in the Area of New Mexico BLM Responsibilities, BLM Manual Supplement H-8100-1*. The results will be reported following the *BLM Manual Supplement H-8100-1 and NMCRIS Guidelines*. The BLM will make the determination of eligibility and effect and will consult with the SHPO as specified in below.

a. Discovered Property is Not Eligible with a No Historic Properties Affected Determination

If the BLM determines that the discovery is not eligible for inclusion in the NRHP, a "No Historic Properties Affected" determination will be made. The BLM will submit the documentation to SHPO as specified in Section VII of this Protocol. The BLM Authorized Officer will issue a written notice to proceed to the project applicant and construction will be allowed to resume in the area of the discovery. Additional construction activities may be subject to an archaeological monitor at the BLM Authorized Officer's discretion.

b. Discovered Property is Eligible with a No Adverse Effect Determination

If the BLM determines that the overall cultural resource is eligible for inclusion in the NRHP and that the discovery and continued implementation of the undertaking will not adversely affect the historic property, a "No Adverse Effect" determination will be made. The BLM will submit the documentation to SHPO as specified in Section VII of this Protocol. The BLM Authorized Officer will issue a written notice to proceed to the project applicant and construction will be allowed to resume in the area of the

discovery. Additional construction activities may be subject to an archaeological monitor at the BLM Authorized Officer's discretion.

c. Discovered Property is Eligible with an Adverse Effect Determination

1. If the BLM determines that the discovery is eligible for inclusion in the NRHP or that it contributes to the eligibility of a known historic property, and was adversely affected by the undertaking, a determination of "Adverse Effect" will be made. The BLM will submit the documentation to the SHPO as specified in Section VII of this Protocol. If the SHPO does not respond within 48 hours, the BLM may assume concurrence with the determinations of eligibility and effect. The BLM will notify affected tribes and Consulting Parties of the discovery.
2. The project applicant will develop a mitigation plan and/or a data recovery plan (see the procedures specified in Section VIII.A of this Protocol). Mitigation and data recovery plans should contain provisions for stabilizing and/or protecting the resource until the appropriate plan can be implemented. The BLM will consult with the SHPO on the data recovery plan. If the data recovery plan is submitted together with the determinations of eligibility and effect the SHPO will have 3 days to review and comment but may request a longer time frame if needed. The BLM will notify affected tribes and Consulting parties of the mitigation plan and/or a data recovery plan.
3. Upon SHPO concurrence with the treatment plan, the BLM will notify the project applicant that the plan is acceptable. The archaeological consultant working for the project applicant will notify the BLM, using the fieldwork notification procedures of the mitigation or data recovery plan. The applicant will be responsible for the cost of any mitigation required by the Authorized Officer. When the terms of the treatment plan have been completed, the BLM Authorized Officer will issue a written notice to proceed to the applicant and construction will be allowed to resume in the area of the discovery. Additional construction activities may be subject to an archaeological monitor at the BLM Authorized Officer's discretion.

C. Human Remains

i. Inadvertent Discovery of Human Remains on Federal or Tribal Lands

- a. If human remains, funerary objects, sacred objects, or objects of cultural patrimony, or suspected human remains, funerary objects, sacred objects, or objects of cultural patrimony, are discovered on federal or tribal lands, the BLM Authorized Officer will be contacted immediately by telephone and notified of the discovery with written confirmation. All activity will be halted within a minimum of 300 feet of the discovery and a reasonable effort will be made to protect the discovery. The BLM will contact and coordinate with the appropriate Law Enforcement Agency and the Office of the Medical

Investigator. The BLM will notify the DPO and SHPO of the discovery by telephone and/or email within 48 hours.

- b. If the appropriate Law Enforcement Agency determines the human remains are not part of a crime scene and the Office of the Medical Investigator releases the human remains, the BLM will determine if the human remains are Native American. If it is determined that the human remains are not Native American, the BLM will proceed in a similar manner to the Discovery procedures listed in Section A above. If it is determined that the human remains are Native American, or if the discovery includes funerary objects, sacred objects, or objects of cultural patrimony, the BLM will follow the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) (43 CFR Part 10). Construction activities will not be allowed to resume within 300 feet of the discovery until written authorization is provided by the BLM Authorized Officer.
- ii. Inadvertent Discovery of Human Remains on State or Private Lands
    - a. If human remains, or suspected human remains, are discovered during surface disturbing activities on state or private lands, the provisions of the Cultural Properties Act (NMSA 1978 Section 18-6-11.2) will be followed. If the discovery is part of a BLM undertaking, the BLM Authorized Officer will be contacted immediately by telephone and notified of the discovery with written confirmation. All activity will be halted within a minimum of 300 feet of the discovery and all reasonable efforts will be made to protect the discovery. The BLM will contact and coordinate with the Law Enforcement Agency with jurisdiction, the Office of the Medical Investigator, the appropriate land owner and the SHPO within 48 hours.
    - b. If the Law Enforcement Agency determines the human remains are not part of a crime scene and the Office of the Medical Investigator releases the human remains, the parties will follow the process detailed in 4.10.11 NMAC for both Native American remains and non-Native American remains including final treatment and disposition of the remains and any associated funerary objects. Construction activities will not be allowed to resume within 300 feet of the discovery until written authorization is provided by the BLM Authorized Officer.



**NEW MEXICO STATE PROTOCOL  
APPENDIX G  
GLOSSARY**

**Advisory Council on Historic Preservation (ACHP)**

Established by the National Historic Preservation Act (1966), the ACHP is an independent executive agency that has an advisory role in a Federal agency's decision-making process when a proposed undertaking might affect a cultural property which meets National Register criteria. The ACHP promulgates regulations which implement section 106 of the National Historic Preservation Act.

**Archaeological Records Management Section (ARMS)**

The mission of the Archaeological Records Management Section (ARMS) within the New Mexico Historic Preservation Division is to house, maintain, and protect all records of cultural resource investigations in the State of New Mexico. ARMS is also responsible for protecting the security of that collective information while providing access to historic preservation professionals and other qualified users.

**Area of Potential Effect (APE)**

"The area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking" 36 CFR 800.16(d). In defining the APE, the BLM will consider potential direct, indirect, and cumulative effects to historic properties and all aspects of integrity, including their associated settings as applicable.

**Backlog**

Reports and site forms that are not currently associated with an active project and are older than 1 year.

**Best Management Practices (BMPs)**

Practices, methods or techniques found to be the most effective and practical means of preventing, avoiding or minimizing effects of undertakings. A BMP can be something structural that is implemented on the ground, or can be part of a process that is used to plan, conduct or close out an operation. BMPs should be matched and adapted to meet the site-specific requirements of the project and local environment, relative to the historic property(ies) within the APE. No one BMP is best suited to every site or situation, or will remain the most optimal practice over time. BMPs must be adaptive and monitored regularly to evaluate effectiveness.

**Bureau of Land Management Deputy Preservation Officer (DPO)**

The BLM Deputy Preservation Officer is a senior cultural resource specialist on each BLM State Director's staff who is responsible for advising the State Director, district and field managers on professional and technical matters relating to cultural resource management. The DPO serves as an ex-officio member on the BLM Preservation Board.

**Bureau of Land Management (BLM) Preservation Board**

The Preservation Board which was established by the BLM Director pursuant to the national Programmatic Agreement of March 26, 1997 and continued in the 2012 national Programmatic Agreement. The Preservation Board oversees historic preservation activities bureau wide, coordinates

with the Advisory Council on Historic Preservation and the State Historic Preservation Officers, and advises the State Directors and the Headquarters Directorate in Washington, D.C. on historic preservation matters.

### **Certified Field Office**

A certified field office is one that operates under the State Protocol instead of the Section 106 regulations at 36 CFR Part 800. Certification occurs by having qualified cultural resources staff at or above the GS-9 level who has received orientation on the NHPA, the nPA and the Protocol by the DPO and the SHPO.

### **Concurring Party**

The agency official may invite all consulting parties to concur on an agreement to resolve adverse effects. A consulting party invited to concur has no responsibility under the agreement, but may be invited to sign the agreement as a Concurring Party. The refusal of any party invited to sign a MOA or PA does not invalidate that MOA or PA.

### **Consulting Party**

Consulting parties include all groups who have a consultative role in the Section 106 process. These may include SHPO, THPO, Indian Tribes, representatives of local governments, the public, 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, individuals and organizations with a demonstrated interest in historic preservation and applicants for Federal assistance, permits, licenses and other approvals. 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.

### **Cultural Resources**

Cultural resources are all eligible, unevaluated, and not eligible resources including buildings, structures, sites, objects, districts and landscapes.

### **Cultural Resource Specialist/Historic Preservation Specialist**

A cultural resource/historic preservation specialist is a Federal agency or SHPO employee meeting qualifications for an archaeologist, historian or architect. For BLM, this is a person responsible for advising BLM managers about cultural resource issues associated with various land use activities; developing a full range of reasonable and justifiable alternatives for inventory, evaluation and treatment of cultural resources potentially affected by land use activities; conducting cultural resource inventory, making professional recommendations of eligibility and effect; and preparing (or reviewing) reports, records, etc., needed for documenting the Section 106 process. For SHPO, this is the person responsible for reviewing BLM Section 106 determinations and the appropriateness of the BLM's documentation supporting those determinations.

### **Cultural Resource Use Allocations**

Within the framework of the BLM manuals, this term refers to six BLM categories (scientific use, conservation for future use, traditional use, public use, experimental use, discharged from management) employed by field office managers to connect identified cultural resources with decisions

about their protection and utilization (see BLM Manual Section 8110.42). All cultural resources have uses, to which they can often be assigned even before they have been individually identified. Use allocations allow field office managers to know in advance how to respond to potential conflicts between cultural resources and proposed land uses. A cultural resource may be allocated to more than one use category. Although some scientific and experimental uses result in physical alteration of resources, use does not imply consumptive use. Managed use of cultural resources can be fully compatible with long-range preservation, and also the means by which preservation is achieved.

### **Demonstrated Interest**

Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties in the Section 106 process 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. A "demonstrated interest" as found at 36 CFR Part 800.2(c)(5) may be indicated by an organization that focuses on historic preservation, as exhibited in their mission statement, charter or bylaws; or an organization or individual with a legal or economic relation to the undertaking or affected properties; or a Certified Local Government (CLG) as defined at 36 CFR Part 61.6. Private landowners have a demonstrated interest when an undertaking involves their property.

### **Eligible Properties (see Historic Properties)**

### **Federal Land Policy and Management Act 1976 (FLPMA)**

The Federal Land Policy and Management Act established public land policy, guidelines for its administration, and provisions for the management, protection, development, and enhancement of the public lands. Public lands retained in Federal ownership are to be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values. Public land resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts.

### **Geographic Information System (GIS)**

A geographic information system (GIS) is a system for managing spatial data and associated attributes. In the strictest sense, it is a computer system capable of integrating, storing, editing, analyzing, and displaying geographically-referenced information.

### **Historic American Buildings Survey/Engineering Record/Historic American Landscapes Survey (HABS/HAER/HALS)**

The Historic American Buildings Survey/Historic American Engineering Record/Historic American Landscapes Survey (HABS/HAER/HALS) is an integral component of the federal government's commitment to historic preservation. The program documents important architectural, engineering and industrial sites and landscapes throughout the United States and its territories. A complete set of formal documentation, consisting of measured drawings, large-format photographs, and written history plays a key role in accomplishing the mission of creating an archive of American architecture and engineering and in better understanding what historic resources tell us about America's diverse ethnic and cultural heritage. To insure that such evidence is not lost to future generations, the HABS/HAER/HALS Collections are archived at the Library of Congress, where they are made available to the public.

## **Historic Properties**

Historic properties are any prehistoric or historic district, site, building, structure, or object that after evaluation through the NRHP process of assessing their significance and integrity are determined as eligible for listing or have been listed in the NRHP. A property may be determined to be eligible under any, or several, of the following four Criteria, as defined at 36 CFR.60.4:

### **Criterion A**

The property is associated with events that have made a significant contribution to the broad patterns of our history.

### **Criterion B**

The property is associated with lives of persons significant in our past.

### **Criterion C**

The property embodies the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.

### **Criterion D**

The property has yielded, or may be likely to yield, information important in history or prehistory.

## **Invited Signatory**

The BLM authorized officer may invite additional parties to participate in an agreement to resolve adverse effects as Invited Signatories and will invite any consulting parties with responsibilities under the agreement, such as the applicant, to participate as Invited Signatories. Any such party that signs the MOA or PA shall have the same rights as other Signatories with regard to seeking amendment or termination of the MOA/PA. The refusal of any Invited Signatory to sign a MOA or PA does not invalidate the MOA or PA.

## **Mitigation**

Mitigation is resolving an adverse effect by compensating for said effect as formalized in an agreement document or data recovery plan. (Note on usage: One mitigates adverse effects to historic properties; one does not mitigate historic properties.)

## **National Environmental Policy Act of 1969 (NEPA)**

The National Environmental Policy Act is the Federal law which guides the decision-making process for public lands in the United States. NEPA requires that all federal agencies involve the interested public in their decision-making, consider reasonable alternatives to proposed actions, and prepare environmental documents which disclose the impacts of proposed actions and alternatives.

## **National Historic Landmarks (NHL)**

A National Historic Landmark is a historic property evaluated and found to have significance at the national level and designated as such by the Secretary of the Interior.

### **National Historic Preservation Act (NHPA)**

The National Historic Preservation Act (NHPA; Public Law 89-665; 16 U.S.C. 470 *et seq.*) is legislation intended to preserve historical and archaeological sites in the United States of America. The act created the National Register of Historic Places, the list of National Historic Landmarks, and the State Historic Preservation Offices.

### **National Register of Historic Places (NRHP)**

The National Register of Historic Places, expanded and maintained by the Secretary of the Interior, as authorized by section 2(b) of the Historic Sites Act and section 101(a)(1)(A) of the National Historic Preservation Act (16 U.S.C. 470). The National Register lists cultural properties found to qualify for inclusion because of their local, state, or national significance. Eligibility criteria and nomination procedures are found in 36 CFR Parts 60.4 - 60.15. The NRHP lists the districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and or culture. The Secretary's administrative responsibility for the National Register is delegated to the National Park Service, and is maintained by the Keeper of the National Register.

### **Native American Graves Protection and Repatriation Act of 1990 (NAGPRA)**

The Native American Graves Protection and Repatriation Act establishes that lineal descendants, tribes, and Native Hawaiian organizations have rights of ownership to "cultural items" (i.e., human remains, funerary objects, sacred objects, and objects of cultural patrimony, as defined in the Act), taken from federal lands and Indian lands after the date of enactment. It requires identification of "cultural items" that were in federal agencies' and federally funded museums' possession or control before enactment; establishes a requirement and process for agencies and museums to repatriate "cultural items" on request; directs the Secretary to form a review committee to oversee implementation; provides for imposing civil penalties on museums that fail to comply; authorizes grants of funds for tribes, Native Hawaiian organizations, and museums to carry out the Act; requires the Secretary to promulgate regulations; and assigns to U.S. District Courts jurisdiction to adjudicate violations of the Act and to enforce the Act's provisions.

### **New Mexico Historic Preservation Division (HPD)**

The Historic Preservation Division (HPD), a division within the Department of Cultural Affairs (DCA), State of New Mexico, is responsible for coordinating historic preservation efforts statewide. The mission of the Historic Preservation Division (HPD) is to protect, preserve and interpret the unique character of New Mexico. The mission is based on a philosophy of preservation, conservation, and beneficial use of archaeological sites, historic structures and districts, and other cultural resources. The director of HPD serves as the NM State Historic Preservation Officer (SHPO) and is appointed by the DCA Cabinet Secretary with the consent of the Governor. Under state statute, the SHPO must hold a graduate degree in American history, anthropology, architecture or historic preservation (or any combination), have at least five years of professional experience and have made substantial contribution through research and publication.

### **New Mexico Cultural Resource Information System (NMCRIS)**

The New Mexico Cultural Resource Information System (NMCRIS) is an integrated online computer information system designed to support historic preservation, cultural resource management, and academic research in New Mexico. NMCRIS integrates geographic, management, and research-related data pertaining to four major classes of cultural resource information: cultural resource investigations,

archeological sites, historic architectural structures, and registered properties. NMCRIIS supports cultural resource management and research by serving as the primary index for cultural resource investigation reports and archeological records housed at the Laboratory of Anthropology as well as historical architectural records and the State Register of Cultural Properties files housed at HPD.

### **Non Eligible Cultural Resources**

Non eligible cultural resources are those resources that, after evaluation through the process of assessing significance, integrity, and criteria considerations, are determined not to meet the National Register criteria and are excluded from the NRHP.

### **Signatory**

Signatories to an agreement to resolve adverse effects are the BLM, the SHPO and the ACHP (if participating). The Signatories have sole authority to execute, amend or terminate the agreement in accordance with subpart 36 C.F.R. 800.6(c).

### **State Historic Preservation Office or Officer (SHPO)**

State Historic Preservation Offices and Officers were established by the National Historic Preservation Act of 1966 as an agency within each State government charged with carrying out the provisions of the Act. The SHPO reflects the interest of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the NHPA (16 USC 470), the SHPO advises and assists the Federal agencies in carrying out their Section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development. A SHPO receives Federal funds from the National Park Service and allocates matching funds and grants to Certified Local Governments (CLGs) for the protection of sites eligible for listing in the National Register of Historic Places.

### **Standard Treatment Measures**

See Best Management Practices

### **Temporary**

Activities or elements that will be in place less than one year, i.e. temporary construction elements.

### **Traditional Cultural Property (TCP)**

A traditional cultural property can be defined generally as a property that is eligible for inclusion in the NRHP because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community.

### **Undertaking**

A project, activity or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license, or approval.

## **Acronyms**

ACHP – Advisory Council on Historic Preservation  
AIRFA – American Indian Religious Freedom Act  
APE – Area of Potential Effect  
ARPA – Archaeological Resources Protection Act  
BLM – Bureau of Land Management  
BMP – Best Management Practices  
CLG – Certified Local Government  
CRM – Cultural Resource Management  
DPO – BLM Deputy Preservation Officer  
EA – Environmental Assessment  
EIS – Environmental Impact Statement  
FLPMA – Federal Land Policy and Management Act  
GIS - Geographic Information System  
GLO – General Land Office  
HABS – Historic American Buildings Survey  
HAER – Historic American Engineering Record  
HALS – Historic American Landscapes Survey  
IM – Instruction Memorandum  
MOA – Memorandum of Agreement  
MOU – Memorandum of Understanding  
NAGPRA – Native American Graves Protection and Repatriation Act  
NCSHPO – National Conference of State Historic Preservation Officers  
NEPA – National Environmental Policy Act  
NHPA – National Historic Preservation Act  
NHT – National Historic Trail  
nPA - National Programmatic Agreement  
NPS – National Park Service  
NRHP – National Register of Historic Places  
PA – Programmatic Agreement  
ROW – Right-of-Way  
RMP – Resource Management Plan  
SHPO – State Historic Preservation Office or Officer  
TCP – Traditional Cultural Property  
THPO - Tribal Historic Preservation Officers