

BLM 2024 National Programmatic Agreement Questions and Answers

What are the BLM's historic preservation responsibilities?

An extensive collection of laws helps safeguard the places that reflect our Nation's rich cultural heritage. The National Historic Preservation Act (NHPA) is the most important law for protection of significant historic places, including properties of traditional religious and cultural importance to an Indian Tribe. Section 106 of the NHPA requires Federal agencies to consult with Indian Tribes, States, local governments, and others with a demonstrated interest in the undertaking or historic properties in the area before approving the undertaking. Other provisions require agencies to act as stewards to inspire present and future generations to do the same.

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

As a Federal agency, the BLM must comply with Section 106 of the NHPA for its undertakings. To help meet these requirements, the BLM has developed a program alternative to the standard Section 106 process. This alternative is called a programmatic agreement and it is allowed under the regulations implementing Section 106 of the NHPA. The current National Programmatic Agreement (Agreement) was signed in 2012 after a multi-year revision process when changes to the Section 106 regulations rendered aspects of the original 1997 national Programmatic Agreement inconsistent with current regulations. Both the 1997 and 2012 agreements were signed by the Bureau of Land Management (BLM), the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Offices (NCSHPO). Both agreements authorized the development of state-specific protocol agreements between the BLM and SHPOs that set forth measures for alternative compliance with the Section 106 process for routine undertakings in each of the 11 western states. The 2012 Agreement made changes to the BLM's alternative process and required review of, and in most cases, revisions of pre-2012 protocol agreements.

Does the Agreement apply to Tribal lands?

The national level agreement is an umbrella agreement that applies generally to BLM's program. The BLM's alternative processes in the two-party state-level protocol agreements only apply to those undertakings within BLM's direct and indirect jurisdiction, as long as undertakings are not located on or affecting historic properties on Tribal lands, defined in the Section 106 regulations as "lands within the external boundaries of any Indian reservation and all dependent Indian communities" (36 CFR 800.16(x)). Where the BLM has responsibility for compliance with Section 106 on Tribal lands, including BLM lands within the external boundaries of an Indian reservation, it follows the standard 36 CFR part 800 process.

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

To carry out its Tribal consultation responsibilities, the BLM follows its Manual Section 1780, "Tribal Relations," which was issued in December 2016 and replaced Manual Section 8120,

“Tribal Consultation under Cultural Resource Authorities.” As the White House and the Department of the Interior issue new Executive Orders, Secretarial Orders, policy, and other guidance, the BLM works to develop BLM-specific policy. For example, on November 20, 2022, the White House announced substantial new policy and guidance regarding Tribal consultation, Tribal relations, co-stewardship, and Indigenous Knowledge in Federal decision making. Department of the Interior agencies, including the BLM, are currently revising their policies to reflect this new guidance.

What are the main changes between the 2012 Agreement and the forthcoming 2024 revision?

No major changes or issues have been brought up by NCSHPO or the ACHP, who are the signatories to the Agreement. For that reason, the BLM anticipates only slight procedural revisions such as updated references and citations and an extension of the Agreement for 10 years. However, the BLM is soliciting input from interested parties with separate and specific outreach to Tribes to ask for comments and issues that are unforeseen, which may lead to additional revisions to the Agreement.

What will the BLM do with the information it receives from Tribes and other interested parties?

The BLM, in consultation with the ACHP and NCSHPO, will consider substantive comments and issues it receives into a draft revised 2024 Agreement. In recognition of the government-to-government relationship between Tribes and Alaska Native Corporations and the Federal Government, the BLM is making additional efforts to engage with Tribes on this matter.

Will the revised Agreement require that BLM-State protocol agreements be revised?

Generally, we anticipate that each state will revise their protocol agreement as dictated in the current terms of the agreement and revise, amend, or renegotiate as appropriate depending on the stipulations of the revised Agreement. The current BLM-State protocol agreements are tiered to the national Programmatic Agreement and define state-specific means by which each SHPO and the BLM will communicate and consult on routine undertakings. Each BLM-state protocol agreement is an agreement between the BLM state and the respective state’s SHPO and has a timeframe for review and revision.

How was Tribal input received during the consultation efforts prior to the 2012 Agreement incorporated?

BLM received valuable wide-ranging input from Tribes during listening sessions leading up to the 2012 Agreement revision. The content of these comments broadly informed an entirely new Manual released in December 2016, the *BLM Manual 1780 Tribal Relations* (MS 1780) which replaced *Manual 8120 Tribal Consultation under Cultural Resources*. MS 1780 implements administration and Departmental policies to provide comprehensive policy direction for all BLM managers and programs.