

PROGRAMMATIC AGREEMENT

AMONG

U.S.D.A. FOREST SERVICE HOOSIER NATIONAL FOREST,

MIAMI TRIBE OF OKLAHOMA,

OSAGE NATION,

PEORIA TRIBE OF INDIANS OF OKLAHOMA,

SHAWNEE TRIBE,

AND

INDIANA STATE HISTORIC PRESERVATION OFFICER

REGARDING

**PHASED IDENTIFICATION FOR UNDERTAKINGS ON THE
BUFFALO SPRINGS RESTORATION PROJECT ON
THE HOOSIER NATIONAL FOREST
OF THE EASTERN REGION OF THE U.S.D.A. FOREST SERVICE**

5/6/2024

WHEREAS, the Hoosier National Forest (HNF) has developed a proposal to carry out a multi-year, landscape scale vegetation management undertaking within the Buffalo Springs Restoration Project area, Tell City Ranger District, pursuant to the Organic Administration Act (16 U.S.C. 551) and the National Forest Management Act of 1976 (P.L. 94-588, 90 Stat. 2949) and other laws that authorize the management of National Forest System lands and their resources; and

WHEREAS, the project is scheduled to be implemented over the span of multiple years and the analysis area consists of large land areas that will require a phased process to conduct identification and evaluation efforts pursuant to 36 CFR 800.4(b)(2) and phased application of criteria of adverse effect at 36 CFR 800.5(a)(3); and

WHEREAS, this programmatic agreement (PA) is executed because the effects of multi-year, landscape scale undertakings cannot be fully determined prior to signing National Environmental Policy Act (NEPA) decision documents (36 CFR §800.14(b)(1)(ii)); and

WHEREAS, the HNF has determined that these types of undertakings may affect historic properties and unevaluated cultural resources and requires consultation with the Indiana State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) and that the ACHP declined to participate in the development of this PA as per their correspondence dated August 29, 2022; and

WHEREAS, Miami Tribe of Oklahoma, Osage Nation, Peoria Tribe of Indians of Oklahoma, and Shawnee Tribe were consulted pursuant to 36 CFR 800.14(b)(2)(i) and agreed to participate in the development of this PA as Invited Signatories; and

WHEREAS, Absentee Shawnee Tribe of Indians of Oklahoma, Delaware Nation, Delaware Tribe of Indians, Eastern Shawnee Tribe of Oklahoma, Pokagon Band of Potawatomi Indians, United Keetoowah Band of Cherokee Indians in Oklahoma, and Wyandotte Nation were consulted pursuant to 36 CFR 800.14(b)(2)(i) and participated in the development of this PA as Consulting Parties; and

WHEREAS, this PA enables the HNF to proceed with the NEPA decision and complete the Section 106 process through a phased identification process; and

WHEREAS, areas of potential effect (APE) that have been previously surveyed and eligible properties evaluated and protected following stipulations outlined below are cleared for project implementation; and

NOW, THEREFORE, the HNF, SHPO, and Tribal Nations agree that the vegetation management program covered by this project-specific PA shall be implemented in accordance with the following stipulations to take into account the effects of all undertakings on any cultural resources associated with the Buffalo Springs Restoration Project on the HNF, and that such phased implementation satisfies the HNF's Section 106 NHPA responsibilities for all individual actions related to this project.

I. SCOPE AND OBJECTIVES

The Buffalo Springs Restoration Project is a proposed vegetation management project to be implemented over the span of multiple years (Attachment A – Project Scoping Document). The project location is within the HNF, Tell City Ranger District (Attachment B – Heritage Specialist Report and Maps). The proposed project would fulfill Forest Plan direction associated with the goal of maintaining and restoring sustainable ecosystems.

The project will meet Forest Plan direction to promote tree growth, reduce insect and disease levels, move the landscape toward precontact and historic conditions, and increase the resiliency and structure of forested areas by restoring the composition, structure, pattern, and ecological processes necessary to make these ecosystems sustainable. The methods for accomplishing these goals will involve thinning in both pine stands and hardwoods, selection harvest in hardwoods, and stand improvement. In addition, regeneration harvests will involve clearcutting in pine and shelterwood harvest in hardwoods. Treatments proposed to promote oak and hickory regeneration where timber is removed include midstory removal, prescribed fire, and herbicide treatment. The proposal also includes the potential of tree plantings as part of research, which could occur at any suitable location within the project area. The proposed actions are expected to result in road construction, reconstruction, and decommissioning, including the replacement of culverts to facilitate aquatic organism passage.

The proposed actions have the potential to impact known or undocumented cultural resources that may be located within the areas of potential effects (APE). The intent of this PA is to keep the HNF in compliance with Section 106 of the National Historic Preservation Act of 1966 (NHPA) regulations, *Protection of Historic Properties* (36 CFR Part 800), for the multi-year vegetation management project in the Buffalo Springs Restoration Project area. This PA stipulates that historic properties that are eligible for the National Register of Historic Places (NRHP) and/or unevaluated properties within the APE will be managed and maintained in such a way that no adverse effects will result.

However, if it is determined that historic properties within the APE could be affected by the undertaking and an adverse effect may result, avoidance shall be the first choice of action. If avoidance of the historic property is not possible, then the HNF will follow the procedures outlined in 36 CFR Part 800.5 through 800.6 regarding determination of effects, review, and consultation to mitigate adverse effects.

II. STIPULATIONS

The HNF is currently conducting a NEPA review of the Buffalo Springs Restoration Project. Following a NEPA decision and prior to any phase of project implementation, the HNF will ensure that the following stipulations are adhered to:

1. For each action that meets the definition of "undertaking," as defined in 36 CFR Part 800.16(y), and is the type of activity that has the potential to cause effects to historic properties, the HNF shall establish a project specific APE, as defined at 36 CFR Part 800.16(d), in accordance with the criteria of effect in 36 CFR Part 800.5.
2. All efforts to identify, evaluate, and manage historic properties, archaeological and historic, shall be carried out in accordance with the processes specified in this PA or 36 CFR Part 800. Background research, including literature and database reviews (e.g., the Indiana State Historic Architectural and Archaeological Research Database, Forest Service site and survey databases, historic topographic maps, historic and modern aerial imagery, nineteenth century county maps, and county histories), will be conducted to identify any known archaeological or historic resources within each project specific APE.
3. In advance of surveys for each phase of the project, the HNF will consult with interested Tribal Nations to assist in identifying historic properties within the undertaking's APE which may be of religious or cultural significance to the Tribal Nations.
4. Undertakings that have potential for ground disturbance include all timber removal treatments, as well as the construction of roadbeds, skid roads (used to drag logs), log and equipment landing pads (areas for staging cut timber and heavy machinery), and aquatic organism passage structures in roadways (i.e. culverts, bridges). In advance of implementation of these phases of the project, the Forest Archaeologist will ensure systematic Phase I archaeological reconnaissance surveys of the APE are completed (see Attachment C – HNF Complete Survey Methods). All survey reports, contracted or completed in-house, will be submitted to the SHPO and Tribal Nations for concurrence review.
5. Undertakings that do not have the potential for ground disturbance but do have the potential to affect surface features and above-ground resources include prescribed fire and mowing. In advance of implementation of these activities the Forest Archaeologist will ensure systematic cursory (surface-only) archaeological reconnaissance surveys of the APE are completed (see Attachment D – HNF Cursory Survey Methods). All survey reports, contracted or completed in-house, will be submitted to the SHPO and Tribal Nations for concurrence review.
6. Sites of significance identified by Tribal Nations through consultation will be marked in the field and avoided with a buffer of 50 meters (165 feet), or 100 meters (328 feet) for Native American burials, unless the reporting Tribal Nation agrees to reduce the buffer for a particular site. Tribal Nations may request an increased buffer distance for particular sites of concern.

7. All NRHP eligible or unevaluated archaeological and historical sites without known Native American burials will be marked in the field and avoided with a minimum buffer of 15-30 meters (50-100 feet) prior to implementation. Native American burials will be avoided with a 100-meter (328-foot) buffer. Tribal Nations may request an increased buffer distance for particular sites of concern. Detailed avoidance information related to specific types of undertakings and site types is provided in Attachment B – Heritage Specialist Report.
8. If a potential Adverse Effect is identified within an undertaking's project area, the HNF will resolve these effects to historic properties in consultation with the SHPO and Tribal Nations following regulations 36CFR800.5 through 800.6 prior to implementation.

III. INADVERTENT DISCOVERIES OF HUMAN REMAINS

A. Inadvertent Discovery Procedures. All applicable state and federal laws and regulations governing the discovery and disposition of human remains shall be followed. Human remains inadvertently discovered during project implementation will be presumed to be Native American unless immediately apparent by context to be of forensic/criminal interest. If Native American remains are inadvertently discovered on Federal lands, all activities within one hundred (100) meters of the discovery shall cease immediately and the HNF will follow the procedures outlined by the Native American Graves Protection and Repatriation Act, as amended (43 CFR 10, Subpart B), and pursuant to the Archaeological Resources Protection Act of 1979 (43 CFR 7). Non-Native American remains may also be inadvertently discovered, in which case consultation will occur with the Indiana SHPO and relevant parties regarding their discovery and disposition.

The following procedures will be used:

1. Such person or persons encountering the human remains shall refrain from disturbing or removing the human remains and shall make a reasonable effort to protect the human remains from inclement weather and vandalism. Only natural materials may be used should those protection efforts require direct contact with exposed remains. The individual shall immediately notify the HNF Heritage Program Manager, who will notify the Forest Supervisor and Forest Service law enforcement to assist in securing the site. Local law enforcement officers may be notified as well, at the discretion of Forest Service law enforcement should FS law enforcement be unable to respond in a timely manner.
2. Following notification of the discovery, the HNF Heritage Program Manager (or qualified designee) will inspect the work or activity site and confirm that the site is secured and any project activities have ceased, per 43 CFR 10.5(c).
3. If the site of the discovery is an archaeological site, or materials are found at the site of the discovery that pre-date 1940 the HNF Heritage Program Manager shall notify the SHPO within forty-eight (48) hours.

4. Per NAGPRA (43 CFR 10.5(c)(1)(iii)), the HNF will contact the Tribal Nations' Point of Contacts by telephone and email to include date, location, project identification, description of the find, and status of protective measures of the discovery within seventy-two (72) hours of their notification by the persons reporting the discovery. This notification will include pertinent information regarding human remains, funerary objects, sacred objects, and/or items of cultural patrimony discovered inadvertently or in areas of prior disturbance, their condition, and the circumstances of the discovery.
5. No excavation, examination, photographs, or analysis of Native American human remains will be conducted by the HNF or any other professional without first consulting with the interested Tribal Nations. Unless the remains were inadvertently removed, all evaluation will be conducted at the site of discovery.
6. HNF archaeologists, or contracted biological anthropologists, may draw and measure the exposed remains and visually analyze associated funerary objects. If any photographs or sketches are collected of Native American human remains, associated funerary objects, unassociated funerary objects, sacred objects, objects of cultural patrimony, and cultural materials, disposition of all images (including electronic and physical copies) will be subject to Tribal Consultation regarding dissemination of the information. Any digital photographs of NAGPRA-related human remains or items retained by HNF, HNF's contractual personnel, or any other non-Tribal agencies or institution will be destroyed.
7. Tribal Nations receiving notification will respond by telephone or email within seventy-two (72) hours followed by response via U.S. mail or electronic mail. The response should specify the party's intention to conduct or decline further consultation.
8. The HNF, as the project proponent, will consult with the consulting Tribal Nation(s) regarding additional measures to avoid and protect or mitigate the adverse effect of the project on the Native American human remains and burial site. Indiana SHPO will be notified of these measures. These measures may include:
 - a. expanded archaeological evaluation of the site;
 - b. visits to the site by the consulting Tribal Nation(s);
 - c. exploration of potential alternatives to avoid the human remains or burial;
 - d. implementation of a mitigation by HNF in consultation with the consulting Tribal Nation(s); and
 - e. approval to resume project by HNF, in consultation with the consulting Tribal Nation(s), following completion of the fieldwork component of any mitigation or in situ reburial plan.

B. Plan of Action. Preferred treatment of any inadvertently discovered Native American human remains or cultural items is in situ reburial. However, should reburial in place be unfeasible a NAGPRA Plan of Action will be drafted by the

Forest Service in consultation with the claimant Tribal Nation(s) in a timely manner. At minimum, this Plan of Action will address the requirements of 43 CFR 10.4(b), the Inadvertent Discovery Plan of Action standards of NAGPRA and will be consistent with the requirements of ARPA:

1. The kinds of objects to be considered as cultural items which have been encountered;
2. The specific information used to determine custody;
3. The planned treatment, care, and handling of human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;
4. The planned archaeological recording of the human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;
5. The kinds of analysis planned for each kind of object;
6. Any steps to be followed to contact Tribal Nation(s) at the time of intentional excavation or inadvertent discovery of specific human remains, funerary objects, sacred objects, or objects of cultural patrimony;
7. The kind of traditional treatment, if any, to be afforded the human remains, funerary objects, sacred objects, or objects of cultural patrimony by members of the claimant Tribal Nation(s);
8. The nature of reports to be prepared; and
9. The planned disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony.

C. Reburial. Through consultation among the Forest Service and the interested Tribal Nation(s), a determination of cultural affiliation of the human remains shall be made as part of the Plan of Action development. After NAGPRA disposition is determined, the Forest Service will continue consultation to determine a reburial site both available and appropriate with the affiliated Tribal Nation(s). The affiliated Tribal Nation(s) shall be able to visit any proposed reburial sites with Forest Service staff as part of this consultation.

1. The HNF will host consultations regarding the selection of a reburial site location and shall be prepared to discuss the following elements of stewardship:
 - a. Providing access to the reburial area for affiliated Tribal Nation(s) and other procedures specific to the locality;
 - b. Restrictions, if any, relating to the reburial area, including but not limited to restrictions relating to proposed changes from current land use in the reburial area, maintenance restrictions, and restrictions regarding the marking of grave sites;
 - c. Security of the reburial area;

- d. Supporting long-term coordination with the affiliated Tribal Nation(s), including affording opportunities to conduct religious ceremonies for the deceased ancestor(s) at the reburial location; and
 - e. Development of a confidentiality agreement that shall stipulate the location of the reburial will not be disclosed to the public, and shall only be disclosed to those Forest Service employees who have a need to know.
 2. When determining specific reburial locations to present as options to the affiliated Tribal Nation(s), the following Reburial Area Criteria shall be considered:
 - a. Proximity to original burial/disinterment area
 - b. Flood susceptibility and location above the 100- year flood plain
 - c. Ease of digging for reburial
 - d. Restrictions on public access
 - e. Current land use, no anticipated change in current use, and not immediately adjacent to property boundary or easement
 - f. Access potential
 - g. Adequate land area to accommodate anticipated burials
 - h. View shed
 - i. Proximity to areas with a history of looting
 3. The Forest Service shall provide the affiliated Tribal Nation(s) with written documentation of the potential reburial sites determined as a result of Section III.C.2, above. The documentation is to include:
 - a. Map of the area
 - b. Size of the area
 - c. Normal flood plain elevation and flood risk
 - d. Description: topography, soil type, flora, fauna, distance to roads and public areas
 - e. Present land classification
 - f. Advantages and disadvantages of the particular site
 - g. Known historic properties; need for field investigations
 - h. Photographs and/or videotapes

D. Documentation. The HNF will maintain copies of the NAGPRA Plan of Action and any relevant draft or final Notice of Inventory Completion and/or Notice of Intent to Repatriate, or any other NAGPRA documentation needed. The Forest Service shall maintain a current list of any reburial areas designated and date of the reburial completed. This information will be housed with the HNF Heritage Program Manager in a secure

location protected from public access. The list and its contents shall only be disclosed to authorized tribal representatives and, upon prior notification to the affiliated Tribal Nation(s), to Forest Service personnel who have a need to know the information. See also Section V. below. HNF will provide archaeological documentation of the inadvertently discovered burial site to the Indiana SHPO once the NAGPRA process has concluded.

IV. ANNUAL REPORTING

The HNF will compile annual reports documenting how this PA was applied to each phase of the project. These reports will include general information about annual project implementation activities, monitoring activities, survey reports completed in advance of the defined undertakings, and reviews of undertakings completed by Tribal Nations and SHPO including their responses. All determinations of eligibility of historic properties for the NRHP will be done in consultation with the SHPO and with interested Tribal Nations. All annual reports generated under this PA shall be provided to all Signatories, Invited Signatories, and interested Tribal Nations for concurrence review.

V. CONFIDENTIALITY OF CULTURAL RESOURCE DATA

Any information furnished to the HNF under this PA is subject to the Freedom of Information Act (5 U.S.C. 552), however, some information regarding cultural resources may be withheld under Exemption 3 (5 U.S.C. 552(b)(3)), Section 9(a) of the Archaeological Resources Protection Act (ARPA) (36 CFR 296), and other legislation including U.S.C. 25 (32A)(§3056) which exempts the Forest Service from sharing information about American Indian human remains, sites used for cultural and traditional purposes, and other culturally sensitive information. The HNF will protect all sensitive, confidential, or proprietary information about the location and character of cultural resources, especially those of interest to Tribal Nations. Information identified as sensitive by consulted Tribal Nations, and requested to remain confidential, will remain confidential to the extent permitted by state and federal law (54 U.S.C. § 307103 et seq. and Section 304 of NHPA).

VI. DISPUTE RESOLUTION

Should any Signatory or Invited Signatory to this PA provide notice to the Forest Service of its objection to an action under this PA, or implementation of the measures stipulated in this PA, within thirty (30) days of becoming aware of an action, the HNF shall consult with all parties to this PA to resolve the objection. The objecting party must provide reasons for, and a justification of, its objection in writing at the time it initially submits its objection to the HNF. If the HNF determines that the objection cannot be resolved, the HNF shall forward all documentation relevant to the dispute to the ACHP and notify the objecting party. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall either:

1. Provide the HNF with recommendations, which the HNF shall consider in reaching a final decision regarding the dispute; or
2. Notify the HNF that it will comment within an additional thirty (30) days, in accordance with 36 CFR 800.7(c)(4).

Any ACHP comment provided in response to such a request will be considered by, and receive a response from, the HNF in accordance with 36 CFR 800. 7(c)(4) with reference to the subject of the dispute.

Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. Any recommendation or comment provided by the ACHP will be provided to all Signatories and Invited Signatories to this PA. The HNF will provide the final decision regarding the dispute to all Signatories, Invited Signatories, and the ACHP. The HNF responsibility to carry out all actions under this PA that are not the subject of the dispute will remain unchanged.

VII. AMENDMENT

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

VIII. TERMINATION

Any Signatory or Invited Signatory to this PA may initiate termination by providing written notice to the other Signatories and Invited Signatories of their intent. After notification by the initiating Signatory or Invited Signatory, the remaining Signatories and Invited Signatories shall have ninety (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 USFS shall comply with 36 CFR Part 800.3-800.6.

IX. SUNSET TERMS

This PA shall remain in effect for ten (10) years after the date of execution hereof. The Signatories and Invited Signatories shall re-evaluate the PA every ten (10) years. The HNF shall ensure the PA will be re-evaluated and amended, to

accommodate any changes to the terms. All Signatories and Invited Signatories will have the opportunity to participate in the amendment process.

X. EXECUTION

Execution of this PA and implementation of its terms is evidence that the HNF has taken into account the effects of the undertaking on historic properties.

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

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OF THE EASTERN REGION OF THE U.S.D.A. FOREST SERVICE**

SIGNATORY:

U.S.D.A. FOREST SERVICE, HOOSIER NATIONAL FOREST


MICHAEL CHAVEAS Digitally signed by MICHAEL CHAVEAS
Date: 2024.05.20 15:15:58 -04'00' **DATE:** 05/20/2024

Michael Chaveas,
Forest Supervisor

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SIGNATORY:

MIAMI TRIBE OF OKLAHOMA



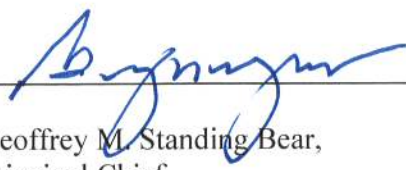
DATE: 5-21-2024

Douglas Lankford,
Chief

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SIGNATORY:

OSAGE NATION




Geoffrey M. Standing Bear,
Principal Chief

DATE: 5-29-24

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SIGNATORY:

PEORIA TRIBE OF INDIANS OF OKLAHOMA



Craig Harper,
Chief

DATE: 5/21/24

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SIGNATORY:

SHAWNEE TRIBE


Ben Barnes
Chief

DATE: 5/29/24

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SIGNATORY:

INDIANA STATE HISTORIC PRESERVATION OFFICE



DATE: 06/17/2024

Beth McCord,
Deputy State Historic Preservation Officer