

# STATE PROTOCOL

BETWEEN

THE OREGON-WASHINGTON STATE DIRECTOR OF THE  
BUREAU OF LAND MANAGEMENT (BLM)

AND

THE OREGON STATE HISTORIC PRESERVATION OFFICER (SHPO)

REGARDING

THE MANNER IN WHICH THE BUREAU OF LAND MANAGEMENT WILL  
MEET ITS' RESPONSIBILITIES UNDER  
THE NATIONAL HISTORIC PRESERVATION ACT

AND

THE NATIONAL PROGRAMMATIC AGREEMENT  
AMONG THE BLM, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

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**PROTOCOL FOR MANAGING CULTURAL RESOURCES  
ON LANDS ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT  
IN OREGON**

**I. PURPOSE**

Under various statutes and agency policies, the Oregon-Washington Bureau of Land Management (BLM) State Director, BLM district managers and BLM field office managers are assigned the responsibility for authorizing and approving proposed undertakings on public lands through a consultative process with the Oregon State Historic Preservation Office (SHPO), Indian tribes, and consulting parties. Under Section 101(b) of the National Historic Preservation Act (NHPA), the Oregon State Historic Preservation Officer is assigned responsibilities to advise and assist BLM in carrying out its historic preservation responsibilities and consulting with BLM on proposed undertakings that may affect historic properties including plans to protect, manage, or to minimize or mitigate harm to historic properties.

This Protocol implements the Bureau of Land Management's national Programmatic Agreement (nPA) between the Bureau of Land Management, the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO) which provides alternative procedures describing the manner in which BLM will comply with the National Historic Preservation Act of 1966. This Protocol is allowed under the terms and conditions of the nPA and describes specific procedures for how the Oregon SHPO and the Oregon BLM will interact, cooperate and consult under that agreement. The goal of this Protocol and the nPA is to forge a meaningful and productive partnership between BLM and the SHPO that will enhance the management of cultural resources under the BLM's jurisdiction.

BLM's professional cultural resource specialists play a central role in advising BLM's district and field manager(s) in the implementation of Protocol procedures during review and planning of proposed undertakings. SHPO staff assigned with responsibilities for review of BLM undertakings and/or plans assume a similar role to aid the Oregon State Historic Preservation Officer in providing official comment on BLM undertakings.

This Protocol seeks to (1) recognize the important role that BLM and SHPO staff play in informing decisions on BLM undertakings; (2) ensure BLM's managers and the Oregon SHPO are appropriately involved regarding evaluations, determinations and decisions affecting historic properties; (3) avoid or reduce the potential for disagreement; and where needed (4) establish a process for resolving issues and disputes.

This Protocol seeks to further the objectives of the NHPA by fostering meaningful consultation with federally recognized Indian tribes during review of proposed actions and plans affecting historic properties of religious and cultural significance to affected Indian tribes.



## II. RELATIONSHIP OF THE PROTOCOL TO OTHER AGREEMENTS

This Protocol fully succeeds the previous August 1998 Oregon Protocol. Other Programmatic Agreements (PAs) and Memoranda of Agreements (MOAs) may be developed when specific agreement documents are needed to define procedures for Section 106 compliance.

When more than one federal agency is involved in an undertaking and BLM accepts lead agency responsibility for Section 106 compliance, the BLM and the SHPO may agree to follow the procedures of the Protocol instead of using the Code of Federal Regulations (CFRs) at 36 CFR Part 800. In general, these situations shall be limited to projects which are small in scope and complexity and where the other federal agency has a permitting responsibility.

When more than one federal agency is involved in an undertaking and an agency other than BLM takes lead responsibility for Section 106 compliance using the regulations, a separate PA or MOA will be developed specific to that undertaking, and BLM will follow the provisions of that agreement. BLM may also enter into agreements with individual tribes to define a consultation process that meets the needs of both the tribe and the BLM. Such agreements will recognize the government to government relationship between BLM and tribes and how tribes will be consulted in the Section 106 process.

## III. OPPORTUNITIES FOR SHPO IN BLM MANAGEMENT PROCESSES

To encourage broader and more proactive participation by the SHPO in BLM's management activities, the BLM offers the following opportunities:

**A. Planning Efforts.** As directed in BLM Manual 8110.44A, each field office responsible for preparing a land use plan at the regional or local level will, when beginning its planning effort, invite the SHPO to participate in scoping for the purpose of identifying issues that should be addressed in the plan. The BLM will invite the SHPO's participation in proposing cultural resource use allocations, identification of objectives, and development of management actions, whether these are made in regional, local, or project plans. Based on delegated authority for decision-making, district and field offices and the State Office will send all draft land use plans to the SHPO for a 90 day review and comment period. In accordance with the Oregon Governor's consistency review procedures, BLM will submit final land use plans to the Governor's Office for a 60 day review by state agencies including the SHPO.

**B. Field Tours:** BLM field offices are encouraged to invite the SHPO to participate in field tours relating to land use planning efforts or specific undertakings when adverse effects to historic properties are anticipated; where long range management actions for historic properties (e.g. proposed National Register of Historic Places (NRHP or National Register) districts, multi-property nominations) are being considered; and/or during the implementation of proactive cultural resource projects.

**C. Informal Consultation, Periodic Meetings between BLM Districts/Field Offices and SHPO Staff:** This Protocol encourages informal consultation and periodic meetings between the Oregon State Office, BLM district and field offices and the SHPO to discuss, specific undertakings, outreach efforts, or other issues related to the BLM's management of cultural resources. The BLM will respond in a timely manner to SHPO requests to meet and provide available information to the SHPO to aid in these meetings and discussions. The SHPO staff and district/field office staff may consult informally at their discretion on specific undertakings or any aspect of the BLM's cultural resource management program. Such consultation is encouraged to take full advantage of the SHPO's experience with a broad range of agencies and historic preservation efforts statewide.

**D. Annual BLM Cultural Resources Meeting:** BLM cultural resources staff will strive to meet yearly to participate in workshops, training, exchange information, and to discuss issues concerning the cultural heritage program including implementation of this Protocol. SHPO will be invited to attend.

**E. Cooperative Efforts:** The BLM and the SHPO recognize the advantages of working together on a wide range of heritage preservation activities and will cooperatively pursue the following efforts:

(1) *Sharing and Facilitating the Use of Data.* The BLM and the SHPO will work together on interagency cooperative data sharing projects as funding and time allows. Consistent with the reporting schedule stipulated in section VI.H of this Protocol, the BLM will provide SHPO cultural resource site records and project reports in a format compatible to the SHPO data system. BLM shall also provide summary information on projects for its annual report to the SHPO in accordance with section VII.B of this Protocol. When developing policies which could affect procedures for collecting and submitting data to the SHPO, SHPO shall provide BLM with an opportunity to review and comment.

(2) *Historic Context Statements.* The BLM will actively promote the development of National Register Multiple Property Nominations that can serve as context statements citing important research issues (theories, hypotheses, empirical observations, methodologies) that can be altered, confirmed, refuted or advanced by cultural resource sites. These nominations will form the baseline data for future determinations of eligibility where applicable and may serve to streamline case-by-case review processes specified in this Protocol.

(3) *Public Outreach.* The BLM and SHPO will continue to work together as follows:

(a) Project Archaeology. Support Project Archaeology as a component of BLM's Heritage Education Program, with the goal of integrating the teaching of archaeological concepts and preservation ethics in Oregon schools statewide.

(b) Oregon Archaeology Celebration. Participate in Oregon Archaeology Celebration activities, including public presentations, field tours, and exhibits.

(c) Avocational Societies. BLM and SHPO recognize the contributions that avocational groups can provide to the preservation of archaeological and historic resources. BLM and SHPO encourage partnerships with avocational archaeological society members to encourage public interest in learning about archaeology and historic preservation.

(d) Adventures in the Past. Interpret cultural properties appropriate for use as exhibits-in-place, consistent with BLM's Adventures in the Past initiative; development of linked internet websites; partnerships with university archaeological field schools, museum interpretive projects, interpretive exhibits, and annual public events.

(4) *Cooperative Stewardship*. The BLM and SHPO will seek opportunities to support and participate in site stewardship and cooperative historic preservation programs. The BLM and SHPO will support stewardship and cooperative preservation programs.

(5) *Data Synthesis*: BLM and SHPO will seek opportunities to synthesize cultural resource data, including geographical and/or topical priorities for reducing the backlog of un-synthesized site location and report information, and data quality.

#### IV. PUBLIC PARTICIPATION

The public and consulting parties will be encouraged to raise issues, express concerns, provide information and identify resources and places they would like the BLM to consider in BLM's decision making process. District and field office managers will provide a means for making a schedule of pending undertakings, including land transfers, available to the public on a regular basis.

BLM managers with jurisdiction over proposed undertakings will seek information from parties likely to have knowledge of or concerns with historic properties in the area for the purposes of (a) identifying properties that may qualify for listing in the National Register of Historic Places; (b) understanding interested/consulting parties' concerns about historic properties; (c) determining if the undertaking will adversely affect historic properties and; (d) seeking methods/options to avoid, minimize or mitigate any adverse effects to the properties of concern. The BLM may use its' agency procedures (e.g. public participation opportunities afforded by BLM's land use planning and environmental review processes) to seek this information.

## V. CONSULTATION WITH INDIAN TRIBES

**A. Background to the BLM-Tribal Relationship:** The BLM, as an agency of the United States Government, has a unique legal and government-to-government relationship with Indian tribal governments which requires BLM to consult with tribes prior to taking actions that affect those tribal governments. Procedures outlined in this Protocol respond to BLM's National Historic Preservation Act obligations to consult with affected tribes. However, BLM also has responsibilities to consult with tribes under other authorities (e.g. Treaties, Federal Land Policy Management Act, Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, National Environmental Policy Act, the American Indian Religious Freedom Act (AIRFA) and other statutes as well as Executive Orders 13175 (Consultation and Coordination with Indian Tribal Governments) and 13007 (Indian Sacred Sites),

In recognition of the unique relationship between the federal government and Indian tribes, BLM's consultation with Indian tribes is a deliberative process that aims to create effective collaboration and informed Federal decision-making. As recognized in the Department of Interior Tribal Consultation Policy (2011), consultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility. This agreement reaffirms these primary principles. Consultation procedures in this Protocol do not limit or lessen BLM's responsibilities under other authorities. BLM and affected individual tribes may establish other agreements specifying the manner in which BLM will satisfy its responsibilities to consult with affected tribes pursuant to the National Historic Preservation Act and/or other authorities.

The BLM recognizes that some historic properties of religious and cultural significance to Indian tribes can be identified only by those tribes, and that effects on such properties can only be assessed with tribal participation. BLM shall consult with Indian tribes on individual undertakings in the context of an ongoing government-to-government relationship sustained through regular periodic meetings. These efforts may be supplemented through consultation on specific undertakings, separate processes and/or agreements established between BLM and tribes.

Consultation with Indian tribes and the SHPO at the outset of land use planning is a vital part of identification and management of historic properties. As directed by BLM's land use planning and cultural resource policy and directives, BLM shall invite tribes to participate in scoping for the purpose of identifying issues which should be considered and addressed in the plan. Involving tribal governments at this level of resource consideration will greatly facilitate coordination and consultation at later stages of planning and project development and provides opportunities to foresee and avoid potential conflicts between BLM-authorized land uses and significant historic properties.

**B. Providing Information on BLM Undertakings to Affected Indian Tribes:** District and field office managers in consultation with tribal leaders and/or their designated representatives will provide a means for making a schedule of pending undertakings, including land transfers,

available to Indian tribes on a regular basis. District and field office managers are encouraged to use BLM's existing public information systems (e.g. "Plans and Projects" data on each district's public website) for providing planning and project information to tribes early in the planning process for proposed undertakings. Tribes and districts/field offices may establish other means (e.g. regular meetings) for BLM to make this and/or other supplemental project information available via mutual agreement between BLM and affected tribes. BLM Field Managers shall ensure that consultation with tribes is initiated in the early stages of project planning and as appropriate, continues throughout planning and implementation.

### **C. BLM Consultation with Affected Indian Tribes:**

(1) District and field office managers will seek information in accordance with BLM land use planning and environmental review processes and the tribal consultation policies outlined below from Indian tribes likely to have knowledge of or concerns with historic properties in the area to:

- (a) Identify historic properties of religious and cultural significance to Indian tribes that may be eligible for listing in the NRHP;
- (b) Understand tribal concerns sufficiently to better understand the effects that potential future federal undertakings might have on historic properties of religious and cultural significance to Indian tribes; and
- (c) Consider tribal comments provided in making decisions on the land use plan, and to notify tribes of relevant final land use planning decisions.

(2) Prior to initiating or authorizing a proposed action that meets the definition of an "undertaking" in 36 CFR § 800.16(y) and is a type of activity that generically has the potential to cause effects to historic properties of religious and cultural significance to Indian tribes, the responsible district or field office manager in consultation with Indian tribes, shall:

- (a) Determine the undertaking's area of potential effects;
- (b) Review existing cultural resource survey and other relevant documentation on historic properties of religious and cultural significance to Indian tribes which could be affected by the undertaking, including documentation of previous tribal consultation;
- (c) Seek information in accordance with BLM land use planning and environmental review processes from Indian tribes and other parties likely to have knowledge of or concerns with historic properties, particularly historic properties of religious and cultural significance to Indian tribes, in the area;

(d) Determine if historic properties of religious and cultural significance to an Indian tribe and located within the area of potential effect meet one or more eligibility criteria specified in 36 CFR § 60.4 (association with events; association with lives of significant persons; embodiment of distinctive characteristics of a type, period, or method of construction or possessing high artistic value; have yielded or are likely to yield important data). If an Indian tribe attaches religious and cultural significance to a property located off tribal lands, BLM recognizes that the tribe may ask the ACHP to request that the BLM field manager obtain a formal determination of eligibility from the Keeper of the National Register pursuant to 36 CFR§ 800.4(c)(2) and 36 CFR § 63;

(e) Determine if the undertaking will adversely affect historic properties of religious and cultural significance to Indian tribes;

(f) Seek ways to avoid, minimize or mitigate any adverse effects to historic properties of religious and cultural significance in consultation with affected tribes.

(3) In addition to the participation opportunities described above for meeting its responsibilities to consult with tribes under the National Historic Preservation Act, the BLM will, at a minimum, be guided by the following documents (including future revisions to BLM Manuals and Handbooks):

(a) BLM Manual 8120, *Native American Coordination and Consultation (Revision dated 12/02/2004)*;

(b) BLM Handbook H-8120-1, *General Procedural Guidance for Native American Consultation (Revision dated 12/02/2004)*;

(c) Executive Order 13175 *Consultation and Coordination with Indian Tribal Governments*; and

(d) Department of Interior Tribal Consultation Policy (2011) and Secretarial Order No. 3317.

**D. Confidentiality of Information:** To the greatest degree possible allowed by statute and regulation, district and field office managers shall protect from disclosure to the public information pertaining to the practice of traditional beliefs and practices including information about the nature and location of sites/areas of such locations identified by affected Indian tribes. District and field offices shall maintain the confidentiality of sacred sites to the greatest degree possible under existing law and regulation.

**E. Coordination with the Native American Graves Protection and Repatriation Act (NAGPRA):** The BLM will ensure that NHPA undertakings are conducted in conformance with

the requirements of the Native American Graves Protection and Repatriation Act and the Archaeological Resources Protection Act (ARPA). This may include the preparation of separate agreements with culturally affiliated tribes addressing treatment and disposition of NAGPRA cultural items and notification of BLM plans to issue an ARPA permit.

**F. Informal Consultation and Meetings between BLM District/Field Offices and Affected Tribes:** This protocol also encourages informal consultation, periodic meetings and field tours between BLM field offices and affected tribes to discuss specific undertakings and opportunities for cooperative cultural resource efforts (e.g. cooperative site stewardship/preservation programs) between BLM and individual tribes.

## **VI. IDENTIFICATION, EVALUATION AND TREATMENT OF HISTORIC PROPERTIES**

BLM shall make a reasonable and good faith effort to identify historic properties that may be affected by an undertaking as described in 36 CFR § 800.4 (b) (1). The following procedures describe the process BLM will follow when conducting identification, evaluation, effects assessment and where applicable, treatment measures to avoid, lessen or mitigate anticipated adverse effects. These procedures shall be carried out in a manner consistent with the public participation procedures of section IV and the tribal consultation framework outlined in section V of this Protocol or agreements between BLM and individual tribes as applicable.

### **A. Establishing the undertaking and Area of Potential Effect (APE)**

(1) Prior to initiating or authorizing a proposed action, the responsible district or field office manager shall approve the professional Cultural Resource Specialist's (CRS) recommendation of whether the proposed action (a) meets the criteria of an action which can be exempted from field survey as specified in Appendix E; or (b) meets the definition of an "undertaking" in 36 CFR §800.16(y).

(2) If the CRS determines that the proposed action meets the criteria of an exempted action delineated in Appendix E, the district and/or field manager shall, in consultation with the district/field office cultural resource specialist follow the procedures outlined in Appendix E. Appendix E lists the types of undertakings for which field inventory is normally not necessary. BLM may perform inventories for projects listed in Appendix E if characteristics of the specific undertaking warrant.

(3) If the CRS determines that the proposed action does not meet the exempted undertaking criteria of Appendix E, the district or field office manager shall be responsible for ensuring that the CRS:

- (a) Determines the undertaking's area of potential effects (APE);
- (b) Reviews existing information on historic properties potentially affected by the undertaking including documentation of previous tribal consultation;
- (c) Seeks information in accordance with BLM land use planning and environmental review processes from Indian tribes, consulting parties and others likely to have knowledge of or concerns with historic properties, particularly historic properties of religious or cultural significance to an Indian tribe located within the APE; and
- (d) Determines field survey (identification) needs in accordance with stipulation VI.B, below.

**B. Determining Survey (Identification) Needs:** Prior to issuing land use authorizations for proposed undertakings, the field office manager shall ensure that the proposed undertaking is considered for its' potential to affect historic properties in accordance with the following procedures:

- (1) In accordance with the stipulations of this section (VI.B), BLM's CRS shall be responsible for recommending the level of field survey needed for undertakings which are not exempted under the criteria of Appendix E.
- (2) Where field inventory is required or deemed appropriate by the CRS, BLM will ensure that the proposed undertaking is inventoried in accordance with the guidelines below:
  - (a) BLM shall ensure that project-specific surveys and other efforts to identify and evaluate historic properties are conducted in accordance with appropriate professional standards, including the Secretary of Interior's Standards and Guidelines for identification, evaluation and documentation (48 FR 44716), and BLM's 8110 Manual Series standards, the ACHP's guidance on meeting the "reasonable and good faith standard for identification standard in Section 106 review" (weblink at [http://www.achp.gov/docs/reasonable\\_good\\_faith\\_identification.pdf](http://www.achp.gov/docs/reasonable_good_faith_identification.pdf)), and in consideration of Oregon SHPO Guidelines (per 36 CFR § 800.4(b)(1)). Per Section 112 of the NHPA, Section 4 of the Archaeological Resources Protection Act (43 CFR § 7.8), BLM Manual Section 8100.2 and 8100.21 and 8100.23, and the professional qualification standards established by the Office of Personnel Management, BLM will ensure that identification, evaluation and treatment activities are carried out under the direction of a professional archaeologist.
  - (b) Appendices A-D provide specific guidance for inventory practices and standards for densely vegetated areas of western Oregon, livestock allocation decisions, prescribed burn project areas, and the Coast Range Province.



(c) Unless otherwise stipulated by this Protocol, BLM will conduct a BLM Class III inventory to identify historic properties on BLM-administered lands and private lands where a BLM undertaking will occur (see Definitions, Appendix F).

(d) When BLM's CRS determines that a Class III inventory is not appropriate and recommends less than Class III of the undertaking area (e.g. Class II survey, see Definitions, Appendix F), based on landscape features, vegetation, and knowledge of the archaeology of the area, BLM will consult with and obtain the SHPO's concurrence on the proposed inventory strategy. BLM will document this consultation in writing and maintain a copy of this consultation in BLM's project files and/or cultural resource files and provide a copy to the SHPO prior to project implementation. BLM will document the inventory strategy in the resulting inventory report.

(3) *Previous Adequate Inventory:* If the BLM CRS determines that the APE or any portion of the APE is included in the area inventoried by a previous adequate Class III inventory for which a report was previously submitted to the SHPO, the BLM may proceed with determining eligibility and effect without additional inventory but with the following provisions:

(a) Previous inventories will be evaluated by BLM's CRS to determine their adequacy for contemporary identification purposes in locating and evaluating historic properties in relation to land use applications subject to terms of this Protocol. This will include (a) further consultation as needed with Indian tribes to ensure that tribes are afforded an opportunity to identify historic properties of religious and cultural significance to Indian tribes as stipulated in Section V.C (1)(a) and V.C (1)(b) of this Protocol and (b) re-assessment of cultural features such as buildings, structures and other above-ground resources which were not 50 years old at the time of the previous survey but which are now 50 years or older.

In addition, and where review by a BLM CRS is able to document that the previous cultural resource survey(s) have been (1) conducted by and under the direction of a professional archaeologist; (2) with survey transects spaced at 30 meters or less; and (3) where environmental factors are not expected to have resulted in exposures of buried archaeological resources undetected by previous field surveys, re-survey is not necessary of these areas.

Documentation of these findings shall be reported to the field manager for approval prior to the manager's decision on the undertaking. Documentation of the manager's approval of the CRS' determination shall be maintained in BLM's project files. These findings shall also be summarized in the BLM's annual CRM report to the SHPO as stipulated in section VI.H of the Protocol. For those projects where previous survey is deemed adequate

in some portions of the APE but where field survey is required in other portions of the APE, BLM shall undertake necessary survey and document these findings in the project report submitted to SHPO.

For those projects where previous survey is deemed adequate for the entire APE, BLM shall summarize these findings in its annual report to SHPO as specified in Appendix G(3).

In making a determination that previous inventory of a proposed project area or a portion(s) of a project area may be adequate, BLM's CRS shall assess the need to conduct field examinations/monitoring of known cultural resource sites and to update site record information.

(4) *Areas with Low Potential for Containing Historic Properties:* BLM and the SHPO may jointly determine that specific areas do not need to be inventoried because current information suggests that the area has little or no potential to contain historic properties. Such determinations may be developed in two ways:

(a) Project-Specific: If the proposed undertaking is not listed in the exemptions found in Appendix E, the BLM will seek the concurrence from the SHPO on project-specific exemptions due to low site probability for containing historic properties;

(b) Supplemental Protocol Agreements: Areas deemed as low site probability for containing historic properties, identified through appropriately validated models may be exempted through a supplemental agreement or an approved amendment to this Protocol, in accordance with Section XI.

### C. Identification Results and Evaluations of Eligibility

(1) *No cultural resources identified within the project APE.* If, as a result of an appropriate inventory as defined in BLM Manual 8110 and this Protocol, the BLM field manager determines that there are no cultural resources located within the APE, and provided that BLM has consulted with Indian tribes in accordance with Section V of this Protocol or other agreements as established between BLM and individual Indian tribes, BLM will document this information in the BLM files and proceed with the undertaking. BLM will provide a project report to the SHPO in accordance with Section VI.H.

(2) *Cultural Resources identified within the APE and Evaluation Standards:* All cultural resources discovered or recorded within the APE during an inventory shall be evaluated for inclusion in the National Register unless avoided as stipulated in section VI.C.1 of this Protocol. BLM evaluations shall be consistent with the *Secretary of the Interior's Standards*

*and Guidelines for Evaluation* (48 FR 44729) and the BLM Manual 8110, *Identifying and Evaluating Cultural Resources*.

Evaluations will be conducted by qualified specialists guided by the National Park Service's Guidelines How to Apply the National Register Criteria for Evaluation National Register Bulletin 15 (Vol. 48, Federal Register, No. 190, Part IV), 36 CFR § 60.4, their own professional knowledge of the resources, BLM's 8110.3 manuals and, when applicable, relevant historic context statements. Evaluations will be conducted using all four criteria, as indicated in 36 CFR § 800.4(c)(1) with the understanding the properties can be eligible under more than one criteria; pre-contact archaeological sites can be eligible under Criteria A, B and C as well as D (Bulletin 15 [and other bulletins] provide examples of each). BLM acknowledges that it is important to consider all four criteria when determining eligibility.

*(3) Cultural Resources identified within the APE and assistance in eligibility*

*determinations:* Where a field manager's immediate staff does not possess the necessary qualifications to perform specialized preservation functions (e.g. historical architecture, historical landscape analyses, ethnography) the field manager will seek specialized expertise from outside the immediate staff. The BLM may also request SHPO assistance in determining eligibility for exceptional properties to resolve uncertainties over eligibility of a particular property, and for those assessments for which the BLM field office lacks the appropriate expertise. BLM shall ensure that personnel performing these duties meet the requirements for a CRS as defined in Appendix G to this protocol, and/or the Secretary of Interior Standards for professional archaeology and/or BLM's permitting standards for Project/Field Directors (see BLM Manual section 8150.12(B)(2)) as appropriate.

*(4) Evaluation of Cultural Resources extending outside the APE:* Sites located within an APE but extending outside of the APE must be evaluated as a whole. In the case of linear resources extending outside of the APE, field identification and evaluation will be limited to a reasonable distance for which project effects are anticipated and for which BLM has legal access. Except for contributing elements of historic properties that straddle the APE boundary, elements of National Register Districts that are entirely outside of the APE do not have to be recorded or evaluated.

*(5) Evaluation of Cultural Resources completely outside the APE:* Resources completely outside of an APE and that will not be affected by the undertaking do not have to be evaluated.

*(6) Evaluation of Cultural Resources during case by case review:* If the undertaking is being reviewed by the SHPO pursuant to requirements set forth in this Protocol for case by case review (see below) the BLM will determine eligibility in consultation with the SHPO. If the BLM and the SHPO agree there are no eligible properties identified within an undertaking's

APE, BLM may document this conclusion in the case file and proceed with the undertaking without further consultation.

(7) *Evaluation of Cultural Resources under the provisions of other agreements:* If the undertaking is being reviewed pursuant to other agreements (e.g. an MOA or PA for energy transmission projects) the BLM shall consult with the SHPO and other parties according to the terms and conditions of those agreements rather than this Protocol.

(8) *Evaluation of cultural resources of religious and cultural significance to Indian tribes:* The BLM acknowledges that Indian tribes possess special expertise in identifying historic properties of religious and cultural significance to Indian tribes and the NRHP character-defining values by which such properties can qualify for listing in the NRHP. The BLM's consultation process should follow Manual 8120 (*Tribal Consultation Under Cultural Resources Authorities*) and Handbook 8120-1 (*Guidelines for Conducting Tribal Consultation* (including updates/revisions to the aforementioned documents) and/or procedures outlined in agreements developed between BLM and individual Indian tribes. Additional ACHP guidance on tribal consultation can be found at <http://www.achp.gov/regs-tribes2008.pdf>.

(9) *Unevaluated Cultural Resources and Avoidance:* When a cultural resource(s) identified during an inventory could be affected by the implementation of an undertaking, BLM may treat the site as if it were eligible and re-design the project to avoid having an effect on the cultural resource site rather than formally determining its' NRHP eligibility. Following review and acceptance of site documentation (including site boundaries) by the CRS, the CRS shall provide these recommendations to the manager for approval. When an unevaluated cultural resource can be avoided in this manner, BLM will not be required to notify SHPO prior to proceeding with the project. The field manager's approval shall be documented in project files and BLM shall report on these findings as described in section VI.H.

(10) *No historic properties present within the project APE:* If, as a result of an appropriate inventory as defined in BLM Manual 8110 and this Protocol (Section VI.C), the BLM field manager determines that there are no historic properties (i.e. determined eligible/listed in the NRHP) within the APE, and provided that BLM has consulted with Indian tribes in accordance with Section V of this Protocol or other agreements as established between BLM and individual Indian tribes, BLM will document this information in the BLM files and proceed with the undertaking. BLM will provide a project report to the SHPO in accordance with Section VI.H.

(11) *Disagreement on Eligibility:*

(a) The BLM is responsible for all eligibility determinations. Thus, the BLM decision regarding eligibility may differ from a consultant's recommendations. The BLM will not require the consultant to amend the final report to conform to the BLM's decision. Instead,

the BLM's decision (documented in writing by the appropriate district/field manager) not the consultant's recommendations, will form the basis for evaluation under Section 106 compliance procedures.

(b) When a consulting party, defined in 36 CFR § 800.2(c), other than the cultural resources consultant making the recommendation disagrees with BLM eligibility determinations, BLM will, in writing (digital or hard copy), request the views of the SHPO on the eligibility determination(s). SHPO shall respond within 30 calendar days of receipt of the written request. If SHPO does not respond within the 30 days, BLM may assume SHPO concurrence with BLM's eligibility determination. BLM will provide notification of its finding to consulting parties and Indian tribes and make this information available for public inspection prior to approving the undertaking.

(c) If the SHPO and BLM cannot agree whether the eligibility criteria are met, or if the Council so requests, the ACHP may provide advice in accordance with 36 CFR § 800.4(d)(1)(ii), and/or the BLM (documented in writing by the appropriate district/field manager) will seek a formal determination of eligibility from the Keeper of the National Register pursuant to 36 CFR § 63.2;

(d) If an affected Indian tribe does not agree with a BLM determination that a property of religious and cultural significance is not eligible for the NRHP, the tribe may seek the advice of the ACHP in accordance with 36 CFR § 800.4(d)(1)(ii), and/or request that the BLM to seek a determination of eligibility from the Keeper of the National Register.

(e) The BLM may also request SHPO assistance in determining eligibility for exceptional properties, to resolve uncertainties over eligibility of a particular property, and for those assessments for which the BLM field office lacks the appropriate expertise.

(12) *Categorical Eligibility Determinations:* Via a formal amendment to this Protocol and in accordance with stipulation XI.A or separate agreements developed in consultation with Indian tribes and consulting parties, the BLM and SHPO may jointly agree that certain classes of properties are eligible or not eligible for listing in the National Register.

**D. Determination of Effects to Historic Properties:** In determining if an undertaking will have an effect on a historic property, the BLM field manager will follow 36 CFR § 800.5 and apply the Criteria of Effect and Adverse Effect giving consideration to the views of the interested public and any consulting parties, including but not limited to Indian tribes. Effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places. An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the 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 a 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.

(1) *Historic properties present, no effect via Avoidance:* If the BLM field manager determines that the proposed undertaking will not affect a historic property, and provided that BLM has consulted with Indian tribes in accordance with Section V of this Protocol or other agreements as established between BLM and individual Indian tribes, the field manager will document this finding, proceed with the undertaking and provide documentation to the SHPO according to the reporting schedule specified in section VI.H of this Protocol.

(2) *Historic properties present, project will affect:* If BLM determines that historic properties are present and the proposed undertaking will have an effect, and provided that BLM has consulted with Indian tribes in accordance with Section V of this Protocol or other agreements as established between BLM and individual Indian tribes, the BLM field manager will submit this determination to the SHPO for concurrence. Determinations will be documented in writing (digital and hard copy) and maintained in BLM's project and cultural resource files.

To streamline consultation, proposed measures to minimize or mitigate any adverse effects may be included with this documentation. SHPO shall respond within 30 calendar days upon receipt of the written request. If BLM does not receive SHPO response within the 30 calendar days, BLM will assume SHPO concurrence with BLM's determination of effect, but minimization and mitigation efforts must still be consulted upon with SHPO per Stipulation VI.D.6. Issues relating to BLM's findings of effect which cannot be resolved between BLM and SHPO shall be referred to the Advisory Council for review per 36 CFR § 800.5(c)(2).

Where evaluation of historic properties will take into account the site context as a whole as noted in Section VI.C.4, the assessment of effects to such properties shall also take into account the effects to the site context as a whole.

(3) *No adverse effect:* Avoidance is the preferred strategy for treating potential effects to historic properties. However, when an undertaking is planned within the boundary of a historic property and where avoidance measures are not feasible, the BLM will develop and evaluate treatment measures so the undertaking will not adversely affect the qualities that make the site eligible for listing in the NRHP. Such determinations will be approved by the district/field manager, documented in writing (digital and hard copy) and submitted to the SHPO for consultation. BLM will request in writing, the view of the SHPO on the determination of effect. SHPO shall respond within 30 calendar days of receipt of the written request. If BLM does not receive SHPO response within the 30 calendar days, BLM will assume SHPO concurrence with BLM's determination of effect. BLM will provide notification and

appropriate documentation (see 36 CFR § 800.11(e)) of this finding to consulting parties and Indian tribes in accordance with 36 CFR § 800.5(c).

If avoidance of effects is not prudent or feasible, the BLM will consider a range of alternative physical or administrative treatments to impose conditions which would avoid adverse effects. Such conditions could include:

(a) restoring, rehabilitating, stabilizing or otherwise altering a building, structure, or feature using means consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR § 68 and applicable guidelines);

(b) treating visual effects by maintaining the integrity and existing character of the historic landscape. Treatment is adequate when the level of change to the characteristic historic landscape can be seen but does not attract attention from the casual observer. Any changes must repeat the basic elements of form, line, color, and texture found in the predominant historic features of the characteristic historic landscape. If this objective cannot be achieved, BLM will consider additional measures to treat visual effects to setting in consultation with SHPO. The BLM will provide the SHPO with appropriate documentation including a report on identification and evaluation efforts and a treatment plan intended to minimize effects to the SHPO.

Upon consideration of these or other treatment options, the BLM may make a determination of effect resulting from implementation of these treatments and reach a determination of "no adverse effect." The BLM will provide appropriate documentation including a report on identification and evaluation efforts and proposed treatment plans (digital and hard copy) to the SHPO for review and comment. SHPO shall provide comment to BLM within 30 days upon receipt of the treatment plan. Such determinations will be approved by the district/field manager, documented in writing and maintained in BLM's project and cultural resource files.

(4) *Adverse Effects*: BLM will consult with SHPO (and other consulting parties per 36 CFR § 800.5[a] and component 4c-e of the nPA) for any undertaking resulting in an adverse effect determination. Undertakings resulting in an adverse effect determination are those affecting the characteristics that qualify the property for listing in the NRHP. Adverse effects may be treated through (but are not limited) to the following measures: (1) documenting the significant architectural, historical, or engineering attributes of an architectural or historic building, structure, or feature; (2) implementing a treatment plan resulting in interpretation, public education, collection of oral histories, or other methods agreed to by BLM and the SHPO; (3) development and implementation of a data recovery plan for a property that is significant because of the data that it contains, provided the plan reflects the Advisory Council's Guidance on the Recovery of Significant Information from Archaeological Sites (May 18, 1999), or other treatment as determined in consultations.

(5) *Treatment of Adverse Effects via Data Recovery*: Based on the results of inventory and evaluation, if BLM determines that a historic property whose NRHP eligibility is based on archaeological information potential (e.g. 36 CFR § 60.4(d)) will be adversely affected, the BLM may propose appropriate treatment measures via data recovery. Copies of proposed data recovery measures will be forwarded to SHPO, who shall be afforded 30 days upon receipt to concur or object. Such determinations and plans will be approved by the district/field manager, documented in writing and maintained in BLM's project and cultural resource files.

BLM will request in writing, the view of the SHPO on the determination of effect and proposed treatment plan. SHPO shall respond within 30 calendar days of the written request. If BLM does not receive SHPO response within the 30 calendar days, BLM will assume SHPO concurrence with BLM's determination of effect. If the SHPO objects to the adequacy of the treatment measures, the BLM and the SHPO must reach agreement or the treatment plan will be forwarded to the Council for comment in accordance with 36 CFR § 800.7. Following Council comment, the BLM will make a final decision. When data recovery via planned excavation and removal is proposed to meet the requirements of the NHPA, BLM will follow appropriate tribal notification as required by section 3.3(c) of the Native American Graves Protection and Repatriation Act (NAGPRA) and section 7.7 of the Archaeological Resources Protection Act (ARPA).

All determinations of adverse effect will be approved by the district/field manager, documented in writing (digital or hard copy) and submitted to the SHPO for comment. SHPO shall respond within 30 calendar days of receipt of the written request. If BLM does not receive SHPO response within the 30 calendar days, BLM will assume SHPO concurrence with BLM's determination of effect.

(6) *Standard Treatment Measures*: Standard treatment may be defined for certain classes of properties. They may be attached to this Protocol and updated through amendments (see Section XI).

**E. Identification, Evaluation and Treatment Measures for Specified Areas and/or Programs:** Appendices A-E provides specific procedures for conducting review, identification and evaluation for specific areas and/or programs. These include:

- (1) Appendix A--Survey Techniques for Densely Vegetated Areas of Western Oregon;
- (2) Appendix B—Review and Assessment of Livestock Grazing Authorizations;
- (3) Appendix C—Cultural Resource Assessments of Prescribed Burning Projects;
- (4) Appendix D—Cultural Resource Inventory in the Oregon Coast Range;



- (5) Appendix E—Undertakings Exempt from Field Inventory;
- (6) Appendix F—Definitions; and
- (7) Appendix G---Annual Report Forms

**F. Case-By-Case Review:** The BLM will request the SHPO's review of the following kinds of undertakings unless otherwise addressed in the attached appendices:

- (1) Where BLM acts as lead agency on behalf of other Federal agencies or where an undertaking may have effects beyond the boundaries of the State and involves other State Historic Preservation Offices. BLM may reach agreement with SHPO(s) and agencies on the appropriate governing consultation mechanism, or will comply with 36 CFR § 800;
- (2) Undertakings affecting National Historic Landmarks or National Register-listed properties in accordance with Chapter V of *National Register Bulletin No. 16A*;
- (3) Highly controversial undertakings when Council review is requested by the BLM, the SHPO, an Indian tribe, a local government, or an applicant for a BLM authorization. Highly controversial undertakings are understood to be those which have received a high level of media attention and/or have been brought to the attention of BLM's Washington Office through requests for assistance;
- (4) Undertakings for which BLM has made a determination that a historic property or properties located within the area of potential effect cannot be satisfactorily avoided; or
- (5) Undertakings where historic properties of religious and cultural significance to Indian tribes pursuant to Title 1, Section 101(6)(A) and (B) of the National Historic Preservation Act of 1966, as amended in 1992 may be affected.

**G. Thresholds for ACHP Notification:** BLM will invite the ACHP to participate in the consultation process for:

- (1) Non-routine interstate and/or interagency projects or programs;
- (2) Undertakings adversely affecting National Historic Landmarks;
- (3) Undertakings that BLM determines to be highly controversial;
- (4) Undertakings that will have an adverse effect when BLM and SHPO have not reached resolution via a formal written agreement (36 CFR § 800.7)

For projects requiring approval through the development of a program alternative including project specific PAs, BLM will follow the process outlined in 36 CFR § 800.14.

In accordance with the provision set forth in component 5(d) of the nPA, the ACHP reserves the right to participate on its own initiative or at the request of the SHPO, an Indian tribe, a local government, an applicant for a federal approval or other consulting party. In such matters in accordance with 36 CFR Part 800, ACHP will notify the responsible district/field office manager and the BLM Director when it decides to participate.

**H. Cultural Resource Inventory, Evaluation and Treatment Reports Submission to the SHPO:** By April 1, districts/field offices will send the SHPO copies of all cultural resource inventory reports, treatment (data recovery) reports, and site records generated by actions initiated or authorized by BLM during the previous federal fiscal year (October 1 through September 30). Field offices are encouraged to provide these documents to the SHPO as projects are completed to assist in keeping the State repository files current but no later than the April 1 deadline listed above. For those projects where fieldwork has been completed but associated analyses/reporting is extensive and/or complex and a final report cannot be completed by April 1, field offices will identify these projects and anticipated completion dates in their annual report submission to the SHPO (see Appendix G(2)).

Unless stipulated by other agreement between BLM and SHPO, BLM shall require non-BLM personnel and consulting firms to submit cultural resource reports and site records (including NRHP eligibility evaluations and effects determinations) to BLM for review by a BLM CRS prior to submission to SHPO. In such cases, the BLM field manager will provide SHPO with the agency's official determination of eligibility and effect. Should SHPO receive such reports lacking this documentation, SHPO shall contact the responsible field manager/CRS and request the agency official's determination(s) before providing SHPO concurrence or non-concurrence with these findings.

## **VII. PROFESSIONAL STAFFING, TRAINING OF NEW MANAGERS AND PROFESSIONAL STAFF AND OBTAINING SPECIALIZED EXPERTISE**

**A. BLM Professional Staffing:** In carrying out its responsibilities under the nPA, BLM has assembled a cadre of professional archaeologists to advise BLM managers and to implement the agency's cultural heritage policies within BLM's statutory authorities.

In meeting its requirement under the nPA and this Protocol, BLM will maintain professional staffing consistent with OPM guidance and Section 112 of the NHPA, taking education and professional work experience into consideration. BLM will ensure that identification and evaluation of cultural resources performed by BLM specialists is conducted by personnel who

meet or exceed the U.S. Office of Personnel Management qualifications for professional archaeologists and are classified in the appropriate OPM series (e.g. Series 193 for archaeologists). Specialists at or below the GS-7 level are considered to be performing duties in a trainee/developmental capacity. Reports prepared by GS-7 or lower graded specialists will be reviewed by a professional CRS prior to submission to the SHPO.

Field offices will devise individual development plans for their cultural heritage staff to ensure that current professional standards in the discipline can be met and maintained, and training needs identified. The BLM Deputy Preservation Officer (DPO) will identify and arrange annual opportunities for specialized cultural heritage training.

Where a field manager's immediate staff does not possess the necessary qualifications to perform specialized preservation functions (e.g. historical architecture, historical landscape architecture, ethnography) the field manager will seek specialized expertise from outside the immediate staff.

It is recognized that participation of cultural heritage staff in professional societies and annual meetings (e.g., Association of Oregon Archaeology, Society for American Archaeology, Society for Historical Archaeology, etc.) is integral to staying abreast of developments and advances in the discipline and for enhancing professional knowledge and skills. As funding allows, BLM will support CRS' attendance and active participation (e.g. presenting papers, posters for conference symposia) at professional meetings.

**B. SHPO Professional Staffing:** SHPO staff assigned to review of BLM projects and reports are required to meet professional qualification standards published in the Code of Federal Regulations 36 CFR § 61.

**C. Training of BLM Managers and Cultural Resource Specialists in the Use of Protocol Procedures:** New managers and cultural resource specialists as defined in Appendix F and who are assigned responsibilities for advising BLM managers regarding implementation and use of these Protocol procedures shall receive training in the use of these procedures within 90 business days of his or her report date.

When personnel changes involving BLM CRM staff, field office certification will be reviewed and the SHPO notified. Until positions are filled and training completed, BLM will ensure that qualified personnel are available to conduct the tasks outlined in this Protocol.

The BLM may request the assistance of the SHPO to assist with training of field managers and cultural resources staff of the procedures outlined in the nPA and this Protocol. Review of training needs will occur on a yearly basis and will be conducted by BLM in consultation with SHPO in time for discussion at the annual meeting.

## VIII. REPORTING

**A. Submission of Cultural Resource Project Reports:** For individual projects, BLM shall submit reports in accordance with section VI.H.

**B. Annual Report:** The BLM Oregon State Office will provide an annual report to the SHPO containing summary information on activities conducted under this Protocol by February 15 of each year. Per the nPA (Component 6.b.15 and 10.b), BLM will also make the report available to the public and Indian tribes via the BLM state web site and notify the ACHP of its availability via email. This report will include:

- (1) narrative information summarizing highlights and major efforts provided for the Cultural Resource Program Annual Report submitted to BLM's Washington Office;
- (2) a summary listing of:
  - (a) Project reports submitted to SHPO during the previous reporting year for those projects described in Section VI.H (see Appendix G(1) for summary reporting format);
  - (b) Project reports pending submission to SHPO including anticipated completion dates (see Appendix G(2) for summary reporting format);
  - (c) Projects where previous survey of a current project APE was deemed adequate in accordance with Section VI.B.3 (see Appendix G(3) for summary reporting format); and
  - (d) Projects deemed to be exempted from field survey/project specific consultation in accordance with the provisions of Appendix E (see Appendix G(4) for summary reporting format).
- (4) an updated listing of Oregon BLM district and field managers and cultural resource specialists including those who received training in use of the NPA and Protocol during the previous federal fiscal year.

The Annual Report will provide primary information for the Annual Program Review meeting. Any questions the SHPO may have about the information in this report will be answered by the Oregon State Office or the appropriate field office.

## IX. PROCEDURES FOR RESOVING ISSUES AND DISPUTES

This Protocol seeks to provide clear and explicit procedures and proactive measures to guide BLM's and SHPO's consultation relationship to meet both agencies' common goals in historic preservation. However, due to the complex nature of the Section 106 process and diverse perspectives, professional disagreements can occasionally be expected. In recognition of this potential, the following measures establish a process for resolving disagreements, issues and disputes.

**A. Resolving Issues Raised by BLM or SHPO:** The following procedures to avoid, lessen and resolve disputes between BLM and SHPO shall be followed:

- (1) Where challenging or complex issues are anticipated, informal, proactive communication between BLM and SHPO professional staff and managers prior to decision-making are encouraged by this Protocol. The professional staffs of BLM and SHPO are integral to developing historic preservation recommendations for consideration by appropriate officials of each agency. Staff of BLM and SHPO shall seek to keep the responsible manager and Deputy SHPO apprised of these situations in advance of decisions;
- (2) District and/or field managers shall document BLM's findings and determinations regarding identification, evaluation and treatment of historic properties in accordance with the procedures discussed in section VI (above);
- (3) BLM or the SHPO may question an action taken by the other under this Protocol. When such situations arise, the responsible BLM manager may consult with the Deputy SHPO/staff informally to resolve the matter;
- (4) When informal resolution is not effective, the objecting party via the Deputy SHPO or the responsible BLM manager shall notify each other of the issue in writing. Within seven (7) calendar days following receipt of notification, the Deputy SHPO and the responsible BLM manager shall initiate a formal 30 calendar day consultation period to resolve the objection. If the objection is resolved within this time frame, the parties shall proceed in accordance with the terms of that resolution;
- (5) If the matter is not resolved and the parties cannot agree, the Deputy SHPO shall notify BLM's Deputy Preservation Officer in writing and request the DPO's assistance in resolving the matter. The DPO will notify the Oregon-Washington Deputy State Director of Resource Services (DSD) of the matter. The Deputy SHPO, the responsible BLM manager, and DPO will meet/consult to resolve the objection. If the matter is not resolved at this level, the matter will be referred to the BLM DSD. The DSD or the DPO may request the assistance of

the BLM Preservation Board to assist in resolving the issue. If the issue is still not satisfactorily resolved at this management level, the issue may be forwarded to the State Director and the Oregon State Historic Preservation Officer for decision. The State Director and the Oregon State Historic Preservation Officer may seek the assistance of the Advisory Council on Historic Preservation for advice, including a reference to the applicable segments of 36 CFR § 800.

**B. Resolving Issues raised by an Indian Tribe, a Consulting Party or the Public**

(1) If an interested public, consulting party, or a federally-recognized Indian tribe objects at any time in writing to the manner in which this Protocol is being implemented for a specific undertaking, the responsible BLM manager shall notify the DPO. The DPO shall notify the DSD of the matter. The manager and his/her cultural resource specialist shall consult with the objecting party for a period not to exceed 30 days to resolve the objection. The manager may request the DPO and the SHPO to participate in these consultations. If the objecting party and the BLM resolve the objection within 30 days, the BLM shall proceed in accordance with the terms of that resolution consistent with the terms and conditions of this Protocol. The BLM manager and/or DPO will inform the SHPO of any objections and the outcome of attempts at resolution within 10 days after the 30 day period of resolution has expired.

(2) If the objection cannot be resolved within the 30 days, and if the objecting party has not requested review by the ACHP, the DPO shall refer the objection to the Preservation Board, which will provide the State Director and the objecting party with its recommendations for resolving the objection. If the State Director and the objecting party accept the Preservation Board's recommendations, the State Director shall proceed in accordance with these recommendations to resolve the objection.

(3) If either the state director or the objecting party rejects the Preservation Board's recommendations for resolving the objection, the state director shall refer the objection to the ACHP, including a reference to the applicable segment of 36 CFR § 800. The state director shall make a final decision regarding the resolution of the objection and in writing, notify the Board, the objecting party, the SHPO and the ACHP of that decision. The objection shall thereby be resolved. In reaching a final decision regarding the objection, the state director shall take into account any comments received from the Board, the objecting party, the SHPO, and the Council pursuant to this paragraph. Any objection filed pursuant to this paragraph shall not prevent the BLM from proceeding with project planning; however, project implementation shall be deferred until the objection is resolved pursuant to the terms of this paragraph.



## X. PROGRAM REVIEW AND MONITORING

The following provides measures for (1) a proactive and programmatic review of the implementation and effectiveness of this Protocol in meetings its intended purposes and (2) a process for review of field office's certification to operate under the terms and conditions of this Protocol.

**A. Annual Program Review:** The SHPO and/or Deputy SHPO and the BLM Oregon-Washington BLM Deputy Preservation Officer (DPO), State director and/or his/her designee, the Deputy State Director for Resources, and respective Branch Chief (for the Cultural Resources Program) will meet on an annual basis, on or before June 1 of each year. The purpose of the annual meeting is to conduct a programmatic review of the overall effectiveness of the Protocol, including issues related to Protocol implementation and assessment of the need for specific or programmatic actions to improve the BLM-SHPO consultation relationship.

**B. District or Field Office Certification and Decertification:** Consistent with component 9 of the NPA, the Preservation Board in coordination with the appropriate DPO, SHPO, and the ACHP, and with consideration of tribal comments, may choose to review the status of a district or field office's certification to employ the terms and conditions of this Protocol. The district or field manager, the state director, the ACHP, or the SHPO, may request that the Preservation Board initiate a review of a district or field office's certification to ensure that the cultural resources policies and procedures are being followed appropriately by the BLM offices.

(1) If a review is being conducted, the FPO, appropriate DPO(s), SHPO(s), the ACHP, and the Preservation Board will participate in the review, and the BLM may consider including other legitimate affected parties as participants in the review, in accordance with component 9b of the nPA.

(2) If a district or field office is found not to have maintained the basis for its certification (e.g., lacks the professional capability needed to carry out these policies and procedures, or is proceeding in contravention of its BLM-SHPO Protocol or BLM internal guidance), and the office's manager has not voluntarily suspended participation under this Protocol, the Preservation Board will recommend that the state director decertify the district or field office. If a suspended or decertified district or field office is found to have restored the basis for certification, the Preservation Board will recommend that the state director recertify the district or field office.

(3) A state director may ask the Director to review the Preservation Board's decertification recommendation, in which case the Director may request the ACHP's participation in the review.

(4) The Preservation Board will notify the appropriate SHPO(s), the ACHP, and the review requestor of the findings of the review, including any recommended changes to the certification status of the office.

(5) When a district or field office is suspended or decertified, the district or field manager shall follow the procedures of 36 CFR § 800.3 through 800.7, or 36 CFR § 800.8(c) or an applicable program alternative under 36 CFR § 800.14, to comply with Section 106.

(6) If the Preservation Board receives a request to perform a review and decides not to conduct the review, it will provide a response to the requester, including the rationale for its decision.

## XI. AMENDING, EXTENDING AND/OR TERMINATING THE PROTOCOL

**A. Amending the Protocol:** If the BLM or the SHPO wish to amend this Protocol at any time, they will consult with Indian tribes and other consulting parties to consider requested changes. Amendments will become effective when signed by both parties.

**B. Expiration and Extension:** Consistent with component 11f of the nPA, this Protocol will be in effect for ten (10) years and may be extended incrementally for up to two years. Should the nPA be terminated, BLM will operate under the regulations implementing Section 106 of the NHPA.

**C. Terminating the Protocol:** The BLM or the SHPO may terminate this Protocol by providing ninety (90) days' notice to the other party, providing that they consult during this period to seek agreement on amendments or other actions that would avoid termination. The Deputy Preservation Officer may request the assistance of the BLM Preservation Board, National Conference of State Historic Preservation Officers, or the Council in the consultation. If the Protocol is terminated, the BLM will operate under the provisions of the nPA and 36 CFR § 800.

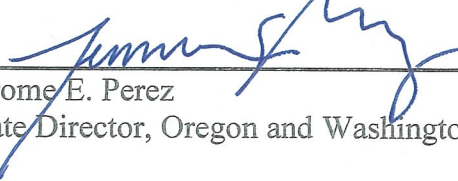
## XII. ADDITIONAL PROVISIONS

Any action taken by the Agencies under this Protocol is subject to available funding. Nothing herein shall, or shall be construed to obligate the BLM to expend, or involve the United States of America in any contract or other obligation for the future payment of, money in excess of appropriations authorized by law and administratively allotted and allocated for the purposes contemplated in this Protocol. Nothing in this Protocol is intended to alter, limit or expand the agencies' statutory and/or regulatory authority.



Approved by:

BUREAU OF LAND MANAGEMENT

  
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Jerome E. Perez  
State Director, Oregon and Washington

*January 23, 2015.*  
\_\_\_\_\_  
Date:

OREGON STATE HISTORIC PRESERVATION OFFICE

  
\_\_\_\_\_  
Lisa Van Laanen  
Oregon State Historic Preservation Officer

*1/23/15*  
\_\_\_\_\_  
Date:

## Appendices

- A. Survey Techniques for Densely Vegetated Areas of Western Oregon
- B. Range Program
- C. Prescribed Burn Project Areas
- D. Coast Range Inventory Plan
- E. Exempt Undertakings
- F. Definitions
- G. Annual Report Forms:
  - 1) BLM Annual Cultural Resources Report to the Oregon SHPO: District Listing of Project Reports
  - 2) BLM Annual Cultural Resources Report to the Oregon SHPO: District Listing of Pending Reports to be Submitted to SHPO
  - 3) BLM Annual Cultural Resources Report to the Oregon SHPO: District Listing of Projects where previous inventory of the project APE was deemed adequate.
  - 4) BLM Annual Cultural Resources Report to the Oregon SHPO: District Listing of Exempted Projects fitting Appendix E Criteria Where Field Inventory was Deemed Not Necessary

APPENDIX A:  
SURVEY TECHNIQUES FOR DENSELY VEGETATED AREAS OF  
WESTERN OREGON

**APPENDIX A**  
**Survey Techniques for Densely Vegetated Areas of Western Oregon**

The following strategy continues, on an interim basis, procedures developed for the 1998 Oregon Protocol with the following understanding: within two years of implementation of revision of the Oregon Protocol, Oregon BLM and Oregon SHPO will, in consultation and collaboration, develop a revised approach for conducting cultural resource identification and evaluation within the Willamette Valley and western Cascades physiographic provinces.

Cultural resource survey for proposed projects in densely vegetated areas commonly found in the Willamette Valley, and western Cascades physiographic provinces of western Oregon (\*Thorson et al., 2003) may proceed as follows:

1. Proposed projects will be reviewed by a BLM cultural resource specialist to determine if the project is an undertaking as described in section VI.A of this Protocol;
2. If the proposed project is determined not to be an undertaking by a BLM cultural resource specialist, no notice to SHPO is required prior to project implementation;
3. If the proposed project is determined to be an undertaking, the BLM cultural resource specialist shall determine if the undertaking meets the criteria established in Appendix E as an exempt undertaking and follow the procedures specified in section VI.H of the Protocol for reporting;
4. If the proposed project is determined to be an undertaking but does not meet the criteria of Appendix E as an exempt undertaking, cultural resources survey will proceed in the following manner:

(a) Literature Review and Determination of Field Survey Needs: Data on previous cultural resource inventories shall be reviewed by the cultural resource specialist and determined for its adequacy. For areas subject to inventory in this Appendix (see sections 4b and 4c below) but where previous survey is deemed to be adequate in accordance with section VI.B.3 of this Protocol, these areas need not be resurveyed;

(b) Survey prior to project activity. For each proposed undertaking affected by new ground disturbance activities in areas assessed as high to moderate sensitivity, these areas shall be field inspected prior to project activity to verify the presence or absence of culturally significant landform features or other key environmental features that likely influenced past use of the area. BLM's CRS will be responsible for conducting this review and will utilize the Oregon Heritage Information Management System (OHIMS) and ARCGIS (Geographic Information Systems) and other relevant data on previous surveys and site locations to identify culturally significant landforms for field reconnaissance survey. Reconnaissance level surveys when deemed justified, will be based on the review procedures described above and will focus upon open areas where the soil surface is visible. Such areas shall include but not necessarily be limited to roads, trails, stream banks, and open ridge lines. Procedures for evaluating, assessing

effects, treatment and reporting described in this Protocol will be followed in all cases where cultural resources are found;

(c) Post-project survey: No less than 20% of the project acreage affected by substantial ground disturbing activities within each project shall be inventoried after completion of the ground-disturbing activity using standard survey procedures. This survey shall include all high probability geomorphic features.

Field inventory reports prepared by each field office shall summarize the results of such surveys in relationship to geomorphic, hydrological and ecological factors to improve future effectiveness of such surveys and for periodic evaluation of the survey process.

\* Thorson, T.D., Bryce, S.A., Lammers, D.A., Woods, A.J., Omernik, J.M., Kagan, J., Pater, D.E., and Comstock, J.A., 2003. Ecoregions of Oregon (color poster with map, descriptive text, summary tables, and photographs): Reston, Virginia, U.S. Geological Survey (map scale 1:1,500,000). Internet weblink (as of 12/31/2013): [ftp://ftp.epa.gov/wed/ecoregions/or/or\\_front.pdf](ftp://ftp.epa.gov/wed/ecoregions/or/or_front.pdf).

APPENDIX B:  
RANGE PROGRAM

## **APPENDIX B Range Program**

It is recognized that permitted livestock grazing level decisions as documented in Allotment Management Plans (AMP), and AMP amendments constitute undertakings as defined in 36 CFR § 800.

A primary goal of the approach described below shall be to assess the potential for future (permitted) livestock grazing actions to adversely affect the NRHP defining characteristics (qualities) of known historic properties or areas deemed as high potential by the BLM CRS for containing historic properties whose NRHP qualities would be susceptible to adverse effects due to the concentration of livestock and/or construction and maintenance of grazing facilities. It is expected that in most permit areas, the vast majority of cultural properties of concern will be archaeological sites whose importance is contained within subsurface contexts.

On average, Oregon BLM processes approximately 80-100 livestock grazing permits per year. Some individual permits may authorize dispersed livestock grazing on tens of thousands of acres. Given the large number of permits to be reviewed and annually processed by the BLM in Oregon, BLM shall apply the following phased approach:

### ***A. Issuing Grazing Permits***

1. As a permit comes up for renewal, a BLM cultural resource specialist and a BLM range management specialist will collaboratively review rangeland management and cultural resource data within the permit area for the purpose of identifying known historic properties which have a high potential to be adversely affected by future livestock grazing actions due to the concentration/congregation of livestock. BLM field units shall consider grouping permit renewals for workload efficiency.
2. Rangeland data to be reviewed shall include BLM rangeland health assessments, guidelines for livestock grazing management (Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Public Lands in Oregon and Washington, June 1997), allotment management plans, and range improvement maps on file in the reviewing/approving office.
3. Cultural resource data to be reviewed shall include site and survey data (e.g. data in Oregon Heritage Information Management Systems (OHIMS) and Geographic Information Systems (GIS)) on file at the appropriate district/field Office.
4. The primary objective of review of livestock permitting shall be to (1) identify specific, well-documented previous impacts from past livestock grazing at known sites; and (2) to identify areas where there is a high probability for livestock to congregate for extended periods of time (e.g. unfenced springs, perennial water sources, ponds, lakes, range improvements--troughs, stock ponds) and trailing routes which could cause adverse effects to historic properties. Identification of congregation areas may utilize aerial or



satellite imagery as a form of visual verification. Where survey data is lacking on the allotment/permit area under review, a BLM's cultural resource specialist shall utilize inventory information from adjacent allotments and other data as available to extrapolate expected site types sensitive to future adverse effects from livestock grazing.

5. Targeted Field Examination: Where review following the procedures outlined in A.1 through A.4 above indicates the potential for livestock grazing to adversely affect historic properties, field examination of those properties will be necessary. Field examinations may be phased in during the effective period of the permit. BLM field offices shall provide the SHPO with a schedule for phasing field examinations and shall report on work accomplished in the annual report.
6. In lieu of field examinations, but where review indicates the potential for adverse effects to historic properties from livestock congregation, BLM shall take measures to mitigate or eliminate adverse effects by amending grazing practices or rangeland improvements authorized in the permit. Such measures may include modifying the time/season of grazing; modifying the number of permitted animal unit months (AUMs); and/or modifying the grazing rotation schedule.
7. Where BLM determines through field assessments that future permitted grazing will affect historic properties, BLM will issue permits containing requirements for reducing or eliminating these impacts. In addition to the mitigation measures described above, other measures may include fencing or excluding livestock use from historic properties; and relocating livestock facilities (e.g. troughs) at a sufficient distance from historic properties to ensure protection from livestock congregation. Where protective fencing is proposed to reduce or eliminate livestock congregation at a historic property BLM shall ensure that the area within the enclosure is inventoried to locate and record all historic properties; that the size of the enclosure is sufficient to protect the historic property; and that the enclosure does not divide a historic property so that a portion of the property is located outside of the enclosure unless that area is determined in consultation with the SHPO to lack integrity.
8. BLM shall also inform the permit holder that standard stipulations in the permit gives BLM the ability to expeditiously mitigate or eliminate impacts to historic properties discovered after the permit is approved by modifying permit conditions.

### ***B. Range Improvements and Projects***

After a permit has been issued or renewed, proposed range improvements will be processed as separate NEPA actions and in accordance with appropriate provisions of this Protocol.



### *C. Grazing Allotment Analyses*

1. Cultural resource specialists will be included in inter-disciplinary analyses to assess the condition of cultural resources within an allotment for allotment assessments. Making use of information listed above for grazing permit renewals, BLM shall identify areas where livestock congregation areas overlap with known sites and areas of high potential for containing cultural resources susceptible to impacts from livestock congregation. These locations include but are not necessarily limited to permanent water sources (including springs, rivers, streams, and artificial holding-facilities such as water tanks, lakes and ponds), and other areas where livestock congregates for extended periods of time (including sheltered areas located in rock shelters, along rock faces with potential rock art, fence lines, and at known permanent salt/mineral block locations). Cumulative effects from grazing will be considered.
2. The results of the rangeland health assessments/analyses will be available for input into the permit renewal process for developing allotment management plans, and to guide monitoring strategies.
3. Allotment Management Plans (AMP), AMP amendments, allotment evaluations and similar actions associated with dispersed livestock grazing decisions shall be exempted from the Section 106 procedures except for locations within the allotments where specific land disturbing developments are initiated by that action or where review procedures described above have identified historic properties whose National Register qualities may be affected by increased grazing levels.

### *D. Consultation with Tribes*

Districts/field offices will be responsible for contacting and consulting with tribes and interested parties as outlined in Section V of this Protocol. Annually, each district or field office will prepare a general letter to tribes informing them of plans and schedules for fully processed permit renewals in the upcoming fiscal year and inviting them to share their concerns, if any, with issuing or renewing the grazing permit identified in the letter. Field offices/districts may also consult with tribes on an individual permit basis per 36 CFR § 800 or using consultation processes agreed to between BLM and individual tribes.

APPENDIX C:  
PRESCRIBED BURN PROJECT AREAS

## APPENDIX C Prescribed Burn Project Areas

BLM manages prescribed fires within an overall strategy and program of managing wildland fire. Wildland fire is defined as any non-structure fire which occurs in the wildland. BLM categorizes wildland fires as either (1) wildfires or (2) prescribed fires.

Wildfires are unplanned ignitions or prescribed fires that are declared wildfires. Prescribed Fire is any fire ignited by management actions to meet specific objectives.

A wildland fire may be concurrently managed for one or more objectives (or uses). Objectives can change as the fire spreads across the landscape. Objectives are affected by changes in fuels, weather, topography; varying social understanding and tolerance; and involvement of other governmental jurisdictions having different missions and objectives. Whether defined as a wildfire or a prescribed fire will be used by BLM to protect, maintain, and enhance resources and, as nearly as possible, be allowed to function in its natural ecological role.

The following procedures are developed with the understanding that wildland fires have the potential to affect historic properties. Effects to historic properties vary based on fire temperature and duration, the type of property and cultural materials/features contained within the property or site.

The following procedures focus on properties deemed to be most vulnerable to adverse effects from wildland fire. Properties considered as vulnerable include, but are not limited to historic buildings, structures and artifacts, prehistoric and ethno-historic wooden structures, arboglyphs, culturally peeled trees, rock art, and other site types such as rock shelters and habitation areas containing flammable organic deposits.

Fires involving larger fuel loads, longer duration and/or high temperature burns, and large total heat release pose significantly greater hazards to vulnerable cultural resources (e.g., obsidian artifacts), than fires with short duration “cool” combustion temperatures. The following procedures also take into account differences in fire behavior and cultural resources within forested lands and non-forested shrublands.

### *A. Prescribed Fire--Procedures to be followed:*

1. For prescribed fires, a written, approved prescribed fire plan must exist prior to ignition.
2. Use of prescribed fire will be based on Land Use and Resource Management Plan and associated Fire Management Plans and will follow specific prescriptions contained in operational plans.
3. The CRS shall review available data (General Land Office records, documentation of known sites and previous surveys within or in adjacent areas, modeling studies, remote sensing information) and assess the potential for the proposed burn to adversely affect vulnerable property types.

4. Prescribed fire areas may be ignited by BLM without SHPO consultation if a cultural resource specialist with concurrence by the appropriate field manager determines that the following conditions have been or will be met:
  - a. Professional literature review by the CRS can reasonably establish that a fire within the last 40 years burned through the area at a sufficient intensity to have significantly affected/destroyed above-ground and/or other fire-vulnerable cultural resources; and/or
  - b. The proposed prescribed fire area has been previously inventoried to currently accepted professional standards (and where a report on the previous survey has been submitted to SHPO for review and concurrence) delineated within this Protocol and no historic properties were identified; and
  - c. The proposed prescribed fire area will be managed within the prescription limits (including measures for protecting historic properties through measures such as foam wetting agents, fire shelter fabric, and/or appropriate ignition techniques) outlined in the approved prescribed fire plan; and
  - e. Consultation with Indian tribes and consulting parties as described in Sections IV and V of this Protocol has occurred.
  - d. These findings shall be documented and maintained in official BLM files and shall be made available to the SHPO upon request.
5. Conducting Pedestrian Field Surveys: Where conditions described in #4 are not met, the following procedures shall apply:
  - a. Non-forested shrublands: the primary focus of field survey in non-forested shrubland settings will be upon areas (a) where fire lines and landing sites will be prepared through mechanical blading or with hand and/or (b) areas which are deemed by the CRS to have high potential for containing historic properties deemed to be vulnerable to adverse effects from fire. The need for conducting field survey shall be based on the potential for fire management activities (e.g. fire line construction and landing sites) to affect cultural resources (including but not limited to vulnerable cultural properties) and the potential for the fire itself to affect vulnerable property types.

Standard survey procedures, such as Class III intensive field surveys using 30-meter transect intervals and/or reconnaissance level survey of these areas will be applied based on the professional assessment of the CRS. Where surveys will be conducted using reconnaissance level methods, BLM shall provide SHPO with a map of these areas and a written rationale for the reconnaissance level survey strategy prior to project implementation. SHPO shall provide comment within 15

calendar days of receipt of this information. The rationale for selecting a particular survey method (intensive vs. reconnaissance) shall be described and documented in the survey report.

- b. Forested Lands: Forested areas can pose different concerns. Not only are small historic structures more difficult to identify, but other low visibility and fire-vulnerable cultural resource types may be present (e.g. pre-contact lean-to frames in old growth juniper in central Oregon and cambium stripped trees in Ponderosa pine stands of south-central Oregon). Similar to procedures for shrublands, survey plans shall take into account (a) the potential for fire management activities (e.g. fire line construction and landing sites) to affect cultural resources (including but not limited to vulnerable cultural properties) and (b) the potential for the fire itself to affect vulnerable property types within forested settings.

Standard survey procedures, such as Class III intensive field surveys using 30-meter transect intervals will be applied based on the professional assessment of the CRS. Where surveys will be conducted using reconnaissance level methods, BLM shall provide SHPO with a map of these areas and a written rationale for the reconnaissance level survey strategy prior to project implementation. SHPO shall provide comment within 15 calendar days of receipt of this information. The rationale for selecting a particular survey method (intensive vs. reconnaissance) shall be described and documented in the survey report.

The results of surveys conducted under 5a and 5b shall be reported in accordance with section VI.H of this Protocol.

6. Avoidance Measures: Identified cultural resources that may incur damage from prescribed fire shall be excluded from prescribed fire areas and protected through appropriate and feasible avoidance measures. Avoidance measures may include, but may not be limited to hand-constructed fire lines, foam wetting agents, or fire shelter fabric as described in section A.4 of this appendix. New fire line construction routes (e.g., dozer lines) shall be surveyed and fire lines reconfigured to avoid vulnerable historic properties.
7. Tribal Consultation: Native American consultation, as appropriate, should be completed at the Resource Management Plan level to identify concerns regarding the potential for planned prescribed burns to affect historic properties religious and cultural significance. Tribes shall be consulted in conformance with normal government to government procedures or consultation Protocols established between BLM and individual tribes. It is also recognized that burning can be used to promote the growth of certain plants used for food, medicine, or craft manufacture. Some concerns may be expressed concerning exposure of some cultural features, such as vision quest/prayer cairns, and elimination of vegetation screening. Such concerns will be identified on a case specific basis.

APPENDIX D:  
COAST RANGE INVENTORY PLAN

## APPENDIX D Coast Range Inventory Plan

The following strategy continues, on an interim basis, procedures developed for the 1998 Oregon Protocol with the following understanding: within two years of implementation of revision of the Oregon Protocol, Oregon BLM and Oregon SHPO will, in consultation and collaboration, develop a revised approach for conducting cultural resource identification and evaluation within the Coast Range physiographic province (\*Thorson et al., 2003).

Cultural resource site and survey data from all west-side districts (Coos Bay, Eugene, Salem, Roseburg, and Medford plus the Klamath Falls Resource Area) are currently being finalized and entered into BLM's Oregon Heritage Information Management Systems (OHIMS). As OHIMS is compatible with Geographic Information Systems (GIS), landscape level analyses of cultural and environmental data will allow both BLM and SHPO to better assess the results of previous inventory and site identification as a means of identifying more effective cultural resource identification and management measures in the Coast Range.

In its identification of high, medium and low probability areas, BLM's cultural specialists shall give due consideration to important environmental and cultural factors influencing cultural resource site location and distribution. This shall include review of relevant literature sources and information obtained through consultation on ethnographically, historically and tribally reported sites/use areas, trade networks, trail systems, water sources, and landforms commonly associated with known sites.

### *1998 Protocol Provisions Continued on Interim Basis:*

The following zones and guides are based on the results of the "Inventory Strategy Plan for BLM Lands in the Oregon Coast Range" (1992) prepared by Heritage Research Associates. The report summarized the BLM's activities in identifying cultural resources in an area encompassing some 754,000 acres on the east and west slopes of the Coast Range. The report, in highlighting the lack of important historic properties found by previous inventories, concluded that the chances of finding important historic properties in the area are so minimal that further expenditure of agency funds for cultural resource surveys prior to project implementation are not justified. As a result of the report, the cultural resource surveys required for the identification of cultural properties in the Coast Range managed by the BLM will be conducted in the manner described below.

1. High Potential Zones: cultural resource surveys of timber harvest units will be conducted after harvest activities have been completed ("post-harvest") where slope is less than 15%.
2. Moderate Potential Zones: post-harvest surveys will be conducted when professional judgment prompts such efforts on topographic features in forested environments with a slope of between 15 to 25%.
3. Low and Negligible Potential Zones: post-harvest inventories will be conducted on approximately 5% of the forested areas where slope is greater than 20% slope.



*Exceptions to Continuation of Interim Procedures:*

In consultation with the Oregon SHPO, districts/field offices may agree to vary this approach on a case-by-case basis. Agreement shall be documented in writing and shall be reported on in individual project reports according to the reporting requirements specified in this Protocol.

\* Thorson, T.D., Bryce, S.A., Lammers, D.A., Woods, A.J., Omernik, J.M., Kagan, J., Pater, D.E., and Comstock, J.A., 2003. Ecoregions of Oregon (color poster with map, descriptive text, summary tables, and photographs): Reston, Virginia, U.S. Geological Survey (map scale 1:1,500,000). Internet weblink (as of 12/31/2013): [ftp://ftp.epa.gov/wed/ecoregions/or/or\\_front.pdf](ftp://ftp.epa.gov/wed/ecoregions/or/or_front.pdf).

APPENDIX E:

UNDERTAKINGS EXEMPTED FROM FIELD SURVEY  
AND CONSULTATION WITH THE SHPO

**APPENDIX E**  
**Undertakings Exempted from Field Survey and Consultation with SHPO**

Pursuant to sections VI.A of this Protocol, the BLM cultural resource specialist will recommend and the agency official will determine if specific projects or activities meet the following criteria for being exempted from field survey and further review. In certain circumstances, even though an action may meet the following criteria, the cultural resource specialist may, based on other justifying factors, recommend a field inventory and further evaluation. Generally, exempt undertakings include resource management actions or projects which do not create new ground disturbance, or do not ordinarily have the potential to affect historic properties. The following list provides both specific and general examples of such undertakings; it is not exhaustive and may be revised or updated by mutual written agreement of the BLM and SHPO, as needed in consultation with Indian tribes and other consulting parties.

*Realty*

1. Withdrawals consisting of administrative actions taken by BLM to withdraw public lands administered by BLM from certain uses. The following withdrawal actions shall be considered as exempt undertakings:
  - a) Continuations or extensions of the time period in which the withdrawal will be in effect where there would be no change in use and/or no new uses would be permitted;
  - b) Terminations, modifications or revocations which, due to overlying withdrawals or statutory provisions, only involve an administrative records procedure;
  - c) Terminations, modifications or revocations and classification cancellations and opening orders where the land would be opened to other uses but where those future uses would be subject to NHPA-Section 106 review; and
2. Reassignment of land use authorization where the action conveys no additional rights beyond those granted in the original authorization.
3. Issuance of Federal Land Policy Management Act (FLPMA) leases, and rights-of-way where no new surface disturbance is authorized.
4. Replacing or adding new lines (power or telephone) to existing pole(s) when there is no change in pole configuration and where no new road construction is authorized.
5. Issuing rights-of-way for overhead lines with no pole, tower, or other surface disturbance on BLM-administered lands where there are no historic properties present.
6. Rights-of-way approvals which would add another user or related electronic equipment to an approved communication facility or structure and would not require (a) installation of substantial new equipment where installation would introduce visual, atmospheric or audible effects on the

NRHP-defining characteristics of historic property; and/or (b) expansion of the facilities permit; and or (c) new ground disturbance not covered by adequate previous survey.

7. Conversions of existing rights-of-ways grants to another user where (a) existing or additional stipulations to be added are sufficient to protect any historic properties which may be involved and (b) where no new surface disturbance is authorized.

8. Renewal or assignment of existing rights-of-way when reuse or continuous use will not affect historic properties as determined by completion of a previous adequate cultural resources survey.

9. Rights-of-ways issued by BLM to the Federal Highways Administration (FHWA) for highway easements wherein FHWA assumes Section 106 responsibilities.

10. Rendering formal classification of Federal lands in the United States as to their mineral character and waterpower and water storage values.

11. Continuing existing Recreation and Public Purpose (R&PP) leases where the continuation conveys no additional rights. (Prior to their approval, existing R&PP leases require compliance with NEPA and NHPA).

12. Administrative classification of lands as suitable for exchange or sale. (Subsequent proposals to exchange or sell lands which have been so classified are considered as undertakings and require compliance with NEPA and NHPA.)

### *Transportation Management Program*

1. Vehicular closures involving the installation of concrete barriers, large boulders or similar non-surface disturbing methods which are limited to existing roads and trails.

2. Installation of routine signs, markers or cattle guards along the shoulders of existing roads and/or existing trails outside the boundaries of known sites in areas previously surveyed.

3. Temporary road closures, including those where ground disturbance will occur outside of the boundaries of known cultural resources in areas previously surveyed.

4. Road maintenance (exclusive of major road improvements) of crowned or ditched roads that do not widen or otherwise extend surface disturbance and confined to the road prism and located outside of known cultural resources. Maintenance includes activities for maintaining existing drainage ditches and road surfaces within the existing road prism.

5. Use of existing material source sites where no expansion of the source or the existing footprint will occur.

6. Continued development of borrow sources which have previously removed all Holocene and Pleistocene sediments and will not extend into any area which contains Holocene and Pleistocene sediments.

7. Removing and replacing non-historic culverts that are located entirely within the road prism.

### *Minerals Management Program*

1. Issuance and modification of regulations, orders, standards, notices to lessees and operators, and field rules that do not authorize ground disturbing actions.

2. Designation of standard or special stipulations for fluid minerals (oil and gas, geothermal) leases through land use plans where no surface disturbance is authorized and there are no Native American concerns or National Register eligible historic landscapes within the lease area.

3. Approval of off-lease storage in a BLM approved facility and located on BLM-administered lands and where (a) no new ground disturbing activities are approved and (b) where no historic properties have been documented by previous cultural resource surveys which have been subjected to previous Section 106 consultation and compliance.

4. Approval of conversion of an existing oil and gas well for disposal of produced water meeting the standards of a BLM Notice to Lessee (NTL) 2B (Note: NTL-2B specifies how much oil can be included in re-injected water; no surface disturbance is authorized via NTL-2B).

5. Approval of conversion of an unsuccessful oil and gas well or an exhausted producer to a water source or observation well.

6. Approval of Sundry Notices and Reports on Wells provided that approval does not authorize ground disturbance, other actions having the potential to affect historic properties, and do not grant any rights to project proponents for management of historic properties .

7. Approval of a plan for geothermal production when derived from a plan of utilization which has been covered by previous National Environmental Policy Act analysis and where potential adverse effects have been fully taken into account with previous Section 106 compliance.

8. Approval of a plan for injection of geothermal fluids meeting the requirements of Geothermal Resources Order No. 4 where no new surface disturbance is authorized.

9. Approval of modifications to, or variances from, activities authorized in an approved mine or exploration plan of operations that do not involve additional surface disturbance or affect historic properties based on adequate cultural resource survey.

10. Minerals exploration that conforms to an exploration plan in accordance with 43 CFR § 3802.1-2 or 43 CFR § 3809.1-2 both of which require previous NEPA and Section 106 compliance.

11. Issuance of mineral patents for mineral patent applications achieving first half final certification prior to 1994 (Note: there is a current moratorium on the issuance of mineral patents with one exception. The one exception is mineral patent applications received prior to



1994. In these cases, BLM has no discretion to not approve patenting if minerals validity is proven. The current moratorium on issuance of mineral patents is expected to become permanent).

12. Reviews of non-discretionary mining notices.

13. Test or exploration drilling and down hole testing included in a project previously subject to review under Section 106 and provided that such testing does not conflict with stipulations of an approved Section 106 agreement document.

### ***Abandoned Mine Lands***

1. Abandoned mine openings – including adits, shafts, and stopes – pose significant public safety concerns. In response to these concerns, at abandoned mine sites that are located on public lands managed by BLM, that are easily accessible, where death or injury has or is likely to occur, or where there is visitation or high use, BLM will complete physical safety remediation and mitigation projects to address these hazards and to protect human health and safety. BLM is authorized to use a variety of methods to secure these mine openings including polyurethane foam seal (PUF), steel gate/grate, steel cupola, wire rope netting, rock bulkhead seal, gabion seal (rock fill mattress), and backfilling (see definitions in Appendix F). Authorization extends to sites determined to be eligible for the National Register as well as ineligible and unevaluated sites.

These closure methods are determined to cause minimal ground disturbance, will have a negligible impact on the site, and are fully reversible should future research needs arise. Depending on local conditions, if one of these closure types does have the potential to have an adverse effect on contributing resources at an eligible or unevaluated site, and no alternative closure method is available, BLM shall consult with SHPO. For the level of site recordation at abandoned mines, BLM shall follow the guidance offered by the BLM 8100 Manual, *National Register Bulletin No. 42* (1997:6-9, 22-25), this Protocol, and Oregon SHPO guidelines for recording and evaluating the NRHP eligibility of historic sites ([http://www.oregon.gov/oprd/HCD/ARCH/docs/eligibility\\_flow\\_charts\\_compiled.pdf](http://www.oregon.gov/oprd/HCD/ARCH/docs/eligibility_flow_charts_compiled.pdf)). BLM will provide the SHPO with documentation of mine closure actions in accordance with the reporting schedule in section VI.H of this Protocol.

### ***Recreation Management Program***

1. Dispersed noncommercial recreation activities including Christmas tree cutting, primitive backcountry camping and mushroom gathering.

2. Issuance of special recreation permits:

a. Along rivers, well-established trails and other specified areas where use is similar to previous permits for which environmental documents have been prepared for the permitted uses and which would not substantially increase the level of use or continue unsatisfactory environmental conditions.

- b. Where uses are consistent with planning decisions, as applicable, or where there will be no surface disturbance.
  - c. When the event is utilizing existing roads, recreation trails, or well-established livestock trails and no known historic properties are present.
3. OHV designations which are the result of planning decisions for which there has been NEPA/Section 106 compliance.
  4. Issuance of river use permits where use is similar to previous river use permits and where environmental documents addressing cultural resource concerns have been prepared and/or where stipulations protecting cultural resources are included in the permit, and/or where permitted uses will be confined to landforms (e.g. sandbars, gravel bars, areas located below current high water levels) which reasonably preclude the possibility of intact cultural resources.
  5. Placement of recreational, special designation or information signs, visitor registers and portable sanitation devices, where ground disturbance will occur outside the boundaries of known sites.
  6. Authorizing OHV events that are limited to previously disturbed or non-historic routes and routes with no historic properties that are clearly visible from the course. Previously disturbed and non-historic routes include: developed roads, roads and trails where use has created surface disturbance at least 2 meters wide, and roads which are less than 50 years old.
  7. Non-commercial rock collection within limits established by BLM-Oregon in accordance with 43 CFR § 3622. By federal regulation and Oregon BLM policy free use recreational rock and petrified wood collection is limited to 25 pounds plus one piece per day, not to exceed 250 pounds in one calendar year, and no specimen greater than 250 pounds may be collected. Decorative or landscape rock collection are not included in this definition.

#### *Wildlife Management Program*

1. Modification of existing fences to provide wildlife ingress and egress outside of known sites in previously surveyed areas.
2. Reintroduction of endemic or native wildlife species into their historical habitats, other than endangered or threatened species.
3. Installation of bear baiting stations and nesting platforms.
4. Fishery habitat improvements that are confined to the active stream channel and will not disturb adjacent stream terraces and/or intact over-bank soil deposits.
5. Authorization of installation of devices to protect raptors from electrocution on power poles or similar structures.



### *Range Management Program*

1. Vegetation treatment by spraying, permit issuance, and aerial seeding of grasses. However, the effects of vegetation treatment by spraying upon traditional food resources will be considered through other analyses (NEPA and/or Land Use Plans).
2. Installing cattle guards, gates within the existing road prism. and/or established trail.
3. Temporary corrals which are located in areas which have been previously disturbed and for which a BLM CRS specialist determines that new disturbances are not likely to affect known or undetected cultural resources. .
4. Herbicide application where it would be unlikely to affect rock art images or traditional Native American plant gathering areas as determined in consultation with affected tribes.
5. Machine mowing (with a rubber tired vehicle) of low shrubs where mowing blades are set at 10 inches or higher above the ground surface. (Machine mowing is typically used for sage-grouse habitat management in the desert steppe environment of eastern Oregon).

### *Other Program Actions*

1. Exclosures (other than riparian exclosures) constructed for vegetation/riparian habitat/stream protective purposes, including those to protect small study areas which are located outside of known historic properties.
2. Removal of recent (less than 50 years old) structures and materials (including abandoned automobiles, dumps, fences and buildings) and reclamation of the site. The site from which these materials are removed *may* be reclaimed provided that such features are not located within the boundaries of a National Register District and do not meet the criteria of exceptional significance as delineated in 36 CFR § 60.4(g) (see National Park Service *Guidelines for Evaluating and Nominating Properties that have Achieved Significance Within the Past Fifty Years*, (revised 1998) and reclamation does not expand previous surface disturbance.
3. Removal of log jams and debris dams using hand labor or small mechanical devices within active stream channels and/or outside of known sites.
4. Special land use designations which do not authorize surface disturbing projects – Areas of Critical Environmental Concern (ACEC), Wilderness Study Areas, environmental education areas, and Research Natural Areas.

5. Establishment of study plots for botanical research projects involving the construction of enclosure fences and which will not involve augering or excavation of post holes.
6. Reforestation planting by hand, excluding site preparation that involves surface disturbance or ripping.
7. Non-mechanized post and pole harvesting or pre-commercial thinning (where cut timber, slash is hand scattered/piled and left) and non-commercial firewood cutting. Non-mechanized refers to the absence of conventional logging equipment, but could involve the use of a pick-up to access the project area and tree cutting/thinning with a chain saw.
8. Removal of non-historic structures or buildings where there will be no new ground disturbance.
9. Removal of modern dumps not associated with historic properties.
10. Inventory, data and information collection activities inclusive of collection of geological and mineralogical samples outside of known sites, resource evaluation studies, cadastral surveys, geophysical surveys and approval of permits for the aforementioned activities.
11. Placement of monitoring stations where no ground disturbance is involved (e.g., stream gauges).
12. Routine maintenance of historic properties utilizing in-kind materials to preserve the historic character of the property where review by BLM's CRS determines that maintenance will be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR § 68 and applicable guidelines) and relevant Preservation Briefs.
13. Hazards abatement, including elimination of drug labs, and marijuana abatement.
14. Flood damage repair to roads, bridges, and other facilities when the facility involved is not of historic properties and the rehabilitation is confined to the previously affected areas.

APPENDIX F:  
DEFINITIONS

## APPENDIX F: Definitions

### *Abandoned Mine Land (AML) Closures—Closure Type Definitions:*

*Polyurethane Foam (PUF) Seal:* Consists of installing a bottom/back form inside a mine opening, then installing the PUF seal to specifications, and backfilling over the PUF with 24-36" of common fill (soil or rock fill). Installation of monumentation and drainage or air-flow features may be necessary depending on local conditions.

*Steel Gate/Grate:* Consists of installing a steel frame and gate/grate that is anchored to the existing structural rock approximately 5' inside an adit portal or at the surface of a shaft/stope collar. Unstable rock may require placing corrugated steel pipe in the mine opening and then anchoring the gate/grate to this. Closure is wildlife compatible (e.g. bats, small mammals, amphibians).

*Steel Cupola:* Consists of installing a steel frame and cupola that is anchored to the existing structural rock immediately around the exterior of mine opening. Closure is wildlife compatible (e.g. bats, small mammals, amphibians).

*Wire Rope Netting:* Consists of installing a wire rope net that is anchored to the existing structural rock either in the interior or on the exterior of a mine opening. Closure is wildlife compatible (e.g. bats, small mammals, amphibians).

*Rock Bulkhead Seal:* Consists of installing a rock and concrete bulkhead seal approximately 5' inside an adit portal or at the surface of a shaft/stope collar. This may include the installation of drainage or air-flow features depending on the local conditions.

*Gabion (Rock Fill Mattress) Seal:* Consists of installing rock-filled gabions in layers over an adit portal or shaft/stope collar and may include backfilling over the gabions with 24-36" of common fill.

*Backfill:* Consists of backfilling mine openings with common fill material. This may include soil or rock fill. Installation of monumentation and drainage or air-flow features may be necessary depending on local conditions.

**Action:** This is a general term which may or may not refer to a proposed BLM action which meets the definition of an undertaking as defined in this Appendix.

**BLM Class III Inventory:** Class III inventories are designed to identify and record all cultural properties detectable from surface observations and exposed profiles of the subsurface within a target areas during standard pedestrian survey methods. Class III inventories are continuous, intensive and complete surveys carried out by trained observers walking regular intervals on parallel transects until the area has been thoroughly examined. Transect intervals ( $\leq 30$  meters) shall be determined based on professional assessment of site types, site size, and detectability (e.g. potential for cultural resources to be detected via surface manifestations of cultural



material) for various regions within the state. A Class III inventory preceded by a review of relevant existing cultural resources data is considered the standard method of identifying historic properties for the purposes of complying with Section 106 of the National Historic Preservation Act.

***BLM Class II Inventory:*** Class II sample inventories are statistically based surveys designed to characterize the probable or expected site density, types, and distribution of cultural properties in an area and to address pertinent research questions. Class II sample surveys may involve the use of various methods either individually or in combination to improve predictive reliability. Such methods may include random or systematically stratified areas where pedestrian survey can be focused upon to test the reliability of random or stratified sampling approaches for given geographic areas. Class II sample surveys may be especially appropriate in certain situations such as when various route alternatives are under consideration for a proposed undertaking (e.g. a proposed electric transmission line route).

***BLM Field Manager/District Manager:*** For this Protocol, BLM managers are defined as an “agency official” under 36 CFR § 800.2(a) who have jurisdiction over an undertaking including the legal responsibility for section 106 compliance, have delegated approval authority for the undertaking and can commit the Federal agency to take appropriate action for an undertaking.

***Cultural Resource:*** The term “cultural resource” is a term commonly used to refer to a wide range of cultural property/resource types including but not limited to archaeological sites, buildings, structures, trails, roads, and objects regardless of age or ethnic affiliation. The term may also be used to describe landscape features or geographic areas important to certain ethnic or tribal groups. The term however, is not one that is defined in statute or regulation. Cultural resources can also include “historic properties” as defined in the National Historic Preservation Act (16 U.S.C. § 470w-5) and archaeological resources as defined in the Archaeological Resources Protection Act (16 U.S.C. § 470bb-1).

***Cultural Resource Specialist (CRS):*** A professional cultural resource specialist or CRS is defined as personnel meeting or exceeding the U.S. Office of Personnel Management qualifications for professional archaeologists and classified in the appropriate OPM series (e.g. Series 193 for archaeologists) at grade; GS-9 or higher. Specialists at the or below the GS-7 level are considered to be performing duties in a trainee/developmental capacity. Reports prepared by GS-7 or lower graded specialists will be reviewed by a professional GS-9 or higher CRS prior to submission to the SHPO.

***High Cultural Resource Sensitivity/High Probability Areas:*** These are areas which through analyses and assessment such as predictive modeling, cultural resource overview studies, or historic context documents, have been classified as containing or possessing the potential to contain high densities of important archaeological and historical properties including historic properties of religious and cultural significance to Indian tribes. Such areas may be defined more informally by BLM’s professional district cultural resource specialist.

***Historic Property:*** This term refers to any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places; the

term includes artifacts, records and remains which are related to such district, site, building, structure or object (16 U.S.C. § 470w-5).

***Reconnaissance Survey:*** As defined in BLM Manual 8110.22, a reconnaissance survey is a focused or special-purpose information tool that is less systematic, less intensive, less complete, or otherwise does not meet class III inventory standards. While portions of an area investigated by reconnaissance survey may have been covered to standards, an area surveyed only by reconnaissance methods cannot be considered to be "inventoried" and may be subject to resurvey for other purposes (depending in part on the purposes and results of the reconnaissance). Reconnaissance surveys may be used, among other purposes, for (a) checking the adequacy of previous surveys; (b) developing recommendations about inventory needs in previously un-surveyed areas; (c) verifying assumed conditions that would warrant a waiver of more intensive survey; (d) locating architectural or other high-profile properties; (e) filling special management information needs (e.g. locating properties associated with particular kinds of landscape features; locating properties potentially damaged by wildfire, wildfire suppression, or other emergency treatments; ground-truthing remote sensing results; or spot checking the effects of a class of authorized uses on a given landscape).

***Undertaking:*** The term "undertaking" refers to any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval (see 36 CFR § 800.14(y)).

APPENDIX G:  
ANNUAL REPORT FORMS









