

**DRAFT NATIONAL PROGRAMMATIC AGREEMENT
 AMONG
 THE U. S. DEPARTMENT OF AGRICULTURE FOREST SERVICE,
 THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
 AND THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION
 OFFICERS
 FOR PHASING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT
 FOR LARGE-SCALE MULTI-YEAR UNDERTAKINGS**

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WHEREAS, the United States Department of Agriculture (USDA) Forest Service (FS) develops and administers the renewable resources of timber, range, water, recreation and wildlife on the National Forests for multiple use and sustained yield of the products and services; and

WHEREAS, the FS implements large-scale multi-year projects (hereafter “Project”) to improve forest health and mitigate impacts of natural disasters and to support non-recreation and recreational special use permitting, range improvements, development and maintenance of transportation and utility corridors, and other activities (such as those listed as examples in Appendix B); and

WHEREAS, the FS has determined that large-scale multi-year Projects constitute undertakings requiring review pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108); and

WHEREAS, FS large-scale multi-year Projects are subject to environmental review under the National Environmental Policy Act (NEPA) and other environmental laws; and

WHEREAS, in accordance with the timing requirement of 36 CFR § 800.1(c), the FS Agency Official must complete the Section 106 process prior to the approval of 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; and the “Agency Official shall ensure that the Section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking;” and

WHEREAS, pursuant to the 2008 Forest Service Manual (FSM) 2364.11, the FS Agency Official completes the Section 106 process prior to the issuance of a decision memo, decision notice, or record of decision unless following an alternative process in a programmatic agreement (PA); and

WHEREAS, individual FS units regularly determine that due to the size and scope of large-scale multi-year Projects, the identification of and the assessment of effects to historic properties that

may be affected by these Projects cannot be fully determined prior to approval of an undertaking (36 CFR § 800.14(b)(1)(ii)) such that use of a PA may be appropriate to complete Section 106 for these Projects; and

WHEREAS, the FS proposes to develop a nationwide programmatic agreement (NPA) to establish a framework for how to implement a program of phased Section 106 processes, consistent with 36 CFR §§ 800.4(b)(2) and 800.5(a)(3), making the requirement for project-specific phasing PAs optional with the alternative process, while also emphasizing early consultation to inform FS about cultural resource stewardship opportunities (CRSOs) that FS Agency Officials may opt to incorporate into Project designs when CRSOs (such as those listed as examples in Appendix E) meet the Project purpose and need and are mutually beneficial to FS and consulting parties; and

WHEREAS, a phased process for Section 106 is hereby defined for this NPA as the identification and evaluation of historic properties, assessment of effects, and resolution of adverse effects that may begin prior to the Project decision, but will only be fully completed after the Project decision, and before Project implementation begins in an area of the project where historic properties may be affected; and

WHEREAS, this NPA may be applied when the FS is the sole or lead agency for a large-scale multi-year Project, but it may not be applied: in Hawaii, U.S. territories except Puerto Rico; on Tribal lands except when Tribal lands are under the jurisdiction of a Tribe that is a Tribal Signatory to the NPA; or when the Project has the potential to affect a National Historic Landmark; and

WHEREAS, this NPA does not invalidate existing program alternatives or any other applicable Section 106 agreements; and

WHEREAS, the FS consulted with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO) pursuant to 36 CFR Part 800; and

WHEREAS, the FS invited federally recognized Indian Tribes (Tribes), including Alaska Native Corporations, and Tribal Historic Preservation Officers (THPOs) to consult pursuant to 36 CFR Part 800; and

WHEREAS, the FS invited National Trust for Historic Preservation, the National Association of Tribal Historic Preservation Officers (NATHPO), and the Coalition for American Heritage to consult; and

WHEREAS, the FS provided opportunities for public review and comment by publishing online information about this NPA and receiving comments through online platforms; and

NOW, THEREFORE, the FS, ACHP, and NCSHPO agree that implementation of this NPA in accordance with the following stipulations will allow the FS to meet its responsibilities under Section 106 of the NHPA for the undertakings subject to this NPA

STIPULATIONS

The FS will ensure the following stipulations are carried out for any Project for which this NPA is used to comply with Section 106:

Purpose:

The purpose of this NPA is to provide a framework for completing a phased Section 106 process for large-scale multi-year Projects subject to review under 36 CFR Part 800. The framework includes developing a Heritage Implementation Plan (HIP), in lieu of an individual PA, to document how the phased Section 106 process will be completed for an individual Project (see Appendix C for more information).

The geographic and temporal scope of FS large-scale multi-year Projects requires the FS to defer the identification and evaluation of historic properties, assessment of effects, and resolution of adverse effects until after a Project's decision document (i.e., decision memo, decision notice, or record of decision). Such Projects require a phased Section 106 approach, whereby Section 106 compliance activities, including the documentation requirements pursuant to 36 CFR § 800.11, begin before and continue after the Project decision, while the large-scale multi-year Project is being implemented with specific activity alternatives being refined over time.

This NPA is an optional Section 106 program alternative that allows for the phased completion of the Section 106 process after an applicable Project decision. The Forest Service shall identify when a Project will utilize the phased approach in this NPA at the early stages of Project planning.

I. Definitions

- A. The definitions in 36 CFR Part 800 are applicable to this NPA and are incorporated by reference herein. Additional terms relating to this NPA are defined in FSM Chapter 2360. The definitions in Appendix A of this NPA are incorporated here for reference and shall apply throughout this NPA and for all Projects reviewed under its terms. For the purposes of this NPA: 1) "Project" is interchangeable with the term "undertaking;" and 2) anything "written" and "in writing" refers to hardcopy or electronic communication.

II. Roles and Qualifications for NPA and HIP

- A. Agency Official. FS Agency Officials have the authority to make decisions related to Section 106 processes under their jurisdiction. For the purposes of this NPA, the Agency Official is a District Ranger, Forest or Grassland Supervisor, Regional Forester, or any equivalent unit leader. The Agency Official who is at minimum, a Forest Supervisor or equivalent unit leader, must sign the HIP to finalize or issue it. The Agency Official for the Project shall:

- 1) Make decisions regarding the use of the NPA, considering recommendations made by the FS Heritage Professional.
 - 2) Ensure that FS Heritage Professionals are engaged in the planning process at the beginning of Project consideration and development so that historic properties are considered in Project planning and design. This includes inviting Heritage Professionals to participate in the Project or planning Inter Disciplinary Team (IDT) at the earliest stages of Project consideration.
 - 3) Seek input from HIP consulting parties and FS Heritage Professionals as early as possible in Project development to identify potential CRSOs that the Agency Official may opt to include in the Project design. This includes inviting Heritage Professionals to participate in the Project or planning IDT at the earliest stages of Project consideration. The Agency Official retains sole discretion on whether or not to include CRSOs in a Project design.
- B. Forest Service Heritage Professional. FS Heritage Professionals are FS staff that meet, at a minimum, Office of Personnel Management standards under the GS-0170 historian, GS-0190 anthropologist, or GS-0193 archaeologist series (FSM 2360); and/or the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation, Professional Qualifications Standards (48 FR 44716, Sept. 29, 1983). The FS Heritage Professional shall:
- 1) Make recommendations to the Agency Official throughout the use of the NPA. This includes verifying the applicability of the NPA in writing to the Agency Official and recommending any CRSOs that may be appropriate to include in the Project design to the Agency Official.
 - 2) Facilitate the development of the HIP on behalf of or with the Agency Official in consultation with HIP consulting parties.
 - 3) Be the subject matter expert with the only authority to make management recommendations and review and approve heritage work performed by others (FSM 2360.91).
- C. HIP consulting parties. The HIP consulting parties include the applicable SHPO(s)/THPO(s), Tribe(s), representatives of local governments, applicants, and other consulting parties, pursuant to 36 CFR § 800.2, that the Agency Official has identified for the specific Project being considered under the NPA. The Agency Official will invite HIP consulting parties to consult on which strategies for identification, assessment of effect, and resolution of adverse effects to include in the HIP for a specific Project under the NPA, and any CRSOs that may be integrated in the Project design.

- D. Advisory Council on Historic Preservation (ACHP). At any time during the development of the HIP or implementation of the NPA, the FS or any party, regardless of their participation as a HIP consulting party, may request ACHP involvement or comment. For each Project during the first two years following execution of the NPA, FS units will notify and invite the ACHP to participate as a HIP consulting party to develop individual HIPs through its Electronic Section 106 Documentation Submittal System (e106). When the ACHP determines that its participation is warranted, the ACHP may choose to participate or comment on the HIP development process. When invited to comment by a consulting party or any party, regardless of their participation as a HIP consulting party, prior to the implementation of the HIP, the ACHP will follow provisions in Section XII.A.

III. Training

- A. Prior to using this NPA and implementing the HIP as an alternative to standard Section 106 procedures, the relevant FS Heritage Professionals, Project planners, and Agency Official must receive training and a certificate documenting completion of training in the use and implementation of this NPA and subsequent HIPs (see Section XI.A for more information). The FS shall offer training materials to HIP consulting parties, pursuant to Section XI.A.
- 1) Personnel change. When the Agency Official or FS Heritage Professional responsible for the development and implementation of the HIP leaves their position or no longer has a role in the HIP, the Agency Official or their immediate supervisor must designate a replacement to serve in the role and take the NPA training within ninety (90) days of taking on the new role. For this purpose, the Agency Official should ensure that they have trained backup staff who can serve in this role for an interim period in the event the position cannot be filled within ninety (90) days of the position becoming vacant.

IV. Applicability

- A. Qualifying criteria. A FS unit may use the phased Section 106 process in this NPA and subsequent HIP for a Project when the following criteria are met:
- 1) The FS unit staff applying the NPA and HIP meet the qualifications and training requirements (Sections II and III); and
 - 2) When Project implementation is proposed to last more than two calendar years from the date the of the Project decision; and
 - 3) When alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted; and

- 4) When the identification of and/or the effects on historic properties cannot be fully determined prior to authorization of a Project; and
 - 5) When none of the conditions described in IV.C. apply.
- B. Example Project activities. Projects appropriate to phase under the NPA may include, but are not limited to, activities listed in Appendix B.
- C. Disqualifying criteria. A FS unit shall not apply this NPA for Projects that:
- 1) Occur on Tribal lands or have the potential to affect historic properties on Tribal lands, unless the Tribe has become a Tribal Signatory to this NPA per Section IV.D, or
 - 2) Involve mineral, oil, and/or gas extraction, exploration, transport, or other related activities, or
 - 3) Include activities that would infringe on or adversely alter the legal rights of any Tribal sovereign nation and/or its Tribal members as guaranteed in treaties, agreements, and other legal instruments that allow access to and use of natural and cultural resources including, but not limited to plants, animals, water, minerals, and other land resources, or
 - 4) Include activities with the potential to affect a National Historic Landmark, or
 - 5) Comply with NEPA via categorical exclusions listed at 36 CFR § 220.6(d), which do not require a project or case file and decision memo, or
 - 6) Consist entirely of activity types that are covered under an existing PA with phasing provisions that is in effect and applicable to the FS unit where the Project is proposed, unless the relevant SHPO signatory to that active and applicable PA agrees to apply the terms of the NPA in writing.
- D. NPA application on Tribal lands. A Tribe may authorize use of this NPA for any Project(s) that are proposed to occur on or have the potential to affect historic properties located on Tribal lands by submitting the Tribal Signatory Page in Appendix D signed by an authorized Tribal Official or designated representative of the Tribe authorizing such intent to the Chief of the Forest Service or designated Agency Official. Once a written and signed notification is received by the Chief of the Forest Service or designated Agency Official, the Tribe will become Tribal Signatory to the NPA and provisions of the NPA will be applicable to the proposed Project(s) that may occur on or affect historic properties on that Tribe's lands. The Tribe's THPO, if applicable, will serve as the SHPO for Projects on Tribal lands.
- 1) Once a Tribe becomes a Tribal Signatory to the NPA, it will remain a signatory until the Tribe terminates its participation in the NPA. Termination by any Tribal Signatory will be limited to termination of the NPA's applicability on

the Tribal lands under the jurisdiction of the Tribal Signatory (see Section XVI.B).

- 2) At any point after a Tribe becomes a Tribal Signatory, the Tribe and a FS Agency Official may agree that the FS shall follow 36 CFR §§ 800.3-800.7 or another applicable program alternative for a particular Project proposed to occur on or have the potential to affect historic properties on Tribal lands rather than the terms of the NPA.

V. **Initiating Application of NPA**

- A. Determination of applicability of the NPA. At the earliest stages of Project consideration, the FS Heritage Professional shall determine and document in writing to the Agency Official whether the terms under this NPA are applicable and appropriate for the Project in accordance with Section IV. If the FS Heritage Professional determines this NPA is:
 - 1) not applicable, the FS Heritage Professional will recommend to the Agency Official whether to follow a different applicable program alternative (such as an existing PA), pursue a Project-specific program alternative or agreement document, follow the substitution process (36 CFR § 800.8((c)), or follow the standard Section 106 process (36 CFR § 800.3 through 800.7).
 - 2) applicable, the FS Heritage Professional will recommend to the Agency Official to invite HIP consulting parties to participate in consultation to utilize the NPA and provide input on potential CRSOs that the Agency Official may opt to include in the Project design.
- B. Notification and invitation of HIP consulting parties. Early in Project planning, the Agency Official shall identify and invite, in writing, SHPO(s)/THPO(s) and Tribe(s) (at a minimum), in addition to representatives of local governments, applicants, the Secretary of Interior (if applicable), and other additional consulting parties, pursuant to 36 CFR § 800.2(c), 36 CFR § 800.8(a)(2) and 36 CFR § 800.10, to participate in the development of the HIP that may help inform the Project design. The Agency Official invitation serves both as a notification of the intent to apply the NPA and a request for parties to indicate their participation as a HIP consulting party within thirty (30) days upon receipt.
- C. Managing responses. The Agency Official shall make a reasonable and good faith effort to ensure parties have received the notification/invitation. If within (30) days of receipt of Agency Official's notification/invitation, parties:
 - 1) Do not provide a written response, the Agency Official will not consider non-responsive parties as HIP Consulting parties.

- (i) Parties who do not respond may request to become a HIP consulting party at a later date pursuant to Section V.D.
 - 2) Respond with written interest to participate in the development of the HIP, the Agency Official will consider those parties as HIP consulting parties and begin to coordinate with them pursuant to Section VI.
 - 3) Respond with written concerns or disagreement about the use of the NPA, providing a reason why the Project does not meet the applicability criteria under Section IV:
 - (i) The Agency Official, in coordination with the FS Heritage Professional, will consider views of the concerned party or parties and provide them a final decision regarding the application of the NPA within thirty days (30) days of receiving parties' written concerns about the use of the NPA.
 - (ii) If the Agency Official determines the use of the NPA is:
 - (a) Acceptable: the Agency Official will provide a written response of decision and invite the concerned party to participate in the development of the HIP, providing them a final thirty (30) day response period and managing responses following Section C.1 and C.2. above, before coordinating the initial Section 106 meeting under Section VI.
 - (b) Not acceptable: the Agency Official will provide a written response of decision and invite parties to participate in consultation under another applicable agreement or program alternative (where available), pursue a Project-specific program alternative or agreement document, follow the substitution process (36 CFR § 800.8((c)) or follow the standard Section 106 process.
- D. Later requests to become HIP consulting parties. A party who has not previously participated as a HIP consulting party may submit a written request to the Agency Official to be a HIP consulting party at any point during the development or implementation of the HIP. The Agency Official, in coordination with the FS Heritage Professional, will consider any written request to participate in accordance with 36 CFR § 800.3(f) and provide the requesting party a written response. SHPOs/THPOs and Tribes will be accepted as HIP consulting parties. The Agency Official will coordinate the participation of any new HIP consulting party to align with the current status of the HIP development or implementation.
- E. Government-to-Government consultation. The NPA does not change the FS Government-to-Government consultation responsibilities for Projects on or off Tribal lands. Regardless of a Tribe's level of participation in larger consulting groups

or meetings (e.g. stakeholder meetings, public meetings, etc.), the Agency Official shall offer NHPA Section 106 consultation opportunities on a Government-to-Government basis for Tribes pursuant to 36 CFR § 800.2(c)(2)(ii) in a manner that will inform the development and implementation of the HIP.

VI. Early Coordination between HIP Consulting Parties

- A. First meeting among HIP consulting parties. The Agency Official will coordinate the first Section 106 consultation meeting and send an initial package of information to HIP consulting parties. The first Section 106 consultation meeting should be held before drafting the HIP to obtain sufficient input from HIP consulting parties to inform the development of the HIP. The package will include information about the proposed Project available at this stage, including:
- 1) A map and summary of the developing Project proposal, including types of activities, intent, and tentative timeline for implementation.
 - 2) A cultural resource overview of the proposed Project area including a brief cultural history, ethnographic information, summary of past investigations, known cultural resources, and any other information the Heritage Professional believes is relevant to develop a reasonable and good faith effort to identify historic properties. Detailed information about sensitive cultural resources must be restricted and only shared with relevant parties (see Section XIV).
 - 3) Initial request for input regarding any potential CRSOs that the Agency Official may opt to incorporate in the Project design.
 - 4) Contact information for both the Agency Official and FS Heritage Professional.
 - 5) A list of all parties invited to participate as a HIP consulting party.
 - 6) A proposal of date(s) for the following Section 106 consultation meeting(s).
 - 7) Reference materials or electronic links to online reference materials on the NPA and the HIP process.
- B. Other early coordination activities.
- 1) Establishing consultation protocol and timeline. The Agency Official should coordinate with the HIP consulting parties to establish an agreeable approach for sending information or draft HIPs for HIP consulting parties' review throughout the HIP development process (e.g., sharing electronic documents via electronic sharing folder, via email, or sending hard copies via certified mail, etc.). If feasible, during the first Section 106 consultation meeting, but no more than thirty (30) days after the first Section 106 consultation meeting, the Agency Official should establish a consultation timeline to develop the HIP

with input from HIP consulting parties that marks when consultation meetings and review periods will occur, following the requirements in Section VIII.

VII. Coordination of HIP and Project Design Development

- A. To help inform Project design and the drafting of the HIP, the Agency Official shall invite HIP consulting parties to participate in any public or relevant stakeholder meetings related to the Project that may occur prior to and/or during the environmental review process.
- B. The HIP consulting parties' level of engagement in consultation meetings, including inability to attend, will not preclude their ability to review, comment, or consult on the HIP according to the timeline established by the HIP consulting parties.
- C. During public or relevant stakeholder meetings related to the Project prior to and/or during the environmental review process, the FS:
 - 1) Shall state to meeting attendees when such meetings will also support Section 106 consultation responsibilities and clarify the intent to use the NPA and the HIP to meet Section 106 requirements. Although Tribes will be invited to attend public meetings, such meetings do not constitute Government-to-Government consultation with Tribes (see Section V.E).
 - 2) The Heritage Professional may share the non-confidential contents proposed in the draft HIP, including non-confidential CRSOs, with meeting attendees in order to refine the scope of the HIP and gain input on the overall Project design. The FS may only share the content of the draft HIP in meetings after consulting with HIP consulting parties regarding sharing the draft HIP content and following applicable confidentiality laws and concerns (Section XIV).
- D. Nothing in the NPA grants any right to members of the public or to HIP consulting parties to attend internal FS meetings or to obtain deliberative FS information.

VIII. HIP Development Consultation Process

- A. Consultation requirements to develop the HIP (Appendix C). The Agency Official and Heritage Professional shall seek, discuss, and consider the views of HIP consulting parties, and, where feasible, seek agreement with them to develop the phased Section 106 process to be documented in the HIP under this NPA (Appendix C).
- B. HIP development consultation timeline (Appendix C). The development of the HIP will begin early, beginning before and/or running concurrently with the NEPA review process, and the HIP shall be finalized before the Agency Official finalizes

the Project decision document (i.e., decision memo, decision notice, or record of decision).

- 1) HIP consultation meetings. The Agency Official or relevant designee shall meet with HIP consulting parties throughout the HIP development process at a frequency that is reasonable to the scope and scale of the Project.
 - (i) Meeting coordination. On behalf of the Agency Official, the Heritage Professional will coordinate consultation meetings at a date and in a location and/or format (e.g., in-person, video conferencing, or teleconferencing, etc.) that allows, to the maximum extent possible, for all HIP consulting parties to participate in the discussion on the proposed Project and phased Section 106 processes to include in the HIP.
- 2) Minimum review periods. At a minimum, there will be two review periods among HIP consulting parties: one review of an informal draft or outline of the HIP and one final thirty (30) day review of a final unsigned HIP prior to finalizing and issuing the HIP (Section IX).

IX. Finalize and Issue the HIP

- A. Request of support. The FS will send to HIP consulting parties the final unsigned HIP documenting how the FS has considered all comments, and to the extent possible, resolved all issues of concern. This will serve as the FS's notification of intent to issue the HIP. In the same transmittal, the FS shall request SHPOs/THPOs and Tribes to provide a written statement of support within thirty (30) days upon receipt regarding the issuance of the HIP. The FS will make a good faith effort to confirm HIP consulting parties' receipt of the final unsigned HIP, such as calling or e-mailing to ensure their receipt.
- B. Managing Responses. Within thirty (30) days of receipt of the draft HIP:
 - 1) If no SHPO/THPO or Tribe provides a response, the Agency Official may issue the HIP.
 - 2) If a SHPO/THPO or Tribe provides a written statement of support, the Agency Official will include it in the Project record and may issue the HIP.
 - 3) If a SHPO/THPO or Tribe provides a written statement of concern, the Agency Official shall consider and may consult with parties on those concerns and shall notify relevant HIP consulting parties of the intent to either issue or modify the HIP. The Agency Official will include all HIP consulting party statements in the Project record.
 - (i) Disagreement Process. If the FS cannot resolve the disagreement, the HIP consulting party or Agency Official will refer the matter to the ACHP.

- (a) When a HIP consulting party or relevant Agency Official requests the ACHP to comment, the ACHP shall address both the Higher-Ranking Agency Official and Agency Official applying the NPA within fifteen (15) days of receipt of all pertinent documentation to either provide the FS recommendations regarding the dispute or request and receive an additional fifteen (15) days to respond.
 - (b) Upon receipt of ACHP's recommendations regarding the dispute, the Higher-Ranking Agency Official shall coordinate with the relevant Agency Official and Heritage Professional(s) and consider whether and/or how to reasonably modify the HIP to meet the agency's responsibilities under 36 CFR part 800. The Agency Official who applies the NPA shall respond to such concerns and indicate to ACHP and HIP consulting parties the FS's decision to issue or modify the HIP.
- C. Issuance of HIP. The Agency Official will sign the final HIP, redact it to address confidentially concerns, and may include the redacted HIP as an appendix to the environmental analysis document (e.g., categorical exclusion documentation, environmental assessment, or environmental impact statement), and must reference the redacted HIP in the Project decision document (i.e., Decision Memo, Decision Notice, or Record of Decision). The Agency Official will send the final, signed, redacted, copy of the HIP to HIP consulting parties and the ACHP and include a copy in the Project record. The Heritage Professional will retain an unredacted copy of the HIP that the FS may share redacted information with applicable parties as appropriate and in accordance with federal law.

X. Implementation of the Project and HIP

- A. Completion of HIP responsibilities prior to Project activities. The Agency Official and the FS Heritage Professional will follow procedures established in the HIP to complete all Section 106 processes, such as identification and evaluation activities and consultation, and commit to applicable measures to resolve adverse effects before a specific Project activity begins where historic properties may be affected.
 - 1) Project changes. If the Project area changes after the HIP issuance, the Agency Official will consider recommendations of the FS Heritage Professional and HIP consulting parties to determine whether the HIP needs to be amended per Appendix C: Section IX.D.

XI. FS Administrative Responsibilities

- A. Training Development and Administration. Within three (3) months following the execution of this NPA, the FS Headquarters will develop training and guidance materials regarding the implementation of the NPA, in consultation with the ACHP and NCSHPO. The FS Headquarters will maintain and update the materials as needed to ensure that it provides sufficient information on the use of the NPA in coordination with NPA Signatories.
- 1) Training and resource format for FS staff. Training and resource materials will include curricula for remote and/or in-person training sessions, online training modules, and a resource library that will include at a minimum: 1) Frequently Asked Questions (FAQ) for the NPA; the HIP process, and disagreements; 2) Best practices and/or case studies for HIP development and consultation; and 3) Example HIP materials.
 - 2) Training for FS staff. The FS will offer training online, with training mandatory for all Heritage Professionals and Agency Officials, including details and new hires, who would use this NPA and/or a HIP developed in accordance with this NPA. Upon completion, staff will receive a certificate that may be provided to HIP consulting parties, upon request.
 - 3) Training for non-FS parties. The FS will make the NPA training and information materials developed for FS staff available to NPA Signatories, SHPOs/THPOs, Tribes, and other consulting parties.
- B. Initial Monitoring of the NPA. The FS Headquarters will seek input from Signatories, SHPOs/THPOs, Tribes, consulting parties, and the public regarding the NPA throughout each year of the first two (2) calendar years following the execution of this NPA.
- 1) Process for seeking input and sharing results. The FS Headquarters will accept comments from SHPOs/THPOs, Tribes, consulting parties and the public through written correspondence, including electronic correspondence, and will hold quarterly teleconference calls with Signatories to discuss the implementation of the NPA. If any consulting parties to any HIP under development pursuant to this NPA requests teleconference calls with FS Headquarters, the FS will consider such requests. At the end of the first year of the two-year monitoring period after execution of this NPA, the FS Headquarters will begin to synthesize comments and responses to comments pertaining to the post-execution monitoring and comment period. The FS Headquarters will make the initial results publicly available fifteen (15) months after the execution of this NPA and updated results thirty (30) months after execution.

- 2) Discussion of monitoring results and potential amendments. The FS will convene a meeting of the Signatories to this NPA within fifteen (15) months of execution of the NPA to review implementation of the terms of this NPA, including comments received during the first twelve (12) months of the post-execution monitoring period, and determine whether revisions or amendments are needed. The Signatories will meet again within thirty (30) months after execution to review additional comments received during the second calendar year of the monitoring period and consider amending the NPA, if needed.
 - (i) Meetings will be conducted in a location and/or format (including in-person, video conferencing, or teleconferencing, etc.) that allows for the maximum flexibility for all parties to participate. If revisions or amendments are needed, the parties will follow the amendment stipulation in Section XIII.

C. Long-Term Monitoring and Reporting Process

- 1) Record keeping. Every fiscal year, Heritage Professionals shall enter information regarding Project activities initiated under this NPA into the FS Heritage Phasing NPA electronic system of record.
- 2) Preparation of report. The National Office will compile the following information to include in the NPA annual report:
 - (i) A table of the names, location (State and Forest), and types of Projects reviewed under the NPA; corresponding number of disputes; CRSOs adopted; and the number of HIP commitments completed and/or initiated.
- 3) Distribution of report. A copy of the nationwide annual report will be made available online and be sent to ACHP, NCSHPO, and the National Association of Tribal Historic Preservation Officers 18 months following the execution of the NPA, and on an annual basis following the submittal of the first report. Tribes and consulting parties will be notified of the annual report's publication.
- 4) Bi-annual discussion of NPA implementation and potential amendments. The FS will convene a meeting of the Signatories to this NPA every two (2) years after the initial meeting regarding the initial twenty-four (24) month implementation of this NPA to review implementation of the terms of this NPA and determine whether revisions or amendments are needed.
 - (i) Meetings will be conducted in a location and/or format, (including in-person, video conferencing, or teleconferencing, etc.) that allows for the maximum flexibility for all parties to participate. Any amendments will be developed in accordance with the amendment stipulation of this NPA.

XII. Dispute Resolution

- A. Disputes regarding HIP development process. When the FS, HIP consulting party, or any party, regardless of their participation as a HIP consulting party, requests the ACHP to comment prior to the HIP issuance (see Sections II.D and IX), the ACHP shall respond within fifteen (15) days of receipt of all pertinent documentation to either provide the FS recommendations regarding the dispute or request and receive an additional fifteen (15) days to respond. The Agency Official shall consider any recommendations to reach a decision concerning the dispute. The Agency Official shall notify ACHP and HIP consulting parties of the final decision. The FS's responsibility to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute remain unchanged.
- B. Disputes regarding NPA. Excluding disputes raised regarding development, finalization, or implementation of a specific HIP; should any Signatory or Tribal Signatory to this NPA object to the way the stipulations provided herein are being implemented, the Signatories will meet to attempt to resolve the dispute. If a Signatory determines that such dispute cannot be resolved, the FS will:
- 1) Notify HIP consulting parties that are actively engaged in the development or implementation of a HIP that a dispute about the NPA has been raised.
 - 2) Forward all documentation relevant to the dispute, including the FS's proposed resolution, to the other Signatories. The Signatories shall provide the FS with their response to the FS's proposed resolution of the dispute within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the FS shall consider any timely advice or comments regarding the dispute from the Signatories and provide them with a written response. The FS will then proceed according to its final decision and notify HIP consulting parties of such decision.
 - 3) If the Signatories do not provide their advice regarding the dispute within the thirty (30) day period, the FS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the FS shall consider any timely comments regarding the dispute from the Signatories and provide them with a written response. The FS will then proceed according to its final decision and notify HIP consulting parties of such decision.
 - 4) The FS's responsibility to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute remain unchanged.

XIII. Amendments

- A. Body of NPA. This NPA, including its appendices, may be amended when such an amendment is agreed to in writing by all Signatories, including current Tribal

Signatories to the NPA at the time of the amendment's execution. Signatories will consider any comments or proposals from Tribes, SHPOs/THPOs, or other consulting parties for amending the NPA. The amendment will be effective on the date a copy signed by all Signatories is filed with the ACHP and published on the FS website.

- B. Appendices to the NPA. Upon written agreement of the Signatories, including current Tribal Signatories at the time of the amendment's execution, any appendix may be modified without amendment to this NPA. Otherwise, the appendices will be amended pursuant to Section XIII. A, above. Modified appendices shall replace the outdated appendices and be distributed to the Signatories and published on the FS website.
- C. Effect on HIPs. Existing finalized HIPs will comply with any amendments, including changes to the body or appendices, which may require an amendment to the HIP to bring it into compliance with the amended NPA. Any subsequent changes to an existing HIP will follow the terms of the amended NPA.

XIV. Confidentiality Concerns Management

- A. Confidential information may be used to inform project design and alternatives; however, some sensitive information may need to be withheld from public view. There are different statutes that protect confidentiality of certain information, but those statutes have different standards according to the type of resource at issue.
- B. If a HIP consulting party expresses confidentiality concerns in regards to the HIP development, issuance or implementation, the Agency Official and FS Heritage Professional shall use best efforts to protect sensitive information from disclosure as requested by HIP consulting parties to the extent permitted by federal law, including Section 304 of NHPA (54 U.S.C. 307103); Section 9 of the Archaeological Resources Protection Act (16 U.S.C. 470hh); Section 8106 of the Food, Conservation, and Energy Act of 2008 (25 U.S.C. 3056); and Section 552(b) of the Freedom of Information Act (5 U.S.C. 552).

XV. Consultation Records Management

- A. The FS is responsible for maintaining the record of consultation from the initiation period up to the formalization of the HIP, and the record of Section 106 review for each Project following XIV. Upon request, the Agency Official may make consultation records available to any HIP consulting party, withholding or redacting any sensitive information pursuant to XIV.

XVI. Termination

- A. Process for Signatories. Any Signatory to this agreement may terminate it by providing ninety (90) days notice to the other Signatories, provided that the Signatory will consult among all Signatories during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.
- B. Process for Tribal Signatories. When a Tribal Signatory signs the NPA, termination of the NPA by that Tribe only terminates the applicability of the NPA on those Tribal lands. The Tribal Signatory will remain a signatory to the NPA until the Tribe terminates its participation in writing. Termination by a Tribal Signatory to the NPA will not terminate the NPA in any jurisdiction other than its own Tribal land.
- C. Effect on existing HIPs. In the event of termination of the NPA, all existing HIPs for proposed or ongoing projects shall immediately expire. Prior to work continuing on the subject projects, the FS must incorporate the terms of a HIP into a new programmatic agreement, developed and executed pursuant to 36 CFR § 800.14(3).

XVII. Duration

- A. This NPA will be in effect for 15 years from the date of execution and can be extended through amendment in accordance with Stipulation XIII.

Execution of this NPA by the FS, NCSHPO, and the ACHP and implementation of its terms evidence that FS has taken into account the effects of this Program of Projects on historic properties and afforded the ACHP an opportunity to comment.

**DRAFT NATIONAL PROGRAMMATIC AGREEMENT
AMONG
THE U.S. DEPARTMENT OF AGRICULTURE FOREST SERVICE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION
OFFICERS
FOR PHASING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT
FOR LARGE-SCALE MULTI-YEAR UNDERTAKINGS**

USDA FOREST SERVICE

Randy Moore
Chief

Date

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Jordan E. Tannenbaum
Vice Chairman

Date

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

Ramona Bartos
President

Date

Appendix A. Definitions

All of the definitions included in 36 CFR § 800.16 apply to this NPA, some of which are included here for easy reference.

Agency Official and Higher-Ranking Agency Official. The line officer responsible for legal compliance and land management decisions. In practice, the Agency Official is often the same person as the Responsible Official under NEPA (excluding district rangers), the agency employee who has the authority to make and implement a decision under NEPA on a proposed action. The order of ranking Agency Officials, from high to low is: Chief, Regional Forester, Forest Supervisor, and District Ranger. The Higher-Ranking Agency Official is the line officer who ranks above the Agency Official applying the NPA.

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 (36 CFR § 800.16(f)).

Cultural resources. An object or definite location of human activity, occupation, or use identifiable through field survey, historical documentation, or oral evidence. Cultural resources are pre-contact and post-contact historic, archeological, or architectural sites, structures, places, objects, or traditional cultural properties. Cultural resources include the entire spectrum of resources for which the Heritage Program is responsible, from artifacts to cultural landscapes, without regard to eligibility for listing on the National Register (FSM 2360.5).

Cultural Resources Stewardship Opportunities (CRSO). Activities that the Agency Official has opted to include in Project design that recognize, preserve, protect, and enhance cultural resources for the greatest public benefit (FSM 2360.2), including benefits to Tribes. CRSOs are activities that mutually benefit the FS and HIP consulting parties, meet the Project's purpose and need, and would be reasonable (e.g. financially, logistically, etc.) to incorporate in Project design. Examples include but are not limited to: enhancement of historic properties and landscapes; development of historic contexts in consultation with Tribes, SHPO and consulting parties; identifying opportunities for interpretation; traditional cultural property studies; nominating sites to the National Register; developing interpretative programs; and other similar activities.

Heritage Implementation Plan (HIP). A plan that outlines how specific FS units will continue to review potential effects to historic properties under Section 106 after a Project decision. The HIP may only be used for compliance under this NPA and must be associated with a specific Project (undertaking). The HIP cannot be programmatic (i.e. independent State-wide or Region-wide HIP without an undertaking). The FS, SHPOs/THPOs, Tribes, and other consulting parties provide input for FS to develop the HIP, which may include standard historic property

identification and evaluation methods. It may also include creative mitigation, which gets away from past standard mitigation measures such as flag-and-avoid and data recovery. The Agency Official may opt to include CRSOs in the HIP if they are reasonable, mutually beneficial, and meet the Project purpose and need. The Agency Official signs the HIP prior to the Project decision, and the HIP is part of the Project record.

Historic Property. "...[a]ny prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria" (36 CFR § 800.16(l)(1)).

HIP Consulting Party. Any entity that has a consultative role in the Section 106 process for this NPA, as defined by 36 CFR § 800.2(c). This includes, among others, the ACHP, SHPOs/THPOs, affected Tribes, other affected agencies, NPA Signatories, and any additional entities invited to participate due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties (36 CFR § 800.2(c)(5)). Signatories, SHPOs/THPOs, Tribes, applicants (if applicable to the Project), and local governments with jurisdiction (if applicable) will be accepted as HIP consulting parties. It is at the discretion of the Agency Official to accept any other party as a HIP consulting party.

Phasing. An alternate sequencing of the standard NHPA Section 106 process afforded to Agency Officials when alternatives under consideration consist of corridors or large land areas, or where access is restricted. For the purposes of this NPA, phasing means the completion of the identification and evaluation of historic properties, assessment effect, and resolution of any adverse effects on historic properties pursuant to the HIP. Phased identification, evaluation, and assessment of effects continue after a Project decision and before Project implementation begins in an area of the Project where historic properties may be affected.

Large-Scale, Multi-Year Project, or Project. Large-scale, multi-Year Project, or Project refers to the applicable undertaking meeting the criteria under Section IV that is subject to an environmental review process that results in a Project decision (i.e. decision memo, decision notice, or record of decision).

Project Activities. A Project activity refers to an activity that is a component of a large-scale, multi-year Project. Project activities are implemented over time as a part of a large-scale multi-year Project and these activities require Section 106 compliance as outlined in the HIP Section 106 compliance is completed before Project implementation begins in an area of the Project where historic properties may be affected. See Appendix B for a list of examples of Project activities.

Reasonable and Good Faith Effort. The regulations at 36 CFR § 800.4(b)(1) state that Federal Agency Officials shall make a “reasonable and good faith effort” to identify historic properties. A reasonable and good faith effort in identifying historic properties within the APE should be both reasonable in terms of intensity and scale; and carried out in good faith through its development and execution. Refer to ACHP guidance for more information:
www.achp.gov/sites/default/files/guidance/2018-05/reasonable_good_faith_identification.pdf

Signatory. Parties required under 36 CFR § 800.14(b)(2) to sign and execute Programmatic Agreements. For this NPA, the FS, the ACHP, and NCSHPO are required Signatories. Signatories have review or other responsibilities identified in the NPA. Only required Signatories can terminate the entire NPA.

Tribal Historic Preservation Officer (THPO). For Tribes with Tribal Historic Preservation Officers designated by the National Park Service pursuant to Section 101(d) of the NHPA, the THPO is a Tribal official appointed by the Tribe's highest elected official, governing authority, or 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 NHPA (54 U.S.C. 302702; 36 CFR § 800.16(w)).

Tribal Lands. For the purpose of this NPA, Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities. (54 U.S.C 300319; 36 CFR § 800.16 (x))

Tribal Signatory. A Tribal official or authorized representative who has signed an addendum to this NPA as a Tribal Signatory, thereby allowing the NPA to apply to the lands of the Tribe for proposed Project(s). A Tribal Signatory may withdraw from the NPA, thereby terminating the NPA only on their lands, but the NPA among the other Signatories will survive and may be applicable to Projects that are not on those Tribal lands.

Tribe. An Indian Tribe, band, nation, or other organized group or community, including 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 (54 U.S.C. 306108).

Undertaking. NHPA defines undertaking as “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; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal Agency” (54 U.S.C. 300320).

Appendix B. Project Activities

Large-scale, multi-year Projects authorize various activities that help the agency in its mission to develop and administer the renewable resources of timber, range, water, recreation, and wildlife for multiple use and sustained yield of the products and services.

The various activities that take place in a Project are analyzed under the NEPA review associated with the large-scale, multi-year Project. Activities such as campground maintenance and improvements may be approved within the scope of a large-scale, multi-year Project, and therefore may be part of a phased Section 106 process under this NPA. For these activities, Section 106 compliance must be outlined in the HIP and implemented over time, but before ground disturbing activities or other activities that may affect historic properties occur in a specific Project activity area.

Activities included in a large-scale, multi-year Project can include, but are not limited to the following examples:

- Forest health and watershed improvement (e.g. removing trees, timber salvage, hazard tree removal, wetland or watershed restoration, and associated activities)
- Road maintenance and decommissioning (e.g. culvert improvements and replacements, grading, roadside brush clearing, and other associated activities)
- Forest Products Harvesting (harvesting trees for timber and other materials)
- Ecocultural restoration (e.g. enhancing raw materials for medicinal and traditional practices, such as plant gathering, and other associated activities)
- Historic landscape restoration and interpretation (e.g. restoring historic properties, their setting and associated activities)
- Planting vegetation (e.g. site preparation and planting of seedlings or plugs, mechanically or manually, and associated activities)
- Range activities (e.g. grazing, range improvements, and associated activities)
- Public land access (e.g. road and trail maintenance, improvements, decommissioning, development, and associated activities)
- Wildlife habitat protection and improvement (e.g. habitat and ecosystem restoration, installation of nest boxes, building and/or replacing fences, restoring or creating water resources, and associated activities)
- Erosion control (e.g. placement of wattles and water bars, bank stabilization, stormwater control, dredging, repairing or replacing culverts, rechanneling stormwater and streams, and associated activities)
- Non-native species removal and control (e.g. weed spraying, cutting, pulling, biocontrol, and associated activities)
- Prescribed burn activities (e.g. site preparation, igniting fuels, containing fire through various firefighting methods, and other associated activities)

- Post-disaster recovery and restoration efforts (e.g. road reconstruction, timber salvage, facility repair, debris removal, landscape restoration, and associated activities)
- Utility line repair and maintenance (e.g., powerline repair and maintenance, including communications lines installation, repair, and replacement, water line installation, repair, or replacement, and associated activities [excluding those related to mineral, oil, or gas exploration or transportation])
- Infrastructure and facility maintenance (e.g. repairing and maintaining bridges, trail heads, toilets, campground facilities, and associated activities)
- Special Use Permits (e.g. easements, and related activities)

Appendix C. HIP Format and Components

A Heritage Implementation Plan (HIP) shall document the process and actions the FS unit will follow to meet NHPA Section 106 responsibilities throughout the span of the Project, including identification and evaluation of historic properties, assessment of effect, and resolution of adverse effects (if applicable).

A HIP must address all potential alternatives, if applicable, that may be implemented as part of the Project. The FS Heritage Professional shall facilitate consultation between the HIP consulting parties on behalf of, or with, the Agency Official to establish protocols in the HIP.

The FS, in consultation with the HIP consulting parties, may model a HIP after agreements that have already been established between the agency and consulting parties, where appropriate.

The HIP shall protect sensitive information to the fullest extent possible in accordance with applicable laws including Section 304 of NHPA (54 U.S.C. 307103); Section 9 of the Archaeological Resources Protection Act (16 U.S.C. 470hh); Section 8106 of the Food, Conservation, and Energy Act of 2008 (25 U.S.C. 3056); and Section 552(b) of the Freedom of Information Act (5 U.S.C. 552).

A HIP shall address all phased steps of the Section 106 process (36 CFR §§ 800.3 through 800.7). The FS shall establish the following provisions in the HIP in consultation with HIP consulting parties:

I. Area of Potential Effects (APE) Overview

A. The HIP will describe the Project APE established by the Agency Official and FS Heritage Professional in consultation with the HIP consulting parties, consistent with 36 CFR § 800.4(a)(1), prior to or as part of Project development. Where there is more than one Project alternative, the initial Project APE will be the geographic area where potential effects from all alternatives under consideration may occur. The HIP shall document a process whereby the Agency Official will refine the APE, in consultation with HIP consulting parties, consistent with 36 CFR § 800.4(a)(1), as project alternatives, if applicable, are clarified throughout the Project design and implementation. The final APE will be the extent of the potential direct and indirect effects that may occur later in time or farther removed in distance from the Project's direct effects, as well as cumulative effects of the Project on historic properties. The APE may extend beyond the physical footprint of a Project where there are other effects such as visual or auditory effects. Unless otherwise negotiated by the HIP consulting parties, the APE overview in the HIP will include (1-4) below.

- 1) Description of Project area (location and introductory information about APE); and

- 2) Summary of existing information for the APE (summary of known or documented cultural resource and previous cultural resource surveys in the APE), in accordance with Section XIV; and
- 3) Maps of the APE, including locations of proposed work, which includes previous survey coverage, and may include an appendix showing the location of known sites and areas of high potential or high sensitivity for historic properties in accordance with confidentiality laws (see Section XIV); and
- 4) Statement about the likely presence of historic properties within APE.

II. Process to Complete a Reasonable and Good Faith Identification Effort

- A. The HIP shall establish the commitment of the Agency Official to complete a reasonable and good faith effort to identify historic properties in the APE (e.g., identification strategies) and consultation before beginning Project activities in an area where historic properties may be affected.
- B. Identification efforts must be determined by the Agency Official in consultation with HIP consulting parties and will be informed by past studies, the magnitude and nature of the Project and its specific Project activities, hazardous conditions or other barriers to identification, the degree of Federal involvement, the highest potential for historic properties (and where the highest potential for adverse effects to resources may occur, consistent with 36 CFR § 800.4(b)(1)). Identification should also be informed by other variables negotiated among HIP consulting parties.
- C. Identification strategies may include, but are not limited to:
 - 1) Remote strategies, such as but not limited to literature and data review, predictive modeling, LiDAR, development of historic contexts, and other ways to identify historic properties remotely.
 - 2) Field-based strategies, such as targeted cultural resource field surveys using methods based on existing Forest protocols.
 - 3) Identification that may be informed by on-site or off-site research such as interviews, oral histories, ethnographic studies, and previous inventories if considered adequate by Heritage Professionals as per guidance provided in FSH 2309.12, Chapter 32, Section 11 and ACHP Guidance, Meeting the “Reasonable and Good Faith” Identification Standard in Section 106 Review.
 - 4) The inclusion of traditional knowledge, a critical component in the identification and evaluation of historic properties. The Section 106 regulations at 36 CFR § 800.4(c)(1) require Federal agencies to acknowledge the special expertise of Indian Tribes in evaluating and, by extension, identifying historic properties of religious and cultural significance to them. It

should also be noted that the regulations acknowledge that the passage of time, changing perceptions of significance, or incomplete prior evaluations may require the reevaluation of Project areas for the presence of historic properties (36 CFR § 800.4(c)(1)). This is a particularly important consideration in planning for identification, because past identification and evaluation efforts may not have included the traditional knowledge held by Indian Tribes.

- D. When only remote strategies are chosen for specific implementation areas, the FS Heritage Professional and/or Agency Official will ensure that these decisions are based on the best available information about the types of historic properties that HIP consulting parties expect to find in a given Project activity area. Consultation among the HIP consulting parties that led to this decision must be documented and placed in the Project record. Remote strategies must be designed to meet a good faith effort to identify historic properties.
- E. When targeted cultural resource field surveys are chosen and/or previous surveys are inadequate, the HIP will document whether the following areas require field survey, based on the best available knowledge of the types of historic properties that the HIP consulting parties expect to be found in a given Project activity area, or will likely result in the identification of additional historic properties (36 CFR § 800.4(c)(1)):
 - 1) Areas of steep slope (e.g. 30%) where sites are not expected to occur, based on local knowledge of the types of historic properties in a given area and as informed by HIP consulting parties.
 - 2) Areas where past natural or human-caused ground disturbance has modified the surface so extensively that the likelihood of finding evidence of intact historic properties is negligible and the site area has not been identified as being significant for other reasons that may make it eligible for the National Register, including but not limited to those that may be of religious and cultural significance to one or more Tribes. Determining that a given area has been so extensively disturbed that the likelihood of finding intact historic properties is negligible requires knowledge of local geology (including natural and cultural stratigraphy) as well as knowledge about the types and depths of historic properties expected in the area, and will take into consideration information gained from HIP consulting parties including information about resources of cultural and religious significance to Tribes.
 - 3) Areas where existing inventory data, consultation information, and predictive models previously reviewed by the HIP consulting parties are sufficient to indicate that further field survey information would not likely result in the identification of additional historic properties.

- F. The HIP may include a list of Project activity types determined by the Heritage Professional in consultation with HIP consulting parties to have limited to no adverse effect on historic properties. The Agency Official may authorize such Project activity types listed in the HIP without further review under Section 106. The Heritage Professional and/or Agency Official will ensure that the consultation among the HIP consulting parties that led to inclusion of categories of activities that do not require further review under Section 106 is documented and included in the Project record.
- 1) At a minimum, the HIP will require the Agency Official to submit, as part of the annual report, a list of any completed listed categories of Project activities that have been authorized by the HIP to proceed without further review.
- G. The HIP will document the determination of when and how cultural resources will be evaluated in consultation with HIP consulting parties for eligibility for inclusion on the National Register as part of the identification process. The Agency Official shall acknowledge that Tribes possess special expertise in assessing the eligibility of historic properties that may have religious or cultural significance to them. Where the FS identifies historic properties, the FS will define boundaries of the extent of historic properties and contributing features or, in consideration of confidentiality concerns, the FS may elect to identify an avoidance area that encompasses multiple historic properties in a given geographic area. Additionally, the HIP will include at least one of the following evaluation methods for the Agency Official to complete in consultation with HIP consulting parties.
- 1) Apply the National Register criteria (36 CFR part 63) to unevaluated properties identified in accordance with 36 CFR § 800.4(c); and/or
 - 2) Treat unevaluated properties as eligible in accordance with FSM 2363.22.
- H. If the FS and SHPO/THPO cannot agree on the eligibility of a property, or if the ACHP so requests, e.g. after receiving a disagreement notification from a Tribe that attaches religious and cultural significance to a property off Tribal lands, the FS will obtain a formal determination of eligibility from the Keeper of the National Register, whose decision shall be final (36 CFR § 800.4(c)(2)). No project activities with the potential to affect historic properties may begin in an area of the Project where there are known cultural resources until a determination of eligibility has been made or until the Agency Official elects to avoid cultural resources in that portion of the Project regardless of eligibility determination.
- I. After each identification effort is complete, the HIP shall establish a process to submit a report on the results of the identification effort(s) to HIP consulting parties for review and comment. The report must meet agency standards (FSM 2363.16)

and include information consistent with 36 CFR § 800.11, unless otherwise negotiated.

- 1) The HIP shall establish a process to complete identification and consultation before beginning Project activities in an area of the Project where historic properties may be affected.

III. Assessment of Effects

- A. Process for assessments of effect. The HIP will include a process developed among HIP consulting parties to determine whether the Project activities may affect, directly or indirectly, the integrity of any characteristics that qualify the property for inclusion in the National Register. Unevaluated properties may be treated as eligible, in accordance with FSM 2363.22, for the purpose of assessments of effect.
 - 1) When a historic property is identified, the HIP will include a protocol to apply the phased criteria of adverse effects consistent with 36 CFR § 800.5(a)(3).
 - 2) When the likelihood of historic properties is determined through predictive models, probability levels, consultation information, or other similar methods appropriate to property types expected in a given area instead of being identified through field survey, the HIP will include a process to apply the phased criteria of adverse effect, consistent with 36 CFR § 800.5(a)(3), based on the nature of the Project activities and the probability or the nature of the historic properties expected to be in the area of the planned Project activities. The FS Heritage Professional, in consultation with HIP consulting parties, will determine when ground truthing, including but not limited to pedestrian survey, is needed to supplement remote methods to identify historic properties. When there is a disagreement regarding the potential for adverse effect and that disagreement can be resolved through obtaining additional information then the HIP may follow Section II.C.2 of this Appendix, as appropriate.
- B. No Historic Properties Affected. Unless otherwise negotiated, when no historic properties are found or when there is low probability of the presence of historic properties (as determined in consultation with HIP consulting parties) the HIP shall direct the Agency Official to propose a finding of No Historic Properties Affected, and provide documentation supporting the finding, consistent with 36 CFR § 800.11 to HIP consulting parties and provide thirty (30) days from receipt for review and comment. The FS will consider comments from HIP consulting parties before making a final finding of effect.
- C. No Adverse Effect. Unless otherwise negotiated, the Agency Official shall notify HIP consulting parties of a finding of No Adverse Effect and provide HIP

consulting parties thirty (30) days from receipt to review and comment, consistent with 36 CFR § 800.5(c), on documentation supporting the finding consistent with 36 CFR § 800.11. When historic properties or areas with probability of historic properties will be affected, the HIP shall utilize one or more methods below to reach a finding of No Adverse Effect for specific Project activities. The specificity of such measures should be commensurate with the information available about the historic properties in the APE and the nature and magnitude of proposed activities. Methods to reach a finding of no adverse effect may include:

- 1) Altering activity boundaries or establishing exclusion areas that are marked for avoidance for Project activities where historic properties or unevaluated properties that may be National Register eligible may be affected;
- 2) Altering design of Project activities where historic properties may be affected to avoid adverse effects to historic properties and unevaluated properties that may be National Register eligible;
- 3) Using methods as otherwise negotiated and documented in the HIP;
- 4) Developing a monitoring plan that describes monitoring procedures (both short and long term), and which identifies sensitive cultural resources to be avoided. Unless otherwise negotiated, a monitoring plan must be implemented when needed to avoid adverse effects to historic properties during implementation of Project activities.

IV. Adverse Effect Findings and Resolution of Adverse Effects

- A. When historic properties or areas with probability of historic properties cannot be avoided, the FS Heritage Professional, in consultation with HIP consulting parties, will apply the criteria of adverse effect consistent with 36 CFR § 800.5(a).
- B. Findings of adverse effect may be made in the development of the HIP or following the finalization of the HIP, as the FS identifies new or additional effects to historic properties.
 - 1) When a finding of adverse effect is anticipated at the time of developing the HIP, the HIP will include measures to resolve adverse effects specific to the anticipated effects, unless otherwise negotiated.
 - 2) When a finding of adverse effect is made after the HIP is completed but before Project activities occur, unless otherwise negotiated, the Agency Official shall consult HIP consulting parties on a finding of Adverse Effect and provide thirty (30) days for review and comment. The Agency Official shall consult and seek agreement of HIP consulting parties on measures to resolve adverse effects. The measures and their timing for implementation

will be appended to the HIP following the amendment process Section IX.D of this Appendix. The HIP may be used in lieu of individual memoranda of agreement to resolve adverse effects, or measures to resolve adverse effects may be documented in individual memorandum of agreement, as determined by the Agency Official in coordination with the Heritage Professional.

- C. When adverse effects are based on the likelihood of historic properties and not verified through field survey, the HIP will establish generalized measures to resolve adverse effects for the types of properties anticipated to be adversely affected by the Project. The HIP shall require assessments of generalized measures as they apply to Project activity areas to assess their efficacy. If the FS, in consultation with HIP consulting parties, finds that generalized measures are insufficient to resolve adverse effects, FS will work with HIP consulting parties to modify or develop new measures to resolve adverse effects to historic properties, and these new measures will be documented in an amendment to the HIP.
- D. The HIP shall establish measure(s) to resolve adverse effects, as appropriate and as decided upon in consultation with HIP consulting parties, such as:
 - 1) Examples of prior mitigation measures that have been previously approved in other Section 106 agreements or documents such as Forest Historic Preservation Plans. For example, previous documentation or data recovery of historic properties may provide examples of methods to resolve adverse effects on other historic properties.
 - 2) Mitigation measures that treat similar cultural resources or areas in lieu of conducting mitigation directly on adversely affected historic properties, such as historic context studies, etc. It is not appropriate to conduct a lesser level of mitigation off-site than would have been required under standard mitigation.
 - 3) Mitigation measures for traditional cultural properties (TCPs), if effects cannot be avoided, might include efforts such as oral history studies, on-site or off-site interpretation, ethnographic studies, habitat protection or enhancement, and other methods. Mitigation for TCPs must be determined in consultation with the applicable Tribe(s) with traditional cultural connection to affected TCP(s).
 - 4) Mitigation measures for historic properties of religious and cultural significance to Indian Tribes, if effects cannot be avoided, might include efforts such as oral history or place name studies, on-site or off-site interpretation, ethnographic or traditional knowledge studies, habitat protection or enhancement, and other methods. Mitigation for these historic properties must be determined in consultation with the applicable Tribe(s) with traditional cultural connection to the affected historic property.

- E. The HIP will include timelines and protocols for when mitigation measures will be implemented throughout the Project and how they will be reported to consulting parties. Project activities that could have an effect on historic properties may not proceed until mitigation measures to resolve adverse effects have been determined in consultation with HIP consulting parties, and the Agency Official has committed to implementing mitigation measures.
- F. The HIP shall include the required dispute resolution process set forth in IX.B. of this Appendix to resolve disagreement of findings.

V. HIP Reporting Process

- A. The HIP will establish a process for documenting the implementation of the HIP, including CRSOs (if any), whereby the Heritage Professional is responsible for entering information regarding any activity initiated under the HIP and NPA into the internal FS Heritage NPA electronic system of record.
- B. The HIP will establish a process for communicating updates on a regular basis about the HIP implementation to HIP consulting parties. The Agency Official will seek input from HIP consulting parties to determine the appropriate frequency of Project updates (e.g. bi-weekly, monthly, bi-monthly, quarterly, etc.) and the format of these updates.
- C. At a minimum, the HIP will establish a process for annual reporting of the HIP, whereby the Heritage Professional provides an annual report on the use of the HIP in the previous fiscal year to HIP consulting parties, appropriate Forest Supervisor(s), and Regional Heritage Program Manager(s). The annual report that follows the completion of the Project will be the final annual report. If unforeseen circumstances prevent the FS from delivering the annual report to HIP consulting parties, the Agency Official will send a letter to HIP consulting parties at the time the report is due to inform them of the delay and provide opportunities for updating HIP consulting parties on HIP implementation in another forum such as verbally, in person, or virtually. The alternate opportunity for updating HIP consulting parties does not substitute for the annual report, and the Heritage Professional will provide the annual report at the soonest possible date after the original due date, but not more than six months after the due date.
- D. The HIP will outline the contents of the annual report, which will include at a minimum, a list of CRSOs initiated and completed, if applicable, and a list of Project and HIP activities completed and initiated in the previous fiscal year.
- E. As part of the annual reporting process, the HIP may include an annual meeting between HIP consulting parties to review the implementation of the HIP, discuss the upcoming program of work, and other topics pertaining to the HIP.

VI. Unanticipated Effects and Post-review Discoveries

- A. The HIP will include a process to address post-review discoveries consistent with 36 CFR § 800.13, unless otherwise negotiated by HIP consulting parties. At a minimum, the Agency Official must consult with the SHPOs/THPOs and Tribes in the event of a post-review discovery.

VII. Inadvertent Discovery and Treatment of Human Remains

- A. If Project activities have a likelihood of encountering Native American human remains or funerary objects, the HIP must establish the development of a Project-specific Plan of Action prior to implementing the HIP (per 43 CFR § 10.3). A Plan of Action must be completed prior to finalizing the HIP. A Plan of Action may be updated after the HIP is finalized by following the amendment process established in the HIP.
- B. The HIP shall also include the following process:
 - 1) If human remains or funerary objects are encountered at any time during the implementation of the Project, work will stop in the area of the discovery, and the agency shall follow the provisions of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), as applicable, and State and local laws as appropriate. These laws are separate from Section 106 of the NHPA, which is the only law applicable to this NPA, and therefore these laws apply to all agency actions and undertakings regardless of whether or not they use this NPA to comply with Section 106 of the NHPA.

VIII. Emergency Situations

- A. Unless otherwise negotiated, the FS shall follow the standard emergency procedures at 36 CFR § 800.12 or as specified in any other applicable program alternative. Should an emergency situation occur which represents an imminent threat to public health or safety, or creates a hazardous condition, the FS shall respond to the emergency or hazardous condition and immediately notify the SHPO/THPO, Tribes, and the ACHP of the emergency situation and the measures the FS has taken to respond to the emergency situation. Should the SHPO/THPO, Tribes, or the ACHP desire to provide technical assistance to the FS, they shall submit comments within seven (7) calendar days from notification, if the nature of the emergency or hazardous condition allows for such coordination.

IX. Required Administrative Provisions

- A. The HIP shall include the following provisions as set forth below.

B. Dispute Resolution Process

- 1) If HIP consulting parties raise disputes during the implementation of the HIP, the Agency Official will convene a meeting or teleconference between all HIP consulting parties to consider their views and seek agreement regarding matters arising in the implementation of the HIP. If disputes cannot be reconciled between the FS and consulting parties of the HIP, the Agency Official or Heritage Professional will refer the matter to the ACHP for their input. Within thirty (30) days of receipt of all pertinent documentation, the ACHP will either provide the FS recommendations regarding the dispute. The FS shall respond in each instance. The Agency Official shall consider any recommendations provided in reaching a decision and notify ACHP and HIP consulting parties of the final decision.

C. Anti-Deficiency Act

- 1) The FS's responsibilities under the HIP are subject to the availability of funds, and the stipulations of the HIP are subject to the provisions of the Anti-Deficiency Act. The FS shall make reasonable and good faith efforts to secure the necessary funds to implement this HIP in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the FS's ability to implement the stipulations of the HIP, the FS shall consult in accordance with the amendment procedures found in this HIP. In the meantime, all work on the Project will cease.

D. HIP Amendment Process

- 1) If the Project area changes during its implementation or when any consulting party proposes an amendment, the Agency Official will consider amending the HIP in coordination with the Heritage Professional. If the Project area changes, the Agency Official will amend the HIP to include Section 106 activities for those new Project areas.
- 2) When the Project area changes or when an amendment is proposed, the Agency Official will notify and consult with HIP consulting parties. Upon receipt of notification, HIP consulting parties will have ten (10) days to comment on whether an amendment to the HIP is necessary.
- 3) When an amendment is warranted, the Agency Official will provide the HIP consulting parties fifteen (15) days to review the drafted amendment, upon receipt of the draft. If there is a dispute about an amendment, the Agency Official and HIP consulting parties will follow the dispute resolution process in IX.B.

- 4) An amendment of the HIP will go into effect upon signature of the Agency Official, and the FS will provide a copy to HIP consulting parties within thirty (30) days of signing.

E. Confidentiality Concerns

- 1) If a HIP consulting party expresses confidentiality concerns in regards to the HIP development, issuance or implementation, the Agency Official and FS Heritage Professional shall use best efforts to protect sensitive information from disclosure as requested by HIP consulting parties to the extent permitted by federal law, including Section 304 of NHPA (54 U.S.C. 307103); Section 9 of the Archaeological Resources Protection Act (16 U.S.C. 470hh); Section 8106 of the Food, Conservation, and Energy Act of 2008 (25 U.S.C. 3056); and Section 552(b) of the Freedom of Information Act (5 U.S.C. 552). These those statutes have different standards according to the type of resource at issue.

F. Duration and Termination

- 1) The HIP will remain active for the duration of the Project (FS to insert duration of Project in calendar terms, such as years, months, etc.). An Agency Official with jurisdiction over the Project may terminate the HIP by providing ninety (90) days' notice to HIP consulting parties, provided the Agency Official consults with HIP consulting parties in good faith and considers their input prior to termination.
- 2) If termination of the HIP or nationwide NPA occurs while individual HIP activities are ongoing for a specific Project area, the HIP consulting parties will continue those individual HIP activities to completion. Prior to continuing work on other Project areas, the Agency Official shall develop and execute a Programmatic Agreement (per 36 CFR 800.14(b)(3)) to incorporate the terms of the HIP. Once the new PA is executed, that PA will govern the Section 106 activities for the Project.
- 3) If the Project is cancelled, the HIP will be terminated.

X. Map of the final APE as defined in consultation with the HIP consulting parties.

XI. Cultural resources stewardship opportunities (CRSOs) integrated.

- A. To encourage stewardship outcomes from an early consultation process, the Agency Official must seek to identify any CRISO(s) that recognize, preserve, protect, and enhance cultural resources for the greatest benefit to the public and Tribes that *may* be integrated into the Project design.

- B. Examples of CRSOs include but are not limited to enhancement of historic properties and landscapes, development of historic contexts, identifying opportunities for interpretation, traditional cultural property studies, identification and documentation of historic properties of religious and cultural significance, habitat improvements for natural and cultural resources important to Tribes, and other opportunities for cultural resources stewardship that are consistent with Project purpose.
- C. If the Agency Official received viable proposals for CRSO(s) and approved any CRSO(s) in the Project design, the HIP will briefly summarize where and how the CRSO(s) will be implemented. At a minimum, information about the implementation of CRSOs will be included in the Annual HIP Report (as described in Section V. of this Appendix).

Appendix D. Tribal Signatory Page

**DRAFT NATIONAL PROGRAMMATIC AGREEMENT
AMONG
THE U. S. DEPARTMENT OF AGRICULTURE FOREST SERVICE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION
OFFICERS
FOR PHASING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT
FOR LARGE-SCALE MULTI-YEAR UNDERTAKINGS**

As Tribal Signatory to the National Programmatic Agreement (NPA) referenced above, the provisions of the NPA will be applicable to the proposed Undertaking(s) occurring on or affecting historic properties on [*Indian tribe 's*] Tribal lands.

Termination of this addendum will terminate the NPA on the Tribal lands under the jurisdiction of the Tribal Signatory.

TRIBE (*insert name*)

(*Name of authorized Signatory for the Tribe*)

Date

(*Title*)

Appendix E. Examples of Cultural Resources Stewardship Opportunities (CRSOs)

The following examples of CRSOs are based on experiences Forest Service Heritage Professionals have shared with the National Office Heritage staff. In all cases, CRSOs are mutually beneficial to the FS and to consulting parties, they are reasonable, and they meet the Project purpose and need.

1. Timber Harvest CRSO Example:

A Forest Supervisor plans a timber harvest project that will remove only a fraction of the available timber in the project area. During consultation the Forest learns that birch trees are very important to the Tribe, and a Tribal representative asks the Forest silviculturist what the best way would be to restore birch to the area. The Forest Silviculturist states that clear cutting with some follow-on restoration work would be best for that purpose. The Forest Supervisor sees the benefit of making more timber available and opts for the clear-cutting option that would mutually benefit the Tribe and the Forest.

2. Prescribed Fire CRSO Example:

A Forest Supervisor plans to restore the natural fire regime throughout the Forest wherever feasible. In consultation with Tribes, the Forest learns that there are plants that were traditionally used for basketry on the Forest, but these plants can no longer be used by Tribes because the plants require a natural fire regime to grow strong enough to be used in basketry. In looking at the areas under consideration for prescribed fire, the Forest Fire Ecologist and Forest Supervisor find that many of the places the Tribe would like included in the project are feasible and would meet the purpose and need of the prescribed fire plan.

3. Watershed Restoration Example:

A Forest Supervisor plans to do a forest-wide watershed restoration project, which would include bank stabilization in several places. Through early consultation, the Forest identifies archaeological sites determined eligible for the National Register of Historic Places that are being negatively impacted by erosion of river and stream banks. The Forest Supervisor decides to prioritize the stabilization components of the watershed restoration project to halt the ongoing erosion adversely affecting the historic properties.