

**DRAFT
PROGRAMMATIC AGREEMENT
AMONG
THE USDA FOREST SERVICE
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION
OFFICERS
FOR COMPLIANCE WITH SECTION 106 OF THE
NATIONAL HISTORIC PRESERVATION ACT**

| | | |
|-------------|--|----|
| I. | Definitions | 3 |
| II. | Staff Responsibilities, Qualifications, and Training | 4 |
| III. | Applicability | 6 |
| IV. | Initiate the Phased Process | 7 |
| V. | Create the HIP | 8 |
| VI. | HIP Format and Components | 9 |
| VII. | Formalize the HIP | 19 |
| VIII. | Implementation of the Project and HIP | 20 |
| IX. | FS Managerial Responsibilities..... | 21 |
| X. | Dispute Resolution | 23 |
| XI. | Amendments..... | 24 |
| XII. | Termination | 24 |
| XIII. | Duration..... | 24 |
| Appendix A. | Definitions..... | 27 |
| Appendix B. | Project Activities | 33 |
| Appendix C. | Heritage Implementation Plan (HIP) Template | 35 |
| Appendix D. | Invitation Letter Templates | 39 |

**DRAFT
PROGRAMMATIC AGREEMENT
AMONG
THE USDA FOREST SERVICE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION
OFFICERS
FOR COMPLIANCE WITH SECTION 106 OF THE
NATIONAL HISTORIC PRESERVATION ACT**

WHEREAS, the United States 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, pursuant to the Multiple-Use Sustained-Yield Act of 1960 (P.L. 86-517); and

WHEREAS, the FS implements multi-year large-scale Projects to improve forest health and mitigate impacts of natural disasters, and authorizes multi-year large-scale Projects of non-recreation special use permit holders, including the maintenance of transportation and utility corridors, pursuant to the Organic Administration Act (16 U.S.C. 551), the Forest and Rangelands Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (P.L. 94-588, 90 Stat. 2949), the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1761-1771), the National Forest and Trails Act, and the Multiple-Use Sustained-Yield Act of 1960 (P.L. 86-517); and

WHEREAS, the FS recognizes that early coordination and consultation in the Project design process supports the agency to effectively meet its responsibilities under the National Historic Preservation Act (NHPA), and may lead to Cultural Resource Stewardship Opportunities – activities that recognize, preserve, protect, and enhance cultural resources for the greatest public benefit, pursuant to Forest Service Manual (FSM) 2360.2; and

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

WHEREAS, FS multi-year large-scale Projects are implemented over time and constitute a single undertaking requiring review under Section 106 of the NHPA; and

WHEREAS, pursuant to 36 CFR 800.1(c), the FS Agency Official must complete the Section 106 process of the NHPA “prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license,” 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 FSM 2364.11, the FS Agency Official should complete the Section 106 process prior to the issuance of a NEPA decision or other land use decision unless following an alternative process in a programmatic agreement; and

WHEREAS, individual FS units regularly determine that the effects of large-scale Projects on historic properties cannot be fully determined prior to approval of an undertaking (36 CFR 800.14(b)(1)(ii)) such that use of this programmatic agreement (PA) may be appropriate to complete Section 106 for these Projects; and

WHEREAS, this PA will establish a framework for how the FS may implement a program of phased Section 106 processes for multi-year large-scale undertakings, with emphasis on early consultation and opportunities for stewardship of federally owned or administered historic properties for the inspiration and benefit of present and future generations; and

WHEREAS, a phased process for Section 106 is here defined as the identification of historic properties, assessment of effects, and resolution of adverse effects both prior to and after the NEPA decision, and completed before Project activities begin in an area of the Project where historic properties may be affected; and

WHEREAS, this PA allows an applicable Project decision to be made prior to completion of Section 106, provided that the FS has developed a Heritage Implementation Plan (HIP) prior to the NEPA decision, which documents the process by which the FS will phase identification of historic properties, assessment of effects, and, if applicable, a process to resolve adverse effects; and

WHEREAS, this process for phasing Section 106 does not supersede existing program alternatives or any other applicable Section 106 agreement and may be applied when FS is the lead agency for large-scale Projects outside of tribal lands; and

WHEREAS, the FS has initiated consultation with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO) pursuant to 36 CFR part 800 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, the FS has initiated consultation with federally recognized Tribes (Tribes), Alaska Native Corporations (ANCs), and Tribal Historic Preservation Officers (THPO) with cultural affiliation to historic properties on the National Forest System (NFS) lands pursuant to 36 CFR part 800; and

WHEREAS, the FS has initiated consultation with the National Association of Tribal Historic Preservation Officers (NATHPO), the National Trust for Historic Preservation, and the Coalition for American Heritage; and

WHEREAS, the FS has initiated consultation with the public by publishing online information about this PA and receiving comments through online platforms; and

NOW, THEREFORE, the FS, ACHP, and NCSHPO mutually agree that implementation of this agreement and the HIP for multi-year large-scale Projects will allow FS to meet its responsibilities under Section 106 of NHPA.

STIPULATIONS

Purpose:

The purpose of this PA is to better coordinate the NHPA Section 106 and NEPA review process and to provide consulting parties an opportunity for earlier consultation on Projects. Projects are large-scale multi-year undertakings. A Project is analyzed through the NEPA process, which covers all activities in a large-scale Project. Due to the large-scale, multi-year scope of Projects, it is not possible to identify, evaluate, and assess effects on historic properties that may occur for all Project activities prior to the NEPA decision for the Project. Therefore, the standard Section 106 process of identifying, evaluating, and assessing effects on historic properties is often not feasible prior to the NEPA decision. Consequently, there is a need to allow, as appropriate, Section 106 consultation to occur after the NEPA decision, while the large-scale, multi-year Project is being implemented over time. This regularly results in the need for Project-specific programmatic agreements that allow Section 106 to be completed after the Project's NEPA decision.

This national PA is an optional Section 106 program alternative that allows applicable Projects' NEPA decisions to be made prior to completion of Section 106, provided that the FS develops a Heritage Implementation Plan (HIP) prior to the NEPA decision. The HIP documents the process by which the FS will phase identification of historic properties, assessment of effects, and, if applicable, a process to resolve adverse effects. The HIP may also include Cultural Resource Stewardship Opportunities, which are activities that may enhance visitor experiences or site protection of historic properties and are integrated into the Project. The HIP is developed in consultation with State Historic Preservation Officers (SHPO), Tribes, and other interested consulting parties.

I. Definitions

The following definitions shall apply to this agreement and all Projects reviewed under its terms:

- A. The definitions in 36 CFR 800 are applicable to this PA and are incorporated by reference herein.
- B. Additional terms relating to this agreement are defined in Chapter 2360 of the FSM and are provided in Appendix A.
- C. For purposes of this optional PA, a Project refers to the applicable undertaking that is subject to environmental review and subsequent NEPA decision and is

implemented on a large spatial scale over multiple years, such that conventional Section 106 procedures are difficult to employ to identify and assess effects to historic properties prior to the NEPA decision.

- D. For the purposes of this optional PA, “Cultural Resource Stewardship Opportunities” are activities that recognize, preserve, protect, and enhance cultural resources for the greatest public benefit (FSM 2360.2) that may be included in the scope of the Project, at the discretion of the Agency Official. Examples include, but are not limited to, enhancement of historic properties and landscapes, interpretation, and traditional cultural property studies.
- E. For the purposes of this optional PA, the HIP is a document developed by the FS with SHPOs, Tribes, and other consulting parties, describing the actions the Forest Service shall complete to meet Section 106 responsibilities after the Project is authorized and before Project activities begin in an area where historic properties may be affected. The HIP may also include direction on Cultural Resource Stewardship Opportunities, if any are identified by consulting parties and approved by the Agency Official (see Appendix B for template).

II. Staff Responsibilities, Qualifications, and Training

- A. Agency Official. FS Agency Officials have the authority to make decisions related to Section 106 under their jurisdiction (the Agency Official is the Responsible Official for NEPA). For the purposes of this PA, the Agency Official is a District Ranger, Forest Supervisor, or Regional Forester. FS units utilizing this agreement shall adhere to the responsibilities set forth below. The Agency Official for the undertaking shall:
 - i. Make decisions regarding the use of the PA, considering recommendations made by the Heritage Professional.
 - ii. Ensure that FS Heritage Professionals are engaged in the planning process at the beginning of Project development so that historic properties are considered in Project planning and design.
 - iii. Invite SHPOs, Tribes, ANCs, local governments, and other interested parties to participate in consultation early, when the widest possible range of alternatives are under consideration (36 CFR 800.8 (a)(2)).
 - iv. Approve the HIP, include a copy of the HIP in the NEPA Project record, with any confidential or tribally sensitive information redacted, and ensure that the HIP is implemented throughout the implementation of the Project.

- B. Forest Service Heritage Professional. Heritage Professionals are FS staff with education and expertise in archaeology, history, cultural resource management, or a related field. A FS Heritage Professional shall advise the Agency Official throughout the use of this agreement. The FS Heritage Professional shall:
- i. Verify the applicability of the PA in writing to the Agency Official and make recommendations to the Agency Official.
 - ii. Facilitate the development of the HIP on behalf of or with the Agency Official among HIP consulting parties.
 - iii. Be the subject matter expert with the only authority to make management recommendations and review and recommend approval of heritage work performed by archaeological technicians, paraprofessionals, contractors, cooperators, and volunteers. (FSM 2360.91).
 - iv. At a minimum, meet Office of Personnel Management standards under the GS-170 historian, GS-190 anthropologist, or GS-193 archaeologist series (FSM 2360); or 36 CFR 296.8; or the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation, Professional Qualifications Standards for Archaeologists and Historians (Appendix A to 36 CFR 61, 48 FR 44716, Sept. 29, 1983).
- C. HIP consulting parties. The HIP consulting parties include the appropriate SHPO(s), THPO(s), Tribe(s), representatives of local governments, applicants, and additional interested parties, pursuant to 36 CFR 800.2.
- i. The Agency Official will invite HIP consulting parties to attend public meetings when the Agency Official determines public meetings are necessary. The consulting parties' level of engagement in these meetings will not affect their ability to review or consult on the HIP according to the timeline established by the HIP consulting parties. HIP consulting parties may request the level of engagement they desire during the HIP development period and the implementation of the Project. The Agency Official will consider these requests and decide, in coordination with the Heritage Professional, what level of involvement in the HIP is appropriate for each consulting party in accordance with 36 CFR 800.3(f).
- D. Training
- i. Prior to using this PA as an alternative to standard Section 106 procedures, FS Heritage staff and Agency Officials must receive training and

certification upon completion of training in the use and implementation of this agreement (See Section IX. for more information).

- ii. FS staff who have received certification will forward documentation to the Regional Forester and Regional Heritage Program Manager and include a copy of the training certification in the Project record.

III. Applicability

- A. Generally, when effects on historic properties cannot be fully determined prior to approval of an undertaking or Project, as discussed in this PA, a FS unit may utilize the phased Section 106 process in this PA for Projects when two or more of the following criteria are met:
 - i. When Project implementation is proposed to last more than two fiscal years from date of signing the NEPA decision; and/or
 - ii. When the Project is based on an adaptive management or other analysis approach under NEPA that allows for flexibility in implementation; and/or
 - iii. When alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted; and/or
 - iv. When the identification of and/or the effects on historic properties cannot be fully determined and resolved prior to authorization of a Project.
- B. Projects appropriate to phase under this agreement may include, but are not limited to, Projects listed in Appendix B.
- C. This PA shall not be utilized for Projects that:
 - i. would occur on Tribal lands or has the potential to affect historic properties on Tribal lands, unless the Tribe agrees to this PA per Section III.D, or
 - ii. involve mineral, or oil and gas activities.
- D. A Tribe may authorize the applicability of this PA for Projects that are proposed to occur on or affect historic properties located on Tribal lands by written notification to the Chief of the Forest Service or designated Agency Official, of such intent or signed by the THPO or designated representative of the Tribe. Once a written and signed notification is received by the Chief of the Forest Service or designated Agency Official, the provisions of the PA will be applicable to Projects that may occur on or affect historic properties on that Tribe's tribal lands.
- E. When the Agency Official proposes to use this agreement for a Project, the Heritage Professional will document whether the terms under this PA are

applicable and appropriate for the Project in accordance with Sections III.A and III.C.

- i. If the Heritage Professional determines it is inappropriate to use this PA, the Heritage Professional will recommend to the Agency Official whether to follow a different applicable program alternative (such as an existing programmatic agreement), pursue a Project-specific program alternative, or follow the standard Section 106 process.
- F. When applicable, application of and adherence to the procedures established by this PA, including the development and implementation of a HIP, will satisfy the Forest Service's Section 106 NHPA responsibilities for the Project for which this PA is used.

IV. Initiate the Phased Process

- A. The Agency Official shall invite SHPO, Tribes, and interested parties to consult as early as possible during Project planning period to inform Project design and to develop the HIP via invitation letters, which will serve as a notification of the intent to apply the PA and an invitation to become a consulting party as a member of the HIP consulting parties (see Appendix D for template).
- B. The Agency Official shall treat parties that express written interest to participate in the development of the HIP within thirty (30) days of receipt of the invitation letter as consulting parties for developing the HIP. The Agency Official will coordinate the first meeting and send written confirmation and an initial package of information to those parties. The package will include information about the proposed Project available at this stage, including:
 - i. A map and brief summary of the developing Project proposal.
 - ii. A brief cultural resource overview and/or ethnographic overview of the proposed Project area including a brief cultural history, 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. Locations of sensitive cultural resources will not be shared in this packet.
 - iii. Contact information for the Agency Official and Heritage Professional.
 - iv. A list of all parties receiving the package of information.
 - v. A proposed date for the first meeting.

- C. If during the development of the HIP or during the implementation of the Project, parties who have not previously request to participate as a consulting party, the Agency Official, in consultation with the Heritage Professional, will consider any request to participate in accordance with 36 CFR 800.3(f). Tribes and SHPOs will be accepted as consulting parties. The Agency Official will send consulting parties a written response and upon their acceptance to become a consulting party, coordinate their participation with other HIP consulting parties.
- D. At any time during the development of the HIP or during the implementation of the Project; the FS, SHPO, Tribe(s), or other consulting parties may request ACHP involvement; or when the ACHP determines that its participation is warranted, the ACHP may choose to participate.
- E. 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.

V. Create the HIP

- A. The Heritage Professional will coordinate the first meeting in a location and/or format (in-person, video conferencing, or teleconferencing, etc.) that allows, to the maximum extent possible, for all HIP consulting parties to participate in the meeting where the FS will present for discussion the proposed Project and establish a consultation timeline to develop the HIP.
 - i. The consultation timeline shall establish *a minimum* of two meetings between HIP consulting parties; one review of an informal draft or outline of the HIP; and one final thirty (30) day review of a final draft of the HIP separate from applicable public comment periods, per Section VII.A. The comment period for the HIP consulting parties will be prior to or concurrent with any comment period that may be required under NEPA, if applicable.
- B. Over the course of the established consultation timeline, the Heritage Professional shall lead the completion of the HIP in consultation with consulting parties.
 - i. The HIP consulting parties shall consider whether existing protocols in other program alternatives (such as programmatic agreements) or forest management plans are applicable in the HIP.
 - ii. The Agency Official and Heritage Professional shall identify and consider Cultural Stewardship Opportunities that enhance and protect historic properties in the Project area, and such opportunities may be incorporated

in the Project at the discretion of Agency Official, per Section VI.B, if the opportunities are consistent with the purpose and need of the Project.

- C. To ensure coordination between the HIP consulting parties and the review process under NEPA, the Agency Official shall inform HIP consulting parties about public meetings related to the NEPA review process, as appropriate.
 - i. The Agency Official may clarify to attendees of public meetings when those meetings will also support Section 106 consultation responsibilities.
 - ii. In consultation with HIP consulting parties, and taking confidentiality concerns into account, the Heritage Professional may inform other interested parties about the proposed contents of the HIP in order to broaden the scope of consultation on the HIP and overall Project design.
 - iii. The Heritage Professional shall facilitate early consultation with the HIP consulting parties. The Agency Official, in coordination with the Heritage Professional, shall consider the nature of the Project and its likely effects on historic properties and take steps to involve the individuals, organizations, and entities likely to be interested in Project design, consistent with 36 CFR 800.14(b)(2)(ii). In consultation with HIP consulting parties, and with input from interested parties, FS may seek to identify Cultural Resource Stewardship Opportunities that may be incorporated in the proposed action at the discretion of Agency Official, per Section VI.C.i.
 - iv. Regardless of a Tribe's level of participation in larger consulting groups, the Agency Official shall offer consultation opportunities on a government-to-government or government-to-corporation basis for Tribes pursuant to 36 CFR 800.2(c)(2)(ii).
- D. The development of the HIP will run concurrently to the NEPA review process and shall be finalized before the Agency Official signs the NEPA decision document (i.e. Decision Memo, Decision Notice, or Record of Decision).

VI. HIP Format and Components

- A. A HIP documents the process and actions the agency will follow to meet Section 106 responsibilities throughout the span of the Project, including identification of historic properties, assessment of effect, and resolution of adverse effects (see Appendix C for HIP template). The Heritage Professional shall facilitate consultation between the HIP consulting parties on behalf of, or with, the Agency Official to establish protocols in a Project-specific HIP. The HIP consulting

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

- B. A HIP shall protect sensitive information to the fullest extent permitted by law, using, among other applicable laws, relevant provisions of Section 304 of NHPA, Section 9 of the Archaeological Resources Protection Act, Title VIII Subpart B of the Conservation, and Energy Act of 2008 (“2008 Farm Bill”) (PL 110-234) and Section 552(b) of the Freedom of Information Act in response to any concern regarding confidentiality and privacy raised by Tribes.
- C. A HIP shall include the following minimum provisions that will be established in consultation with HIP consulting parties:
 - i. Cultural Resource Stewardship Opportunities, if any identified.
 - 1. To encourage stewardship outcomes from an early consultation process, select Cultural Resource Stewardship Opportunities that recognize, preserve, protect, and enhance cultural resources for the greatest public benefit (FSM 2360.2) may be integrated into the Project design. Cultural Resource Stewardship Opportunities do not resolve adverse effects, though the nature of their actions may be similar to mitigation measures.
 - a. Examples include but are not limited to, enhancement of historic properties and landscapes, development of historic contexts, identifying opportunities for interpretation, traditional cultural property studies, and other alternatives.
 - 2. The HIP will establish when, what, and how information about the implementation of any Cultural Resource Stewardship Opportunity will be reported. At a minimum, information about the implementation of Stewardship Opportunities will be included in the Annual HIP Report (as described in Section IV.C.iv below).
 - ii. Project Description and Area of Potential Effect (APE) Overview
 - 1. The HIP will briefly describe the Project APE established by the Agency Official in consultation with the HIP consulting parties per 36 CFR 800.4(a)(1). The initial Project APE will be the geographic area where potential effects from any alternative under consideration may occur. The Agency Official will refine the APE as project alternatives are clarified throughout the Project design and implementation. The final APE will be the extent of the

potential direct and indirect effects of the Project on historic properties. The APE may extend beyond the physical footprint of a Project where there are indirect effects such as visual effects.

2. Unless otherwise negotiated by the HIP consulting parties, the Project overview will describe the Project APE including (a-d) below. If such information is in the NEPA document, the HIP may refer to the NEPA document for such information.
 - a. Description of APE (location, introductory information about Project potential effects); and
 - b. Summary of existing information in the APE (summary of known or documented cultural resource and of previous cultural resource surveys in the APE); and
 - c. Maps of the APE depicting the location of known sites, previous survey coverage, and areas of high potential or high sensitivity for historic properties (considering confidentiality concerns); and
 - d. Statement about the likely presence of historic properties within APE.
 3. The HIP will articulate the process for establishing an APE for the overall Project per 36 CFR 800.4(a)(i). Unless otherwise negotiated, the Agency Official will notify consulting parties in writing when and where Project activities are planned before beginning Project activities in areas where historic properties may be affected and provide an overview for the activities in a given area of the Project with a similar package of information as above for the overall Project (Section IV.a.ii.).
- iii. Process to Complete a Reasonable and Good Faith Identification Effort
1. The HIP shall establish the commitment of the Agency Official to complete actions that constitute a reasonable and good faith effort to identify historic properties in the APE (e.g., identification strategies), as defined in consultation with the HIP consulting parties.
 2. Identification efforts should be informed by the nature and scale of the Project and its specific Project activities, where hazardous conditions or other barriers to identification may be located, level

of federal involvement, where the highest potential for historic properties may be located, where the highest potential for adverse effects to resources may occur, and as otherwise negotiated among consulting parties.

3. Identification strategies may include, but are not limited to:
 - a. Remote strategies, such as but not limited to literature and data review, interviews, oral histories, predictive modeling, LiDAR, development of historic contexts, development of ethnographic studies in consultation with interested parties, and other ways to identify historic properties remotely;
 - b. Field-based strategies, such as targeted cultural resource field surveys using methods based on existing Forest protocols, or previous inventories if considered adequate by Heritage Professionals as per guidance provided in FSH 2309.12, Chapter 32, Section 11 (Date Approved 04/14/2015) and ACHP Guidance, *Meeting the “Reasonable and Good Faith” Identification Standard in Section 106 Review*.
4. When only remote strategies are chosen for specific implementation areas, the Heritage Professional and/or Agency Official will ensure that the consultation that led to this decision is documented and included in the Project record. Remote strategies must include an adequate level of documentation as determined by HIP consulting parties. Unless otherwise negotiated, remote-based strategies must be supplemented with a predictive model.
5. When targeted cultural resource field surveys are chosen and/or previous surveys are inadequate, the HIP will document determination of whether the following areas require field survey:
 - a. Areas of steep slope (e.g. 30%) where sites are not expected to occur, or the site density is low.
 - b. Areas where past natural or human-caused ground disturbance has modified the surface so extensively that the likelihood of finding evidence of intact archaeological historic properties is negligible.

- c. Areas where existing inventory data and landscape-sensitivity-predictive models are sufficient to indicate that further field survey information would not contribute to better understanding the eligibility of cultural resources.
- 6. The HIP will document consideration of whether the Project involves routine management activities with little to no potential to affect historic properties suitable for the Agency Official to authorize the Project activities without further review under Section 106.
 - a. Unless otherwise negotiated, the HIP will require the Agency Official to submit, as part of the annual report, a list of any completed routine management Project activities that have been authorized by the HIP to proceed without further review.
- 7. The HIP will document the determination of when and how cultural resources will be evaluated for eligibility for inclusion on the National Register. Unless otherwise negotiated, the Agency Official will complete the following actions in consultation with consulting parties:
 - a. Apply the National Register criteria (36 CFR part 63) to unevaluated properties identified in accordance with 36 CFR 800.4(c); and/or
 - b. Apply criteria established in FS protocols or other agreements; and/or
 - c. Establish types of properties to be determined eligible or ineligible without consultation; and/or
 - d. Treat unevaluated properties as eligible in accordance with FSM 2363.22.
- 8. If the FS and appropriate SHPO/THPO or Tribe cannot agree on the eligibility of a property, or if the ACHP so requests 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)).

9. After each identification phase is complete, the HIP shall establish a process to submit a report meeting agency standards (FSM 2362.16) to appropriate consulting parties.
 - a. The HIP shall establish a process to complete inventory before beginning Project activities in an area of the Project where historic properties may be affected.
 10. Unless otherwise negotiated, when no historic properties are found or when there is low probability of the presence of historic properties (as defined by HIP consulting parties) the HIP shall direct the Agency Official to reach a finding of *No Historic Properties Affected*, and provide thirty (30) days for SHPOs and Tribes to review.
- iv. Assessment of Effects
1. The HIP will include a process to determine whether the Project activities may affect, directly or indirectly, the integrity of any characteristics that qualify the property or unevaluated properties for inclusion in the National Register.
 - a. When a historic property is identified, the HIP will include a protocol to apply the criteria of adverse effects in accordance with regulations at 36 CFR 800.5.
 - b. When the likelihood of historic properties is determined through predictive models, probability levels, or other similar methods instead of being verified through field survey, the HIP will include a process to apply the criteria of adverse effect 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.
 2. No Adverse Effect. When historic properties or areas with probability of historic properties will be affected, the HIP shall establish a process for the Agency Official to modify or impose conditions on the Project activities to reach a finding of No Adverse Effect. The HIP shall utilize one or more methods below (a-d) 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. These processes include:

- a. Alter boundaries or management actions of Project activities where historic properties may be affected to avoid, minimize, or mitigate effects to historic properties and unevaluated properties (e.g. sites) or areas with the likelihood of historic properties for one or more areas of the Project; or
 - b.
 - c. As otherwise negotiated and documented in the HIP.
3. The HIP will establish how the Agency Official may propose a finding of No Adverse Effect. Unless otherwise negotiated, the Agency Official shall notify SHPOs and Tribes of a finding of No Adverse Effect and provide thirty (30) days for SHPOs and Tribes to review.
- v. Resolution of Adverse Effects
1. The HIP will include a process to avoid, minimize, or mitigate effects on the property and resolve adverse effects identified by applying the criteria of adverse effect pursuant to Section VI.C.iv.
 2. The HIP will establish a process for the Agency Official to propose findings and resolutions of adverse effects for specific Project activities.
 - a. When a finding of adverse effect is reached after the HIP is completed but before Project activities occur, unless otherwise negotiated, the Agency Official shall notify SHPOs and Tribes of a finding of Adverse Effect and provide thirty (30) days for SHPOs and Tribes to review and respond to a proposed mitigation. The chosen mitigation measure will then be amended to the HIP per Section VI.C.ix.
 - b. When a finding of adverse effect is anticipated at the time of developing the HIP, the HIP will include mitigation measures specific to the anticipated effects of those areas of the Project, unless otherwise negotiated.

3. The specificity of mitigation measures should be commensurate with results of reasonable and good faith identification efforts completed in the APE.
 - a. When adverse effects are based on the presence of historic properties verified through field survey, the HIP will establish mitigation measures for properties adversely affected by the undertaking.
 - b. When adverse effects are based on the likelihood of historic properties and not verified through field survey, the HIP will establish generalized mitigation measures for the types of properties anticipated to be adversely affected by the undertaking. The HIP shall require post-review assessment of Project activity areas to be included as a mitigation measure of a generalized mitigation approach, to assess whether adverse effects were anticipated accurately.
4. When a National Historic Landmark (NHL) will be adversely affected, the HIP will include the following process.
 - a. When the FS determines a Project activity will adversely affect an NHL, the Agency Official shall notify and invite the Secretary of the Interior to participate in in consultation accordance with 36 CFR § 800.10, and will also notify Regional National Park Service staff and invite them to participate in consultation. The Agency Official will only notify the ACHP of effects to an NHL when a NHL will be adversely affected; however, the FS, the SHPO/THPO, Tribe(s), or other consulting parties may request ACHP involvement at any time, or when the ACHP determines that its participation is warranted.
5. The HIP shall establish one or more of the following measures to resolve adverse effects, as appropriate:
 - a. Mitigation measures that parties have developed in consultation, as part of HIP development. Forests may utilize mitigation measures that have been previously approved in other Section 106 agreements or documents such as Forest Historic Preservation Plans. For example,

but not limited to, documentation or data recovery of adversely affected historic properties or areas with historic properties.

- b. Alternative mitigation or "off-site mitigation," such as treating similar sites or areas in lieu of conducting mitigation directly on adversely affected sites or areas. It is not appropriate to conduct a lesser level of mitigation off-site than would have been required under standard mitigation.
- c. Monitoring plan that describes monitoring procedures (both short and long term), and which identifies sensitive sites to be avoided. Unless otherwise negotiated, a monitoring plan must be used in addition to another mitigation measure.
 - a. When adverse effects are based on the likelihood of historic properties, the HIP shall include a post-review assessment of a Project activity area as a mitigation measure, to assess whether adverse effects were anticipated accurately.
 - d. Consultation protocol that convenes HIP consulting parties during the Project to consult and develop mitigation measures specific to the adverse effects of a Project activity. Such mitigation measures and its timing for implementation will be amended to the HIP per the amendment process under Section VI.C.ix and Appendix C.
- 6. 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.
- vi. Annual HIP Reporting Process
 - 1. The HIP will establish a process for documenting the implementation of the HIP, whereby the Heritage Professional is responsible for entering information regarding any activity initiated under the HIP and PA into the internal FS Heritage electronic system of record.
 - 2. 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 appropriate Forest Supervisor(s), SHPO(s), Tribe(s), Regional Heritage Program Manager(s) and other HIP consulting parties upon request. The annual report that follows the completion of the Project will be the final annual report.

3. The HIP will outline the contents of the report, which will include at a minimum, a list of Project activities completed and initiated (listed as “open/in progress” in the FS internal system of record) under the Project in the previous fiscal year; schedule updates on the Project and HIP activities for the next fiscal year; update on long-term schedule for the Project and HIP activities.
 4. As part of the reporting process, the HIP may include an annual meeting to review the implementation of the HIP, discuss the upcoming program of work, and other topics pertaining to the HIP.
- vii. Unanticipated Effects and Post-review Discoveries
1. The HIP will include a process to address post-review discoveries pursuant to 36 CFR 800.13, unless otherwise negotiated.
- viii. Inadvertent Discovery and Treatment of Human Remains
1. If Project activities have a likelihood of encountering Native American human remains, the HIP should establish the development of a Project-specific Plan of Action prior to implementing the HIP (per 43 CFR 10.3).
 2. The HIP shall include the following process:
 - a. If human remains are discovered 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.
- ix. Emergency Situations
1. 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 and the ACHP of the condition which has initiated the situation and the measures the FS took taken to respond to the emergency situation. or hazardous condition. Should the SHPO 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.

- x. Required Administrative Provisions
 - 1. The HIP shall include the following provisions, as set forth in the template (Appendix B).
 - a. Dispute Resolution Process
 - b. Anti-Deficiency Act
 - c. Amendment Process

VII. Formalize the HIP

- A. The Agency Official or Heritage Professional will provide the HIP consulting parties a final thirty (30) day period to seek input on the final draft of the HIP. The draft will be sent to HIP consulting parties according to a given Forest System unit's consultation protocols and correspondence methods (e.g. email or other electronic submission, first class mail, certified mail), unless otherwise negotiated. The thirty (30) day final consultation period will begin upon receipt of the draft HIP by the HIP consulting parties and is separate from any public comment periods. The thirty (30) day HIP review period may run concurrent with or before the comment period for a NEPA document and must be concluded before any applicable NEPA document comment period. When using this PA to comply with Section 106, the Agency Official and consulting parties will finalize a HIP before the NEPA decision. The finalized HIP may be amended after the NEPA decision, if clarifications are needed or new information becomes available that affects the scope of the HIP.
- B. The Agency Official will consider views of the HIP consulting parties, and where feasible, seek agreement regarding matters arising in the HIP.
 - i. The Agency Official will consult the Heritage Professional to determine whether the HIP is appropriate to finalize before signing, per Section VII.C.
 - ii. If the ACHP is not participating, the Agency Official may invite the ACHP to participate as a consulting party to resolve issues. If the Agency

Official or Heritage Professional determines that concerns about the proposed HIP cannot be resolved, the Agency Official or Heritage Professional will forward all relevant documentation to the Regional Office for their review.

1. In consultation with the Regional Heritage Program Manager and Regional Forester, the Agency Official will consider how to reasonably modify the HIP based on concerns raised by consulting parties.
 2. The Agency Official will keep records of how consultation was undertaken in good faith to develop the HIP and how each concern raised was addressed, as appropriate. Upon request from a consulting party, the Agency Official may make certain of these records available to a consulting party and with consideration to confidentiality concerns.
- iii. If disputes persist, any HIP consulting party may refer the matter to the ACHP to comment within fifteen (15) days. Within fifteen (15) days of receipt of all pertinent documentation, the ACHP will either provide the FS recommendations regarding the dispute or receive an additional fifteen (15) days in accordance with 36 CFR 800.7 (c)(4). 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. The Agency Official will sign the final HIP and, taking into consideration confidentiality concerns¹, include it as an appendix or incorporated by reference in the NEPA decision document (i.e. decision memo, decision notice, or record of decision).
- i. The Agency Official will send the final, signed copy of the HIP to SHPO, Tribes, and the ACHP and include a copy in the administrative record for the Project.

VIII. Implementation of the Project and HIP

¹ Confidential information may be used to inform project design and alternatives; however, some sensitive information may need to be withheld from public view.

- A. At each stage of the Project, the Agency Official and Heritage Professional will review the HIP and coordinate efforts to comply with all the requirements of the HIP.
- B. The Agency Official and Heritage Professional will coordinate to ensure that when Project activity areas overlap with areas targeted for cultural resource field inventory, the cultural resource field inventory will be completed before the Project activities begin. The Agency Official shall complete all identification and evaluation activities as well as measures to avoid, minimize, or mitigate adverse effects outlined in the HIP before a specific Project activity begins in an area of the Project where historic properties may be affected.
 - ii. If the Project area changes, the Agency Official, Heritage Professional and consulting parties will determine whether the HIP needs to be amended per Section VI.C.ix and Appendix C.

IX. FS Managerial Responsibilities

- A. Training Development and Administration
 - i. Within three (3) months following the execution of this PA, the FS Headquarters will develop training materials regarding the implementation of this agreement, in consultation with the ACHP and NCSHPO.
 - 1. Training materials will include but not be limited to curricula for remote and in-person training sessions, online training modules, handouts, and checklists.
 - ii. Training will be offered, at a minimum, on an annual basis in each region, with training mandatory for all Heritage Professionals and Agency Officials, including details and new hires before using this PA and any HIP developed in accordance with this PA.
 - iii. FS will make online and other remote training available to SHPOs, Tribes, and other interested parties.
- B. Monitoring of Initial twelve (12) Months
 - i. The FS will seek input from Tribes, SHPOs, and the public regarding the PA throughout the first twelve (12) months after execution of this PA, in addition to the 45-day consultation period preceding execution of this PA. The FS expects that a few FS units will be in the process of developing HIPs for large-scale Projects during the first year after execution of the PA.

- ii. As information about active HIP development processes becomes available, the FS Heritage Program will make that information available on a public-facing website (excluding any confidential information) such as parties involved, locations of projects, milestones met, or any issues of concern. The FS Headquarters will accept comments from Tribes, SHPOs, and the public through written correspondence, including electronic correspondence, and will hold quarterly teleconference calls with signatories to discuss the implementation of the PA. If any consulting parties to any HIP under development pursuant to this PA requests teleconference calls with FS Headquarters, the FS will arrange such meetings. At the end of the twelfth month after execution of this PA, the FS Headquarters will begin to synthesize responses pertaining to the post-execution extended comment period. The FS Headquarters will make the results publicly available fifteen (15) months after the execution of this PA.
- iii. The FS will convene a meeting of the signatories to this PA within fifteen (15) months of execution of the PA to review implementation of the terms of this PA, including comments received during the 12-month post-execution monitoring period, and determine whether revisions or amendments are needed.
- iv. Meetings may be conducted in a location and/or format; including in-person, video conferencing, or teleconferencing; that allows for the maximum flexibility for all parties to participate. If revisions or amendments are needed, the parties will consult in accordance 36 CFR 800.14. If the FS and signatories decide no amendments are warranted in response to comments from the 12-month monitoring period, Section IX.B will no longer be in effect. All other terms of the PA will remain in effect.

C. Annual Reporting on the PA

- i. Every fiscal year, Heritage Professionals shall enter information regarding any Project and Project activities initiated under this PA into the FS Heritage electronic system of record.
- ii. Before the end of every fiscal year, the Agency Official or Heritage Professional will provide an annual report on the use of the PA to the Regional Heritage Program Manager.

- iii. At the end of every fiscal year, the Washington Office or Regional Heritage Program Manager will compile regional reports. The nationwide annual report will include:
 - 1. A list of the names of the undertakings, the State(s), and Forest(s) where Projects or Project activities have been completed or initiated (listed as “in progress/open” in the system of record) under this PA; and
 - 2. A list of pertinent or unique activities initiated or completed under this PA including Cultural Resource Opportunities, unique historic properties identified, and unique mitigation measures; and
 - 3. A concise narrative and evaluation of the performance of this PA for each region.
- iv. A copy of the nationwide annual report will be made available online and be sent to ACHP, NCSHPO, and NATHPO. A copy will be sent to any other consulting party upon request.
- v. The FS will convene a meeting of the signatories to this PA every two (2) years after the initial meeting regarding the initial 12-month implementation of this PA to review implementation of the terms of this PA and determine whether revisions or amendments are needed.
- vi. Meetings may be conducted in a location and/or format; including in-person, video conferencing, or teleconferencing; that allows for the maximum flexibility for all parties to participate. If revisions or amendments are needed, the parties will consult in accordance 36 CFR 800.14.

X. Dispute Resolution

- A. Excluding disputes raised regarding a specific HIP, should any signatory to this PA 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, FS will:
 - i. Forward all documentation relevant to the dispute, including the FS's proposed resolution, to the other signatories. The signatories shall provide FS with their response to the FS's proposed resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FS shall prepare a written response that considers any timely advice or comments regarding the

dispute from the signatories and provide them with a copy of this written response. FS will then proceed according to its final decision.

- ii. If the signatories do not provide their advice regarding the dispute within the thirty (30) day period, FS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FS shall prepare a written response that considers any timely comments regarding the dispute from the signatories to the PA and provide them with a copy of such written response.

- B. 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.

XI. Amendments

- A. Body of Agreement. This Agreement may be amended when such an amendment is agreed to in writing by all Signatory Parties. The amendment will be effective on the date a copy signed by all Signatory Parties is filed with the ACHP.
- B. Appendices. Upon written agreement of the Signatory Parties, any appendix to this Agreement may be modified without amendment to this Agreement. Modifications shall be distributed to the Signatory Parties and appended to this Agreement.

XII. Termination

- A. 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. In the event of termination, protocols set forth in the ongoing HIPs developed under the authority of this Agreement will remain active. The FS will comply with Section 106 for all undertakings previously subject to the PA pursuant to 36 CFR 800.3 through 800.7, or 36 CFR 800.8(c), or an applicable program alternative under 36 CFR 800.14.

XIII. Duration

- A. This Agreement will expire ten (10) years from the date of its execution.

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

**DRAFT
PROGRAMMATIC AGREEMENT
AMONG
THE USDA FOREST SERVICE
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION
OFFICERS
FOR COMPLIANCE WITH SECTION 106 OF THE
NATIONAL HISTORIC PRESERVATION ACT**

USDA FOREST SERVICE

Vicki Christiansen
Chief

Date

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Leonard Forsman
Vice Chairman

Date

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

Mark Wolf
President

Date

Appendix A. Definitions

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

Adaptive management. A system of management practices based on clearly identified intended outcomes and monitoring to determine if management actions are meeting those outcomes; and, if not, to facilitate management changes that will best ensure that those outcomes are met or re-evaluated. Adaptive management stems from the recognition that knowledge about natural resource systems is sometimes uncertain (36 CFR 220.3).

Adverse Effect. An effect of an undertaking that “may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register of Historic Places (National Register) in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling or association. Consideration shall be given to all qualifying characteristics of an historic property, including those that may have been identified subsequent to the original evaluation of the property’s eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative” (36 CFR 800.5(a)).

Advisory Council on Historic Preservation (ACHP). An independent agency created by Title II of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108. The review process established by NHPA Section 106, 54 U.S.C. 306108 is conducted according to regulations issued by the ACHP at 36 CFR 800, as authorized by 54 U.S.C. 306108.

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, the agency employee who has the authority to make and implement a decision under NEPA on a proposed action. Refer to section 2360.4, exhibit 01 for the Agency Official responsible for specific Heritage Program activities (FSM 2360.5).

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

Categorical Exclusion. Describes a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have no extraordinary circumstances associated with the proposed action. Therefore, the action is categorically excluded from further study and neither an environmental assessment nor an environmental impact statement is required. A decision memo documents the use of a of certain categorical exclusions, while others with little or no potential for environmental effects do not require documentation (36 CFR 220.6(a)).

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)).

Consulting Party. Any entity that has a consultative role in the Section 106 process for this PA, as defined by 36 CFR 800.2(c). This includes, among others, the ACHP, SHPOs, THPOs, affected Tribes, other affected agencies, Signatory Parties, concurring parties, 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)).

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 prehistoric, historic, archeological, or architectural sites, structures, places, or objects and 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. Activities that recognize, preserve, protect, and enhance cultural resources for the greatest public benefit (FSM 2360.2). Examples include but are not limited to, enhancement of historic properties and landscapes; development of historic contexts in consultation with Tribes, SHPO and interested parties; identifying opportunities for interpretation; traditional cultural property studies; and other alternatives.

Decision Memo. A concise written record of the responsible official's decision to implement certain actions that are categorically excluded from further environmental analysis and documentation in an environmental assessment or an environmental impact statement.

Decision Notice. A concise written record of the responsible official's decision when an environmental assessment and finding of no significant impact have been prepared.

Environmental Assessment (EA). Describes a concise public document for which a Federal agency is responsible that serves to briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact. A finding of no significant impact documents the findings from an environmental assessment while a decision notice documents the use of an environmental assessment.

Environmental Impact Statement (EIS). A detailed written statement examining potential environmental consequences as required by section 102(2)(C) of NEPA. Historic properties, as a subset of cultural resources, are one aspect of the environment that agencies review in accordance with the regulations implementing the procedural provisions of NEPA (40 CFR 1500-1508) and the NEPA statute (42 U.S.C. 4321 et seq.). A record of decision documents the use of an environmental impact statement.

Heritage Implementation Plan (HIP). A plan that outlines how the FS will continue to review potential effects to historic properties under Section 106 after a NEPA decision document is signed. The FS, SHPOs/THPOs, Tribes, and other consulting parties develop the plan, which may include stewardship activities (e.g., nominating sites to the National Register, evaluating unevaluated sites, developing interpretive programs, etc.), and standard historic property identification methods. It may also include creative mitigation, which gets away from past standard mitigation measures such as flag-and-avoid and document-and-destroy. The Agency Official signs the HIP prior to the NEPA decision document, and the HIP is maintained in the administrative record.

Heritage Professional. FS staff with education and expertise in archaeology, history, cultural resource management, or related disciplines. Heritage Professionals are in the GS-170-History, GS-190-General Anthropology, and GS-193-Archaeology job series. They provide professional recommendations and services to help land managers meet their Heritage program responsibilities (FSM 2360.5).

Historic Property. Any 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(1)(1)).

National Conference of State Historic Preservation Officers (NCSHPO). A nonprofit organization whose members are State Historic Preservation Officers (SHPOs) and their staff

who carry out the national historic preservation program as delegates of the Secretary of the Interior pursuant to the National Historic Preservation Act of 1966, as amended (NHPA). NCSHPO serves as a communications vehicle between SHPOs, federal agencies and other organizations.

National Environmental Policy Act (NEPA). A federal law that ensures agencies consider the environmental consequences of their proposed actions and inform the public about their decision making. The NEPA statute (42 U.S.C. 4321 et seq.) was signed into law in 1970 to establish a national policy for the environment and foster harmony between people and the human environment, which includes natural and cultural resources.

National Historic Preservation Act (NHPA). A federal law which directs federal agencies to take into account the effect of any undertaking (a federally funded or assisted project) on historic properties.

National Register of Historic Places (National Register). The National Park Service, through the authority of the Secretary of the Interior, maintains the National Register. Sites are determined eligible for listing on the National Register using criteria defined in 36 CFR 60.4.

Party, or Interested Party. An individual, organization, or entity that is not a consulting party (until invited to be so), that is likely to be interested in information about the undertaking and its effects on historic properties. FS may identify and reach out to members of the public based on, for example, the Lead Federal Agency's prior experience or contact with the individual or entity, the recommendations of a SHPO or THPO, Tribe, or the individual or entity's own initiative in providing its views.

Phasing. An alternate sequencing of the standard 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 agreement, phasing means the completion of the identification of historic properties, assessment and resolution of any adverse effects on historic properties pursuant to the HIP after a NEPA decision is signed and prior to implementing Project activities.

Programmatic Agreement (PA). A document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with 36 CFR 800.14(b).

Project. For this PA, a Project refers to the applicable undertaking that is subject to environmental review and subsequent NEPA decision, and is implemented on a large spatial

scale over multiple years, such that conventional Section 106 procedures to identify and assess effects to historic properties would be difficult to accomplish prior to the NEPA decision.

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:

https://www.achp.gov/sites/default/files/guidance/2018-05/reasonable_good_faith_identification.pdf

Record Of Decision (ROD). A concise public record of the responsible official’s decision to implement an action when an environmental impact statement has been prepared.

Regional Forester. The Agency Official responsible for legal compliance and land management at the Regional level. The Regional Forester oversees Agency Officials in their region.

Regional Heritage Program Manager. The Heritage Professional providing professional recommendations and services to the Regional Forester and Heritage Professionals in their region. The Regional Heritage Program Manager manages the region’s responsibilities related to historic preservation.

Responsible Official. The Agency employee who has the authority to make and implement a decision under NEPA on a proposed action. In practice, the Responsible Official and the Agency Official are the same person.

Section 106 Review. Section 106 of the NHPA requires Federal agencies to consider the effects of undertakings that they carry out, license, approve, or assist on historic properties and to provide the ACHP an opportunity to comment prior to any Federal approval, license, or the expenditure of any Federal funds on such undertakings.

Signatory Party. People/organizations who have signed this Agreement as a signatory. Signatory Parties have review or other responsibilities identified in the PA.

State Historic Preservation Officer (SHPO). The official appointed or designated pursuant to Section 101(b)(1) of the NHPA to administer the State historic preservation program or a representative designated to act for the State historic preservation officer (36 CFR 800.16(v)).

Tribal Historic Preservation Officer (THPO). The tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has

assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act (36 CFR 800.16(w)).

Tribe, or Indian 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).

Traditional Cultural Property (TCP). A property that may be “eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community.” National Park Service, National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties (1990). The property must meet the requirements defined in 36 CFR. 60.4 and Bulletin 38. Historic properties of religious and cultural significance to Indian Tribes may be a type of TCP.

Undertaking. NHPA, Section 301(7) 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.”

Appendix B. Project Activities

To improve the condition of NFS lands, the agency is routinely implementing Projects with expansive scopes, scales, and associated analyses to better understand the effects of a Project on the landscape and environment. As a result of growing trends for large-scale Projects and their associated environmental analyses on the landscape, the FS has encountered an increase in the need to phase Section 106, as allowed under 36 CFR 800.4(b)(2) and 36 CFR 800.5(a)(3).

Large-scale 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 NEPA through the environmental review associated with the large-scale Project. Activities that are typically consulted about individually, such as campground maintenance, may be an activity approved within the scope of the large-scale Project. As result, its associated Section 106 compliance must be outlined in the HIP and implemented before ground disturbing activities or other activities that may affect historic properties occur.

Activities included in a large landscape Project can include, but are not limited to:

- Forest health/watershed improvement (e.g. removing trees via timber sales, timber salvage, hazard tree removal, and associated activities)
- Forest Products Harvesting (harvesting timber and other materials for lumber, paper, renewable energy, and other woody materials uses)
- Ecocultural restoration (e.g. enhanced raw materials for medicinal and traditional practices and associated activities)
- Historic landscape restoration and interpretation (e.g. restoring historic properties and their setting and associated activities)
- Planting vegetation (e.g. site preparation and planting of seedlings or plugs, mechanically or manually and associated activities)
- Hazardous fuel reduction through mechanical treatments (e.g. thinning of small trees and brush, reduction of ladder fuels, reconfiguration of heavy fuel concentrations, and associated activities)
- Range (e.g. grazing, range improvements, and associated activities)
- Public land access (e.g. road and trail maintenance/decommissioning, development and associated activities)
- Wildlife (e.g. habitat restoration and improvements, ecosystem restoration, installation of nest boxes, building and/or replacing fences, restoring or creating water features, and associated activities)
- Erosion control (e.g. placement of wattles and water bars, bank stabilization through revegetation, stormwater control, and associated activities)
- Stream channel restoration (e.g. dredging, repairing, installing, and replacing culverts; rechanneling, bank stabilization, 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, which may include establishing fuel breaks by digging lines manually or with heavy equipment; 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, and associated activities)
- Utility line repair and maintenance (e.g., powerline maintenance, including vegetation management, and associated activities excluding those related to mineral, or oil and gas)
- Infrastructure and facility maintenance (e.g. repairing and maintaining bridges, trail heads, toilets, campground facilities, and associated activities)
- Recreation development (constructing trails, camp sites, day-use sites, and other facilities for recreational uses)
- Special Use Permits (e.g. access cabins and other recreational areas, outfitter /guides, easements, and related activities)

Appendix C. Heritage Implementation Plan (HIP) Template

Heritage Implementation Plan (HIP) for the [Name of Project]

Developed among the Forest Service [FS Unit and Consulting Parties who consulted on development of HIP]

Primary Author: [Name, Title]

[Date]

Agency Official: [Name, Title]

Undertaking Description

- A. Description of Area of Potential Effects (APE)
- B. Summary of Existing Information in the APE
- C. Statement of likely presence of historic properties
- D. Map of the final APE as developed in consultation.

- I. Cultural Resource Stewardship Opportunities
 - A. Description of “Opportunity A”
 - i. Timing of completion, as negotiated
 - ii. Any reporting on outcome to SHPO, THPO, Tribes, or consulting parties.
 - B. Description of “Opportunity B”
 - i. Timing of completion, as negotiated
 - ii. Any reporting on outcome to SHPO, THPO, Tribes, or consulting parties.
- II. Reasonable and good faith identification effort
 - A. Identification methods, as negotiated
 - B. Protocol to determine eligibility for inclusion on the National Register, as negotiated
 - C. Process to submit report to consulting parties & their review timeline, as negotiated
- III. Assessment of Effects
 - A. Process to report findings & determination of effect to consulting parties, as negotiated
- IV. Resolution of Effects
 - A. Mitigation measures either approved at the time of the HIP, or protocol for establishing mitigation measures during Project implementation, as negotiated
- V. Annual Report
 - A. Process to report, as negotiated.
 - B. Annual meeting, as negotiated.
- VI. Post-review Discoveries
 - A. Post-review discoveries pursuant to 36 CFR 800.13, as negotiated
- VII. Inadvertent Discovery and Treatment of Human Remains
 - A. If human remains are discovered 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.
 - B. If Project activities have a likelihood of encountering Native American human remains, a Project specific Plan of Action will be developed prior to implementation of the HIP per 43 CFR 10.3.
- VIII. Dispute Resolution Process
 - A. If HIP consulting parties raise disputes during the implementation of the HIP, the Agency Official will convene a meeting or teleconference to consider views of the HIP consulting parties, and where feasible, seek agreement regarding matters arising in 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 Regional Office for their input. If disputes persist, any consulting party involved in the Project may refer the matter to the ACHP to comment within thirty (30) days. Within thirty (30) days of receipt of all pertinent documentation, the ACHP will either provide the FS recommendations regarding the dispute or receive an additional thirty (30) days in accordance with 36 CFR 800.7 (c)(4). 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.

- IX. Emergency Situations
- A. If the HIP does not address protocols for emergency situations, the FS shall follow the standard emergency procedures at 36 CFR 800.12 or as specified in any other applicable programmatic agreement other than this national phasing PA. 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 and the ACHP of the condition which has initiated the situation and the measures the FS took taken to respond to the emergency situation. or hazardous condition. Should the SHPO 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.
- X. Anti-Deficiency Act
- A. 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.
- XI. Amendment Process
- A. 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 consultation with the Heritage Professional.
- B. When the Project area changes or when an amendment is proposed, the Agency Official will notify HIP consulting parties. Upon notification, consulting parties will have ten (10) days to determine whether an amendment is necessary.
- C. When an amendment is warranted, the Agency Official will provide the HIP consulting parties fifteen (15) days to review the drafted amendment, upon receipt.
- D. 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.
- XII. Duration and Termination
- A. The HIP will remain active for the entire duration of the Project. If the Project is cancelled, the Agency Official will notify consulting parties of the HIP's

termination If the nationwide PA is terminated, the HIP will remain active, and FS will follow the terms of the HIP until all Project activities are completed or until Project activities permanently cease.

- B. The Agency Official 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 prior to termination to seek input on termination.

Signature, Agency Official _____
Date

Appendix D. Invitation Letter Templates

A. Invitation to Consult Letter Template for Tribe

Subject: Invitation to Participate in Section 106 Consultation

Dear [*Title of highest-ranking elected official in Tribe*] XXXXX:

The U.S. Forest Service (FS) would like to invite you to participate early consultation, in the development of the [*Project name*] Project (Project), located in [*county(s), State(s)*] under the provisions of the National Phasing Programmatic Agreement. As a landscape-scale Project, the purpose of the Project is to [*concise description*].

You are receiving this information early in the planning process, consistent with 36 CFR 800. The FS is committed to government-to-government consultation on projects that could have an impact on Indian Tribes. The FS invites you to engage and consult on the Project under the provisions of the National Phasing PA, which was developed in accordance with Section 106 of the National Historic Preservation Act and its implementing regulations. Your insights and knowledge would be helpful in the development stage of the Project. Tribes will have the opportunity to submit comments throughout the Project development process, in addition to the opportunity for government-to-government consultation.

Please let us know whether you are interested in participating within thirty (30) days of receiving this letter. You can respond by letter, email, or phone. Please address hardcopy replies to [*Line Officer*] at [*Address*]. Please write “[*Project Name*]” in the subject line. You can also contact any of the Heritage Program Manager [*Name, Contact Information*] or Tribal Relations Coordinator [*Name, Contact Information*].

We would be very interested in working with you, or your staff, to craft the Project in the next few months.

Sincerely,

[*Line Officer*]

Enclosures (hardcopy)

CC: [*THPOS, Environmental Coordinators, etc.*]

B. Invitation to Consult Letter Template for SHPOs and Other Interested Parties

Subject: Invitation to Participate in Section 106 Consultation

Dear XXXXX:

The U.S. Forest Service (FS) would like to invite you to participate in the development of the [Project name] Project (Project), located in [county(s), State(s)] under the provisions of the National Phasing Programmatic Agreement. As a landscape-scale Project, the purpose of the Project is to [concise description].

[We do not have a timeline of activities for this Project yet, which is anticipated in (date).]

You are receiving this information early in the planning process, consistent with 36 CFR 800. Your insights and knowledge would be helpful in the development stage of the Project. The FS invites you to engage and consult The FS invites you to engage and consult on the Project under the provisions of the National Phasing PA, which was developed in accordance with Section 106 of the National Historic Preservation Act and its implementing regulations.

Please respond within thirty (30) days of receiving this letter confirming your participation in consultation on this Project. You can respond by letter, email, or phone. Please address hardcopy replies to [Line Officer] at [Address]. Please write “[Project Name]” in the subject line. You can also contact the Heritage Program Manager, [Name, Contact Information].

We would be very interested in working with you, or your staff, to craft the proposed action in the next few months.

Sincerely,

[Line Officer]

Enclosures (hardcopy)

CC: *[Heritage Professionals, Environmental Coordinators, etc.]*