

PROGRAMMATIC AGREEMENT

AMONG

THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE NATIONAL COUNCIL OF STATE HISTORIC PRESERVATION OFFICERS

REGARDING

THE EXEMPTION FROM REVIEW UNDER 36 CFR 800 CERTAIN ACTIVITIES
ON LANDS WITHIN THE NATIONAL FOREST SYSTEM,
MANAGED BY THE U.S. FOREST SERVICE

WHEREAS, the U.S. Forest Service (FS) manages lands and activities within the National Forest System; and

WHEREAS, the FS is responsible for the management of properties included in or eligible for inclusion in the National Register of Historic Places (historic properties) that might be affected by activities on National Forest System lands; and

WHEREAS, certain FS activities may be legally undertakings, as defined in Section 301 of the National Historic Preservation Act (NHPA), but have little or no potential to effect historic properties; and

WHEREAS, the FS, under Section 110 of the NHPA, is required to develop programs for the identification and evaluation of historic properties under its jurisdiction or control, or that may be affected by FS actions; and

WHEREAS, the FS, the Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation Officers (NCSHPO) have consulted pursuant to Section 106 of the NHPA (16 U.S.C. 470f) and 36 Code of Federal Regulations (CFR) 800.13 of the NHPA in developing this Programmatic Agreement;

NOW, THEREFORE, it is mutually agreed that the activities covered herein shall be administered in accordance with the following stipulations.

DEFINITIONS

The following definitions, and those included in Section 301 of the NHPA (16 U.S.C. 470w) and 36 CFR 800.2, apply to this Agreement.

Exempt Undertaking: FS actions that, because of the low potential of such actions to affect historic properties, do not require consideration of effects to historic properties or individual case-by-case review in accordance with 36 CFR Part 800.

Historic Preservation Specialist: Until such time that professional qualification standards are developed by the Office of Personnel Management, an individual meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology and Historic Preservation (48FR 44738-9) or Office of Personnel Management's X118 standards shall be considered a historic preservation specialist.

Recreation Residence Tract: An established area of the National Forest, surveyed and divided into lots, each lot containing a recreation residence

Undertaking: Any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including: (1) those carried out by or on behalf of the agency; (2) those carried out with Federal financial assistance; (3) those requiring a Federal permit, license, or approval; and (4) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency (Section 301(7) of the NHPA).

STIPULATIONS

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

1. Identification and Management of Recreation Residences

A. Within one year of the signing of this Agreement each Forest will complete an Identification and Scheduling (IS) Plan. This IS plan will

- 1 identify all recreational residence tracts within each Forest;
- 2 set up a schedule to complete a Recreational Residence Evaluation and Management (RREM) Plan for each of the tracts identified.

B. The IS plan will be submitted by the Forest to the SHPO(s) of the affected States.

C. Each Forest will complete, in consultation with the SHPO, the RREM plans set forth in the IS plan.

1. The inventory portion of each RREM plan should include the scope and focus of public participation, cabin owner participation, priorities, and a schedule for completion of inventory, evaluation, and documentation of historic properties for each of the identified tracts. A copy of the inventory information should be provided to the appropriate SHPO. The management portion of the RREM plan should include proposed measures for protection of those properties determined to be eligible for inclusion on the National Register of Historic Places.

2. Each RREM plan will be submitted by the FS to the appropriate SHPO for review. SHPOs will provide comments, if any, within 30 days of receipt of the proposed RREM plan. If no comments are received within 30 days, the FS may assume SHPO concurrence. Unresolved objections will be submitted for Council review in accordance with Stipulation 3. Once SHPO concurrence is received or objections resolved in accordance with Stipulation 3, the FS will implement the RREM plan.

2. Exempt Undertakings

Undertakings in the classes contained in Appendix 1 will not require case-by-case review under this Agreement or 36 CFR Part 800, except as provided below:

- A. The Forest Historic Preservation Specialist will be consulted on exempted undertakings and may recommend to the responsible Agency Official that because of local issues, Native American concerns, or historically sensitive areas or properties, an exempted undertaking be subjected to standard review procedures. The Agency Official, based on this recommendation, may subject any exempted undertaking to review under 36 CFR Part 800 or under another applicable Programmatic Agreement.
- B. The Historic Preservation Specialist for each Forest will document, by citing the appropriate exclusion from Appendix 1, the decision that an undertaking is excluded from case-by-case review. The documentation will be kept on file at the Forest Supervisor's Office. A summary of the number and types of specific undertakings excluded from case-by-case review pursuant to this stipulation will be included in the Annual Reports prepared by the FS (See Stipulation 4).
- C. Should a dispute or an objection arise about an exempted undertaking the FS will either subject the undertaking to standard review under 36 CFR Part 800, or implement Stipulation 3 to resolve the dispute.
- D. Upon recommendation by any party to this Agreement, the FS, NCSHPO, and the Council shall consider adding other classes of undertakings to Appendix 1. Appendix 1 may be revised to include such additional classes of undertakings upon the written approval of all three parties.
- E. Any party to this Agreement may request, in writing, the removal of any class of undertakings from Appendix 1. Upon receipt of this written request, the FS shall exclude, temporarily, the class of undertaking from Appendix 1 and subject such undertaking to review under procedures in 36 CFR Part 800 or other applicable Programmatic Agreements. Within 60 days of receipt of the written request the parties to this Agreement will make a final determination whether to exclude the class from Appendix 1 of this Agreement.
- F. Individual Regions or Forests may, through the continuation or amendment of existing Programmatic Agreements, or the development of new Programmatic Agreements pursuant to 36 CFR 800.13, modify the list of exemptions provided in Appendix 1 of this Agreement to fit regional or local circumstances. In addition to those parties set forth in 36 CFR 800.13, the FS Federal Preservation Officer will also be consulted.
- G. Individual Regions or Forests which have existing programmatic agreements that allow the exemption from review of various Forest Service activities may continue to apply the exemptions contained in those agreements in lieu of, or in addition to, those included in Appendix 1.

3. Dispute Resolution

Should any party affected by a FS decision under this Agreement or a SHPO raise an objection regarding exemption of an undertaking, or to the plans set forth in Stipulation 1 of this Agreement, the FS shall consult with the objecting party to resolve the objection. If the FS determines that the objection cannot be resolved, the FS shall forward all documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council will either:

A. provide the Forest Service with recommendations, which the FS will take into account in reaching a final decision regarding the dispute; or

B. notify the FS that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the FS in accordance with 36 CFR 800.6(c)(2) with reference to the subject of the dispute.

4. Annual Report and Review

A. Each National Forest will prepare an annual report which includes (1) a heading that identifies the Forest, Region, and Programmatic Agreement; (2) a summary of the number and types of specific undertakings exempted from review under the terms of this agreement during the previous Federal fiscal year, beginning with fiscal year 1996; (3) an assessment of the effectiveness of this agreement; and (4) a summary of progress in the completion or implementation of RREM plans as set forth in the IS Plan required under Stipulation 1. Each Forest shall submit its annual report to its FS Regional Office on or before March 1 of each year following execution of this agreement.

Forests or Regions may elect to use the sample report format contained in Appendix 2, or develop their own alternative format for the report. Appendix 2, page 1, lists those specific exempted undertakings that must be included in the annual report. The Regional Historic Preservation Officer and the appropriate SHPO may agree on other exempted items to be added to the list; none of the items listed can be deleted from the list. The list may be modified through the annual review process, set forth in Item E.

B. The FS Regional Offices will consolidate and forward the annual reports prepared by Forests within their region, with a brief overall summary, to the SHPO(s) of the affected states(s), NCSHPO, and the Council on or before May 1 of each year.

C. FS Regions which have region-wide Programmatic Agreements for the management of historic properties on Forest System lands may, in lieu of preparing the reports required under 4(A) and 4(B), incorporate the information required in these Stipulations into the annual reports required under those Agreements.

D. Each Forest and/or Regional Office shall ensure that the Annual Reports are made available for public inspection, that interested members of the public are made aware of its availability, and that interested members of the public are invited to provide written comments to any of the parties to this Agreement.

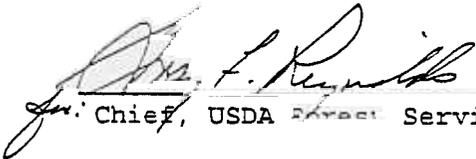
E. The NCSHPO, SHPO(s) and the Council shall provide the FS with any comments on the Annual Report within 30 days of receipt. At the request of any party to this Agreement, a meeting or meetings shall be held to facilitate review and comment, to resolve questions, or to resolve adverse comments. Based on this review, the FS, the NCSHPO, and the Council shall determine whether this Programmatic Agreement shall continue in force, be amended, or be terminated.

5 Termination

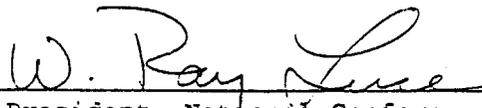
Any party to this Agreement may terminate it by providing 30 days notice to the other parties, provided that the parties consult during the period prior to terminations to seek agreement on amendments or other action that would avoid termination. Termination of this Agreement, or failure to abide by its terms, shall require the FS to comply with 36 CFR 800 in processing undertakings covered by this Agreement.

6. Execution and Implementation

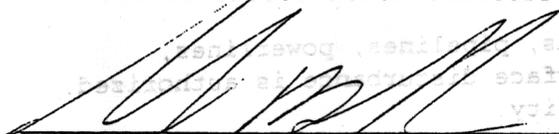
Execution and implementation of this Agreement evidences that the FS has satisfied its Section 106 responsibilities with respect to activities covered by this agreement. This Agreement becomes effective on the date of the last signature below.


J. L. Reynolds
Gen. Chief, USDA Forest Service

8/15/95
Date


W. Ray Luce
President, National Conference of
Historic Preservation Officers

9/22/95
Date


Vice Chairman, Advisory Council on
Historic Preservation

9/12/95
Date

APPENDIX 1
EXEMPTIONS

A General

1. Maintaining or modifying existing projects, facilities and other infrastructure, or programs that do not disturb additional surface area or effect historic properties. Does not include maintenance or modification of facilities or infrastructure that are eligible or potentially eligible for inclusion on the National Register of Historic Places (NRHP).
2. Conducting or approving permits for non-archaeological data collection and monitoring activities, that involve less than one cubic meter of cumulative ground disturbance, unless within eligible or potentially eligible historic properties or areas considered likely to contain historic properties. Such activities could include forage trend monitoring, stream gauges, weather gauges, research sensors, photoplots, traffic counter, animal traps, or other similar devices.

Removal of trash that is less than 50 years old

4. Nondisturbing broadcast seeding and mulching for establishment of vegetation.
5. Application of pesticides that do not have the potential to affect access to or use of resources by Native Americans.

B Lands and Realty

Acquisition of lands or interests i.e. easements in lands

2. Requesting, from the DOI, withdrawal revocations, terminations, or modifications that would result in opening orders where the land would be opened to discretionary land laws and where each discretionary action would be subject to the NHPA Section 106 process.
3. Renewing existing linear permits (roads, pipelines, powerlines, underground cables, etc.), when no new surface disturbance is authorized. Does not include modification of the facility.
4. Renewing existing site permits (recreation residences, ski areas communication sites, businesses) when no new surface disturbance is authorized. Does not include modification of the structures.
5. Issuing permits (including road use permits) easements, rights-of-way or leases that do not authorize surface disturbance, and that do not have the potential to affect access to, or use of, resources by Native Americans.
6. Issuing permits, easements, rights-of-way or leases that constitute simply transferring the authorization, without modification, from one owner to another when the real property facilities under authorization are sold or transferred and no new surface disturbance is authorized.

7. Authorizing new lines on an existing overhead utility line when there is no change in pole configuration and no new surface disturbance.

8. Issuing permits which would add another user and related electronic equipment to an approved communication site which does not require the expansion of the facility or addition of towers to the exterior of the building and where no new surface disturbance is authorized.

9. Conversion of an existing authorization from one Federal authority to another Federal authority (e.g., a road permit under the authority of the Federal Land Policy and Management Act to an easement under the authority of the Federal Highway Act) where no new surface disturbance is authorized.

10. Authorizing or installing devices to protect human or animal life (a raptor electrocution prevention device on a power line, placing small animal grates across wildlife guzzlers) that do not involve new surface disturbance

C Law Enforcement

1. Installation, in a non-damaging manner, of law enforcement detection devices within historic properties to assist in prevention, detection, and prosecution of criminal violations.

2. Removal of illegal drugs, paraphernalia, and related equipment from Federal land during law enforcement operations.

D Minerals

1. Approving non-surface disturbing oil and gas exploration activities when vehicular activity is restricted to existing roadways.

2. Modifications to, or variances from, activities authorized in an approved mine or exploration plan of operations that do not involve additional surface disturbance or effect historic properties eligible or potentially eligible for the NRHP.

E Recreation

1. Issuing recreation permits on rivers and trails or in other designated areas where the type and location of activity permitted has been previously subject to NHPA Section 106 consultation.

2. Issuing permits for off-road vehicle events over courses that were established subject to NHPA Section 106 consultation and no changes in the course, spectator areas, or pit areas is allowed.

F Transportation and Engineering

1. Installation of signs, sign posts, markers, gates, or cattleguards on or adjacent to existing roads in previously disturbed areas.

2. Route maintenance that does not widen or otherwise extend surface disturbance beyond previously disturbed areas (e.g., road blading, ditch pulling, asphalt surfacing, and roadside brushing) and where no eligible or potentially eligible historic properties are present.

3. Culvert enhancements, maintenance or replacements including placement of riprap at inlet and outlets at existing culverts where there are no eligible or potentially eligible historic properties and where the facility itself is not a historic property.

4. Felling of hazardous trees along roadways, within recreation areas, or other areas for health and safety reasons, provided they are left in place

5. Road closure designations on existing roads or trails, and the devices to implement the road closures.

6. Placement of visitor information kiosks, portable sanitation devices, or visitor registers where the proposed location of the facility has been previously disturbed and there are no known historic properties.

7. Stockpiling of road related materials in or on existing roads or turnouts.

8. Installation of roadside safety features such as guardrails, adjacent to existing Forest roads, in previously disturbed areas where the road and its features are not eligible or potentially eligible historic properties.

G Wildlife

1. Reintroducing endemic or native species into their historical habitats in ways that do not involve surface disturbance.

U.S. Forest Service Region *
* National Forest
Report for FY *

APPENDIX 2
SAMPLE ANNUAL REPORT

This report is submitted to fulfill the requirement set forth in Stipulation 4 (A) (B) of the Programmatic Agreement among the USDA Forest Service, the Advisory Council on Historic Preservation and the National Council of State Historic Preservation Officers regarding the Exemption from Review under 36 CFR 800 Certain Activities on Lands within the National Forest System, managed by the U.S. Forest Service. The following list includes only a portion of the exempted items listed in Appendix 1. It has been determined in Stipulation 4 (A) of the Programmatic Agreement that only these specific undertakings require reporting, by type, the number of times it has been used annually. Upon agreement between the Regional Historic Preservation Specialist and the SHPO, additional exemptions may be added to this list; none of this list can be deleted.

Number of undertakings from Appendix 1 exempted

<u>REFERENCE</u>	<u>TYPE</u>	<u>NUMBER</u>
A. GENERAL		
1.	Maintaining or modifying facilities	*
2.	Permits for monitoring activities	*
B. LANDS		
3.	Renewing existing linear permits	*
4.	Renewing existing site permits	*
5.	Issuing no new surface disturbance permits	*
6.	Issuing permits that constitute a transfer	*
8.	Adding users to an existing comm site	*
C. LAW ENFORCEMENT		
1.	Installation of devices within properties	*
D. MINERALS		
1.	Approving non-surface disturbing activities	*
2.	Non-surface disturbing modification to plans	*
E. RECREATION		
1.	Issuing permits in designated areas	*
2.	Issuing ORV permits over established courses	*
F. ENGINEERING		
2.	Route maintenance	*
3.	Culvert enhancements	*
G. WILDLIFE		

U.S. Forest Service Region *
* National Forest
Report for FY *

2. If any of the exemptions are causing controversy or just not working, please list and briefly explain.

3. Is the Agreement effective in terms reducing Section 106 consultations and still providing proper protection to historic properties? Please explain.

4. a For FY 96 - did you complete your IS plan and submit it to the SHPO?

b. Please give a brief summary of your progress on the RREM plans. How many are completed? How many have been fully implemented? Any problems being encountered? Is the schedule in the IS plan being met.

5. Are there any exemptions you would like to see added or deleted from Appendix 1? If so, please provide supporting information.

6 Other comments