

PROGRAMMATIC AGREEMENT

AMONG THE

U.S.D.A. FOREST SERVICE, NEBRASKA NATIONAL FORESTS AND GRASSLANDS

SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICER

AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING

COMPLIANCE WITH THE NATIONAL HISTORIC PRESERVATION ACT

ON THE GRASSLANDS OF SOUTH DAKOTA

MANAGED BY

THE NEBRASKA NATIONAL FORESTS AND GRASSLANDS

November 2013 Draft

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FOREWORD

WHEREAS, the U.S.D.A. Forest Service (Forest Service), as a public land steward is mandated to comply with Sections 106 and 110 of the National Historic Preservation Act of 1966, as amended (NHPA) (16 U.S.C. 470), and its implementing regulations, entitled "Protection of Historic and Cultural Properties" (36 CFR Part 800); and

WHEREAS, the Forest Service has a multiple-use mission to manage its public lands for a variety of resources, values, products, and uses which may involve historic properties, and that many of the programs it conducts have repetitive activities and kinds of cultural resources that are conducive to standardized approaches; and

WHEREAS, the South Dakota Forest Service units participating under this programmatic agreement (PA) include those managed by the Nebraska National Forests and Grasslands (NNFG); and

WHEREAS, the area of potential effects (APE) includes Forest system lands under the management of the NNFG; and

WHEREAS, many Forest Service activities are undertakings as defined in 36 CFR § 800.16(y); and

WHEREAS, the Forest Service has determined that these activities may affect historic properties; and

WHEREAS, the Forest Service has consulted with the Advisory Council on Historic Preservation (ACHP) and the South Dakota State Historic Preservation Officer (SHPO) (consulting parties) pursuant to Section 800.14(b) of the regulations, and the parties agree that the NNFG have an extensive history of compliance with the provisions of 36 CFR Part 800 that demonstrates that many undertakings can be implemented using more cost-effective, streamlined steps and procedures than those outlined in 36 CFR Part 800; and

WHEREAS, the consulting parties share a common desire to develop a flexible programmatic approach for expeditiously implementing Section 106 of the NHPA that will satisfactorily take into account the effects of Forest Service undertakings on historic properties, provide for tribal consultation and public participation, minimize redundant documentation, and reduce the need for case-by-case review of routine land management activities when historic properties will not be affected; and

WHEREAS, execution of this PA by the Forest Service obligates the participating unit to comply with the stipulations contained herein, and the Forest Supervisor has concurred with this requirement; and

WHEREAS, in developing this PA, the Forest Service has consulted with the Tribes listed in Appendix E and invited them to be concurring parties in accordance with Section 101(d)(6)(B) and 110(a)(2) of NHPA; and

WHEREAS, in developing this PA, the Forest Service has provided the public with an opportunity to comment on the general scope and nature of the program; and

WHEREAS, in compliance with Section 106, the Forest Service, Indian Tribes, Tribal Historic Preservation Officers (THPO), South Dakota State Historic Preservation Officer (SHPO), the Association of National Grasslands, and the ACHP have developed and the Forest Service will implement this PA in accordance with 36 CFR Section 800.14(b) for certain management actions as outlined in this PA; and

NOW, THEREFORE, the Forest Service, Indian tribes, THPOs, SHPO, the Association of National Grasslands and the ACHP agree the grasslands in South Dakota managed by the NNFG shall be administered in accordance with the following stipulations to satisfy the Forest Service's Section 106 responsibilities for actions outlined within this PA.

STIPULATIONS

I. SCOPE AND OBJECTIVES

- A. The purpose of this PA is to streamline the regulations "Protection of Historic Properties" 36 CFR Part 800 implementing Section 106 of the NHPA. Many undertakings performed on National Forest System lands do not affect historic properties, yet the Section 106 regulatory process follows a prescribed, routine path with several determinations and consultation points requiring review by the State Historic Preservation Officer (SHPO). This PA is meant to streamline Section 106 compliance when appropriate circumstances permit the application of routine procedures, and to decrease the need for review. When extraordinary circumstances exist, complex issues warrant, or when the standard measures contained in the appropriate appendix to the PA cannot or will not be implemented, the Forest Service shall revert to standard procedures as prescribed by 36 CFR Part 800. The Forest Service will inform the consulting parties when it has chosen to follow 36 CFR Part 800 for compliance with Section 106 instead of the terms of this PA.
- B. A goal of this PA is to facilitate the Forest's progress toward compliance with Section 110 of the NHPA. The Forest will prepare a plan for accomplishing Section 110 activities. The Annual Report for this PA will track Section 110 accomplishments.
- C. Definitions used in this PA are found in Appendix A.

II. STANDARDS

- A. Professional Qualifications. Agency personnel responsible for historic resources shall meet qualifications established by the Office of Personnel Management. Heritage Program Professionals (see Definition in Appendix A) serve in a staff or advisory capacity and provide professional recommendations and services to assist agency officials in meeting their Heritage Program responsibilities. Only Heritage Program Professionals may review and recommend approval of heritage work done by archaeological technicians, paraprofessionals, contractors and volunteers. Archaeological Technicians (see Definitions in Appendix A) may participate in all facets of Heritage Program work under the direct supervision of the Heritage Professional. Reports prepared by Archaeological Technicians, or any cultural resource consultant or contractor, must be reviewed and submitted to the SHPO by a Heritage Program Professional. Individuals employed by cultural resource consultants or contractors that work for the Forest must meet standards defined by the Secretary of Interior's Professional Qualification Standard.
- B. Documentation Standards. Reporting on and documenting that action cited in Paragraph A of this stipulation shall comply with 36 CFR 800.11 and conform to every reasonable extent of the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-44740).
- C. Curation Standards. The materials and records resulting from actions cited in Paragraph A of this stipulation shall be curated in accordance with Curation of Federally-owned and Administered Archaeological Collections, 36 CFR part 79, and the provisions of NAGPRA, 43 CFR part 10, as applicable. The Forest will work with the Archaeological Resource Center (ARC) in Rapid City to curate, support, and maintain archaeological collections (artifacts, associated field notes, reports, site records, and other documents) obtained from lands. Following submission and acceptance of project reports to SHPO, the Forest shall continue to track and manage all archaeological collections obtained from lands managed by the USDA Forest Service.

III. STANDARD PROCEDURE FOR IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

- A. Undertakings Excluded from Case-by-Case Review. Certain classes of actions have minimal potential to adversely affect historic properties and are exempt from further review and/or consultation under the terms of this agreement. The Heritage Program Professional will assess each undertaking to determine if it is excluded from case-by-case review (see Appendix B). Projects that are standard examples of the types listed in Appendix B may be considered excluded from case-by-case review. No inventory report and no SHPO consultation shall be required for excluded undertakings. Excluded undertakings shall be listed in the annual report to the SHPO. However, at the discretion of the Heritage Program Professional, the Forest may submit an otherwise excluded undertaking for review under this PA or 36 CFR § 800.3(a)(1).

B. Identify the Area of Potential Effect (APE). The criteria for determining the APE for specific classes of most Forest Service projects are defined in the applicable attached appendices. When such project class specific appendices do not exist, the APE and the type/amount of survey will be determined by the Heritage Program Professional. The Forest Service shall consider potential direct, indirect, and cumulative effects to historic properties and their associated setting, where setting is an important aspect of integrity. Provided that the undertaking is carried out under this agreement, no SHPO consultation on the delineation of the APE is required.

C. Conduct Level I Survey and Determine Adequacy of Previous Inventories

- 1) Forest Heritage Program personnel shall conduct literature searches with the ARC, as well as review of Forest's own cultural resources files. Searches will also include review of aerial photographs, General Land Office records, resource management plans, and relevant historic documents. If discrepancies between SHPO and Forest Service records are identified, documentation will be provided to the appropriate party to resolve the discrepancy.
- 2) If an undertaking's APE contains areas covered by previous inventories that have been reviewed by SHPO, the Heritage Program Professional shall determine if re-inventory is appropriate, based on the current undertaking's potential for effects or some type of changed conditions.
- 3) If the Heritage Program Professional determines that no new survey is necessary because previous inventory was adequate per Stipulation III.C.2 above, and no historic properties and/or unevaluated cultural resources exist within the APE, no SHPO consultation is needed and no inventory report is required. This decision shall be documented in the annual report to the SHPO. The Heritage Program Professional shall internally communicate results of this literature search to their project planners as appropriate.
- 4) If no new survey is necessary, but previously recorded historic properties do exist within the APE, the Forest Service shall provide an inventory report (see F, below) summarizing the condition of the historic properties. Project notification, consisting of a transmittal letter, along with an inventory report, will be sent to the SHPO prior to project implementation.
- 5) If previous inventories within the APE exist but have not been reviewed by the SHPO, and these inventories meet current inventory standards, the Forest shall incorporate results of the previous inventory that have not been reviewed into the current inventory report.

D. Conduct New Level II and Level III Survey As Appropriate

- 1) When it is determined that a new inventory for historic properties within the APE of an undertaking is warranted, all inventories will be carried out under the direction of the Heritage Program Professional (per OPM standards).
- 2) If an undertaking requires new field inventory, the Heritage Program Professional shall ensure that all inventories conducted conform to the *Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation, Standards for Identification*, and South Dakota Guidelines, as appropriate.

- 3) Field inventory strategies for certain classes of undertakings shall conform to the specific appendices attached to this PA, if appropriate.

E. Site Evaluation and Determination of Effect

- 1) The Forest Service shall avoid historic properties within the APE (see below under G. Consultation Process). If avoidance cannot be implemented (see Definitions in Appendix A), the Forest shall comply with 36 CFR § 800.6 and 800.7 as necessary.
- 2) The Forest Service shall complete evaluations for NRHP eligibility and determinations of effect on all cultural resources within the APE during project inventory and the results will be reported in the survey report (see F, below).
- 3) Cultural resources that may exhibit religious or cultural significance to tribes shall be evaluated with tribal input as per Stipulation VI below, and per 36 CFR Part 800.4(c)(1).
- 4) Evaluation for NRHP eligibility: Systematic archaeological testing shall be used to evaluate cultural resources for the NHPA. This will be accomplished according to the state's testing standards *South Dakota Guidelines for Compliance with the National Historic Preservation Act and South Dakota Codified Law 1-19A-11.1* (2012). Each cultural resource shall be evaluated against NRHP eligibility criteria as outlined in 36 CFR 60.

F. Inventory Report Submission and Standards

- 1) An inventory report shall be prepared by the Forest Service for each undertaking *prior to implementing the action* or related activities (undertakings excluded from case-by-case review and detailed in Appendix B do not require a survey report). A group of similar or related undertakings in the same geographical area may be grouped together in one survey report for reporting purposes. The Forest Service will submit inventory reports to SHPO as outlined in Section III.G.
- 2) Forest Service Heritage personnel, partners, and contractors shall record all newly identified cultural resources and isolated finds. Previously recorded cultural resources may require updated determinations of eligibility as per 36 CFR Part 800.4(c)(1).
- 3) The Heritage Program Professional shall ensure that survey reports conform to the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation.

G. Consultation Process

- 1) Determinations for listing on the National Register of Historic Places (NRHP) will follow regulations set forth in 36CFR800 as they pertain to the consulting parties (36CFR800.2(c)) and the identification of cultural resources (36CFR800.4):
 - a) If the SHPO does not respond to the Forest within thirty days of receipt of the inventory report, the Forest may assume SHPO concurrence with the Forest's NRHP determinations.

- b) When previously identified cultural resources exist within the APE that have no previous SHPO review and concurrence for NRHP significance, the Forest will revisit the resources and reassess NRHP significance based on any newly acquired information.

2) Determinations of Effects

a) No Historic Properties Affected

- i. No Historic Properties Present. When no cultural resources are identified within the APE as a result of field inventory, no concurrence from the SHPO is required prior to implementing an undertaking. The Forest shall send project notification consisting of a transmittal letter and an inventory report as prescribed in Stipulation III.F to the SHPO prior to project implementation. These undertakings will be listed in the Annual Report.
- ii. Historic Properties Present. When cultural resources are identified within the APE as a result of field inventory, but the Forest has determined that the undertaking will have no effect on them, no concurrence from the SHPO is required prior to implementing an undertaking. The Forest shall send project notification consisting of a transmittal letter and an inventory report as prescribed in Stipulation III.F to the SHPO prior to project implementation.

b) No Adverse Effect

- i. When historic properties are present within the APE but activities associated with the undertaking can be modified or conditions be imposed to avoid adverse effects, then the following stipulations apply:
 - 1. The Heritage Program Professional shall determine the boundary of the area to be avoided for each historic property based on the extent of the property, viewshed concerns (if any), and environmental conditions to ensure the property is not affected by the undertaking.
 - 2. All historic properties within an APE shall be clearly demarcated by the Forest's Heritage Resources personnel prior to implementation activities. Heritage Resources personnel shall communicate directly or via maps given to project implementation staff prior to implementing any activities that have the potential to affect historic properties. Communication on historic properties avoidance requirements will occur so that the information can be incorporated into plans, contracts, and other documents.
 - 3. When historic properties have been identified in an APE and avoidance measures will be employed, no review or consultation with the SHPO is required prior to implementing an undertaking. The inventory report,

however, shall be submitted to the SHPO prior to implementing the undertaking.

- ii. If a determination of “No Adverse Effect” is appropriate as defined in 36 CFR §800.5(b), the Forest will submit an inventory report to the appropriate SHPO. The SHPO will review and comment on the “No Adverse Effect” determination within 30 days of receipt of the documentation. If SHPO does not respond within 30 days, the Forest Service may assume concurrence with determinations of eligibility and effect and proceed with the undertaking.

c) Adverse Effects

When it is determined that an undertaking cannot be modified to avoid adverse effect to historic properties, the Forest shall notify the ACHP and consult with the SHPO and other consulting parties to resolve adverse effects under 36 CFR §800.6 and §800.7, as necessary.

d) Random Review

The SHPO and Heritage Program Professional will randomly review the Forest’s determinations of “No Historic Properties Affected.” If problems are identified during the random review the Forest Supervisor will be contacted immediately to rectify the issue or problem. If there is a pattern of inappropriate or inadequate eligibility and effect determinations, the SHPO will begin consultation with the Forest following dispute resolution procedures in this agreement (Stipulation XII).

IV. SPECIAL PROCEDURES SPECIFIC TO CLASSES OF UNDERTAKINGS

- A. Beginning with Appendix F, specific procedures are described for specific classes of undertakings repeatedly implemented on National forest system lands. The purpose of these appendices is to streamline the Section 106 process by developing procedures that take into account the unique nature of a class of undertakings based on extensive experience of the agency with similar projects.
- B. The identification, evaluation, and management of historic properties for certain classes of undertakings shall be guided by the appendices prepared under the terms of this PA. When an appropriate appendix exists, the Forest may use survey strategies and additional stipulations defined in the appendix to satisfy inventory and evaluation requirements without project-specific SHPO consultation. If no appendix exists, Section 106 compliance may be accomplished under Stipulation III of this PA.
 - 1) New appendices may be developed, and existing appendices may be modified, as needed by the Forest Service in consultation with the SHPO. The development, format and process for inclusion for appendices are described in Appendix D.

V. PUBLIC INVOLVEMENT

- A. Unless an undertaking is excluded under Stipulation III.A, the Forest Service shall seek and consider the views of the public in a manner that reflects the nature and complexity of each undertaking and its potential effects on historic properties and the likely interest of the public in the effects on historic properties. The Forest Service shall use its procedures for public involvement under the National Environmental Policy Act of 1969 (NEPA) to solicit information and concerns about historic properties from members of the public. The Forest Service will ensure that an appropriate level of public involvement is provided, in accordance with 36 CFR Part 800.2(d)(3) including the identification, recognition, and invitation to be consulting parties in accordance with 36 CFR part 800.2(c)(3, 4 and 5). The Forest Service will ensure that environmental documents include information on historic properties that will be affected by the proposed action and alternatives, consistent with Section 304 of NHPA and Section 9 of the Archaeological Resources Protection Act (ARPA).
- B. The Forest Service will consider comments and objections by members of the public in a timely manner, and shall ensure public access to findings made pursuant to this document, provided that disclosure of this information does not breach confidentiality (see Stipulation XI).
- C. If the Heritage Program Leader determines, based upon public or tribal input that certain proposed undertakings would likely have adverse or controversial effects on historic properties, those undertakings shall be excluded from implementation under the provisions of this PA. Compliance with Section 106 of NHPA for these undertakings will follow 36 CFR Part 800.

VI. TRIBAL CONSULTATION

Unless an undertaking is excluded under Stipulation III.A of this PA, in accordance with Section 101(d)(6)(B) and Section 110 of NHPA, the Forest Service shall consult with Indian tribes that attach traditional religious and cultural significance to historic properties that may be affected by Forest Service undertakings. The current list of Tribes the NNFG consults with regarding Forest Service undertakings in South Dakota is located in Appendix E. The Forest Service shall follow the regulations outlined in 36CFR800 Subpart B, and use the principles in the USDA Forest Service policy, *Consultation with American Indian and Alaska Native Tribes* (FSM 1563.06) to guide its tribal consultation procedures and relationships.

VII. FIELD INSPECTION/MONITORING

- A. The Forest shall conduct field inspections as necessary to ensure that avoidance or treatment/site management measures taken under this PA are effective. These inspections shall consist of visits to an undertaking area during or following the activity to view results at select locations. The Heritage Program Leader shall determine the need for, schedule, quantity, and location of any inspections. A permanent record shall be completed for each inspection event and kept on file at the Forest Supervisor's Office, and field inspection activities shall be reported to SHPO in the annual report.

- B. The Forest Service will invite SHPO to participate in field review when an undertaking has an adverse effect to historic properties. Field inspection may be performed by the SHPO during or after an undertaking with advance notice and arrangement between the SHPO, the Heritage Program Leader, and the Agency Official.
- C. Where no known historic properties exist in the APE following an intensive inventory, but uncertainty remains about the possible presence of historic properties because of observation limitations or information about presence of cultural resources from the literature review or other sources (e.g., oral history), field inspection may be employed during the implementation of an undertaking if recommended by the Heritage Program Professional. The purpose would be to ensure that unidentified historic properties, if present, are documented and subjected to appropriate management/mitigation. If any historic properties are identified, the provisions of Stipulation VIII. shall be followed.

VIII. UNANTICIPATED DISCOVERIES AND INADVERTENT EFFECTS

- A. The SHPO and the ACHP shall be notified by the Forest immediately upon discovery that a known or previously unrecorded property has been affected in an unanticipated way by an undertaking implemented under this PA. If human remains are discovered, the Forest shall follow the requirements established in NAGPRA (43 CFR 10) as appropriate. If non-Native American human remains are discovered, the Forest shall follow South Dakota Codified Law 34-27-25, 3927-26, and 34-27-27.
- B. If the undertaking has not been completed at the time the effect is discovered. All activities in the vicinity of the property shall cease and reasonable efforts shall be taken to avoid or minimize harm to the property until the following steps are completed:
 - 1) The Forest shall notify SHPO, usually by phone, as soon as possible that there is a discovery situation.
 - 2) The Forest shall notify the appropriate tribal authority as soon as possible that there is a discovery situation.
 - 3) Within ten (10) business days after discovery, the Forest shall submit to SHPO a determination of the National Register eligibility of the cultural resource(s) affected, along with proposed actions to resolve adverse effects (if any). The exact type and format of the determination documentation will be negotiated during these 10 days.
 - 4) The SHPO shall respond with recommendations within five (5) business days of receiving this determination and documentation. The Forest shall take into account these recommendations, and shall then carry out appropriate actions.
- C. If the undertaking has already been concluded when an effect to a historic property has been discovered. Within 30 calendar days, the Forest shall initiate consultation with the SHPO, ACHP, and Tribes as appropriate under 36 CFR § 800.13(b)(3).

- D. In all cases of unanticipated discovery within an APE. Within six (6) months, or as prescribed in a Memorandum of Agreement (MOA), the Forest shall provide the SHPO, the ACHP if a participant and other interested parties with a Discovery Report describing the undertaking and any resulting effects. This report must include information regarding: the type of historic property affected; historic property's NRHP status; nature of the effects; the date the effects were identified; condition of the historic property; the actions taken to resolve adverse effects (if any); and any other pertinent information. Unanticipated discoveries will be included in the annual report to the SHPO.

IX. EMERGENCY PROTOCOLS

In emergency situations, as described in 36 CFR 800.12(a), parties agree that the agency may choose to follow the consultation process outlined in 800.12(b)(2) for more than 30 days, but no more than 6 months. Inclusion of this stipulation eliminates the need for the agency to request an extension, as described in 800.12(d), for individual emergency undertakings (as defined in Appendix A).

- A. If the agency intends to use the process outlined in 800.12(b)(2) for more than 30 days but no more than 6 months, the agency shall notify the Council (with copy to SHPO) via letter. The Council need not respond or approve the extension, as this document records the agreement of an extension for up to 6 months.

X. SUPPORTING PROGRAMS AND ACTIVITIES

- A. The Forest shall demonstrate progress toward Section 110 program goals in a yearly progress report to the SHPO (described in Stipulation "Submission of Annual Reports").
- B. A necessary component of the 110 plan shall be Forest Plan Heritage site monitoring. National Register listed and other designated historic properties shall be monitored in accordance with Forest Land Management Plans, heritage preservation plans, and other site-specific plans. The purpose of site monitoring is to check on the overall condition of the site, to assess any changes in site integrity, to identify possible vandalism, and to identify and carry out annual maintenance.

XI. SUBMISSION OF ANNUAL REPORT

- A. The Forest Service shall submit to SHPO an Annual Report detailing all undertakings carried out under this agreement. The Annual Report shall describe all undertakings completed during the previous federal fiscal year (October 1 to September 30). The format and description of this report is detailed in Appendix C. Appendices will be reviewed annually and revised as needed.
- 1) The Forest Service regional offices shall coordinate and will compile and submit a single annual report to the SHPO, and to the ACHP should it so request, each year by March 15.

- 2) By March 1, the NNFG is responsible for 1) submitting a narrative report to the Regional Office and 2) ensuring that the Forest Service corporate database (I-Web) is up to date with all site and project information for the reporting year. The Forest's failure to accomplish these two items by the March 1 date can result in termination of the Forest's participation in this PA.

ADMINISTRATIVE STIPULATIONS

XII. CONFIDENTIALITY OF CULTURAL RESOURCES DATA

To the extent consistent with disclosure regulations outlined in Section 304 of the National Historic Preservation Act (NHPA), Section 9(a) of the Archaeological Resources Protection Act (ARPA), and Exemption 3 of the Freedom of Information Act (FOIA), cultural resources data from Forest lands will be treated as confidential. Cultural resource data can be found in both electronic and hard-copy sources. These sources can include, but is not limited to, technical reports, Geographic Information Systems (GIS) data, maps, environmental assessments, site records, architectural assessments, project files, and specialist reports.

XIII. DISPUTE RESOLUTION

- A. Should any Signatory or Consulting Party object to any finding or action proposed pursuant to this agreement, the Forest shall consult with all Signatories and Concurring Parties to resolve the objection. If the Forest determines that the objection cannot be resolved, the Forest shall forward all documentation relevant to the dispute to the ACHP pursuant to 36 CFR §800.2(b)(2).
- B. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute; the Forest's responsibility to carry out all actions under this agreement that are not a subject of the dispute will remain unchanged.
- C. If the dispute is related to a failure to resolve adverse effects, the Signatories shall follow procedures in 36 CFR §800.7.

XIV. AMENDMENTS

- A. Any signatory to this PA may at any time propose amendments, whereupon all parties to this PA shall consult to consider such amendments pursuant to 36 CFR §800.6(c)(7) and §800.6(c)(8). This PA may be amended only upon written agreement of the signatories.
- B. Each appendix to this PA may be individually amended through consultation of the parties without requiring amendment of the PA, unless the signatories through such consultation decide otherwise.
- C. Amendments to this PA shall take effect on the dates that they are fully executed by the signatories and concurring parties.

- D. If this PA is not amended through the above process, signatories to this PA may terminate the agreement in accordance with Stipulation XIV.

XV. TERMINATION

- A. Any Signatory to this PA may initiate termination by providing written notice to the other Signatories of their intent. After notification by the initiating Signatory, the remaining 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 Forest shall refer to regulations at 36 CFR §800 to address any remaining adverse effects to historic properties.
- B. If the Forest fails to submit the Annual Report by April 1st, the SHPO(s) may so advise the Forest Supervisor and the ACHP. If the Forest fails to submit the report within 30 calendar days of SHPO's letter, SHPO shall send a letter documenting the failure to the Forest Supervisor and ACHP and procedures will be initiated to terminate the PA pursuant to Stipulation XIV.A.

XVI. DURATION OF AGREEMENT

This PA shall remain in effect for five (5) years after the date of execution hereof. The Forest and SHPO shall re-evaluate the need for this PA before the first five years have expired. The Forest shall ensure the PA will be amended to accommodate any changes to the terms or to extend the PA. All Signatories will be consulted during the amendment process (See Section XIII).

SIGNATURES

Execution and implementation of this PA evidences that the USDA Forest Service's Rocky Mountain Region and the NNFG have afforded the Advisory Council on Historic Preservation and the South Dakota State Historic Preservation Office a reasonable opportunity to comment on their undertakings, and have satisfied their Section 106 responsibilities for all individual undertakings.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

/s/ _____
John Fowler, Executive Director

DATE: _____.

STATE OF SOUTH DAKOTA, OFFICE OF HISTORIC PRESERVATION

/s/ _____
Jay Vogt, State Historic Preservation Officer

DATE: _____.

U.S. FOREST SERVICE, ROCKY MOUNTAIN REGION

/s/ _____
Daniel J. Jirón, Regional Forester

DATE: _____.

APPENDICES

DRAFT

APPENDIX A

DEFINITIONS

Advisory Council on Historic Preservation

Established by the National Historic Preservation Act (1966). The Council 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 Technician

A Forest Service employee who meets the Office of Personnel Management basic requirements of a social science aid and technician series (series 0102) and who qualifies at the grade series (GS) of 05 or higher.

Area of Potential Effects

The geographic area or areas within which an undertaking may directly or indirectly cause alteration in the character or use of historic properties, if such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Avoidance

Avoidance means that no activities associated with an undertaking that may affect historic properties shall occur within a historic property's boundaries (including an appropriate buffer or viewshed) where setting is an important element to the site's significance. Portions of undertakings may need to be modified, redesigned, or eliminated to avoid Historic Properties.

Consultation

The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process. The Secretary's *Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act* provide further guidance on consultation.

Consulting Party

A consulting party is any participant who assumes responsibilities stipulated in an agreement document. Consulting parties include the Forest Service, the SHPO, the Council (if participating), the project proponent, and any other party who agrees to some responsibility stipulated in the agreement. All become signatories to the agreement and all have the same rights to amend or terminate the agreement.

Concurring Party

A consulting party that participates in the development of the agreement and is asked to show their approval of the end product through a concurring signature. Concurring parties do not have the right to terminate the agreement.

Cultural Resources

All eligible, unevaluated, and not eligible resources including buildings, structures, sites, objects, districts and landscapes.

Effect

Alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

Eligible for Inclusion in the National Register

This term includes both properties formally determined as such in accordance with regulation of the Secretary of the Interior and all other properties that meet the National Register criteria (36 CFR 60).

Eligibility Criteria

Criteria against which cultural Resources are evaluated to determine if they are eligible for listing in the National Register of Historic Places. As defined in 36 CFR 60, property cultural resource may be determined to be eligible under any of four Criteria:

Criterion A

The property is associated with events that have made a significant contribution to the broad patterns of our history. Criterion A also includes traditional cultural properties, a property associated with cultural practices, beliefs, the sense of purpose, or existence of a living community that is rooted in that community's history or is important in maintaining its cultural identity and development as an ethnically distinctive people. Traditional cultural properties are ethnographic resources eligible for listing in the National Register.

Criterion B

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

Criterion C

The property exemplifies a distinctive type, period, or method of construction, or the work of a master, or a high artistic quality.

Criterion D

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

Emergency Undertaking

Any Forest Service undertaking that the Regional Forester determines must be initiated within 30 days of a natural disaster (including human-caused fire) or national security emergency, in order to avoid an imminent threat to human life or major property damage, as defined in 36 CFR 78.

Forest Supervisor

The Agency official as defined in 36 CFR Part 800.2(a). The Agency official is responsible for meeting the requirements of this PA or for complying with Section 106 of the NHPA.

Geophysical project

An activity related to the search for evidence of oil and gas which requires the physical presence upon the lands and which may result in damage to the lands or resources. Geophysical exploration is a Federal undertaking as defined in the National Historic Preservation Act and approval of geophysical projects requires agency compliance with section 106. Each project is examined on a case by case basis for terrain type, nature of the specific project, and the types of cultural resources anticipated within the project area.

Heritage Program Leader

The heritage program leader (a.k.a. Forest Archaeologist/Historian) is the position on each Forest, or designee, that is responsible for: directing, planning, and administering the Forest's complex and multifaceted Cultural Resources management program; providing professional and technical advice to the Forest Leadership Team; directing the Heritage Program internally and with external agencies, organizations, and the public; and planning and developing the Forest's cultural resource inventory, evaluation, and enhancement program. Although the Heritage Program Leader is responsible for making technical decisions under the terms of this agreement, local line officers (District Rangers and Forest Supervisors) have the ultimate discretion, authority, and responsibility for compliance with this agreement and the National Historic Preservation Act.

Historic property means any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. This term includes properties of traditional, religious, and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

Indian tribe

An Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Interested Parties

An interested party has a demonstrated interest in a Forest Service undertaking or action on a historic property. Interested parties may include, but are not limited to, local governments, grantees, permittees, owners of affected lands or land surfaces, Indian tribes, and other groups. Interested parties provide input and information to the consulting parties before an agreement is prepared. However, they may not necessarily be invited to become a concurring signatory on the agreement document.

Level I Survey, or Record Search

A type of cultural resource survey that is a compilation and analysis of existing cultural resource data and a management-focused, interpretive narrative overview and synthesis of the data.

Level II Survey, or Sampling Field Inventory

A type of cultural resource survey that provides the database for making an objective estimate of the nature and distribution of cultural resources within a study area. Field investigations usually include transects of greater than 30 meters (100 feet).

Level III Survey, or Intensive Field Inventory

A type of cultural resource survey that provides cultural resource specialists and managers with a record of cultural properties, which can be identified from surface indications, for a specific area. Thirty meter (100 feet) transect spacing (at a maximum) is required for a Class III inventory.

Memorandum of Agreement

The document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

National Environmental Policy Act of 1969 Federal law which guides the decision-making process for public lands in the United States. It 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 Register of Historic Places

The official Federal list of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and or culture maintained by the Keeper of the National Register, National Park Service.

Secretary

The Secretary of the Interior acting through the director of the National Park Service except where otherwise specified.

State Historic Preservation Officer

The official appointed or designated pursuant to section 101(b)(1) of the act to administer the state historic preservation program or a representative designated to act for the SHPO.

Tribal Historic Preservation Officer The tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program, who has assumed the responsibilities of the SHPO for purposes of Section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

Tribal lands

All lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

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
APE	Area of Potential Effect
CFR	Code of Federal Regulations
FSM	Forest Service Manual
MOA	Memorandum of Agreement
NAGPRA	Native American Graves Protection and Repatriation Act
NEPA	National Environmental Policy Act of 1969
NHPA	National Historic Preservation Act of 1966 (as amended)
NNFG	Nebraska National Forests and Grasslands
NRHP	National Register of Historic Places
PA	Programmatic Agreement
SHPO	State Historic Preservation Office
THPO	Tribal Historic Preservation Officer

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APPENDIX B

ACTIONS EXCLUDED FROM CASE-BY-CASE REVIEW

The Heritage Program Professional shall determine whether a specific undertaking fits within any of the classes of undertakings listed. This list is not considered to be comprehensive, nor does the presence of an undertaking on this list automatically exclude a given project from review. If the Grasslands Archeologist determines that an undertaking has a potential to affect historic properties, the undertaking shall not be considered excluded and shall be subject to the provisions of 36CFR Part 800. The NNFG will check appropriate records for evidence of previously recorded historic properties prior to making a determination that the undertaking is excluded from review.

The Heritage Program Professional should be aware that in the case of historic properties of religious and cultural significance to Indian tribes, avoiding or limiting visual and auditory impacts upon the property may be necessary to preserve the qualities that make the site eligible for the National Register of Historic Places. Thus, any decision to exempt a project from case-by-case review in that context must carefully consider the potential of the undertaking to have such impacts.

Undertakings excluded from case-by-case review are to be reported in Annual Report of Implementation (ROI). Such projects include (but are not limited to) the following:

I. Administrative Actions

- a. Area closures for emergency purposes that do not involve new ground disturbance.
- b. Removal of illicit narcotics equipment from federal land during law enforcement operations, excluding the removal of buildings or structures that are 45 years old.
- c. Manual removal of trash and vehicles that are less than 45 years old.
- d. Maintenance or replacement in kind and in place of modern constructed features less than 45 years old that does not involve new or additional ground disturbance (e.g., maintenance or replacement of cattle guards, gates, fences, stock tanks, guardrails, barriers).

II. Range Activities

- a. Installation of temporary electric fences.
- b. Installation of temporary above ground pipelines to existing tank or dugout, provided that structures are located within an area of previous disturbance, or where no new or additional ground disturbance occurs.
- c. Repair or replacement of existing fencelines and cornerposts in place where no new ground disturbance occurs.
- d. Maintenance of existing range improvements within existing footprint provided that any areas of disturbance are limited to those areas that have already been impacted.
- e. Maintenance of dugouts within the footprint, to include the removal of silt/sediment from the water catchment area.
- f. Repair and maintenance of constructed dams within the water catchment area excluding borrow areas which will need to be reviewed.

- g. Placement of tank in existing dugouts.

III. Lands and Recreation Special Use Permits

- a. Land acquisitions, easement acquisitions, or transfers of administrative control to the Forest Service and no new ground disturbing activities are proposed.
- b. Placement of geophysical seismic monitoring equipment on the surfaced portion or within the prism (area clearly associated with road construction, from road surface to top of cut and/or toe of fill) of a regularly maintained road.
- c. Conducting or approving permits for non-archaeological data collection and monitoring activities that involve less than one cubic meter of cumulative ground disturbance, unless within unevaluated cultural resource or historic properties or areas considered likely to contain historic properties. Such activities could include soil samples, forage trend monitoring, stream gauges, weather gauges, research sensors, photo plots, traffic counters, animal traps, or similar devices.
- d. Renewing existing linear permits (roads, pipelines, powerlines, underground cables, etc.), when no new ground disturbance is authorized. Does not include the modification of facilities.
- e. Renewing existing site permits (communication sites, camps, businesses) when no new ground disturbance is authorized. Does not include the modification of facilities.
- f. Authorizing new lines on an existing overhead utility line when there is no change in pole configuration and no new ground disturbance.
- g. Issuing permits that would add another user and related electronic equipment to an approved communication site that does not require the expansion of the facility or addition of towers to the exterior of the building and where no new ground disturbance is authorized.
- h. Maintenance (that does not add to nor change the configuration of the existing facility) to an existing electronic communication site involving no new ground disturbance or impacts to known historic properties.
- i. Conversion of an existing authorization from one Federal authority to another Federal authority (e.g., a road permit under the authority of the Federal Land Policy and Management Act to an easement under the authority of the Federal Highway Act) where no new ground disturbance is authorized.

IV. Wildlife Enhancements

- a. Reintroduction of endemic or native species into their historical habitats in ways that do not involve new ground disturbance.

V. Management of Developed Recreation Sites

- a. Replacement of visitor information kiosks, portable sanitation devices, or visitor registers where the proposed location of the facility within existing footprint.
- b. Replacement of pit or vault toilets within the same footprint, provided that the toilet to be replaced is not older than 45 years.
- c. Felling of hazardous trees within developed and dispersed recreation areas, adjacent to recreation facilities, or in other areas for health and safety reasons, provided trees are cut without ground disturbance, left in place or removed.
- d. Trailhead maintenance activities.

VI. Road Maintenance, Trail Maintenance, and Travel Management

- a. Installation of signposts and monuments, when no new ground disturbance is involved.
- b. Routine trail maintenance limited to brushing and light maintenance of existing tread (prism) with hand tools.
- c. Routine Level 3-5 road (as defined in Forest Service handbook) and trail maintenance and resurfacing where work is confined to previously maintained surfaces, ditches and culverts.
- d. Felling and removal of hazard and windthrow trees from road and trail prisms where deemed necessary for health, safety, or administrative reasons, so long as trees are cut at ground level with ground is dry or frozen. Issuance of road use permits for commercial hauling over existing roads.
- e. Temporary or permanent road closures involving no new ground disturbance.
- f. Stockpiling of road related materials in or on existing roads or turnouts.
- g. Installation of roadside safety features such as guardrails, adjacent to existing forest roads, in previously disturbed areas where the road and its features are not historic properties.
- h. Blading of currently graveled roads.
- i. Road closure that involves creating barriers that do not involve new ground disturbance (such as dropping trees or boulders).

VII. Soil and Water

- a. Non-disturbing broadcast seeding and mulching for establishment of vegetation utilizing methods that do not involve new ground disturbance.

VIII. Vegetation Management/Fuels Reduction

- a. Mowing with a brush hog or similar rubber-tired equipment.
- b. Creation of hand lines for prescribed burns where chainsaws and hand tools are used, and where duff and vegetation are cleared to mineral soil.
- c.
- d. Weed treatments using non-motorized application or motorized when ground is dry or frozen.

XII. Burned Area Restoration and Rehabilitation (BAER and post-BAER)

- a. Seeding or seeding with fertilizers in order to establish vegetation in burned areas.
- b. Mulch/slash spreading to provide surface cover; application is by means of hand, ground- or aerial-based operations, or in slurry with seed.
- c. Geotextile fabrics/geowebbing applications, where engineered materials (commonly called erosion control blankets) are used for temporary erosion control or slope stabilization.

APPENDIX C

ANNUAL REPORT FORMAT

The Forest shall use the following format to report annual accomplishment data to the Region by March 1 each year. The categories reported coincide with the National Forest Service database (Infra/I-Web), and will be taken directly from that database. The Forest shall also submit a narrative explaining anything unusual found in the tabular data, and may also submit a copy of its LMP Monitoring Report to meet the Section 110 Monitoring Plan reporting requirement. The Forest shall also submit a summary, listing accomplishments toward its Section 110 Plan goals, which may be similar to its budgetary accomplishment reports (PAR, CTA, GPRA, etc.) with accompanying discussion as needed.

The Region shall compile the Forest data and submit it to the SHPO by March 15 each year.

State:

Forest Name:

Reporting Year:

Type and number of Undertakings	Acres Surveyed	Number of Newly Recorded Cultural Resources	Number of Cultural Resources Revisited	APE Covered by Previous Surveys? (Y/N)	Undertakings excluded from case-by-case review	Avoidance Measures Employed to Protect Sites?	Discoveries

APPENDIX D

GUIDELINES FOR THE DEVELOPMENT OF APPENDICES SPECIFIC TO CLASSES OF UNDERTAKINGS

Identification, evaluation, and management procedures for certain classes of Forest undertakings (e.g. vegetation management, livestock grazing) shall be guided by appendices that contain specific procedures for survey, reporting, and review.

I. PRINCIPLES

Forest Undertaking Appendices should be: straightforward and easy to implement; sufficiently specific and detailed to minimize interpretive complications; and directive as to what should be done.

II. CONTENTS AND FORMAT

Forest Undertaking Appendices must contain the following information:

- A. *Title* that specifies the subject (undertaking);
- B. *Description* that specifies intent, use and limitations of the appendix, which will include but not be limited to the following:
 - 1) description of the class of undertakings to which the appendix applies, including variations in methods and implementation of the class of undertaking;
 - 2) description of the known and likely effects of such undertakings on different types of heritage resources, in the absence of protective measures. This discussion may include an identification of the kinds of cultural resources that are most likely to be affected by the class of undertaking;
- C. *Management Protocol*, which may include steps, measures, or additional details of procedures.
- D. *Standard Survey Strategy*, which may include:
 - 1) discussion, description and reasons for APE determination;
 - 2) sample survey criteria or models to be used for that class of undertaking;
 - 3) justification of sample criteria or model;
- E. *Additional Stipulations*, which may include:

- 1) process for notifying and soliciting the views and involvement, as appropriate, of interested parties, Native Americans, and the public, if these procedures differ from the main body of the PA;
- 2) as appropriate, continued long-term studies and refinement of effects and methods of protection.
- 3) any other processes or requirements specific to the class of undertaking.

III. DEVELOPMENT OF NEW APPENDICES

New appendices may be developed and included in this Agreement by the following procedures.

- A. The Forest or Regional Office proposing to develop a protocol will provide the Regional Forester, SHPO and ACHP with written notification of their intent to develop and add a protocol to this Agreement and seek their initial advice.
- B. Appendices shall be prepared according to the principles and content listed herein (Section II).
- C. Interested parties shall be consulted and afforded an opportunity to provide input in the development and review of draft appendices. Interested parties should include, as appropriate, signatories to this Agreement, Indian tribes, organizations or individuals that may be directly affected by the appendices, and organizations or individuals that have asked to be included.
- D. When a draft appendix is completed, it shall be submitted to the Regional Forester's Office for review.
- E. The Regional Forester's Office shall submit the Appendix to the SHPO and ACHP for review.
- F. The SHPO and ACHP shall be afforded 30 days to review and comment on the draft Appendix.
- G. The protocol shall be added to the Agreement and implemented by the Forest if the SHPO, ACHP, and Regional Forester accept and certify the protocol by signing an addendum to this Agreement.
- H. The Forest shall implement individual undertakings within the subject class of undertakings according to Stipulations of this Agreement or 36 CFR Part 800 until the protocol for the class of undertakings is certified. The Forest may choose to follow the provisions of this Agreement or 36 CFR Part 800 rather than the procedures described in a protocol for individual undertakings.
- I. Appendices may be amended by agreement of the consulting parties as described in Section XIII. of the PA.

APPENDIX E

CURRENT LIST OF TRIBES CONSULTED FOR SOUTH DAKOTA UNDERTAKINGS

The NNFG typically consults with the following tribes on projects deemed as undertakings in South Dakota, as defined in Appendix A:

Cheyenne River Sioux Tribe
PO Box 590
Eagle Butte, SD 57625-0590

Crow Creek Sioux Tribe
PO Box 50
Fort Thompson, SD 57339-0050

Eastern Shoshone Tribe
PO Box 538
Fort Washakie, WY 82514

Fort Peck Assiniboine and Sioux Tribes
501 Medicine Bear Road
PO Box 1027
Poplar, MT 59255

Lower Brule Sioux Tribe
187 Oyate Circle
Lower Brule, SD 57548

Northern Arapaho Tribe
PO Box 396
Fort Washakie, WY 82514-0396

Oglala Sioux Tribe
PO Box 2070
Pine Ridge, SD 57770

Santee Sioux Nation
108 Spirit Lake Avenue West
Niobrara, NE 68760

Sisseton-Wahpeton-Oyate Sioux Tribe
PO Box 509
Agency Village, SD 57262-0509

Cheyenne/Arapaho Tribes of Oklahoma
PO Box 38
Concho, OK 73022-0038

Crow Nation
PO Box 159, Bacheeitché Avenue
Crow Agency, MT 59022

Flandreau Santee Sioux Tribe
PO Box 285
Flandreau, SD 57028-0285

Kiowa Ethnographic Endeavor for Preservation
Route #3, Box 700
Carnegie, OK 73015

Mandan, Hidatsa, and Arikara Nation
404 Frontage Road
New Town, ND 58763

Northern Cheyenne Tribe
PO Box 128
Lame Deer, MT 59034-0128

Rosebud Sioux Tribe
PO Box 809
Rosebud, SD 57570-0809

Sicangu Lakota Treaty Council Office
PO Box 430
Rosebud, SD 57570

Spirit Lake Sioux Tribe
PO Box 359
Fort Totten, ND 58335-0359

Standing Rock Sioux Tribe
PO Box D
Fort Yates, ND 58538

Turtle Mountain Band of Chippewa
PO Box 900
Belcourt, ND 58316

Yankton Sioux Tribe
PO Box 1153
Wagner, SD 57380-1153

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APPENDICES SPECIFIC TO CLASSES OF UNDERTAKINGS

APPENDIX F

RANGELAND MANAGEMENT AND LIVESTOCK GRAZING ACTIVITIES

I. DESCRIPTION

The USDA Forest Service administers the Rangeland and Livestock Grazing programs as authorized by the Multiple Use Sustained Yield Act (P.L. 86-517, 74 Stat. 215; 16 U.S.C. 528), the Forest and Rangeland Renewable Resources Planning Act (P.L. 93-378, 88 Stat. 476, as amended: 16 U.S.C. 1601), and the Public Rangelands Improvement Act (92 Stat. 1803, 43 U.S.C. 1752-1753, 1901-1908). The Forest Service has determined that the Rangeland and Livestock Grazing Management Programs may affect Historic properties and agrees to responsibly comply with the provisions contained in the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347) pursuant to 40CFR parts 1500-1508 and the 1995 Rescission Act (P. L. 104-19), which specifically requires NEPA analysis and decisions on grazing allotments according to a prescribed schedule. Therefore, the Forest Service, the ACHP, and the SHPO agree that Rangeland Activities shall be administered in accordance with the following stipulations to satisfy the Forest Service's Section 106 responsibility for all individual undertakings of the program.

II. MANAGEMENT PROTOCOL

Consideration of cultural resources as they are affected by rangeland and livestock grazing activities will normally be accomplished during the Allotment Management Plan preparation or modification as part of compliance with NEPA. Class II inventory, if any, will focus on those areas determined to be most at risk from grazing activities and associated improvements. Historic properties that appear to be affected by livestock grazing and other rangeland activities will be monitored to determine the extent of the effect, and to provide information about suitable treatment/protective measures.

III. STANDARD INVENTORY STRATEGY

In most cases, allotment boundaries shall be considered the Area of Potential Effect. Because these areas are usually extremely large, the focus of analysis will be limited to livestock congregation areas and their intersection with areas known or likely to contain cultural resources.

The Heritage Program Leader shall contact the Forest and District Rangeland Management Staff to define areas where livestock tend to congregate. Congregation areas should be defined based upon the number of livestock in the allotment, the duration, and the likelihood of soil and other resource damage. The Heritage Program Leader shall then determine additional inventory needs, if any, based upon the specific environmental and cultural setting of each analysis area, using the following strategy:

- A. The Forest Rangeland Management Staff will help to define areas within the analysis boundary where livestock tend to congregate. Standard predictive variables may include, but are not limited to, the following:
 - 1) Adjacent to existing livestock management improvements such as water tanks, fences, and handling structures

- 2) Unimproved areas where livestock congregate to drink
 - 3) Near salting areas
- B. The Heritage Program Leader will define areas most likely to contain cultural resources, based on standard archaeological modeling variables such as nearness to water, slope and elevation, and presence of known cultural resources. Standard predictive variables may include, but are not limited to, the following:
- 1) Within $\frac{1}{4}$ mile of permanent water
 - 2) On slopes less than 15%
 - 3) On topographic prominances, such as ridge tops, saddles, and high points
 - 4) Near ecotonal boundaries
- C. The intersection of these two variables shall be the focus of analysis, and additional field inventory, if any, will occur there.
- D. The Heritage Program Leader may determine that no additional inventory is required, if
- 1) The areas identified in C. above have been adequately inventoried to current standard, or
 - 2) There are no intersecting areas identified in C. above.

IV. ADDITIONAL STIPULATIONS

The Forest Service will ensure that the following measures are carried out during the course of rangeland and livestock management activities:

A. Evaluation and Effects

Within areas of livestock congregation, all previously recorded historic properties will be examined for potential damage due to rangeland and livestock management activities. All unevaluated cultural resources within this area will be evaluated for National Register eligibility. Results of evaluations and effects shall be included in the inventory report for the given allotment or group of allotments.

B. Monitoring

If damage or potential damage is noted on newly recorded and previously known historic properties within livestock congregation areas, but the cause, degree, or extent is unclear, the site will be monitored at least once a year to help determine whether or not protective measures are needed. Any prescribed monitoring of cultural resources and impacts will be discussed in the inventory report, and subsequent monitoring will be described in the annual report to SHPO, and

will recommend either continued monitoring or implementation of appropriate protective measures.

C. Standard Site Protective Measures

Appropriate treatment and a schedule for implementation will be prescribed for historic properties identified through each Forest's inventory and monitoring efforts. Appropriate treatments may include improved rangeland condition or retention of higher vegetative structure, avoidance, long-term studies, or other actions, such as fencing, changes in time/timing, or frequency/duration of livestock use. If fencing is used as a protective measure, the Heritage Program Leader and Rangeland Management Staff will determine the appropriate amount and design of acreage to be fenced, and the most appropriate and effective type of fencing to be employed, based on the best method to eliminate the adverse effect. The inventory report will describe protective measures and the schedule for implementation. As protective measures are implemented, they will be described in the annual report to SHPO. Protective measures that involve data recovery or other changes to the site matrix require consultation with SHPO.

D. Improvements are Treated as Separate Undertakings

Rangeland and livestock management improvements including but not limited to water developments, fence construction (except as noted in Appendix B), and livestock handling facilities shall be considered undertakings in accordance with Section 106 of the NHPA, and shall comply with provisions of this PA or with 36 CFR § 800.4 through 800.6.

APPENDIX G

VEGETATION MANAGEMENT ACTIVITIES

I. DESCRIPTION

The Forest Service conducts vegetative management activities (usually associated with hazardous fuel reduction, commercial timber sales, insect and disease outbreaks, and protection of homes along the Wildland-Urban Interface). These undertakings may have an adverse effect on properties eligible for or included in the National Register of Historic Places. The Forest Service, the ACHP, and the SHPO agree that vegetation management activities shall be administered in accordance with the following stipulations to satisfy the Forest Service's Section 106 responsibility for all individual undertakings of the program.

II. MANAGEMENT PROTOCOL

Forest Service vegetation management programs encompass two general project planning processes: 1) individual, stand-alone projects; and 2) vegetation management as a tool for meeting management objectives in a broad-scale analysis area.

- A. Response to specific projects analyzed under the NEPA process as stand-alone undertakings. For a specific project which documents treatment units, location and type of treatments, and all other associated activities, the Forest Service will carry out the following actions to identify, evaluate, and take into account the effects of the proposed vegetation management activities on historic properties before issuing a NEPA decision:
 - 1) The Forest will complete a field inventory of the Area of Potential Effect of each vegetation management project following procedures defined below in Stipulation III.
 - 2) The Forest shall document the results of the field inventory, consultation with Indian Tribes, and any proposed measures to avoid adverse effect to historic properties in an inventory report as defined in Section IV.F.
- B. Response to large area analyses where discrete vegetation management activities are not specifically defined, or where completion of Section 106 compliance for all aspects of the undertaking prior to reaching a NEPA decision is not reasonably possible. The following actions will be completed as part of the Forest's environmental analysis under NEPA, and prior to issuance of either a FONSI or a ROD:
 - 1) The Environmental Analysis (EA) or Environmental Impact Statement (EIS) will include a heritage specialist Summary Report which does not disclose sensitive site information, but discusses significant cultural resources within the areas potentially affected by vegetation management activities. The Heritage Program Leader will use this information as a basis for determining potential effects of the proposed vegetation management activities on historic properties. The FONSI or ROD will contain specific language requiring the Forest to inventory for and assess effects to historic properties once site-

specific plans and silvicultural prescriptions are developed. The Decision Notice will also reference this agreement and condition the decision on completion of inventory and compliance with the applicable provisions of this PA.

- 2) The following actions will be carried out by the Forests after the NEPA decision is made:
 - a) The Forest will develop specific burn plans and/or detailed silvicultural prescriptions. Project areas or burn units will be subjected to a sample inventory as defined in Stipulation III.
 - b) The Forest Service will conduct consultation through the NEPA scoping process as defined in this PA for the identification of properties of traditional cultural and religious significance to Indian Tribes or other interested parties. Additional consultation may be carried out depending on the results of the identification effort. Forests will conduct tribal consultation on vegetation management as early as possible in the NEPA process, and not after a NEPA decision is made. Forests should do broad scale consultation within the NEPA process and again when specific plans are in place under NHPA. Site specific consultation with the Tribes should be conducted.
 - c) If the Forest Service determines that adverse effects cannot be avoided, or if the SHPO objects to a finding of no adverse effect, the Forest Service will rescind the portion of the Decision Notice which implements the specific project for the analysis area and consult further in accordance with 36 CFR § 800.6 to resolve the adverse effects.

III. STANDARD INVENTORY STRATEGY

The Forest will complete inventories within Areas of Potential Effect (APE) for vegetation management activities using the following inventory strategy. The APE shall be defined by the Heritage Program Leader on a project-by-project basis, based upon the types of proposed activities and their intensity. Should the strategy for any given project differ from these standards, the Forest shall submit electronic maps and justification to the SHPO for approval prior to conducting the inventory. Any of these approved changes will be noted and justified in the inventory report.

A. General

- 1) In all cases, field observations will also be used to identify areas of high or low site potential that cannot be specifically noted until field work begins; inventory strategies may be altered as needed based upon these observations.
- 2) All areas of known high site density within the APE will be intensively inventoried.
- 3) For prescribed burning activities, all historic properties or unevaluated cultural resources susceptible to burning identified through the files search and historic research will be visited and a plan devised for protection of these resources will be developed. This plan will be a part of the inventory report.

- 4) Within one year after prescribed burns, the Forest Service will revisit any protected historic properties to evaluate protection techniques and effectiveness. Results of this evaluation will be communicated to the SHPO via letter, and any needed follow-up measures will be negotiated at that time.

B. Strategy for those areas planned for prescribed fire

- 1) Open Grass and Sagebrush Settings – short duration, low and/or moderate level of fire severity.
 - a) Previously recorded eligible and unevaluated properties will be inspected. A primary objective will be to identify any subsurface features which may be exposed to the surface, such as a fire hearth, which could be affected by a low intensity/low duration fire.
 - b) A Level II survey (as defined in Appendix A) will be conducted through each burn unit to look for wood features, exposed archaeological features, and rock art panels, which could be affected by the prescribed fire. The inventory will provide for a visual inspection of the open burn unit where the presence or absence of standing wood features can be confidently documented.
 - c) Inventory transects will also be used to inspect stream cut-banks, road cuts and other open locations where there is potential for exposed sub-surface deposits or features.
 - d) All machine constructed fire lines will be intensively inventoried.
- 2) Forested Settings – short duration, low and/or moderate level of fire severity.
 - a) Previously recorded eligible and unevaluated properties will be inspected. A primary concern will be to identify any subsurface features which may be exposed to the surface, such as a fire hearth, and which could be affected by a low intensity/low duration fire.
 - b) Intensive inventory coverage will be implemented using a GIS model according to the following criteria, and identified areas with these characteristics will be inventoried:
 - i) Forested areas with a slope of less than 15% and within .25 mile from permanent water (i.e. streams, creeks etc.);
 - ii) Geological features such as saddles, terraces, benches, overhangs, escarpment edges, and high points;
 - iii) Those areas regardless of slope and cover where chert-bearing formations are exposed or contain known stone quarry sites;
 - iv) Stream terraces or benches;

- v) Rock shelters;
 - vi) Mines;
 - vii) Prominent rock faces which contain or are likely to contain Native American rock art properties;
 - viii) Historic structures (eligible, potentially eligible, or unevaluated) identified during the literature search process that includes a review of Forest files, county library, and courthouse records.
- c) All machine constructed fire lines will be intensively inventoried.
- 3) Burn Units (Open and Forested) – long duration, moderate and/or high level of fire severity.
- a) An intensive inventory will be conducted over all areas where planned severity levels would be considered moderate or high and long duration.
 - b) All machine constructed fire lines will be intensively inventoried.
- C. Strategy for those areas planned for mechanical vegetative management
- 1) Open Canopy and Sagebrush Settings
- a) Areas of open canopy or sagebrush within the APE will be subject to Class III (complete) inventory.
 - b) Inventory transects will also be used to inspect stream cut-banks, road cuts and other open locations where there is potential for exposed sub-surface deposits or features.
- 2) Forested Settings
- a) A Class II inventory strategy will be implemented using a model according to the following criteria:
 - i) Forested areas with a slope of less than 15% and within .25 mile from permanent water (i.e. streams, creeks etc.);
 - ii) Geological features such as saddles, terraces, benches, overhangs, escarpment edges, and high points;
 - iii) Those areas regardless of slope and cover where toolstone bearing formations are exposed or contain known stone quarry sites;
 - iv) Stream terraces or benches;

- v) Rock shelters;
- vi) Mines;
- vii) Prominent rock faces which contain or are likely to contain Native American rock art;
- viii) Historic structures identified during the literature search process that includes a review of SHPO records, Forest files, county library, and courthouse records.

IV. ADDITIONAL STIPULATIONS

The Forest Service will ensure that the following measures are carried out during the course of Vegetation Management Activities.

A. Evaluation and Effect

Within the Area of Potential Effect (APE), all previously recorded historic properties will be considered during project planning, and every effort will be made to avoid these resources through project design. All newly recorded and unevaluated cultural resources within the APE will be evaluated for National Register eligibility. Results of evaluations and effects shall be included in the inventory report.

B. Standard Site Protective Measures

Appropriate treatment will be prescribed for historic properties identified through each Forest's inventory efforts. Appropriate treatments may include avoidance and project redesign. The inventory report will describe any protective measures required, and no consultation is necessary if avoidance is the prescribed treatment (see Section IV.G.3). The use of fire protections (black lines, foam, protective fabric) or other mitigation measures will require consultation with SHPO prior to implementation.

APPENDIX H

WILDLAND FIRE MANAGEMENT ACTIVITIES

I. DESCRIPTION

Wildland fire is any non-structure fire, other than prescribed fire, that occurs in the wildland and is considered an emergency situation as stipulated in 36 CFR § 800.12. Wildland fire includes unplanned and unwanted wildland fire and wildland fire for resource benefit (an unplanned wildfire managed to accomplish resource objectives based on the Land/Resource Management Plan objectives). The consideration of cultural resources for wildland fire management activities shall follow procedures outlined in this appendix. Prescribed fire activities are discussed in Appendix G – Vegetation Management Activities.

Wildland fire management activities are comprised of the following three categories:

A. Programmatic Planning

Programmatic planning involves activities conducted at the program level and produces Land/Resource Management Plans (LRMP) and Fire Management Plans (FMP) that provide the foundation for implementation of an appropriate management response (AMR) to every wildland fire. The LRMP identifies the resource management objectives and wildland fire management strategies including areas/conditions when fires may be managed for resource benefit. The FMP translates the programmatic direction from the LRMP into operational implementation activities and information including: fire management units, fire management strategies, tactics and AMR options for areas/conditions as identified in the LRMP, and descriptions and maps of values to be protected.

The Forest Heritage Program Leader will participate on interdisciplinary teams developing LRMPs or other NEPA documents that address fire management activities. These planning activities include development of AMR options for all wildland fire and identifying areas where fire may be managed for resource benefit. Such planning efforts will incorporate the management protocol and inventory strategy as defined in Section II and III below. The Heritage Program Leader will also ensure that public scoping for these planning efforts shall include appropriate Indian tribes and other interested parties.

B. Decision-Making

Once an unplanned ignition occurs, a decision will be made to manage the fire according to the AMR direction given in the LRMP and FMP. A full spectrum of options may be considered, ranging from aggressive suppression to off-site monitoring. Fires may only be managed for resource benefit if that management option has been authorized in the LRMP and implementation criteria have been established in the FMP.

Wildland fire has the potential to affect historic properties through damage or destruction, so it is important to consider cultural resources that are susceptible to the effects of fire during wildland fire planning activities as well as identifying potential protection measures in advance. The information developed by the Heritage Program Leader during the programmatic planning phase along with any new

information regarding the potential effects to cultural resources are to be incorporated in the decision process for determining if a fire will be managed for resource benefit as well as selection of AMR options for wildland fire.

C. Implementation

Two main options may be implemented:

- 1) If direction in the programmatic planning documents supports suppression, initial actions will usually consist of prompt and decisive control commiserate with firefighter and public safety and cost effectiveness. If initial or subsequent actions fail, control objectives may be modified and the tactical options that comprise the AMR may also change.
- 2) If direction in the programmatic planning documents supports wildland fire use for resource benefit, a full range of strategies and tactics (as discussed in section I.B above) may be engaged. The information developed by the Heritage Program Leader during the programmatic planning phase along with any new information regarding the potential effects to cultural resources are to be incorporated in the implementation of protective measures as possible.

Decision support from the Heritage Program Leader will continue as needed to evaluate the effectiveness of measures intended to protect cultural resources. Additional decision support documentation used in wildland fire management implementation may include a Wildland Fire Situation Analysis (WFSA), a Wildland Fire Implementation Plan (WFIP), short-term or long-term plans, a variety of data, and input from various resource specialists.

II. MANAGEMENT PROTOCOL FOR HERITAGE RESOURCES

Direction in this Appendix is meant to fulfill 36 CFR § 800.12(a) and to ensure that the Forest Heritage Program Leader is consulted and engaged in the planning, decision-making and implementation aspects of all wildland fire management activities that may impact cultural resources.

In most cases, existing information is used for programmatic planning purposes. If the existing inventory coverage is not adequate, the Heritage Program Leader will identify areas on the forest that are MOST LIKELY to contain cultural resources. These areas will be mapped as “High Probability” for containing cultural resources. The criteria for the Heritage Program Leader to determine which areas are MOST LIKELY to contain cultural resources are described in Section III – Standard Inventory Strategy. Based on these criteria, the Heritage Program Leader will make recommendations for additional inventory needs to the Agency Official. Additional decision support information for the Agency Official may include: the significance of known or potential cultural resources that may be impacted as a result of different strategies or AMR options; the potential for and consequences of damaging or destroying historic properties; and acceptable protection measures to prevent damage to historic properties.

The Agency Official is also responsible for decisions regarding: the commitment of personnel and resources to conduct additional cultural resource inventories, whether to manage the fire for resource benefit or suppression, and the type and extent of measures to protect historic properties.

III. STANDARD INVENTORY STRATEGY

If, during Programmatic Planning, the Heritage Program Leader determines that additional inventory is required, the following standard procedures apply:

- A. The Heritage Program Leader will define areas **MOST LIKELY** to contain cultural resources, based on standard literature review, archaeological modeling variables, and professional knowledge of the area. Additional inventory, if any, may include the following areas:
 - 1) Forested areas with a slope of less than 15% and within .25 mile from permanent water (i.e. streams, creeks etc.),
 - 2) Geological features such as saddles, terraces, benches, overhangs, escarpment edges, and high points;
 - 3) Those areas regardless of slope and cover where toolstone bearing formations are exposed or contain known stone quarry sites;
 - 4) Stream terraces or benches;
 - 5) Rock shelters;
 - 6) Mines;
 - 7) Prominent rock faces which contain or are likely to contain Native American rock art;
 - 8) Historic structures identified during the literature search process that includes a review of SHPO records, Forest files, county library, and courthouse records.
- B. Maximum transect interval is 30 meters, with transects spaced to give an intensity of coverage appropriate to the roughness of terrain, density of vegetation cover, degree of slope, constraints on observation, difficulty of access, and expected archaeological sensitivity.

IV. ADDITIONAL STIPULATIONS

The Forest Service will ensure that the following measures are carried out:

- A. Programmatic Planning Phase:
 - 1) The Heritage Program Leader will prepare for their respective forest a map showing known cultural values at risk as well as areas that have not been inventoried but are **MOST LIKELY** to contain cultural resources. The map must be completed by each participating forest/grassland before implementing a wildland fire use program and is also suggested for appropriate management response decision support.

- a) High risk areas are determined by the presence of cultural resources that are listed on the National Register of Historic Places (NRHP), cultural resources determined eligible for the NRHP, or cultural resources that have not been evaluated for NRHP significance, **and** that fall into one or more of the following categories:
 - i) Sites with wooden structures, features, or other flammable architectural elements that contribute to the overall significance of the site
 - ii) Sites containing rock art, aspen art, or other images that contribute to the overall significance of the site, and are susceptible to damage by fire
 - iii) Prehistoric and historic cemeteries
 - iv) Prehistoric artifact scatters located in unstable geomorphic settings
 - v) Prehistoric sites that are shallowly buried, and contain hearths, datable charcoal, or other fire-sensitive deposits
 - vi) Peeled, scarred, or blazed tree sites
 - vii) Rockshelter sites
 - viii) Traditional Cultural Properties (TCPs), Cultural Landscapes, or Sacred Sites where appropriate Tribes indicate that fire would have a deleterious effect
 - ix) Existing and proposed National Register Districts
 - b) Low risk properties are those cultural resources that fall into one or more of the following categories:
 - i) Sites that contain deeply buried cultural deposits
 - ii) Prehistoric artifact scatters located in stable geomorphic settings
 - iii) Sites with non-flammable surface features
 - iv) Historic earthworks
 - v) Sites that are determined not eligible for the NRHP
- 2) Existing sources of information shall be used to develop the maps, including but not limited to literature and records searches, aerial photographs, databases (FS and SHPO), and GIS coverages.

- a) The Forest Service shall consult with appropriate American Indian Tribes in developing the maps, with an emphasis on the potential effects of fire on TCPs, Sacred Sites, and Cultural Landscapes.
 - b) Where the Heritage Program Leader determines that there is insufficient archaeological inventory coverage for a given area, the Forest shall consult with the SHPO to determine additional inventory needs according to Stipulation III.A above. Until additional inventories (if any) are completed, the area lacking adequate information shall be considered high risk.
 - c) The Heritage Program Leader shall provide the completed map showing cultural values at risk to the Forest's Fire Manager for incorporation into the Fire Management Plan. The map shall also be used for decision support when developing implementation plans (i.e. WFSA, WFIP, or short or long-term plans).
 - d) The Forest Service will submit to the SHPO the Fire Management Plan and associated maps for comment prior to implementation. e) The Heritage Program Leader will provide updated cultural information (if any) to the annual Fire Management Plan review/revision.
- 3) Any site-specific or area-specific treatments shall be identified, including protective measures that should be employed for specific historic properties, if appropriate. Identification of deleterious treatments should also be identified; e.g. areas where bulldozer line should be avoided if possible due to the presence of buried prehistoric sites.

B. Decision-Making Phase:

- 1) Once an ignition is determined to have the potential to be a managed wildland fire use project or the initial suppression actions on a wildland fire have been unsuccessful and cultural resources are threatened, the Heritage Program Leader will consult with the cultural values at risk map to assess risks to identified and unidentified historic properties. The Heritage Program Leader then makes one or more of the following recommendations to the Agency Administrator:
 - a) The fire should be allowed to proceed as a managed wildland fire;
 - b) Preferred appropriate management response options to protect identified or unidentified historic properties from wildland fire;
 - c) Site-specific implementation of protection measures that should be undertaken to prevent damage or loss from wild fire or fire suppression actions.

C. Implementation

- 1) The Heritage Program Leader shall be informed and involved in the revalidation of managed wildland fire conditions to ensure that the risks to historic properties and their protective needs have not changed as a result of the fire's behavior.

- 2) If it becomes necessary to employ ground-disturbing fire control measures during the management of a wildland fire, the Heritage Program Leader may recommend appropriate actions to help protect cultural resources, which may include:
 - a) assigning a professional archaeologist to accompany bulldozer and/or hand line crews during fire line construction;
 - b) flagging or otherwise marking known cultural resources for avoidance.
- 3) The Forest shall keep the SHPO informed of any loss of or damage to historic properties resulting from wildland fire management activities.

D. Conduct post-fire assessment

- 1) Follow procedures as defined in Appendix I, Burned Area Emergency Rehabilitation (BAER) Activities.
- 2) Provide a report to SHPO as per Appendix I.III.C.

APPENDIX I

BURNED AREA EMERGENCY REHABILITATION (BAER) ACTIVITIES

I. DESCRIPTION

Actions associated with burned area emergency rehabilitation (BAER) may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places. These are actions associated with fire rehabilitation and recovery, and typically take place in a rapid sequence of events in order to protect life and property as well as resource values in the burned areas. Therefore, the Forest Service, the ACHP, and the SHPO agree that BAER activities shall be administered in accordance with the following stipulations to satisfy the Forest Service's Section 106 responsibility for all individual undertakings of the program.

II. MANAGEMENT PROTOCOL

Safety Concerns: The intensity of some fires may create major safety concerns, especially in the timbered portions of the burned areas. Specific safety rules are usually implemented to reduce the safety hazard while working in burned areas. While these safety rules can reduce the hazard, it is believed that the best way to prevent danger to personnel is to reduce the amount of time actually spent in the intensively burned areas. Therefore, determinations of actual inventory areas will be made on a case-by-case basis, and will usually be limited to those areas that will have the greatest ground disturbance and those areas that can be inventoried safely.

III. STANDARD INVENTORY STRATEGY

The standard inventory strategy for BAER activities is designed to provide as complete an examination as possible within limitations on observation and accessibility. Within burned areas, these limitations include topography, vegetation remaining in riparian areas, ground surface visibility, and hazardous conditions created by the fire.

- A. Maximum transect interval is 30 meters, with transects spaced to give an intensity of coverage appropriate to the roughness of terrain, density of vegetation cover, degree of slope, constraints on observation, difficulty of access, and expected archaeological sensitivity.
- B. In general, only those areas that include planned, ground-disturbing BAER activities will be inventoried for cultural resources. Additional inventory may be needed in areas where increased vandalism to cultural resources is anticipated due to newly exposed features and artifacts.
 - 1) Additional inventory may be conducted within the burned area at the discretion of the Heritage Program Leader and the BAER Team.
 - 2) Additional inventory, if any, should focus on areas that have been moderately-to-intensely burned, and that have a high likelihood of unrecorded cultural resources.

- C. All inventory areas will be recorded for entry in the Forest database, all newly recorded cultural resources will be documented and evaluated, and will be provided to the SHPO as part of the inventory report.

IV. ADDITIONAL STIPULATIONS

Consideration of cultural resources during BAER is twofold. First, deteriorated watersheds resulting from wildfires may place significant cultural resources at risk due to erosion, increased visibility, storm runoff, and debris flows. Treatments to protect cultural resources may be required as a part of the BAER process.

Second, potential effects of BAER treatment activities for other resource values at risk will require consideration of cultural resources prior to implementation. The Forest Service will ensure that the following measures are carried out during the course of Burned Area Emergency Rehabilitation:

A. Historic Properties

- 1) When ground and safety conditions permit, historic properties will be visited, and an assessment will be made by the Heritage Program Leader to determine site conditions and identify needed treatments.
 - a) BAER treatments will be conducted on significant cultural resources only when it is determined that an urgent need exists. An urgent need is a situation where “unacceptable degradation” of a significant cultural resource will occur without treatment. This degradation must be *highly likely to occur within the year*, and must constitute an adverse effect to the cultural resource according to criteria established in the National Historic Preservation Act (36CFR §800.5(a)(1)).
 - b) Consultation with the SHPO, Indian tribes, the ACHP, and other interested parties is appropriate when determining suitable site treatments during BAER. However, because timeframes are narrow, consultation may be limited to simple notification.
- 2) When ground and safety conditions permit, historic properties will be visited, and an assessment will be made by the Heritage Program Leader to determine site conditions and identify needed treatments.
- 3) The Heritage Program Leader shall identify any previously recorded historic properties and flag them for avoidance during BAER activities, if appropriate.
- 4) Timber sale administrators, inspectors and operators shall be notified of heritage concerns, if appropriate.
- 5) When appropriate, the Heritage Program Leader shall monitor historic properties during project implementation. If effects are observed, the Forest shall follow procedures in Stipulation IX of this agreement. However, due to the emergency nature of some projects conducted for BAER,

the timelines specified in Stipulation IX will be negotiated at the time of discovery and SHPO notification.

B. Undertakings Associated With BAER Activities

- 1) Proposed BAER treatments for resource protection must give consideration to cultural resource values prior to project implementation. Although BAER treatments are considered “emergency undertakings” according to the provisions of the National Historic Preservation Act (36CFR §800.12(d)), a reasonable effort shall be made to inventory ground-disturbing project areas for previously unknown cultural resources. Impacts to both known and previously unknown cultural resources shall be avoided whenever possible.
- 2) The terms of this Agreement apply to all Forest Service undertakings conducted in connection with BAER activities on National Forest Service lands. When BAER activities are conducted by the Forest Service on lands under the jurisdiction of other federal agencies, that agency may at its discretion require the Forest Service to comply with 36CFR § 800.4 through 800.6 rather than follow terms of this agreement.