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APPENDIX K:
GOVERNMENT-TO-GOVERNMENT
AND CULTURAL RESOURCE CONSULTATIONS

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TABLE K-1 Status of Tribal Consultations

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
AZ	Ak Chin Indian Community Council	Maricopa	AZ	+	AZ		
AZ	Cocopah Tribal Council	Somerton	AZ, CA	+	AZ	+	
AZ	Colorado River Indian Tribes Museum	Parker		+	AZ	+	
AZ	Colorado River Tribal Council	Parker	AZ, CA	+	AZ	+	
AZ	Fort McDowell Yavapai Tribal Council	Fountain Hills	AZ	+	AZ	+	
AZ	Fort Yuma Quechan Tribe	Yuma	AZ, CA	+	AZ		2009/09/03: Letter from Mike Jackson, Sr., President Quechan Indian Tribe. The letter states the Tribe's concerns/comments regarding cultural resource protection and preservation and concerns about impairment of the quantity and quality of their water resources. Mr. Jackson states that the Quechan people and their ancestors have inhabited the area surrounding the confluence of the Colorado and Gila Rivers for centuries. The Indian Claims Commission found that the Quechan Tribe's historic lands extended well beyond the boundaries of the present day Fort Yuma Indian Reservation and includes certain lands to the north and west of the Fort Yuma Indian Reservation that fall within the solar energy study areas. Also that these areas are rich in cultural resources that could be impacted by large-scale solar development projects. The Tribe is aware of numerous applications for solar development within or nearby the area known as Indian Pass, which is a Traditional Cultural Property area that is considered sacred to the Tribe. The Tribe opposes solar development in areas that have

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
							been identified as specific TCPs of the Tribe, such as Indian Pass. Moreover, that the Tribe has diversion rights of 71,616 acre-feet per year in California and diversion rights of 6,350 acre-feet per year in Arizona. Mr. Jackson requests to meet with officials at the local BLM offices to discuss the Tribe's concerns in more detail.
AZ	Gila River Indian Community Council	Sacaton	AZ, CA	+	NM - AZ		
AZ	Havasupai Tribal Council	Supai	AZ	+	AZ	+	
AZ	Hopi Tribal Council	Kykotsmovi	AZ, CO, UT, NM	+	UT	+	
AZ	Hualapai Tribal Council	Peach Springs	AZ	+	AZ	+	
AZ	Kaibab Paiute Tribal Council	Fredonia	AZ, NV, UT	+	AZ	+	
AZ	Navajo Fish & Wildlife, Natural Heritage Program	Window Rock		+			
AZ	Navajo Nation	Window Rock	AZ, CO, UT	+	AZ		2008/07/03: From Judy Martin for Mr. Tony Joe, Program Manager, Historic Preservation Department-Traditional Culture Program. The letter is in response to a BLM request for information and offering tribal consultation to evaluate solar energy development on BLM lands. After reviewing the consultation documents of the HPD-TCP the proposed undertaking of the project would not impact any Navajo traditional cultural properties or historical properties. The Navajo Nation requests that if there are any inadvertent discoveries made during the course of the project, the agency shall cease

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
							all operations, notify the HPD-TCP within 24 hours, along with a formal letter sent within 72 hours. 2009/08/07: From Judy Martin for Mr. Tony H. Joe, Jr., Supervisory Anthropologist, Historic Preservation Department-Traditional Culture Program. After reviewing BKM's consultation documents, HPD-TCP, on behalf of the Navajo Nation has no concerns at this time. However, the determination made by the HPD-TCP does not necessarily mean that the Navajo Nation has no interest or concerns with the proposed project. If the proposed project inadvertently discovers habitation sites, plant gathering areas, human remains and objects of cultural patrimony the HDP-TCP request that we be notified respectively in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA). Following with contact information for Tony Joe. With a side note that Mr. Kelly Francis will be taking over all Section 106 Consultations soon within the near future.
AZ	Navajo Nation Council	Window Rock	AZ	+			
AZ	Navajo Nation, Birdsprings Chapter	Winslow	AZ	+		+	
AZ	Navajo Nation, Black Mesa Chapter	Pinon	AZ	+		+	
AZ	Navajo Nation, Blue Gap/Tachee Chapter	Blue Gap	AZ	+		+	
AZ	Navajo Nation, Bodaway-Gap Chapter	Gap	AZ	+		+	

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
AZ	Navajo Nation, Cameron Chapter	Cameron	AZ	+		+	
AZ	Navajo Nation, Chilchinbeto Chapter	Kayenta	AZ	+	AZ		
AZ	Navajo Nation, Chinle Chapter	Chinle	AZ	+		+	
AZ	Navajo Nation, Coalmine Canyon Chapter	Tuba City	AZ	+			
AZ	Navajo Nation, Coppermine Chapter	Page	AZ	+		+	
AZ	Navajo Nation, Cornfields Chapter	Ganado	AZ	+		+	
AZ	Navajo Nation, Cove Chapter	Red Valley	AZ	+		+	
AZ	Navajo Nation, Dennehotso Chapter	Dennehotso	AZ	+		+	
AZ	Navajo Nation, Dilkon Chapter	Winslow	AZ	+		+	
AZ	Navajo Nation, Forest Lake Chapter	Pinon	AZ	+		+	
AZ	Navajo Nation, Fort Defiance Chapter	Fort Defiance	AZ	+		+	
AZ	Navajo Nation, Ganado Chapter	Ganado	AZ	+		+	
AZ	Navajo Nation, Greasewood Springs Chapter	Ganado	AZ	+		+	
AZ	Navajo Nation, Hardrock Chapter	Kykotsmovi	AZ	+		+	
AZ	Navajo Nation, Houck Chapter	Houck	AZ	+		+	
AZ	Navajo Nation, Indian Wells Chapter	Indian Wells	AZ	+		+	

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
AZ	Navajo Nation, Inscription House Chapter	Tonalea	AZ	+		+	
AZ	Navajo Nation, Jeddito Chapter	Keams Canyon	AZ	+		+	
AZ	Navajo Nation, Kaibeto Chapter	Kaibeto	AZ	+		+	
AZ	Navajo Nation, Kayenta Chapter	Kayenta	AZ	+		+	
AZ	Navajo Nation, Kinlichee Chapter	St. Michael	AZ	+		+	
AZ	Navajo Nation, Klagetoh Chapter	Ganado	AZ	+			
AZ	Navajo Nation, LeChee Chapter	Page	AZ	+		+	
AZ	Navajo Nation, Leupp Chapter	Leupp	AZ	+		+	
AZ	Navajo Nation, Low Mountain Chapter	Blue Gap	AZ	+		+	
AZ	Navajo Nation, Lukachukai Chapter	Lukachukai	AZ	+		+	
AZ	Navajo Nation, Lupton Chapter	Lupton	AZ	+		+	
AZ	Navajo Nation, Many Farms Chapter	Many Farms	AZ	+		+	
AZ	Navajo Nation, Mexican Water Chapter	Tecnospos	AZ	+		+	
AZ	Navajo Nation, Nahata Dzill Chapter	Sanders	AZ	+		+	
AZ	Navajo Nation, Navajo Mountain Chapter	Tonalea	AZ	+		+	
AZ	Navajo Nation, Nazlini Chapter	Nazlini	AZ	+		+	
AZ	Navajo Nation, Oak Springs Chapter	Window Rock	AZ	+		+	

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
AZ	Navajo Nation, Pinon Chapter	Pinon	AZ	+		+	
AZ	Navajo Nation, Red Valley Chapter	Red Valley	AZ	+		+	
AZ	Navajo Nation, Rock Point Chapter	Rock Point	AZ	+		+	
AZ	Navajo Nation, Rough Rock Chapter	Chinle	AZ	+		+	
AZ	Navajo Nation, Round Rock Chapter	Round Rock	AZ	+		+	
AZ	Navajo Nation, Sawmill Chapter	Ft. Defiance	AZ	+		+	
AZ	Navajo Nation, Shonto Chapter	Shonto	AZ	+		+	
AZ	Navajo Nation, St. Michael Chapter	St. Michael	AZ	+		+	
AZ	Navajo Nation, Steamboat Chapter	Ganado	AZ	+		+	
AZ	Navajo Nation, Sweetwater Chapter	Tecnospos	AZ	+		+	
AZ	Navajo Nation, Teec Nos Pos Chapter	Teec Nos Pos	AZ	+		+	
AZ	Navajo Nation, Teesto Chapter	Winslow	AZ	+		+	
AZ	Navajo Nation, Toh Nanees Dizi Chapter	Tuba City	AZ	+		+	
AZ	Navajo Nation, Tolani Lake Chapter	Winslow	AZ	+		+	
AZ	Navajo Nation, Tonalea Chapter	Tonalea	AZ	+		+	
AZ	Navajo Nation, Tsaille/Wheatfields Chapter	Tsaille	AZ	+		+	

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
AZ	Navajo Nation, Tselani/Cottonwood Chapter	Chinle	AZ	+		+	
AZ	Navajo Nation, Whippoorwill Chapter	Pinon	AZ	+		+	
AZ	Navajo Nation, Wide Ruins Chapter	Chambers	AZ	+		+	
AZ	Pascua Yaqui Tribal Council	Tucson	AZ	+	AZ		
AZ	Salt River Pima-Maricopa Indian Community Council	Scottsdale	AZ, NM	+	AZ	+	
AZ	San Carlos Tribal Council	San Carlos	AZ, NM	+	AZ		
AZ	San Juan Southern Paiute Council	Tuba City	AZ, UT	+	AZ		
AZ	Tohono O'odham Nation	Sells	AZ, NM	+	AZ		
AZ	Tonto Apache Tribal Council	Payson	AZ	+	AZ	+	
AZ	White Cone Chapter	Indian Wells	AZ	+		+	
AZ	White Mountain Apache Tribe	Whiteriver	AZ, NM	+	AZ	+	
AZ	Yavapai-Apache Nation Tribal Council	Camp Verde	AZ	+	AZ	+	
AZ	Yavapai-Prescott Board of Directors	Prescott	AZ	+	AZ	+	
CA	Agua Caliente Band of Cahuilla Indians	Palm Springs	CA	+	CA	+	
CA	Alturas Rancheria	Alturas	CA	+			
CA	Augustine Band of Mission Indians	Coachella	CA	+	CA	+	2010/02/22: Email from Thomas Gallagher, Augustine Band. Argonne follow-up e-mail and attachments were given to Chairperson Green for her review.

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
CA	Barona Group of the Capitan Grande	Lakeside	CA	+	CA	+	
CA	Bear River Band of Rohnerville Rancheria	Loleta	CA	+			
CA	Benton Paiute Reservation	Benton	CA	+		+	
CA	Berry Creek Rancheria	Oroville	CA	+			
CA	Big Lagoon Rancheria	Trinidad	CA	+			
CA	Big Pine Paiute Tribe of the Owens Valley	Big Pine	CA	+			<p>2009/09/14: Letter from Virgil Moose, Tribal Chairperson. The letter was submitted as a scoping comment regarding Solar PEIS, the scoping maps, and to request the Draft EIS as soon as it is released. Mr. Moose states that the Big Pine Paiute Tribe of the Owens Valley is a federally recognized Tribe located in Owens Valley, California. The tribe encourages the BLM to focus evaluations for possible solar development on lands recently disturbed and to avoid lands showing no evidence of recent disturbance. The tribe regrets that prior disturbance does not appear to have been a criterion in selecting lands for solar energy development. If the details of a particular resource on a given area of land are unknown, then it should be assumed that noteworthy or valuable resources may be present. If there is no known history of disturbance for an area, then it should be presumed intact and the goal should be to preserve it intact. The tribe finds the following statement from the PEIS public web site problematic “Environmental protection and energy production are both desirable and necessary objectives of sound land management practices and are not considered</p>

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
							mutually exclusive priorities.” The Tribe feels protection of public lands should be a higher priority, and questions leasing lands to private entities. Even though the maps do not include the Owens Valley region, an important issue in the Tribe’s area has been export of water to fuel distant economies and energy generation, taking resources from one area to develop resources in another should be avoided. If solar energy development sites cannot be fully restored, plans should be in place to compensate for the lost resources, goods, services, and values. The tribe recommends a fund for mitigation be established for each developed site, and that considerable thought be given to the long term and currently unquantifiable impacts such development will cause.
CA	Big Sandy Rancheria	Auberry	CA	+		+	
CA	Big Valley Rancheria	Lakeport	CA	+			
CA	Bishop Paiute Tribe	Bishop	CA	+		+	
CA	Blue Lake Rancheria	Blue Lake	CA	+			2009/07/09: Email from Janet P. Eidsness, Tribal Heritage Preservation Officer. The letter thanks BLM for contacting Chairperson, Claudia Brundin, on July 1, 2009. The California study area is located well outside the Blue Lake Rancheria Tribe’s cultural area of geographical concern, and the Tribe does not wish consultation.
CA	Bridgeport Indian Colony	Bridgeport	CA	+		+	
CA	Buena Vista Rancheria	Sacramento	CA	+			
CA	Cabazon Band of Cahuilla Mission Indians	Indio	CA	+	CA	+	

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
CA	Cahto Tribal Executive Committee	Laytonville	CA	+			
CA	Cahuilla Band of Mission Indians	Anza	CA	+	CA	+	
CA	California Valley Miwok Tribe	Stockton	CA	+			
CA	Campo Band of Mission Indians	Campo	CA	+	CA	+	
CA	Cedarville Rancheria	Alturas	CA	+		+	
CA	Chemehuevi Tribal Council	Havasu Lake	CA	+	CA	+	
CA	Chicken Ranch Rancheria	Jamestown	CA	+			
CA	Cloverdale Rancheria	Cloverdale	CA	+			
CA	Cold Springs Rancheria	Tollhouse	CA	+			
CA	Colusa Rancheria	Colusa	CA	+			
CA	Cortina Rancheria	Williams	CA	+			
CA	Coyote Valley Reservation	Redwood Valley	CA	+			
CA	Dry Creek Rancheria	Geyserville	CA	+			
CA	Elem Indian Colony	Clearlake Oaks	CA	+			
CA	Elk Valley Rancheria	Crescent City	CA	+			
CA	Enterprise Rancheria	Oroville	CA	+			
CA	Ewiiapaayp Band of Kumeyaay Indians	Alpine	CA	+	CA	+	
CA	Federated Indians of Graton Rancheria	Rohnert Park	CA	+			
CA	Fort Bidwell Reservation	Fort Bidwell	CA	+		+	
CA	Fort Independence Indian Reservation	Independence	CA	+		+	
CA	Fort Mojave Tribal Council	Needles	AZ, CA	+	AZ, CA	+	

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
CA	Greenville Rancheria	Greenville	CA	+			
CA	Grindstone Rancheria	Elk Creek	CA	+			
CA	Guidiville Rancheria	Talmage	CA	+			
CA	Habematolel Pomo of Upper Lake	Upper Lake	CA	+			
CA	Hoopla Valley Tribal Council	Hoopla	CA	+			
CA	Hopland Reservation	Hopland	CA	+			
CA	Inaja-Cosmit Reservation	Escondido	CA	+		+	
CA	Ione Band of Miwok Indians	Ione	CA	+			
CA	Jackson Rancheria	Jackson	CA	+			
CA	Jamul Indian Village	Jamul	CA	+			
CA	Karuk Tribe of California	Happy Camp	CA	+			
CA	Kern Valley Indian Community	Caliente	CA	+			
CA	Kwaaymii Laguna Band of Indians	Pine Valley	CA	+			
CA	La Jolla Band of Luiseño Indians	Pauma Valley	CA	+	CA		
CA	La Posta Band of Mission Indians	Boulevard	CA	+	CA	+	
CA	Lone Pine Paiute Shoshone Reservation	Lone Pine	CA	+		+	
CA	Los Coyotes Band of Cahuilla & Cupeno Indians	Warner Springs	CA	+	CA	+	
CA	Lower Lake Rancheria	Santa Rosa	CA	+			
CA	Lytton Rancheria	Santa Rosa	CA	+			
CA	Manchester - Point Arena Band of Pomo Indians	Point Arena	CA	+			

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
CA	Manzanita Band of Mission Indians	Boulevard	CA	+	CA	+	
CA	Mechoopda Indian Tribe of the Chico Rancheria	Chico	CA	+			
CA	Mesa Grande Band of Mission Indians	Santa Ysbel	CA	+			
CA	Middletown Rancheria	Middletown	CA	+			
CA	Mooretown Rancheria	Oroville	CA	+			
CA	Morongo Band of Mission Indians	Banning	CA	+	CA	+	
CA	Native American Heritage Commission	Sacramento	-	-	-		
CA	North Fork Rancheria	North Fork	CA	+		+	
CA	Pala Band of Mission Indians	Pala	CA	+	CA	+	
CA	Paskenta Band of Nomlaki Indians	Orland	CA	+			
CA	Pauma/Yuima Band of Mission Indians	Pauma Valley	CA	+	CA	+	
CA	Pechanga Band of Mission Indians	Temecula	CA	+	CA	+	
CA	Picayune Rancheria of Chukchansi Indians	Coarsegold	CA	+		+	
CA	Pinoleville Reservation	Ukiah	CA	+			
CA	Pit River Tribal Council	Burney	CA	+			
CA	Potter Valley Tribe	Ukiah	CA	+			
CA	Quartz Valley Reservation	Fort Jones	CA	+			
CA	Ramona Band of Mission Indians	Anza	CA	+	CA	+	
CA	Redding Rancheria	Redding	CA	+			
CA	Redwood Valley Reservation	Redwood Valley	CA	+			

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
CA	Resighini Rancheria	Klamath	CA	+			
CA	Rincon Band of Mission Indians	Valley Center	CA	+			
CA	Robinson Rancheria	Nice	CA	+			
CA	Round Valley Reservation	Covelo	CA	+			
CA	Rumsey Rancheria	Brooks	CA	+			
CA	San Luis Rey Band of Mission Indians	Poway	CA	+			
CA	San Manuel Band of Mission Indians	Patton	CA	+	CA	+	
CA	San Pasqual Band of Mission Indians	Valley Center	CA	+	CA	+	
CA	Santa Rosa Band of Mission Indians	Hemet	CA	+	CA	+	
CA	Santa Rosa Rancheria	Lemoore	CA	+			
CA	Santa Ynez Band of Mission Indians	Santa Ynez	CA	+			
CA	Santa Ysabel Band of Diegueno Indians	Santa Ysabel	CA	+	CA	+	
CA	Scotts Valley Rancheria	Lakeport	CA	+			
CA	Sherwood Valley Rancheria	Willits	CA	+			
CA	Shingle Springs Rancheria	Shingle Springs	CA	+			
CA	Smith River Rancheria	Smith River	CA	+			

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
CA	Soboba Band of Luiseño Indians	San Jacinto	CA	+	CA		<p>2010/03/08: Letter from Joseph Ontiveros, Soboba Cultural Resource Department. The Soboba find that the proposed action does fall within the Tribe's traditional use area and requests that tribe participate in government-to-government consultation in accordance with Section 106; be a lead participant in consultation; provide monitors for any ground-disturbing activity; and that the tribe's procedural requests be honored.</p> <p>The Developer should follow NAGPRA and agree to return all Native American ceremonial items and items of cultural patrimony that may be found on the project site to the Soboba Band. Upon completion of authorized and mandatory archeological analysis, the Developer should return said artifacts to the Soboba Band within a reasonable time period agreed to by the Parties. If human remains are encountered, the Soboba Band should be allowed, to (1) inspect the site of the discovery and (2) make determinations as to how the human remains and grave goods shall be treated and disposed of with appropriate dignity. The Developer should accommodate on-site reburial in a location mutually agreed upon by the Parties.</p>
CA	Stewarts Point Rancheria	Santa Rosa	CA	+			
CA	Susanville Indian Rancheria	Susanville	CA	+			
CA	Sycuan Band of the Kumeyaay Nation	El Cajon	CA	+		+	<p>2010/03/04: From Sid Morris, Planning and Development. The letter includes the contact information for Sid Morris.</p>

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
CA	Table Bluff Reservation	Loleta		+			
CA	Table Mountain Rancheria	Friant	CA	+			
CA	Timbi-sha Shoshone Tribe	Death Valley	CA, NV	+	CA		
CA	Torres-Martinez Desert Cahuilla Indians	Thermal	CA	+	CA	+	
CA	Trinidad Rancheria	Trinidad	CA	+			
CA	Tubatulabals of Kern Valley	Lake Isabella	CA	+			
CA	Tule River Reservation	Porterville	CA	+			
CA	Tuolumne Rancheria	Tuolumne	CA	+			
CA	Twenty-Nine Palms Band of Mission Indians	Coachella	CA	+	CA	+	
CA	United Auburn Indian Community	Auburn	CA	+			
CA	Viejas Band of Mission Indians	Alpine	CA	+	CA	+	2010/03/04: From Jenny Rothrauff, Project Manager Office of Chairman Bobby Barrett. The area referenced is not something Viejas would typically comment on since the project appears to be outside of the boundaries of San Diego limits.
CA	Wiyot Tribe	Loleta	CA	+			
CA	Woodfords Community Council	Markleeville	CA - NV	+			
CA	Yurok Tribe	Klamath	CA	+			
CO	Southern Ute Tribe	Ignacio	CO - UT	+	CO	+	
CO	Ute Mountain Ute Tribe	Towaoc	CO - UT	+	CO		
DC	National Association of Tribal Historic Preservation Officers	Washington		+			
ID	Shoshone-Bannock Tribes	Fort Hall	CO, UT	+			

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
MT	Blackfeet Tribal Business Council	Browning		+			
MT	Chippewa Cree Business Committee	Box Elder		+			
MT	Confederated Salish & Kootenai Tribes, Tribal Council	Pablo		+			
MT	Crow Tribal Council	Crow Agency		+			
MT	Fort Belknap Community Council	Harlem		+			
MT	Fort Peck Tribal Executive Board	Poplar		+			
MT	Northern Cheyenne Tribal Council	Lame Deer	CO	+	CO	+	
ND	Standing Rock Sioux Tribal Council	Fort Yates	CO	+	CO		2008/07/21: Letter from Ron His Horse Is Thunder, Chairman of Standing Rock Sioux Tribal Council. The letter requests that before any ground disturbance begins that there be a Class III archeological survey, in order to locate any potential Native American artifacts and/or items of cultural significance. Also, a request to utilize Native Americans who have been specifically trained to conduct these types of ground surveys.
NM	All Indian Pueblo Council	Albuquerque		+		+	
NM	Eight Northern Indian Pueblos Council	San Juan Pueblo		+		+	2010/03/04: From Michael G. Miller. The letter updates contact information.
NM	Five Sandoval Indian Pueblos	Bernalillo		+		+	
NM	Jicarilla Apache Nation	Dulce	CO	+	CO	+	
NM	Mescalero Apache Tribe	Mescalero	NM	+	NM		
NM	Navajo Nation, Alamo Chapter	Magdalena		+		+	

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
NM	Navajo Nation, Baahaali Chapter	Gallup		+		+	
NM	Navajo Nation, Baca/Prewitt Chapter	Prewitt		+		+	
NM	Navajo Nation, Becenti Chapter	Crownpoint		+		+	
NM	Navajo Nation, Beclabito Chapter	Shiprock		+		+	
NM	Navajo Nation, Casamero Lake Chapter	Prewitt		+		+	
NM	Navajo Nation, Chichiltah Chapter	Gallup		+		+	
NM	Navajo Nation, Churchrock Chapter	Churchrock		+		+	
NM	Navajo Nation, Counselor Chapter	Counselor		+			
NM	Navajo Nation, Coyote Canyon Chapter	Brimhall		+		+	
NM	Navajo Nation, Crownpoint Chapter	Crownpoint		+		+	
NM	Navajo Nation, Crystal Chapter	Navajo		+		+	
NM	Navajo Nation, Gadii'ahi/To'koi Chapter	Shiprock		+		+	
NM	Navajo Nation, Huerfano Chapter	Bloomfield		+		+	
NM	Navajo Nation, Iyanbito Chapter	Fort Wingate		+		+	
NM	Navajo Nation, Lake Valley Chapter	Crownpoint		+		+	
NM	Navajo Nation, Little Water Chapter	Crownpoint		+		+	
NM	Navajo Nation, Manuelito Chapter	Manuelito		+		+	

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
NM	Navajo Nation, Mariano Lake Chapter	Smith Lake		+		+	
NM	Navajo Nation, Mexican Springs Chapter	Mexican Springs		+		+	
NM	Navajo Nation, Nageezi Chapter	Nageezi		+		+	
NM	Navajo Nation, Nahodishgish Chapter	Crownpoint		+		+	
NM	Navajo Nation, Naschitti Chapter	Sheep Springs		+		+	
NM	Navajo Nation, Nenahnezad Chapter	Fruitland		+		+	
NM	Navajo Nation, Newcomb Chapter	Newcomb		+		+	
NM	Navajo Nation, Ojo Encino Chapter	Cuba		+		+	
NM	Navajo Nation, Pinedale Chapter	Churchrock		+		+	
NM	Navajo Nation, Pueblo Pintado Chapter	Cuba		+		+	
NM	Navajo Nation, Red Lake #18 Chapter	Navajo		+		+	
NM	Navajo Nation, Red Rock Chapter	Gallup		+			
NM	Navajo Nation, Rock Springs Chapter	Yatahey		+		+	
NM	Navajo Nation, San Juan Chapter	Fruitland		+		+	
NM	Navajo Nation, Sanostee Chapter	Sanostee		+		+	
NM	Navajo Nation, Sheep Springs Chapter	Sheep Springs		+		+	
NM	Navajo Nation, Shiprock Chapter	Shiprock		+		+	

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
NM	Navajo Nation, Smith Lake Chapter	Smith Lake		+		+	
NM	Navajo Nation, Standing Rock Chapter	Crownpoint		+		+	
NM	Navajo Nation, Thoreau Chapter	Thoreau		+		+	
NM	Navajo Nation, Tiis Tsoh Sikaad Chapter	Newcomb		+		+	
NM	Navajo Nation, Toadlena/Two Grey Hills Chapter	Newcomb		+		+	
NM	Navajo Nation, Tohatchi Chapter	Tohatchi		+		+	
NM	Navajo Nation, Torreon Chapter	Cuba		+		+	
NM	Navajo Nation, Tsayatoh Chapter	Mentmore		+		+	
NM	Navajo Nation, Tse Daa K'aaan Chapter	Shiprock		+		+	
NM	Navajo Nation, Twin Lakes Chapter	Yatahey		+		+	
NM	Navajo Nation, Upper Fruitland Chapter	Fruitland		+		+	
NM	Navajo Nation, White Rock Chapter	Crownpoint		+		+	2010/03/05: From Lucinda Henry, President states in her letter that after viewing the Solar Energy PEIS, it sounded good and interesting.
NM	Navajo Nation, Whitehorse Lake Chapter	Cuba		+		+	
NM	Ohkay Owingeh	San Juan Pueblo	NM, CO	+		+	
NM	Pueblo of Acoma	Acoma	NM, CO	+	CO	+	
NM	Pueblo of Cochiti	Cochiti	NM, CO	+		+	
NM	Pueblo of Isleta	Isleta	NM, CO	+	NM		

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
NM	Pueblo of Jemez	Jemez Pueblo	NM, CO	+		+	
NM	Pueblo of Laguna	Laguna	NM, CO	+			2009/08/14: Letter from John E. Antonio, Sr., Governor of the Pueblo of Laguna. The Pueblo of Laguna has determined that the undertaking will not have a significant impact at this time. However, the governor requests to be notified if Native American artifacts are discovered at the sites. He also requests photographs of these items. According to the tribe's unpublished migration history, tribal ancestors journeyed from the north through the areas under discussion and settled for periods of a time before traveling to their present location, increasing the chances that possible findings exist.
NM	Pueblo of Nambe	Santa Fe	NM, CO	+		+	
NM	Pueblo of Pecuris	Penasco	NM, CO	+		+	
NM	Pueblo of Pojoaque	Santa Fe	NM, CO	+	NM	+	
NM	Pueblo of San Felipe	San Felipe Pueblo	NM, CO	+		+	
NM	Pueblo of San Ildefonso	Santa Fe	NM, CO	+		+	
NM	Pueblo of Sandia	Bernalillo	NM, CO	+		+	
NM	Pueblo of Santa Ana	Santa Ana Pueblo	NM, CO	+		+	
NM	Pueblo of Santa Clara	Espanola	NM, CO	+		+	
NM	Pueblo of Santo Domingo	Santo Domingo Pueblo	NM, CO	+		+	
NM	Pueblo of Taos	Taos	NM, CO	+		+	
NM	Pueblo of Tesuque	Santa Fe	NM, CO	+	NM	+	
NM	Pueblo of Zia	Zia Pueblo	NM, CO	+		+	
NM	Pueblo of Zuni	Zuni	NM, CO	+	NM		
NM	Ramah Navajo Chapter	Ramah		+		+	

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
NM	Tohajiilee Navajo Chapter	Tohajiilee		+		+	
NV	Battle Mountain Band Council	Battle Mountain	NV	+		+	
NV	Carson Community Council	Carson City	NV, CA	+			
NV	Dresslerville Community Council	Gardnerville	NV, CA	+			
NV	Duckwater Tribal Council	Duckwater	NV, CA	+		+	
NV	Elko Band Council	Elko	NV	+		+	
NV	Ely Shoshone Tribe	Ely	NV	+	NV	+	
NV	Fallon Paiute Shoshone Tribal Business Council	Fallon	NV	+	NV	+	
NV	Fort McDermitt Tribal Council	McDermitt	NV	+	NV	+	
NV	Inter-Tribal Council of Nevada	Sparks		+		+	
NV	Las Vegas Tribal Council	Las Vegas	NV, CA	+	NV	+	
NV	Lovelock Tribal Council	Lovelock	NV	+	NV		
NV	Moapa Business Council	Moapa	NV	+	NV	+	
NV	Pahrump Paiute Tribe	Pahrump	NV	+			
NV	Pyramid Lake Paiute Tribal Council	Nixon	NV	+	NV	+	
NV	Reno-Sparks Tribal Council	Reno	NV	+	NV	+	
NV	Shoshone-Paiute Business Council	Owyhee	NV	+		+	
NV	South Fork Band Council	Lee	NV	+		+	
NV	Stewart Community	Gardnerville	NV	+	NV	+	

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
	Council c/o Washoe Tribe of Nevada/California						
NV	Summit Lake Paiute Tribal Council	Sparks	NV	+	NV	+	
NV	Te-Moak Tribe of Western Shoshone Tribal Council	Elko	NV	+		+	
NV	Walker River Paiute Tribal Council	Schurz	NV, CA	+	NV	+	
NV	Washoe Tribal Council	Gardnerville	NV, CA	+	NV		2009/07/28: Email from Darrel Cruz, Tribal Historic Preservation Officer. The letter states that the areas of interest for the SEZs are out of their boundary and will not pursue the matter.
NV	Wells Indian Colony Band Council	Wells	NV	+		+	
NV	Winnemucca Tribal Council	Winnemucca	NV	+	NV		
NV	Yerington Paiute Tribe	Yerington	NV	+	NV	+	
NV	Yomba Tribal Council	Austin	NV	+		+	
OK	Apache Tribe of Oklahoma	Anadarko	CO	+	CO	+	
OK	Cheyenne-Arapaho Tribes of Oklahoma	Concho	CO		CO		2009/10/07: Letter from Gordon Yellowman, Cultural Heritage Program. The letter requests that the tribe will participate as a consulting and cooperating party.
OK	Comanche Nation	Lawton	CO, NM	+	CO	+	
OK	Fort Sill Apache Tribe of Oklahoma	Apache	CO, NM	+	NM		
OK	Kiowa Tribe of Oklahoma	Carnegie	CO, NM	+	CO	+	
OK	Pawnee Nation of Oklahoma	Pawnee	CO	+	CO	+	

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
SD	Cheyenne River Lakota Sioux Tribe	Eagle Butte	CO	+	CO	+	
SD	Crow Creek Sioux Tribal Council	Fort Thompson	CO	+	CO	+	
SD	Lower Brule Sioux Tribal Council	Lower Brule		+			
SD	Oglala Sioux Tribal Council	Pine Ridge	CO	+	CO	+	
SD	Rosebud Sioux Tribal Council	Rosebud	CO	+	CO	+	2010/02/03: From Rodney Bordeaux, President writes in his letter that he will forward the letter to the Tribal Historic Preservation Office for them to follow up on the PEIS.
SD	Sisseton-Wahpeton Sioux Tribe	Agency Village		+			
SD	Yankton Sioux Tribe	Marty		+			
TX	Ysleta del Sur Pueblo	El Paso	TX	+		+	2010/02/23: From Javier Lorea, War Captain/Tribal Historic and Preservation Officer. The letter states the tribe has no comments on the proposed study and believes that the project will not adversely affect their traditional, religious, or culturally significant sites of the Pueblos. Although, they request consultation should any human remains or artifacts unearthed during this project be determined to fall under NAGPRA guidelines.
UT	Goshute Business Council	Ibapah	NV, UT	+		+	
UT	Navajo Nation, Aneth Chapter	Montezuma Creek	UT	+		+	
UT	Navajo Nation, Oljato Chapter	Monument Valley	UT	+		+	
UT	Navajo Nation, Red Mesa Chapter	Montezuma Creek	UT	+		+	
UT	Navajo Utah	Montezuma	UT	+			

TABLE K-1 (Cont.)

State	Organization	City	2008 Letter	July 2009 Letter	Field Office Follow-up	Argonne Follow-up	Response Letter
	Commission	Creek					
UT	Northwestern Band of Shoshone Nation	Brigham City	UT	+		+	
UT	Paiute Indian Tribe of Utah Tribal Council	Cedar City	NV, UT	+	UT	+	2010/03/02: From Jeanine Borchardt, Chairwoman requesting more information about the project.
UT	Paiute Indian Tribe of Utah, Cedar Band	Cedar City	NV, UT	+	UT		
UT	Paiute Indian Tribe of Utah, Indian Peak Band	Cedar City	NV, UT	+	UT	+	
UT	Paiute Indian Tribe of Utah, Kanosh Band	Kanosh	UT	+			
UT	Paiute Indian Tribe of Utah, Koosharem Band	Cedar City	UT	+			
UT	Paiute Indian Tribe of Utah, Shivwits Band	Ivins	NV, UT	+	UT		2010/03/18: From Shanan Martineau, Cultural Resources Manager. The Shivwits have been contacted by a private developer regarding a solar energy facility on Shivwits land. Therefore the tribe is interested in the PEIS and requests more information and government-to-government consultation on what the Solar PEIS is all about.
UT	Skull Valley Band of Goshute Indians General Council	Grantsville	UT	+		+	
UT	Ute Indian Tribe	Ft. Duchesne	CO, UT	+	CO	+	
UT	White Mesa Ute Tribe	Blanding		+		+	
WY	Eastern Shoshone Business Council	Fort Washakie	CO, UT	+	CO	+	
WY	Northern Arapaho Business Council	Fort Washakie	CO	+	CO	+	

TABLE K-2 Index of Agencies, Organizations, and Tribal Governments

Date	Originating Agency/Tribal Government	Recipient Organization	Page
June 5, 2008	New Mexico BLM	Various	K-28
June 6, 2008	Colorado BLM	Various	K-31
June 9, 2008	Arizona BLM	Various	K-35
June 19, 2008	Nevada BLM	Various	K-43
June 23, 2008	Utah BLM	Various	K-47
June 24, 2008	California BLM	Various	K-52
July 1, 2009	California BLM	Various	K-58
July 3, 2008	Navajo Nation, Historic Preservation Dept.–Traditional Culture Program	BLM	K-84
July 9, 2009	Blue Lake Rancheria Tribe	BLM	K-85
July 13, 2009	Navajo Nation, Klagetoh Chapter	BLM	K-86
July 21, 2009	Standing Rock Sioux Tribe	BLM, California Desert District	K-87
July 28, 2009	Washoe Tribe of California and Nevada	BLM	K-89
	Moapa Band of Paiutes	Argonne National Laboratory	K-90
Aug. 7, 2009	Navajo Nation, Historic Preservation Dept.–Traditional Culture Program	BLM, California Desert District	K-91
Aug. 14, 2009	Pueblo of Laguna	BLM, California Desert District	K-92
	Pueblo of Zuni	BLM, New Mexico State Office	K-93
Sept. 3, 2009	Quechan Indian Tribe	Argonne National Laboratory	K-94
Sept. 8, 2009	Moapa Band of Paiutes, Dept. of Environmental Protection	BLM	K-99
Sept. 11, 2009	Native American Land Conservancy	Argonne National Laboratory	K-100
Sept. 14, 2009	National Trust for Historic Preservation	Argonne National Laboratory	K-106
	Big Pine Paiute Tribe of the Owens Valley	Argonne National Laboratory	K-112
Sept. 17, 2009	Timbisha Shoshone Tribe	BLM, Pahrump Field Office	K-115
	Navajo Nation, Chilchinbeto Chapter	BLM	K-116
Oct. 7, 2009	Cheyenne and Arapaho Tribes	BLM	K-117
Feb. 23, 2010	Ysleta del Sur Pueblo	BLM, California Desert District	K-118
March 2, 2010	Paiute Indian Tribe of Utah	Argonne National Laboratory	K-120
March 4, 2010	Kumeyaay Nation, Sycuan Band	Argonne National Laboratory	K-123
	Kumeyaay Nation, Sycuan Band	Argonne National Laboratory	K-124
	Kumeyaay Nation, Viejas Band	Argonne National Laboratory	K-125
March 5, 2010	Navajo Nation, White Rock Chapter	Argonne National Laboratory	K-127
March 8, 2010	Soboba Band of Luiseño Indians	BLM	K-129
March 18, 2010	Shivwits Band of Paiutes	BLM	K-132
March 30, 2010	Navajo Nation, Low Mountain Chapter	BLM	K-133

1
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1 K.1.2 Letters
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IN REPLY REFER TO:
2800 (932)

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
New Mexico State Office
1474 Rodeo Rd.
P.O. Box 27115
Santa Fe, New Mexico 87502-0115
www.nm.blm.gov



June 5, 2008

Governor Chandler Sanchez
Pueblo of Acoma
P.O. Box 309
Acoma, NM 87034

Dear Governor Sanchez:

As part of the Bureau of Land Management's (BLM's) ongoing government-to-government consultation with the Acoma Pueblo, we are writing to let you know that the BLM and the Department of Energy (DOE) have initiated the preparation of a joint Programmatic Environmental Impact Statement (PEIS) to evaluate solar energy development on BLM-administered lands in Arizona, California, Colorado, New Mexico, Nevada, and Utah.

The Energy Policy Act of 2005 establishes a goal for the BLM to approve 10,000 megawatts of nonhydropower renewable energy on BLM-administered lands by the year 2015. The DOE and BLM have identified utility-scale solar energy development, along with wind and geothermal power, as critical components in meeting this goal and the Nation's energy needs. Utility-scale solar energy projects generate electricity that is distributed to consumers through the electric power transmission grid.

The study area has been limited to six states based on initial resource assessment showing that these states encompass the most prospective solar energy resources suitable for utility-scale development over the next 20 years. The BLM has already received a large number of utility-scale solar energy project proposals for BLM-administered lands, mainly in Arizona, southern California, and Nevada.

In addition to government-to-government consultation on this topic, we would also like to offer you an opportunity to partner with us in a cooperating agency relationship for this PEIS and potential plan amendments. The Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA) (40 CFR 1500-1508) emphasize the use of such arrangements as a means of ensuring timely coordination with Tribal, State, Federal, and local agencies in preparation of NEPA analyses and documentation. The BLM places great importance on working effectively with its governmental partners through the cooperating agency relationship. For further information, please see our cooperating agency Web site: <http://www.blm.gov/planning/cadg/>.

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Cooperating agency status is available to government entities with jurisdiction by law or special expertise. The cooperating agency must sign a Memorandum of Understanding with the Federal agency and must fund its own participation. Other governmental entities who may be invited to be cooperating agencies on this PEIS include the States of Arizona, California, Colorado, New Mexico, Nevada, and Utah; county governments; and several local town and city governments.

Preparation of the PEIS is a multistep process that will be completed in approximately 22 months and will include the preparation of a draft PEIS, a final PEIS, and Records of Decision by the BLM and the DOE. As such, we anticipate very short, concurrent review time frames for both us and our cooperating agencies. Cooperating agencies may negotiate the level of their involvement consistent with their available staffing and resources.

Gaining your Tribe's expertise and perspective is important to the success of the PEIS and subsequent management strategies. We value your knowledge, concerns, and perspectives relating to the planning area. Please note that the Tribe's participation, as a cooperating agency, does not replace BLM's obligation to consult on a government-to-government basis. Therefore, regardless of your Tribe's decision to participate or not as a cooperating agency, our government-to-government consultation will continue.

If you would like to participate as a cooperating agency, please contact Cynthia Sandoval or Debby Lucero at the above address or by phone at 505-438-7602 or 505-438-7593, respectively. Also, please allow me to direct you to our Web site where you can gain further information and sign up for Web news and updates. The Web site address is: <http://solareis.anl.gov>.

Thank you for your consideration. We look forward to our interaction and discussions with you.

Sincerely,



Linda S.C. Rundell
State Director

Same Letter Sent To:
See Attached List

932:DLucero:jp:6/5/08:x7593:Letter_to_Tribes

Same Letter Sent To:

Governor Robert Benavides
Pueblo of Isleta
P.O. Box 1270
Isleta Pueblo, NM 87022

Governor John Antonio, Sr.
Pueblo of Laguna
P.O. Box 194
Laguna Pueblo, NM 87026

Governor Earl Salazar
OHKAY OWINGEH
P.O. Box 1099
San Juan Pueblo, NM 87566

Governor Ernest Suina
Pueblo of Cochiti
P.O. Box 70
Cochiti Pueblo, NM 87072

Governor Paul Chinana
Pueblo of Jemez
P.O. Box 100
Jemez Pueblo, NM 87024

Governor Ernest Mirabal
Pueblo of Nambe
Route 1, Box 117-BB
Santa Fe, NM 87506

Governor Craig Quanchello
Pueblo of Picuris
P.O. Box 127
Penasco, NM 87553

Governor George Rivera
Pueblo of Pojoaque
78 Cities of Gold Road
Santa Fe, NM 87506

Governor Ulysses Leon
Pueblo of Santa Ana
2 Dove Road
Santa Ana Pueblo, NM 87004

Governor Ronald L. Tenorio
Pueblo of San Felipe
P.O. Box 4339
San Felipe Pueblo, NM 87001

Governor Sisto Quintana
Pueblo of Santo Domingo
P.O. Box 99
Santo Domingo Pueblo, NM 87052

Governor Robert Mora
Pueblo of Tesuque
Route 42, Box 360-T
Santa Fe, NM 87506

Governor Robert Montoya
Pueblo of Sandia
481 Sandia Loop
Bernalillo, NM 87004

Governor J. Michael Chavarria
Pueblo of Santa Clara
P.O. Box 580
Española, NM 87532

Governor Leon T. Roybal
Pueblo of San Ildefonso
Route 5, Box 315-A
Santa Fe, NM 87506

Governor Paul T. Martinez
Pueblo of Taos
P.O. Box 1846
Taos, NM 87571

Governor Ivan Pino
Pueblo of Zia
135 Capitol Square Dr.
Zia Pueblo, NM 87053-6013

Governor Norman Cooyate
Pueblo of Zuni
P.O. Box 339
Zuni, NM 87327



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215-7093
www.co.blm.gov



JUN 6 2008

In Reply Refer To:
1793 (CO-923)

Chairman Ivan Posey
Shoshone Business Council
Shoshone Tribe
P.O. Box 538
Fort Washakie, WY 82514

Dear Chairman Posey:

As part of the Bureau of Land Management's (BLM's) ongoing government-to-government consultation with the Shoshone Tribe, the Washington Office of the Bureau of Land Management (BLM) are co-leads and the Department of Energy (DOE) have initiated the preparation of a joint Programmatic Environmental Impact Statement (PEIS) to evaluate solar energy development on BLM-administered lands in Arizona, California, Colorado, New Mexico, Nevada, and Utah.

The Energy Policy Act of 2005 establishes a goal for the BLM to approve 10,000 megawatts of non-hydropower renewable energy on BLM-administered lands by the year 2015. The DOE and BLM have identified utility-scale solar energy development, along with wind and geothermal power, as critical components in meeting this goal and the Nation's energy needs. Utility-scale solar energy projects generate electricity that is distributed to consumers through the electric power transmission grid.

The study area has been limited to six states based on initial resource assessment showing that these states encompass the most prospective solar energy resources suitable for utility-scale development over the next 20 years. The BLM has already received a large number of utility-scale solar energy project proposals for BLM-administered lands mainly in Arizona, southern California, and Nevada.

In addition to government-to-government consultation on this topic, we would also like to offer you an opportunity to partner with us in a cooperating agency relationship for this PEIS and potential plan amendments. The Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA) 40 C.F.R. 1500-1508 emphasize the use of such arrangements as a means of ensuring timely coordination with Tribal, State, Federal, and local agencies in preparation of NEPA analyses and

documentation. The BLM places great importance on working effectively with its governmental partners through the cooperating agency relationship. For further information, please see our cooperating agency web site: <http://www.blm.gov/planning/cadg/>.

Cooperating agency status is available to government entities with jurisdiction by law or special expertise. The cooperating agency must sign a Memorandum of Understanding with the Federal agency and must fund its own participation. Other governmental entities who may be invited to be cooperating agencies on this PEIS include the States of Arizona, California, Colorado, New Mexico, Nevada, and Utah; county governments; and several local town and city governments.

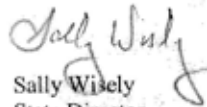
Preparation of the PEIS is a multistep process that will be completed in approximately 22 months and will include the preparation of a draft PEIS, a final PEIS, and Records of Decision by the BLM and the DOE. We anticipate very short concurrent review timeframes for both us and our cooperating agencies. Cooperating agencies may negotiate the level of their involvement consistent with their available staffing and resources.

Gaining your Tribe's expertise and perspective is important to the success of the PEIS and subsequent management strategies. We value your knowledge, concerns and perspectives relating to the planning area. Please note that the Tribe's participation as a cooperating agency does not replace BLM's obligation to consult on a government-to-government basis. Therefore, regardless of your Tribe's decision to participate or not as a cooperating agency, our government-to-government consultation will continue.

If you would like to participate as a cooperating agency, please contact Maryanne Kurtinaitis at (303) 239-3708. Also, please allow me to direct you to our web site where you can gain further information and sign up for web news and updates. The web site address is: <http://solareis.anl.gov>.

Thank you for your consideration. We look forward to our interaction and discussions with you.

Sincerely,


Sally Wisely
State Director

Chairman Ivan Posey
Shoshone Business Council
Shoshone Tribe
P.O.Box 538
Fort Washakie, WY 82514

Mr. Robert J. Goggles (NAGPRA Contact)
328 17 Mile Road
Arapaho, WY 82510

Mr. Neil Cloud
NAGPRA Representative, Southern Ute
Indian Tribe
P.O. Box 737
Ignacio, CO 81137

Colorado Commission of Indian Affairs
Ernest House, Jr., Executive Secretary
130 State Capitol
Denver, CO 80203

Chairman Alonzo Chalepah
Apache Tribe of Oklahoma
P.O. Box 1220
Anadarko, OK 73005

Chairman Wallace Coffey
Comanche Tribal Business Committee
P.O. Box 908
Lawton, OK 73502

Chairman Ben Nuvamsa
The Hopi Tribe
P.O. Box 123
Kykotsmovi, AZ 86039

President Joe Shirley
Navajo Nation, P.O. Box 9000
Window Rock, AZ 86515

Governor Earl Salizar
Ohkay Owingeh
P.O. Box 1099
San Juan, NM 87566

Governor Ray H. Trujillo
Pueblo de Cochiti
P.O. Box 70
Cochiti, NM 87072

Ms. Glenda Trosper
Director, Shoshone Tribe Cultural Center
P.O. Box 1008
Fort Washakie, WY 82514

Ms. Jo Ann White
THPO Director
P.O. Box 396
Ft. Washakie, WY 82514

Chairman Ernest House, Sr.
Ute Mountain Ute Tribe
P.O. Box JJ
Towaoc, CO 81334

Governor Bill Ritter
Ken Weil, Dir. Office Policy & Initiatives
136 State Capital
Denver, CO 80203-1792

Governor Darrell Flyingman
Cheyenne & Arapaho Tribes of Oklahoma
P.O. Box 38
Concho, OK 73022

Chairman Lester Thompson, Jr.
Crow Creek Sioux Tribe
P.O. Box 50
Fort Thompson, SD 57325

President Levi Pesata
Jicarilla Apache Tribal Council
P.O. Box 507
Dulce, NM 87528

President Eugene Little Coyote
Northern Cheyenne Tribal Council
P.O. Box 128
Lame Deer, MT 59043

President George Howell
Pawnee Nation of Oklahoma
881 Little Dee Drive
Pawnee, OK 74058

Governor Robert Benavides
Pueblo of Isleta
P.O. Box 1270
Isleta, NM 87022

Chairman Richard Brannan
Northern Arapaho Business Council
P.O. Box 396
Fort Washakie, WY 82514

Chairman Clement Frost
Southern Ute Indian Tribe
356 Ouray Drive, P.O. Box 737
Ignacio, CO 81137

Mr. Terry Knight, Sr.
NAGPRA Representative, Ute Mountain Ute
Tribe
P.O. Box 468
Towaoc, CO 81334

The Governor's Energy Office
Morey Wolfson
1580 Logan St., Suite 100
Denver, CO 80203

Chairman Joseph J. Brings Plenty, Sr.
Cheyenne River Sioux Tribe
P.O. Box 590
Eagle Butte, SD 57625

Chairman Jeff Houser
Fort Sill Apache Business Committee
Fort Sill Apache Tribe
Route 2, Box 121
Apache, OK 73006

Chairman Billy Evans Horse
Kiowa Business Committee,
Kiowa Tribe of Oklahoma
P.O. Box 369
Carnegie, OK 73015

President John Yellow Bird Steele
Oglala Sioux Tribal Council
P.O. Box 2070
Pine Ridge, SD 57770

Governor Jason Johnson
Pueblo of Acoma
P.O. Box 309
Pueblo of Acoma, NM 87034

Governor Raymond Gachupin
Pueblo of Jemez
P.O. Box 100
Jemez Pueblo, NM 87024

Governor John Antonio, Sr.
Pueblo of Laguna
P.O. Box 194
Laguna, NM 87026

Governor Dennis F. Vigil
Pueblo of Nambe
Route 1, Box 117-BB
Santa Fe, NM 87506

Governor Richard Mermejo
Pueblo of Picuris
P.O. Box 127
Penasco, NM 87553

Governor George Rivera
Pueblo of Pojoaque
78 Cities of Gold Road
Santa Fe, NM 87506

Governor Michael T. Sandoval
Pueblo of San Felipe
P.O. Box 4339
San Felipe Pueblo, NM 87001

Governor James Mountain
San Ildefonso Pueblo
Route 5, Box 315-A
Santa Fe, NM 87506

Governor Victor Montoya
Pueblo of Sandia
Box 6080
Bernalillo, NM 87004

Governor Ulysses G. Leon
Pueblo of Santa Ana
Two Dove Road
Bernalillo, NM 87004

Governor Joseph Michael Chavarria
Santa Clara Pueblo
P.O. Box 580
Española, NM 87532

Governor Nelson Pacheco
Santo Domingo Pueblo
P.O. Box 99
Santo Domingo Pueblo, NM 87052

Governor Gilbert Suazo, Sr.
Taos Pueblo
P.O. Box 1846
Taos, NM 87571

Governor Charles Dorame
Tesuque Pueblo
Route 42, Box 360-T
Santa Fe, NM 87506

Governor Rudy Shije
Pueblo of Zia
135 Capitol Square Drive
Zia Pueblo, NM 87053

President Rodney Bordeaux
Rosebud Sioux Tribe
P.O. Box 430
Rosebud, SD 57570

Chairman Alonzo Coby
Fort Hall Business Council
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, ID 83203

Chairman Ron His-Horse-Is-Thunder
Standing Rock Sioux Tribal Council
P.O. Box D
Fort Yates, ND 58538

Chairman Curtis Cesspooch
Uintah & Ouray Tribal Business Committee
P.O. Box 190
Ft. Duchesne, UT 84026

Governor Norman Coeoyate
Zuni Pueblo
P.O. Box 339
Zuni, NM 87327

Tribal Letter

June 9, 2008

In Reply Refer To:
8160/1793 (AZ-912)

«Title» «First_Name» «Last_Name»
«Title_2»
«Company_Name»,
«Company_Name_2»
«Address_Line_1»
«City», «State» «ZIP_Code»

Dear «Title_2» «Last_Name»:

As part of the Bureau of Land Management's (BLM's) ongoing government-to-government consultation with the «Company_Name», «Company_Name_2», I am writing to let you know that the Bureau of Land Management (BLM) and the Department of Energy (DOE) have initiated the preparation of a joint Programmatic Environmental Impact Statement (PEIS) to evaluate solar energy development on BLM-administered lands in Arizona, California, Colorado, New Mexico, Nevada, and Utah.

The Energy Policy Act of 2005 establishes a goal for the BLM to approve 10,000 megawatts of non-hydropower renewable energy on BLM-administered lands by the year 2015. The DOE and BLM have identified utility-scale solar energy development, along with wind and geothermal power, as critical components in meeting this goal and the Nation's energy needs. Utility-scale solar energy projects generate electricity that is distributed to consumers through the electric power transmission grid.

The study area has been limited to six states based on initial resource assessment showing that these states encompass the most prospective solar energy resources suitable for utility-scale development over the next 20 years. The BLM has already received a large number of utility-scale solar energy project proposals for BLM-administered lands, mainly in Arizona, southern California, and Nevada.

In addition to government-to-government consultation on this topic, we would also like to offer you an opportunity to partner with us in a cooperating agency relationship for this PEIS and potential plan amendments. The Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) (40 CFR 1500-1508) emphasize the use of such arrangements as a means of ensuring timely coordination with Tribal, State, Federal, and local agencies in preparation of NEPA analyses and documentation. The BLM

places great importance on working effectively with its governmental partners through the cooperating agency relationship. For further information, please see our cooperating agency web site: <http://www.blm.gov/planning/cadg/>.

Cooperating agency status is available to government entities with jurisdiction by law or special expertise. The cooperating agency must sign a Memorandum of Understanding with the Federal agency and must fund its own participation. Other governmental entities who may be invited to be cooperating agencies on this PEIS include the States of Arizona, California, Colorado, New Mexico, Nevada, and Utah; county governments; and several local town and city governments.

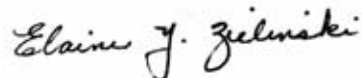
Preparation of the PEIS is a multi-step process that will be completed in approximately 22 months and will include the preparation of a draft PEIS, a final PEIS, and **Records of Decision by the BLM and the DOE. As such, we anticipate very short, concurrent review timeframes for both us and our cooperating agencies. Cooperating agencies may negotiate the level of their involvement consistent with their available staffing and resources.**

Gaining your Tribe's expertise and perspective is important to the success of the PEIS and subsequent management strategies. We value your knowledge, concerns and perspectives relating to the planning area. Please note that the tribe's participation as a cooperating agency does not replace BLM's obligation to consult on a government-to-government basis. Therefore, regardless of your tribe's decision to participate or not as a cooperating agency, our government-to-government consultation will continue.

If you would like to participate as a cooperating agency, please contact Angela Mogel at 602-417-9536. Also, please allow me to direct you to our web site where you can gain further information and sign up for web news and up-dates. The web site address is: <http://solareis.anl.gov>.

Thank you for your consideration. We look forward to our interaction and discussions with you.

Sincerely,



Elaine Y. Zielinski
State Director

First	Last	Suffix	Title	Organization	Address	Mode	City	State	Zip	Phone No.
Delia M.	Carlyle		Chairperson	Ak Chin Indian Community	42507 W. Peters & Nall Road		Maricopa	AZ	85239	
Sherry	Cordova		Chairperson	Cocopah Tribe	County 15th & Avenue G	Fed Ex	Somerton	AZ	85350	928-503-2291
Daniel	Eddy	Jr.	Chairman	Colorado River Indian Tribes	Rt. 1, Box 23-B		Parker	AZ	85344	
Michael	Tsosie		Director	Colorado River Indian Tribes Museum	26600 Mohave Rd.		Parker	AZ	85344	928-669-1339
Raphael	Bear		President	Fort McDowell Yavapai Nation	P.O. Box 17779		Fountain Hills	AZ	85268	
Timothy	Williams		Chairman	Fort Mojave Indian Tribe	500 Merriman Avenue		Needles	CA	92363	760-629-4591
Linda	Otero		Director	Aha Makav Cultural Society	500 Merriman Avenue		Needles	CA	92363	
William Roy	Rhodes		Governor	Gila River Indian Community	P.O. Box 97		Sacaton	AZ	85247	
Don	Watabomigie	Sr.	Chairman	Havasupai Tribe	P.O. Box 10		Supai	AZ	86435-0010	
Benjamin	Nuvamsa		Chairman	Hopi Tribe	P.O. Box 123		Kykotsmovi	AZ	86039	
Charles	Vaughn	Sr.	Chairman	Hualapai Tribe	P.O. Box 179		Peach Springs	AZ	86434	928-769-2216
Ona	Segundo		Chairperson	Kaibab Paiute Tribe	HC65, Box 2	893 Highway 66 -Fed Ex	Fredonia	AZ	86022	928-643-8311
Peter	Yucupicio		Chairperson	Pascua Yaqui Tribe	7474 S. Camino de Oeste	Fed Ex	Tucson	AZ	85746	520-879-6337
Mike	Jackson	Sr.	President	Fort Yuma Quechan Tribe	P.O. Box 1899	MAIL	Yuma	AZ	85366	619-572-0213
Diane	Enos		President	Salt River Pima-Maricopa Indian Community	10005 E. Osborn		Scottsdale	AZ	85256	
Wendler	Nosie	Sr.	Chairperson	San Carlos Apache Tribe	P.O. Box *0*		San Carlos	AZ	85550	
Mary Lou	Boone		President	San Juan Southern Paiute Tribe	P.O. Box 2710		Tuba City	AZ	86045	

First	Last	Suffix	Title	Organization	Address	Mode	City	State	Zip	Phone No.
Ned	Norris	Jr.	Chairman	Tohono O'odham Nation	P.O. Box 837		Sells	AZ	85634	
Ivan	Smith		Chairman	Tonto Apache Tribe	Tonto Apache Reservation #30		Payson	AZ	85541	
Ronnie	Lupe		Chairman	White Mountain Apache Tribe	P.O. Box 700		Whiteriver	AZ	85941	
Thomas	Beauty		Chairman	Yavapai-Apache Nation	2400 W. Datsi Rd.		Camp Verde	AZ	86322	
Ernest	Jones	Sr.	President	Yavapai-Prescott Indian Tribe	530 E. Merritt		Prescott	AZ	86301-2038	
Alan	Downer			Tribal Preservation (Navajo Nation Historic Preservation Department)	P.O. Box 4950		Window Rock	AZ	86515	928- 871-7148
Joe	Shirley	Jr.	President	Navajo Nation	P.O Box 7440	Fed Ex	Window Rock	AZ	86515	928-871-7003
George	Arthur		Chairperson	Navajo Nation Council	200 Parkway Administration Bldg 3	Fed Ex	Window Rock	AZ	86515	928-871-6381
Andy	Ayze		Chairperson	Navajo Nation Council	200 Parkway Administration Bldg 3	Fed Ex	Window Rock	AZ	86515	928-871-6381
LoRenzxo C.	Bates		Chairperson	Navajo Nation Council	200 Parkway Administration Bldg 3	Fed Ex	Window Rock	AZ	86515	928-871-6381
Kee Allen	Begay	Jr.	Chairperson	Navajo Nation Council	200 Parkway Administration Bldg 3	Fed Ex	Window Rock	AZ	86515	928-871-6381
Sampson	Begay		Chairperson	Navajo Nation Council	200 Parkway Administration Bldg 3	Fed Ex	Window Rock	AZ	86515	928-871-6381
Ervin M.	Keeswood	Sr.	Chairperson	Navajo Nation Council	200 Parkway Administration Bldg 3	Fed Ex	Window Rock	AZ	86515	928-871-6381
Hope	MacDonald-LoneTree		Chairperson	Navajo Nation Council	200 Parkway Administration Bldg 3	Fed Ex	Window Rock	AZ	86515	928-871-6381

First	Last	Suffix	Title	Organization	Address	Mode	City	State	Zip	Phone No.
Lawrence T.	Morgan		Speaker	Navajo Nation Council	200 Parkway Administration Bldg 1	Fed Ex	Window Rock	AZ	86515	
Larry	Noble		Chairperson	Navajo Nation Council	200 Parkway Administration Bldg 3	Fed Ex	Window Rock	AZ	86515	928-871-6381
Lawrence R.	Platero		Chairperson	Navajo Nation Council	200 Parkway Administration Bldg 3	Fed Ex	Window Rock	AZ	86515	928-871-6381
Francis	Redhouse		Chairperson	Navajo Nation Council	200 Parkway Administration Bldg 3	Fed Ex	Window Rock	AZ	86515	928-871-6381
Thomas	Walker		Chairperson	Navajo Nation Council	200 Parkway Administration Bldg 3	Fed Ex	Window Rock	AZ	86515	928-871-6381
			President	Navajo Nation, Birdsprings Chapter	HC 61, Box K		Winslow	AZ	86047	
			President	Navajo Nation, Black Mesa Chapter	P.O. Box 97		Pinon	AZ	86510	
Joe J.	Jim		President	Navajo Nation, Blue Gap/Tachee Chapter	P.O. Box 4427		Blue Gap	AZ	86520	
Billy	Arizona	Jr.	President	Navajo Nation, Bodaway-Gap Chapter	P.O. Box 1546		Gap	AZ	86020	
Jack	Colorado		President	Navajo Nation, Cameron Chapter	P.O. Box 85		Cameron	AZ	86020	
Lee J.	Gambler		President	Navajo Nation, Chilchinbeto Chapter	P.O. Box 1681		Kayenta	AZ	86033	
Dwayne	Billsie		President	Navajo Nation, Chinle Chapter	P.O. Box 1809		Chinle	AZ	86503	
Charlie	McCabe		President	Navajo Nation, Coalmine Canyon Chapter	P.O. Box 1464		Tuba City	AZ	86045	
Sid	Whitehair		President	Navajo Nation, Coppermine Chapter	P.O. Box 1323		Page	AZ	86040	
Jimmie	Taliman	Sr.	President	Navajo Nation, Cornfields Chapter	P.O. Box 478		Ganado	AZ	86505	
Irvin	Tsosie	Sr.	President	Navajo Nation, Cove Chapter	P.O. Box 276		Red Valley	AZ	86544	
Chester	Begay		President	Navajo Nation, Dennehotso Chapter	P.O. Box 301		Dennehotso	AZ	86535	

First	Last	Suffix	Title	Organization	Address	Mode	City	State	Zip	Phone No.
Manuel W.	Shirley		President	Navajo Nation, Dilkon Chapter	HCR 63 Box E		Winslow	AZ	86047	
Donald T.	Chee		President	Navajo Nation, Forest Lake Chapter	P.O. Box 441		Pinon	AZ	86510	
Lorraine	Wauneka-Nelson		President	Navajo Nation, Fort Defiance Chapter	P.O. Box 366		Fort Defiance	AZ	86504	
Martin	Begay		President	Navajo Nation, Ganado Chapter	P.O. Box 188		Ganado	AZ	86505	
Franklin	Gishey	Sr.	President	Navajo Nation, Greasewood Springs Chapter	P.O. Box 1260		Ganado	AZ	86505	
Percy	Deal		President	Navajo Nation, Hardrock Chapter	P.O. Box 20		Kykotsmovi	AZ	86039	
Anderson H.	Morgan		President	Navajo Nation, Houck Chapter	P.O. Box 127		Houck	AZ	86506	
Laverne	Yazzie-Benally		President	Navajo Nation, Indian Wells Chapter	P.O. Box 3042		Indian Wells	AZ	86031	
Larry	Goodman		President	Navajo Nation, Inscription House Chapter	P.O. Box 5205		Tonalea	AZ	86044	
Bahe	Jackson		President	Navajo Nation, Jeddito Chapter	P.O. Box 798		Keams Canyon	AZ	86034	
Frieda	Sage		President	Navajo Nation, Kaibeto Chapter	P.O. Box 1761		Kaibeto	AZ	86053	
Albert	Bailey		President	Navajo Nation, Kayenta Chapter	P.O. Box 1088		Kayenta	AZ	86033	
Christine	Wallace		President	Navajo Nation, Kinlichee Chapter	P.O. Box 860		St. Michael	AZ	86511	
Nancy Y.	Chee		President	Navajo Nation, Klagetoh Chapter	P.O. Box 1019		Ganado	AZ	86505	
Yvonne	Bigman		President	Navajo Nation, LeChee Chapter	P.O. Box 4720		Page	AZ	86040	
Thomas	Cody		President	Navajo Nation, Leupp Chapter	CPO Box 5085		Leupp	AZ	86035	
Gerald	Ahasteen		President	Navajo Nation, Low Mountain Chapter	P.O. Box 4407		Blue Gap	AZ	86520	

First	Last	Suffix	Title	Organization	Address	Mode	City	State	Zip	Phone No.
Samual	Yazzie		President	Navajo Nation, Lukachukai Chapter	P.O. Box 248		Lukachukai	AZ	86507	
Paul	Begay		President	Navajo Nation, Lupton Chapter	P.O. Box 403		Lupton	AZ	86508	
Aljerino	Tsedah		President	Navajo Nation, Many Farms Chapter	P.O. Box 185		Many Farms	AZ	86538	
Jerry	Tsosie		President	Navajo Nation, Mexican Water Chapter	HC 61 Box 38		Teecnospos	AZ	86514	
Arnold R.	Begay		President	Navajo Nation, Nahata Dzill Chapter	P.O. Box 400		Sanders	AZ	86512	
			President	Navajo Nation, Navajo Mountain Chapter	P.O. Box 10070		Tonalea	AZ	86044	
Johnson	Claw		President	Navajo Nation, Nazlini Chapter	P.O. Box 7387		Nazlini	AZ	86505	
			President	Navajo Nation, Oak Springs Chapter	P.O. Box 486		Window Rock	AZ	86515	
Bessie S.	Allen		President	Navajo Nation, Pinon Chapter	P.O. Box 127		Pinon	AZ	86510	
Phillip	Harrison	Jr.	President	Navajo Nation, Red Valley Chapter	P.O. Box 304		Red Valley	AZ	86544	
Clarence Ce	Begay		President	Navajo Nation, Rock Point Chapter	P.O. Box 190		Rock Point	AZ	86545	
Alfred L.	Yazzie		President	Navajo Nation, Rough Rock Chapter	P.O. Box 633-RRDS		Chinle	AZ	86503	
Ruth	Roessel		President	Navajo Nation, Round Rock Chapter	P.O. Box 10		Round Rock	AZ	86547	
Herman	Begay	Sr.	President	Navajo Nation, Sawmill Chapter	P.O. Box 1786		Ft. Defiance	AZ	86504	
Jones	Grass		President	Navajo Nation, Shonto Chapter	P.O. Box 7800		Shonto	AZ	86054	
Albert Edisc	Ross	Jr.	President	Navajo Nation, St. Michael Chapter	P.O. Box 829		St. Michael	AZ	86511	
Jack	Whitehorse	Jr.	President	Navajo Nation, Steamboat Chapter	P.O. Box 117		Ganado	AZ	86505	

First	Last	Suffix	Title	Organization	Address	Mode	City	State	Zip	Phone No.
Lena	Clark		President	Navajo Nation, Sweetwater Chapter	P.O. Box 105		Teecnospos	AZ	86514	
Rodger D.	Joe		President	Navajo Nation, Teecnospos Chapter	P.O. Box 106		Teecnospos	AZ	86514	
Virgil D.	Nez		President	Navajo Nation, Teesto Chapter	P.O. Box 7166		Winslow	AZ	86047	
Frank	Bilagody		President	Navajo Nation, Toh Nanees Dizi Chapter	P.O. Box 727		Tuba City	AZ	86045	
Keith	Begay		President	Navajo Nation, Tolani Lake Chapter	P.O. Box HC61-SR- Box 3001		Winslow	AZ	86047	
Chester	Claw		President	Navajo Nation, Tonalea Chapter	P.O. Box 207		Tonalea	AZ	86044	
Wesley L.	Begay		President	Navajo Nation, Tsaille/Wheatfields Chapter	P.O. Box 667		Tsaille	AZ	86556	
Harrison	Kee		President	Navajo Nation, Tselani/Cottonwood Chapter	P.O. Box 1139		Chinle	AZ	86503	
Phyllis A.	Begay		President	Navajo Nation, Whippoorwill Chapter	P.O. Box 279		Pinon	AZ	86510	
Robert E.	Salabye		President	Navajo Nation, Whitecone Chapter	P.O. Box 338		Indian Wells	AZ	86031	
Shawnevan	Dale		President	Navajo Nation, Wide Ruins Chapter	P.O. Box 208		Chambers	AZ	86503	



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Nevada State Office
P.O. Box 12000 (1340 Financial Blvd.)
Reno, Nevada 89520-0006
www.blm.gov/nv/

In Reply Refer To:
1610 (NV-912)

JUN 19 2008

Ft. McDermitt Pai-Sho Tribes
Arlo Crutcher
P.O. Box 457
McDermitt, NV 89421

See list attached

*27
LRS
/10*

Dear Chairperson:

As part of the Bureau of Land Management's (BLM's) ongoing government-to-government consultation, I am writing to let you know that the Bureau of Land Management (BLM) and the Department of Energy (DOE) have initiated the preparation of a joint Programmatic Environmental Impact Statement (PEIS) to evaluate solar energy development on BLM-administered lands in Arizona, California, Colorado, New Mexico, Nevada, and Utah.

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If you would like to participate as a cooperating agency, please call Jackie Gratton at (775) 861-6532. There is additional information on our web site: <http://solareis.anl.gov>.

Thank you for your consideration. We look forward to our interaction and discussions with you.

Sincerely,



Ron Wenker
State Director, Nevada

<p>Battle Mountain Band Council</p> <p>Chairperson: Mike Young</p> <p>37 Mountain view Drive Battle Mountain, NV 89820</p> <p>Ph: (775)635-2004 Fx: (775)635-8016</p>	<p>Carson Colony Council</p> <p>Chairperson: Chad Malone</p> <p>2900 South Curry Street Carson City, NV 89703</p> <p>Ph: (775)883-6459 Fx: (775)883-6467</p>	<p>Dresslerville Community Council</p> <p>Chairperson: Mark Kizer</p> <p>1585 Watasheamu South Gardnerville, NV 89410</p> <p>Ph: (775)265-4191 Fx: (775)265-6240</p>
<p>Duck Valley Sho-Pai Tribes</p> <p>Chairperson: Nancy Egan</p> <p>P.O. Box 219 Owyhee, NV 89832</p> <p>Ph: (208)759-3100 Fx: (208)759-3102</p>	<p>Duckwater Shoshone Tribe</p> <p>Chairperson: Jerry Millett</p> <p>P.O. Box 140068 Duckwater, NV 89314</p> <p>Ph: (775)863-0227 Fx: (775)863-0301</p>	<p>Elko Band Council</p> <p>Chairperson: Lynette Piffero</p> <p>1745 Silver Eagle Drive Elko, NV 89801</p> <p>Ph: (775)738-8889 Fx: (775)753-5439</p>
<p>Ely Shoshone Council</p> <p>Chairperson: Diana Buckner</p> <p>16 Shoshone Circle Ely, NV 89301</p> <p>Ph: (775)289-3031 Fx: (775)289-3237</p>	<p>Fallon Paiute Shoshone Tribes</p> <p>Chairperson: Alvin Moyle</p> <p>565 Rio Vista Road Fallon, NV 89406</p> <p>Ph: (775)423-6075 Fx: (775) 432-5202</p>	<p>Ft. McDermitt Pai-Sho Tribes</p> <p>Chairperson: Arlo Critcher <i>Crutcher</i></p> <p>P.O. Box 457 McDermitt, NV 89421</p> <p>Ph: (775)532-8259 Fx: (775)532-8487/8060</p>
<p>Goshute Business Council</p> <p>Chairperson: Rupert Steele</p> <p>P.O. Box 6140 Ibapah, UT 84034</p> <p>Ph: (435)234-1138 Fx: (435)234-1162</p>	<p>Las Vegas Paiute Tribe</p> <p>Chairperson: Benny Tso</p> <p>One Paiute Drive Las Vegas, NV 89106</p> <p>Ph: (702)386-3926 Fx: (702)383-4019</p>	<p>Lovelock Paiute Tribe</p> <p>Chairperson: Clark Rhondes</p> <p>P.O. Box 878 Lovelock, NV 89419</p> <p>Ph: (775)273-7861 Fx: (775)273-3802</p>
<p>Moapa Business Council</p> <p>Chairperson: Philbert Waim</p> <p>P.O. Box 340 Moapa, NV 89025-0340</p> <p>Ph: (702)865-2787 Fx: (702)865-2875</p>	<p>Pyramid Lake Paiute Tribe</p> <p>Chairperson: Mervin Wright</p> <p>P.O. Box 256 Nixon, NV 86424</p> <p>Ph: (775)574-1000 Fx: (755)574-1008</p>	<p>Reno-Sparks Indian Colony</p> <p>Chairperson: Arlan Melendez</p> <p>98 Colony Road Reno, NV 89506</p> <p>Ph: (775)329-2936 Fx: (775)329-8710</p>

<p align="center">South Fork Band Council</p> <p>Chairperson: Cheryl Mose-Temoke</p> <p>21 Lee B-13 Spring Creek, NV 89815</p> <p>Ph: (775)744-4273 Fx: (775)744-4523</p>	<p align="center">Stewart Community Council</p> <p>Chairperson: Wanda E. Batchelor</p> <p>5300 Snyder Avenue Carson City, NV 89701</p> <p>Ph: (775)883-7794 Fx: (775)883-5679</p>	<p align="center">Summit Lake Paiute Tribe</p> <p>Chairperson: Warner Barlese</p> <p>3690 Grant Drive Suite K Reno, NV 89509</p> <p>Ph: (775)827-9670 Fx:</p>
<p align="center">Te-Moak Tribal Council</p> <p>Chairperson: Davis Gonzales</p> <p>525 Sunset Street Elko, NV 89801</p> <p>Ph:(775) 738-9251 Fx:(775) 752-2345</p>	<p align="center">Walker River Paiute Tribe</p> <p>Chairperson: Edmund Raymus</p> <p>P.O. Box 220 Schurz, NV 89427</p> <p>Ph: (775)772-2306/884-3751 Fx: (775)773-2585</p>	<p align="center">Washoe Tribal Council</p> <p>Chairperson: Waldo Walker</p> <p>919 Highway 395 South Gardnerville, NV 89410</p> <p>Ph: (775)265-4191/883-1446 Fx: (775)265-6240</p>
<p align="center">Wells Band Council</p> <p>Chairperson: Julie Stevens</p> <p>P.O. Box 809 Wells, NV 89835</p> <p>Ph: (775)752-3045 Fx: (775)752-2179</p>	<p align="center">Winnemucca Colony Council</p> <p>Chairperson: Linda Ayer</p> <p>P.O. Box 1370 Winnemucca, NV 89446</p> <p>Ph: (775)623-0888 Fx: (775)623-6918</p>	<p align="center">Woodfords Community Council</p> <p>Chairperson: DeAnn Roberts</p> <p>96 Washoe Blvd Markleeville, CA 96120</p> <p>Ph: (530)694-2170 Fx: (530)694-1890</p>
<p align="center">Yerington Paiute Tribe</p> <p>Chairperson: Vince Conway</p> <p>171 Cambell Lane Yerington, NV 89447</p> <p>Ph: (775)463-3301/883-3895 Fx: (775)463-2416</p>	<p align="center">Yomba Tribal Council</p> <p>Chairperson: Wayne Dyer</p> <p>HC 61 Box 6275 Austin, NV 89310</p> <p>Ph: (775)964-2463 Fx: (775)964-2443</p>	<p align="center">Timbisha Shoshone Tribe</p> <p>Chairperson: Joseph Kennedy</p> <p>785 N. Main St. Suite Q Bishop, CA 93514</p> <p>Ph: (760)873-9003 Fx: (760)873-9004</p>



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Utah State Office
P.O. Box 45155
Salt Lake City, UT 84145-0155
http://www.blm.gov/ut/st/en.html



Sanchez 6-17-08

IN REPLY REFER TO:
1790
(UT-921)

JUN 23 2008

M. DeKegel 6/18/08
M. Cross 6-18-08
K. Hoffman 6/18/08
D. Balle 6/19/08

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear :

As part of the Bureau of Land Management's (BLM's) ongoing government-to-government consultation with Tribes, I am writing to let you know that the Bureau of Land Management (BLM) and the Department of Energy (DOE) have initiated the preparation of a joint Programmatic Environmental Impact Statement (PEIS) to evaluate solar energy development on BLM-administered lands in Arizona, California, Colorado, New Mexico, Nevada, and Utah.

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In addition to government-to-government consultation on this topic, we would also like to offer you an opportunity to partner with us in a cooperating agency relationship for this PEIS and potential BLM land use plan amendments. The Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) (40 CFR 1500-1508) emphasize the use of such arrangements as a means of ensuring timely coordination with Tribal,

State, Federal, and local agencies in preparation of NEPA analyses and documentation. The BLM places great importance on working effectively with its governmental partners through the cooperating agency relationship. For further information, please see our cooperating agency web site: <http://www.blm.gov/planning/cadg>.

Cooperating agency status is available to government entities with jurisdiction by law or special expertise. The cooperating agency must sign a Memorandum of Understanding with the Federal agency and must fund its own participation. Other governmental entities who may be invited to be cooperating agencies on this PEIS include the States of Arizona, California, Colorado, New Mexico, Nevada, and Utah; county governments; and several local town and city governments.

Preparation of the PEIS is a multi-step process that will be completed in approximately 22 months and will include the preparation of a draft PEIS, a final PEIS, and Records of Decision by the BLM and the DOE. As such, we anticipate very short, concurrent review timeframes for both us and our cooperating agencies. Cooperating agencies may negotiate the level of their involvement consistent with their available staffing and resources.

We are starting the PEIS with public scoping which runs from May 29, 2008, through July 15, 2008. Public scoping meetings will be held beginning at 6:00 PM on the dates and in the cities listed below:

June 16, 2008 – Riverside, CA	June 19, 2008 – Sacramento, CA	June 25, 2008 – Salt Lake City, UT
June 17, 2008 – Barstow, CA	June 23, 2008 – Denver, CO	June 26, 2008 – Albuquerque, NM
June 18, 2008 – Las Vegas, NV	June 24, 2008 – Phoenix, AZ	July 8, 2008 – Tucson, AZ

The Wednesday June 25, 2008 public scoping meeting in Salt Lake City will be held at the Hampton Inn & Suites, SLC Airport, 307 North Admiral Byrd Road, Salt Lake City, Utah 84114. We have developed a web site specific to this project where users can gain further information, sign up for web news and up-dates, as well as submit comments.


Gaining your Tribe's expertise and perspective is important to the success of the PEIS and subsequent management strategies. We value your knowledge, concerns and perspectives relating to the planning area. Please note that the tribe's participation as a cooperating agency does not replace BLM's obligation to consult on a government-to-government basis. Therefore, regardless of your Tribe's decision to participate or not as a cooperating agency, our government-to-government consultation will continue.

If you would like to participate as a cooperating agency, please contact Mike DeKeyrel at the above address or at (801) 539-4105. Also, please allow me to direct you to our web site where you can gain further information and sign up for web news and up-dates. The web site address is: <http://solareis.anl.gov>.

Thank you for your consideration. We look forward to our interaction and discussions with you.

Sincerely,

/s/ **Jeff Rawson**

 Selma Sierra
State Director

Solar PEIS Letter M-D-5A-6-7-08

Solar Energy Programmatic EIS
Tribal Contact List – Scoping

Southern Ute Tribe
Southern Ute Tribal Council
Clement Frost, Chairman
P.O. Box 737
Ignacio, Colorado 81137

Ute Mountain Ute Tribe
Manuel Hart, Acting Chairman
P.O. Box JJ
1 Mike Wash Road
Towaoc, Colorado 81334

White Mesa Ute Tribe
Elayne Atcity, Councilwoman
P. O. Box 7096
Blanding, Utah 84511

Ute Indian Tribe (Uintah & Ouray Reservation)
Curtis Cesspooch, Chairman
P.O. Box 190
Fort Duchesne, Utah 84026

cc: Betsy Chapoose
Director, Cultural Rights and Protection

Eastern Shoshone
Mr. Ivan Posey, Chair
Shoshone Business Council
P.O. Box 538
Ft. Washakie, Wyoming 82514

Shoshone-Bannock
Mr. Blaine Edmo, Chair
Fort Hall Business Council
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, Idaho 83203-0306

Northwest Band of Shoshone
Mr. Bruce Perry
707 North Main
Brigham City, UT 84302

Goshute Indian Tribe (Confederated Tribes of the Goshute Res.)

Mr. Rupert Steele, Chair
P.O. Box 6104
Ibapah, Utah 84034-6104

Skull Valley Band of Goshute Indians

Lawrence Bear, Chairman
2480 South Main, Suite 110
Salt Lake City, UT 84115-4443

Paiute Tribe of Utah

Ms. Lora Tom, Chair
440 North Paiute Drive
Cedar City, Utah 84720

cc: Dorena Martineau
Cultural Resources Coordinator

Kanosh Band of Paiutes

Mr. Phil Pikyavit, Band Chairman
P.O. Box 116
Kanosh, Utah 84637

Koosharem Band of Paiutes

Ms. Cyndi Charles, Band Chair
223 East 575 North
Cedar City, UT 84720

Shivwits Band of Paiutes

Mr. Glenn Rogers, Band Chair
370 North 400 West #2
St. George, Utah 84770

Indian Peaks Band of Paiutes

Mrs. Jeanine Borchardt, Band Chair
440 North Paiute Drive
Cedar City, Utah 84720

Cedar Band of Paiutes

Alex Shepherd, Band Chair
5267 West 3700 South
Cedar City, UT 84720

Kaibab Band of Paiute Indians

Ona Segundo, Chair
HC 65 Box 2
Pipe Spring, AZ 86022

San Juan Southern Paiute Tribe
Ms. Mary Lou Boone, President
P.O. Box 2656
Tuba City, AZ 86045

Hopi Tribe
Ben Nuvamsa, Chairman
Hopi Tribal Council
P.O. Box 123
Kykotsmovi, AZ 86039

cc: Leigh Kuwanwisiwma
Director, Hopi Cultural Preservation Office

Navajo Nation
Mr. Tony Joe
Supervisory Anthropologist
Traditional Culture Program
PO Box 4950
Window Rock, AZ 86515

Aneth Chapter
P.O. Box 430
Montezuma Creek, UT 84534

Oljato Chapter
P.O. Box 360455
Monument Valley, UT 84531

Red Mesa Chapter
P.O. Box 422
Montezuma Creek, UT 84534

Navajo Utah Commission
Clarence Rockwell, Director
P.O. Box 570
Montezuma Creek, UT 84534



United States Department of the Interior
BUREAU OF LAND MANAGEMENT

California Desert District
22835 Calle San Juan de los Lagos
Moreno Valley, CA 92553
www.ca.blm.gov/cdd



In Reply Refer To:
2800/8100/CA610.25 (P)

June 24, 2008

Chairperson
Rumsey Rancheria
P.O. Box 18
Brooks, CA 95606

Dear Chairperson:

As part of the Bureau of Land Management's (BLM's) ongoing government-to-government consultation with the Rumsey Rancheria, I am writing to let you know that the Bureau of Land Management (BLM) and the Department of Energy (DOE) have initiated the preparation of a joint Programmatic Environmental Impact Statement (PEIS) to evaluate solar energy development on BLM-administered lands in Arizona, California, Colorado, New Mexico, Nevada, and Utah.

The Energy Policy Act of 2005 establishes a goal for the BLM to approve 10,000 megawatts of non-hydropower renewable energy on BLM-administered lands by the year 2015. The DOE and BLM have identified utility-scale solar energy development, along with wind and geothermal power, as critical components in meeting this goal and the Nation's energy needs. Utility-scale solar energy projects generate electricity that is distributed to consumers through the electric power transmission grid.

The study area has been limited to six states based on initial resource assessment showing that these states encompass the most prospective solar energy resources suitable for utility-scale development over the next 20 years. The BLM has already received a large number of utility-scale solar energy project proposals for BLM-administered lands, mainly in Arizona, southern California, and Nevada.

In addition to government-to-government consultation on this topic, we would also like to offer you an opportunity to partner with us in a cooperating agency relationship for this PEIS and potential plan amendments. The Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) (40 CFR 1500-1508) emphasize the use of such arrangements as a means of ensuring timely coordination with Tribal, State, Federal, and local agencies in preparation of NEPA analyses and documentation. The BLM places great importance on working effectively with its governmental partners through the cooperating agency relationship. For further information, please see our cooperating agency web site:

<http://www.blm.gov/planning/cadg/>

Cooperating agency status is available to government entities with jurisdiction by law or special expertise. The cooperating agency must sign a Memorandum of Understanding with the Federal agency and must fund its own participation. Other governmental entities who may be invited to be cooperating agencies on this PEIS include the States of Arizona, California, Colorado, New Mexico, Nevada, and Utah; other federal agencies, county governments; and several local town and city governments.

Preparation of the PEIS is a multi-step process that will be completed in approximately 22 months and will include the preparation of a draft PEIS, a final PEIS, and Records of Decision by the BLM and the DOE. As such, we anticipate very short, concurrent review timeframes for both us and our cooperating agencies. Cooperating agencies may negotiate the level of their involvement consistent with their available staffing and resources.


Gaining your Tribe's expertise and perspective is important to the success of the PEIS and subsequent management strategies. We value your knowledge, concerns and perspectives relating to the planning area. Please note that the tribe's participation as a cooperating agency does not replace BLM's obligation to consult on a government-to-government basis. Therefore, regardless of your tribe's decision to participate or not as a cooperating agency, our government-to-government consultation will continue.

If you would like to participate as a cooperating agency, please contact Gregory Miller, Renewable Energy Program Manager, California Desert District Office, at (951) 697-5200. Also, please allow me to direct you to our web site where you can gain further information and sign up for web news and up-dates. The web site address is:

<http://solareis.anl.gov>

Thank you for your consideration. We look forward to our interaction and discussions with you.

Sincerely,



Steven J. Borchard
District Manager
California Desert District

Chairman
Agua Caliente Band of Cahuilla
Indians
5401 Dinah Shore Drive
Palm Springs, CA 92264

Chairperson
Barona Band of Diegueno Indians
1095 Barona Road
Lakeside, CA 92040

Chairman
Berry Creek Rancheria
5 Tyme Way
Oroville, CA 95966

Chairman
Big Sandy Rancheria
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Auberry, CA 93602

Chairperson
Blue Lake Rancheria
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Blue Lake, CA 95525

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Chairwoman
Campo Kumeyaay Nation
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Campo, CA 91906

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Chairwoman
Cocopah Indian Tribe
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Chairperson
Colusa Rancheria
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Colusa, CA 95932

Chairman
Alturas Rancheria
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Alturas, CA 96101

Chairman
Bear River Band of Rohnerville
Rancheria
32 Bear River Drive
Loleta, CA 95551

Chairman
Big Lagoon Rancheria
P.O. Drawer 3060
Trinidad, CA 95570

Chairperson
Big Valley Rancheria
2726 Mission Rancheria Road
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Chairperson
Bridgeport Indian Colony
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Bridgeport, CA 93517

Chairman
Cahuilla Band of Mission Indians
P.O. Box 391760
Anza, CA 92539-1760

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Chairperson
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P.O. Box 1159
Jamestown, CA 95327

Chairperson
Cold Springs Rancheria
P.O. Box 209
Tollhouse, CA 93667

Chairperson
Cortina Rancheria
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Williams, CA 95987

Chairwoman
Augustine Band of Mission Indians
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Coachella, CA 92236

Chairperson
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567 Yellow Jacket Rd
Benton, CA 93512

Chairman
Big Pine Paiute Tribe of the Owens
Valley
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Big Pine, CA 93513

Chairperson
Bishop Paiute Tribe
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Bishop, CA 93514

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Cedarville Rancheria
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Chairman
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Parker, AZ 85344

Chairperson
Coyote Valley Reservation
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Gardnerville, NV 89410

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Elem Indian Colony
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Clearlake Oaks, CA 95423

Chairman
Ewiiapaayp Band of Kumeyaay
Indians
P.O. Box 2250
Alpine, CA 91903-2250

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Fort Independence Paiute Tribe
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Independence, CA 93526

Governor
Gila River Indian Community Council
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Sacaton, AZ 85247

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Guidiville Rancheria
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Talmage, CA 95481

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3000 Shanel Rd.
Hopland, CA 95449

Chairperson
Jackson Rancheria
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Jackson, CA 95642

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Caliente, CA 93518

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La Posta Band of Kumeyaay Indians
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Chairman
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Crescent City, CA 95531

Spokesperson
Federated Indians of Graton
Rancheria
320 Tesconi Circle, Suite G
Santa Rosa, CA 95401

Chairman
Fort Mojave Indian Tribe
500 Merriman Avenue
Needles, CA 92363

Chairperson
Greenville Rancheria
P.O. Box 279
Greenville, CA 95947

Chairperson
Habematolel Pomo of Upper Lake
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Upper Lake, CA 95485

Chairperson
Inaja-Cosmit Band of Mission Indians
309 S. Maple Street
Escondido, CA 92025

Chairperson
Jamul Indian Village
P.O. Box 612
Jamul, CA 91935

Tribal Administrator
Kwaaymii Laguna Band of Indians
P.O. Box 775
Pine Valley, CA 91962

Chairman
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One Paiute Drive
Las Vegas, NV 89106

Chairperson
Duckwater Shoshone Tribe
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Enterprise Rancheria
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Fort Bidwell, CA 96112

President
Fort Yuma Quechan Tribe
P.O. Box 1899
Yuma, AZ 85366-1899

Chairperson
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P.O. Box 63
Elk Creek, CA 95939

Chairman
Hoopa Valley Tribal Council
P.O. Box 1348
Hoopa, CA 95546

Chairwoman
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Ione, CA 95640

Chairman
Karuk Tribe of California
P.O. Box 1016
Happy Camp, CA 96039

Chairman
La Jolla Band of Luiseno Indians
22000 Highway 76
Pauma Valley, CA 92061

Chairperson
Laytonville Rancheria
P.O. Box 1239
Laytonville, CA 95454

Chairman
Lone Pine Paiute-Shosone Tribe
P.O. Box 747
Lone Pine, CA 93545

Chairperson
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1300 N. Dutton Ave, Suite A
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Mechoopda Indian Tribe of the Chico
Rancheria
125 Mission Ranch Blvd.
Chico, CA 95926

Chairperson
Mooretown Rancheria
1 Alverda Drive
Oroville, CA 95966

Chairman
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35008 Pala Temecula Road
Pala, CA 92059

Chairman
Pechanga Band of Mission Indians
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Temecula, CA 92593

Chairman
Pit River Tribal Council
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Burney, CA 96013

Chairman
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P.O. Box 391372
Anza, CA 92539

Chairman
Resighini Rancheria
P.O. Box 529
Klamath, CA 95548

President
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P.O. Box 448
Covelo, CA 95428

Chairwoman
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Cupeno Indians
P.O. Box 189
Warner Springs, CA 92086

Chairperson
Manchester - Point Arena Band of
Pomo Indians
P.O. Box 623
Point Arena, CA 95468

Chairman
Mesa Grande Band of Mission Indians
P.O. Box 270
Santa Ysabel, CA 92070

Chairman
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Chairperson
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Chairperson
Potter Valley Tribe
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Chairman
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Chairman
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Chairman
Lower Lake Rancheria Koi Nation
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Santa Rosa, CA 95402

Chairman
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Chairman
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Middletown, CA 95461

Chairperson
North Fork Rancheria
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North Fork, CA 93643-0929

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Indians
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Pauma Valley, CA 92061

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367 No. State Street, Suite 204
Ukiah, CA 95482

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Chairperson
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Redwood Valley, CA 95470

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Chairperson
Smith River Rancheria
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Smith River, CA 95567

Chairman
Susanville Indian Rancheria
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Susanville, CA 96130

Chairperson
Table Mountain Rancheria
P.O. Box 410
Friant, CA 93626

Chairperson
Trinidad Rancheria
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Trinidad, CA 95570

Chairperson
Tuolumne Rancheria
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Tuolumne, CA 95379

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Santa Ynez Band of Mission Indians
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Sherwood Valley Rancheria
190 Sherwood Hill Drive
Willits, CA 95490

Spokesman
Soboba Band of Luiseno Indians
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Chairman
Sycuan Band of Kumeyaay Nation
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Chairman
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Chairperson
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P.O. Box 226
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Chairman
Twenty-nine Palms Band of Mission
Indians
46-200 Harrison Place
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Schurz, NV 89427

Chairperson
Yurok Tribe
P.O. Box 1027
Klamath, CA 95548

Tribal Chairman
Santa Rosa Band of Mission Indians
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Hemet, CA 92546

Chairman
Santa Ysabel Band of Diegueno
Indians
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Santa Ysabel, CA 92070

Chairman
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Shingle Springs, CA 95682

Chairperson
Stewarts Point Rancheria
3535 Industrial Dr., Suite B-2
Santa Rosa, CA 95403

Chairperson
Table Bluff Reservation
1000 Wiyot Drive
Loleta, CA 95551

Chairman
Torres-Martinez Desert Cahuilla
Indians
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Thermal, CA 92274

Chairperson
Tule River Reservation
P.O. Box 589
Porterville, CA 93258

President
United Auburn Indian Community
575 Menlo Dr., Suite 2
Rockin, CA 95765

Chairman
Washoe Tribal Council
919 Highway 395 South
Gardnerville, NV 89410



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
California Desert District
22835 Calle San Juan de los Lagos
Riverside, CA 92553
www.ca.blm.gov/cdd



In Reply Refer To:
CR CA610-09-01/8100 (CA610.25)

July 1, 2009

The Honorable «First» «Last»«Suffix», «Title»
«Organization»
«Address»
«City», «State» «Zip»

Dear «Title» «Last»:

In the summer of 2008, you received a letter from the Bureau of Land Management (BLM) announcing that the BLM and the Department of Energy (DOE) were beginning to work on a joint Programmatic Environmental Impact Statement for Solar Energy Development (PEIS) in six southwestern states: Arizona, California, Colorado, Nevada, New Mexico, and Utah. In that letter, we invited you to become a cooperating party and offered government-to-government consultation for this federal action.

On June 30, 2009, we published a notice in the Federal Register announcing that the BLM and the DOE were also going to be doing an in-depth environmental analysis of 24 specific tracts of land, called solar energy study areas, as part of the ongoing PEIS effort to determine whether these tracts are well suited for solar energy development. Public scoping for the PEIS has been reopened until July 30, 2009, in order to give individuals and groups an opportunity to comment on any environmental issues or concerns associated with the solar energy study areas. Copies of the Federal Register notice and maps depicting the solar energy study areas are enclosed with this letter and are also available on the PEIS project Web site at:

<http://solareis.anl.gov/eis/maps/index.cfm>

We are seeking your views and comments on the PEIS and the proposed solar energy study areas. Please contact us if you have any questions or concerns about the solar energy study areas or if you would like to enter into government-to-government consultation on the Solar PEIS.

We would also like to take this opportunity to update you on the status of the PEIS and solar energy development on public lands. The BLM and the DOE held 11 public scoping meetings for the PEIS in June and July 2008 in which nearly 600 people participated. During the initial scoping period we received about 16,000 comments from the public. The transcripts from those meetings and the comments received are now available through the PEIS project Web site: <http://solareis.anl.gov/>. Comments from the second scoping period will be added to the Web site as they are received.

As the BLM and the DOE work together on the PEIS, the BLM continues to receive new solar energy applications for public lands. Although the BLM had announced that we would not accept new applications while the PEIS was underway, the public voiced many concerns about that decision in light of the Nation's energy needs, and we changed our initial policy. As of June 19, 2009, the BLM had received about 225 applications covering nearly 1.8 million acres. Most of those applications are for BLM-administered lands located in California, Nevada and Arizona.

Until the PEIS results in a new BLM program for solar energy development, solar energy development applications will continue to be processed under BLM's Solar Energy Development policy of 2007. That policy established a framework for BLM land managers to process right-of-way applications for solar energy development projects on public lands. That policy directs BLM field offices to be proactive in responding to demands for solar energy projects while protecting the environment. Solar energy development proposals will be evaluated within BLM's land use planning process. Lands designated as wilderness and wilderness study areas are off limits to solar energy development, but other lands will be considered on a case-by-case basis. In evaluating solar energy applications, the BLM will comply with the requirements of the Endangered Species Act and the National Historic Preservation Act (NHPA), along with other laws and regulations, including consultation with Indian tribes. In addition, BLM will cooperate with state regulators in evaluating these applications. At the conclusion of the PEIS, the BLM expects to implement a new solar development program that includes best management practices and mitigation measures for solar energy development on public lands and that may designate some or all of the solar energy study areas as solar energy zones where solar energy development will have priority over other land uses.

The types of solar energy development being proposed for public lands require hundreds and, in some cases, thousands of acres for each facility. The BLM recognizes that the number of applications and size of the proposed projects have the potential to dramatically affect the public lands. During the review and analysis of individual projects, the BLM intends to actively seek the involvement of Indian tribes as early as possible through all available avenues, including the commenting process of the National Environmental Policy Act (NEPA), the Section 106 consultation process of the NHPA, and our general responsibilities to actively engage Indian tribes in consultation on a government-to-government basis.

In addition, the BLM will consult the State Historic Preservation Office (SHPO) and other interested parties in compliance with Section 106 of the NHPA. BLM has entered into consultation with the Advisory Council on Historic Preservation (ACHP) and the SHPOs of the six western states covered by the PEIS and has determined that our section 106 responsibilities may be best met by developing a Programmatic Agreement (PA) for the new solar energy program. It is our hope that such an agreement will provide a clear roadmap and understanding of how the affected parties will effectively and efficiently address section 106 for the solar energy program through the various stages leading toward development. The BLM intends to provide more information about the proposed PA as we move forward in our consultations.

If you would like more information about solar energy development or about a specific project, please contact either your local BLM field office or the tribal liaison listed on the attached BLM Tribal Contact List. You may also contact Linda Resseguie, BLM's project manager for the Solar PEIS, by email at linda_resseguie@blm.gov or by telephone at (202) 452-7774.

Sincerely,



Steven J. Borchard
California Desert District Manager

Enclosures

Federal Register Notice of 6/30/2009
Map Page Explanation Sheet
Map: Solar Energy Study Areas in Arizona
Map: Solar Energy Study Areas in California
Map: Solar Energy Study Areas in Colorado
Map: Solar Energy Study Areas in Nevada
Map: Solar Energy Study Areas in New Mexico
Map: Solar Energy Study Areas in Utah
BLM State Tribal Liaison and Deputy Preservation Officer Contact List

cc electronically

Robin Burgess, WO240
Linda Resseguie, WO350
Reid Nelson (Nancy Brown), ACHP
Linda Jorgenson, DOE
Byron Loosle, UT934
Dan Haas, CO931
Michael Johnson, AZ931
Tom Burke, NV933

Signa Larralde, NM930
Charlotte Hunter, CA930
SHPO (AZ, CA, NV, NM, CO, UT)

Tribal staff will be contacted and provided
electronic copies of this letter by BLM Field
Offices in the affected States.

ADDRESSES: Submit comments related to the project by any of the following methods:

- *E-mail:*
Nextlight Primm NV_SEP@blm.gov
- *Fax:* (702) 515-5010, attention Gregory Helseth.
- *Mail:* BLM, Las Vegas Field Office, Attn: Gregory Helseth, 4701 North Torrey Pines Drive, Las Vegas, NV 89130-2301.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the mailing list, contact Gregory Helseth, Renewable Energy Project Manager, at (702) 515-5173; or e-mail at *Nextlight_Primm_NV_SEP@blm.gov*.

SUPPLEMENTARY INFORMATION: NextLight Renewable Power, LLC, has submitted two applications for rights-of-way for the construction, operation, maintenance, and termination of two solar energy generation sites. The two applications are identified as NVN-085077 Silver State South Solar Project, and NVN-085801 Silver State North Solar Project. The proposed projects would consist of photovoltaic panels and related right-of-way appurtenances, including a substation and switchyard facilities. The proposed projects, combined, would produce approximately 400 megawatts of electricity, and would be located on approximately 7,840 acres of public lands east of Primm, Nevada.

Issues that are anticipated to be addressed in this EIS include threatened and endangered species impacts, visual impacts, socioeconomic impacts, and cumulative impacts. The EIS will analyze the site-specific impacts on air quality, biological resources, cultural resources, water resources, geological resources and hazards, hazardous materials handling, land and airspace use, noise, paleontological resources, public health, socioeconomic, soils, traffic and transportation, visual resources, waste management, worker safety, and fire protection, as well as facility design engineering, efficiency, reliability, transmission system engineering, transmission line safety, and nuisance. Native American Tribal consultations will be conducted in accordance with policy, and Tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, as well as individuals or organizations that may be interested in or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

Documents pertinent to this project may be examined at the Las Vegas Field Office. Additional opportunities for public participation will be provided upon publication of the draft EIS.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR Part 2800)

Robert B. Ross Jr.,
Las Vegas Field Manager.
[FR Doc. E9-15470 Filed 6-29-09; 8:45 am]
BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO350000.L14300000]

Notice of Availability of Maps and Additional Public Scoping for Programmatic Environmental Impact Statement To Develop and Implement Agency-Specific Programs for Solar Energy Development; Bureau of Land Management Approach for Processing Existing and Future Solar Applications

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Department of Energy (DOE) and the Bureau of Land Management (BLM) (the Agencies) are announcing the availability of maps depicting solar energy study areas to be analyzed in their joint Programmatic Environmental Impact Statement to Develop and Implement Agency-Specific Programs for Solar Energy Development (Solar PEIS) and the opportunity for additional public scoping. The BLM is issuing this Notice to inform the public of the availability of the solar energy study area maps; to solicit public comments for consideration in identifying environmental issues, existing resource data, and industry interest with respect to the solar energy study areas in particular; and to explain how the BLM will address existing and future solar energy development applications on BLM-administered lands.

DATES: The time period for public comments starts with the publication of this notice in the **Federal Register** and

will continue through July 30, 2009. Comments received or postmarked after that date will be considered to the extent practicable.

ADDRESSES: You may submit written comments by the following methods:

- Electronically, using the online comment form available on the project Web site: <http://solareis.anl.gov>. This is the preferred method of commenting.
- In writing, addressed to: Solar Energy PEIS, Argonne National Laboratory, 9700 S. Cass Avenue—EVS/900, Argonne, IL 60439.

Availability of Maps: Maps of the solar energy study areas are available electronically from the project Web site: <http://solareis.anl.gov>. The maps may also be obtained from the following BLM offices:

Arizona State Office, One North Central Avenue, Suite 800, Phoenix, AZ 85004.

California State Office, 2800 Cottage Way, Suite W-1623, Sacramento, CA 95825.

Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215.

Nevada State Office, 1340 Financial Blvd., Reno, NV 89520.

New Mexico State Office, 1474 Rodeo Road, Santa Fe, NM 87505.

Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT 84101.

FOR FURTHER INFORMATION CONTACT: For further information contact: Linda Resseguie, BLM Washington Office, *linda_reseguie@blm.gov*, 202-452-7774; or Lisa Jorgensen, Department of Energy, Golden Field Office, *lisa.jorgensen@go.doe.gov*, 303-275-4906. You may also visit the Solar PEIS Web site at <http://solareis.anl.gov>.

SUPPLEMENTARY INFORMATION: On May 29, 2008, the Agencies published a Notice of Intent to Prepare a Programmatic Environmental Impact Statement to Evaluate Solar Energy Development (73 FR 30908). Subsequently, the Agencies held a series of public scoping meetings, received public comments, and published a scoping summary report, available at <http://solareis.anl.gov>.

On March 11, 2009, the Secretary of the Interior issued Secretarial Order No. 3285, which announced a policy goal of identifying and prioritizing specific locations best suited for large-scale production of solar energy. Also, the BLM received funding from the American Recovery and Reinvestment Act to accelerate permitting of renewable energy projects on public lands. A portion of that funding is being used to enhance the Solar PEIS by enabling in-depth environmental analysis of 24 specific tracts of public

lands which have excellent solar development potential and limited resource conflicts.

The Solar PEIS will help BLM identify lands appropriate for solar energy development and establish a comprehensive list of mitigation requirements applicable to all future solar energy development on BLM-administered lands. As part of the Solar PEIS, the Agencies will conduct in-depth environmental analyses of 24 solar energy study areas for the purpose of determining whether such areas should be designated as Solar Energy Zones (SEZs), specific locations determined best suited for large-scale production of solar energy.

The solar energy study areas were identified based on preliminary results of California's Renewable Energy Transmission Initiative, the Western Governors' Association Western Renewable Energy Zone and Transmission Study, and existing BLM resource information. Criteria used to identify solar energy study areas include requirements that the area: be a minimum size of 2,000 acres, be near existing roads and existing or designated transmission line routes, and have a slope of less than 5%. Sensitive resource areas were also removed from consideration, including the following categories of lands:

- (1) National Landscape Conservation System lands (except that lands within the California Desert Conservation Area that have no other special designation may be included in a solar energy study area);
- (2) Threatened and endangered species designated critical habitat;
- (3) Back-country byways;
- (4) Areas of known Tribal concern;
- (5) Areas of known high cultural site density; and
- (6) Areas designated for right-of-way avoidance or right-of-way exclusion in BLM land use plans. Such areas include BLM areas of critical environmental concern, areas with important visual resources, special recreation management areas, areas allocated to maintain wilderness characteristics, wildlife movement corridors, and areas where the BLM has made a commitment to take certain actions with respect to sensitive species habitat.

Some or all of the solar energy study areas may be found appropriate for designation as SEZs as described above. The Agencies are making the maps of the solar energy study areas available to the public and soliciting written comments to provide an opportunity for public input as part of the ongoing Solar PEIS analysis. Specifically, the Agencies request information and comments on

the potential for significant impacts of solar energy development on known resources within a solar energy study area and the economic viability of solar energy development within specific areas. No additional public meetings are planned prior to the release of the draft Solar PEIS; however, the public will have additional opportunities to comment when the draft Solar PEIS is released.

The BLM's objective for the Solar PEIS is to create a more efficient process for authorizing solar energy development on public lands that would also:

- Facilitate near-term utility-scale solar energy development on public lands;
- Minimize potential environmental, social, and economic impacts;
- Provide the solar industry flexibility in proposing and developing solar energy projects (location, facility size, technology, etc.);
- Optimize existing transmission corridors; and
- Standardize the authorization process for solar energy development on BLM-administered lands.

The BLM will continue to accept new solar applications. The BLM is in the process of considering alternative procedures, such as non-competitive and competitive, application fees, and diligent development requirements, for solar energy development applications within the solar energy study areas. Any entity with an existing application for lands within the solar energy study areas received by the BLM prior to June 30, 2009 will continue to be processed under the BLM's current procedures. Applications received after June 30, 2009 for lands inside the solar energy study areas will be subject to the Record of Decision (ROD) for the Solar PEIS and any alternative procedures developed by BLM for non-competitive and competitive processes. All applications received for lands outside of the solar energy study areas will be processed under the BLM's current procedures. Any right-of-way grant for a solar energy application issued after the BLM's ROD for the Solar PEIS may be issued subject to the requirements adopted in the ROD.

The Agencies invite interested Federal and State agencies, organizations, Native American tribes and members of the public to submit written comments to assist in identifying significant environmental issues, existing resource data, and industry interest with respect to the solar energy study areas. You may submit comments in writing using one of the methods listed in the "ADDRESSES" section above. Before

including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comments—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mike Pool,

Acting Director, Bureau of Land Management.
[FR Doc. E9-15471 Filed 6-29-09; 8:45 am]

BILLING CODE 4310-04-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO350000.L14300000]

Notice of Proposed Withdrawal and Opportunity for Public Meeting: Arizona, California, Colorado, Nevada, New Mexico, and Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw approximately 676,048 acres of public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, on behalf of the Bureau of Land Management (BLM) to protect and preserve solar energy study areas for future solar energy development. This notice segregates the lands for up to 2 years from surface entry and mining while various studies and analyses are made to support a final decision on the withdrawal application. The lands will remain open to the mineral leasing laws.

DATES: Comments and requests for a public meeting must be received by September 28, 2009.

ADDRESSES: Comments and meeting requests should be sent to the BLM Director, 1849 C Street NW. (WO350), Washington, DC, 20240.

FOR FURTHER INFORMATION CONTACT: Linda Resseguie, BLM, 202-452-7774, or one of the following BLM State Offices.

SUPPLEMENTARY INFORMATION: The applicant is the Bureau of Land Management at the address above and its petition requests the Secretary of the Interior to withdraw, subject to valid existing rights, approximately 676,048 acres of public lands located in the States of Arizona, California, Colorado, Nevada, New Mexico, and Utah from

MAPS OF SOLAR ENERGY STUDY AREAS FOR IN-DEPTH STUDY

The U.S. Department of Energy (DOE) and the Bureau of Land Management (BLM (the Agencies) are preparing a draft Programmatic Environmental Impact Statement (PEIS) pursuant to the National Environmental Policy Act to evaluate utility-scale solar energy development in six Western states: Arizona, California, Colorado, Nevada, New Mexico, and Utah. In the course of the PEIS analyses, the Agencies have identified a number of tracts of BLM-administered land for in-depth study for solar development.

Three study areas have been identified in Arizona: Brenda (4,321 acres), Bullard Wash (8,201 acres), and Gillespie (3,970 acres).

Four study areas have been identified in California: Imperial East (12,830 acres), Iron Mountain (109,642 acres), Pisgah (26,282 acres), and Riverside East (202,295 acres).

Four study areas have been identified in Colorado: Antonito Southeast (9,598 acres), De Tilla Gulch (1,522 acres), Fourmile East (3,882 acres), and Los Mogotes East (5,909 acres).

Three study areas have been identified in New Mexico: Afton (55,810 acres), Mason Draw (17,984 acres), and Red Sand (47,666 acres).

Seven study areas have been identified in Nevada: Amargosa Valley (32,699 acres), Dry Lake (16,516 acres), Delamar Valley (17,932 acres), Dry Lake Valley North (49,775 acres), East Mormon Mountain (7,418 acres), Gold Point (5,830 acres), and Miller's (19,205 acres).

Three study areas have been identified in Utah: Escalante Valley (6,648 acres), Milford Flats South (6,440 acres), and Wah Wah Valley (3,676 acres).

The attached maps show the locations of these solar energy study areas.

About the Solar Energy PEIS

The Agencies are preparing the Solar Energy PEIS to reach goals established by Congress, as set forth in Title II, Section 211 of the Energy Policy Act of 2005, and in accordance with Executive Order 13212, Actions to Expedite Energy-Related Projects, and in response to the Secretary of the Interior's Secretarial Order No. 3285 issued March 11, 2009. On the basis of the information and analyses developed in the PEIS, the Agencies will develop and implement agency-specific programs that would establish environmental policies and environmental impact mitigation strategies for solar energy development.

Public Comment Solicitation

On June 30, 2009, the Agencies issued a Federal Register Notice of Availability informing the public of the availability of the solar energy study area maps, and soliciting public comments for consideration in identifying environmental issues, existing resource data, and industry interest with respect to the proposed study areas. Some or all of the proposed solar energy study areas may be found appropriate for designation as solar energy zones in the future. Criteria for identifying the study areas are listed in the Notice of Availability.

The public comment period ends July 30, 2009. Comments on the solar energy study areas may be submitted electronically through the public comment form on the Solar Energy Development Programmatic EIS Information Center Web site at <http://solareis.anl.gov>. Written comments can also be mailed to Solar Energy PEIS, Argonne National Laboratory, 9700 S. Cass Avenue--EVS/900, Argonne, IL 60439.

For More Information

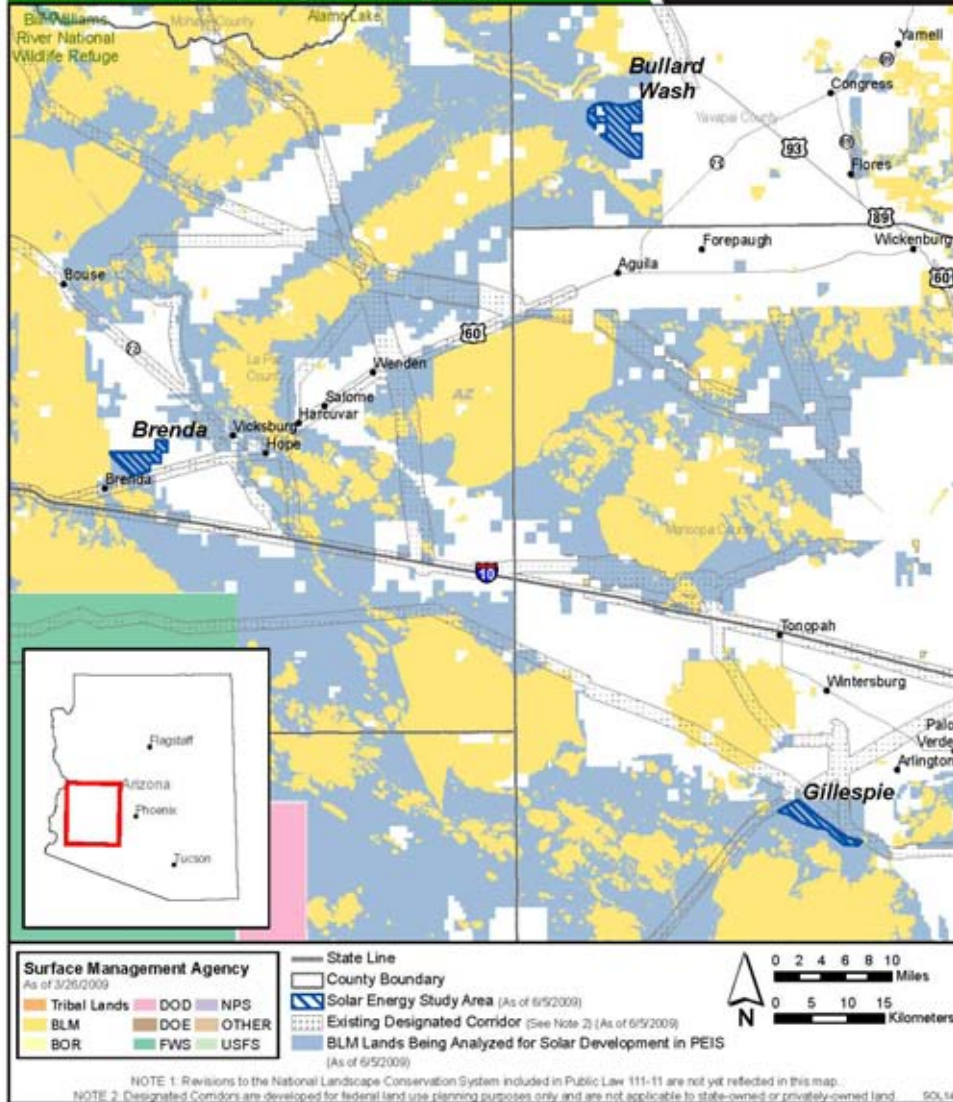
Copies of the solar energy study area maps, Federal Register notice, and other information about the solar energy study area maps and the Solar Energy PEIS are available on the Web site at <http://solareis.anl.gov>. For questions regarding map content, please contact Linda Resseguie, BLM Washington Office, linda_resseguie@blm.gov, 202-452-7774. For questions regarding use of the GIS data or GIS-enabled maps, please contact Brian Cantwell, Argonne National Laboratory, bcantwell@anl.gov, 630-252-6802.

Solar Energy Study Areas in Arizona

Map Prepared June 5, 2009



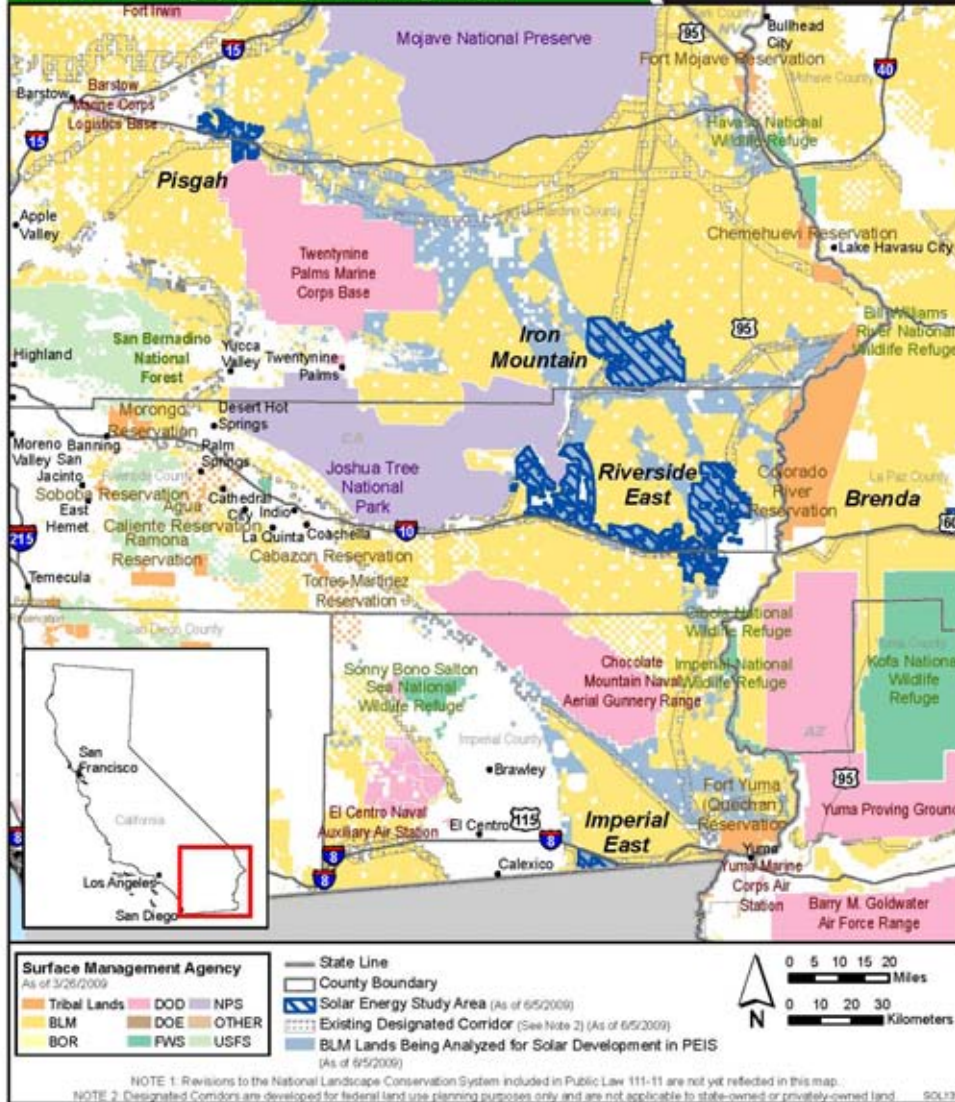
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for Use in Preparation of their Programmatic Environmental Impact Statement
to Develop and Implement Agency-Specific Programs for Solar Energy Development



Solar Energy Study Areas in California

Map Prepared June 5, 2009

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to Develop and Implement Agency-Specific Programs for Solar Energy Development

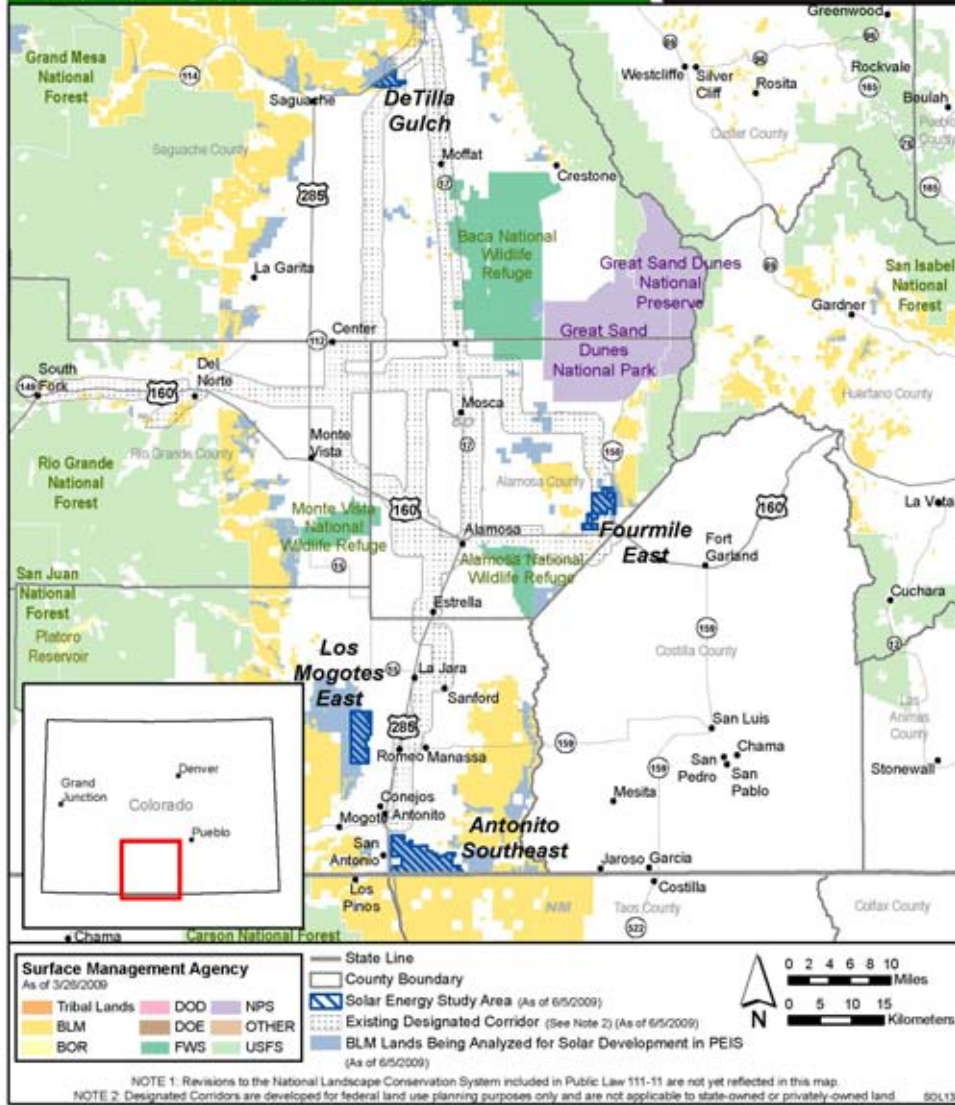


Solar Energy Study Areas in Colorado

Map Prepared June 5, 2009



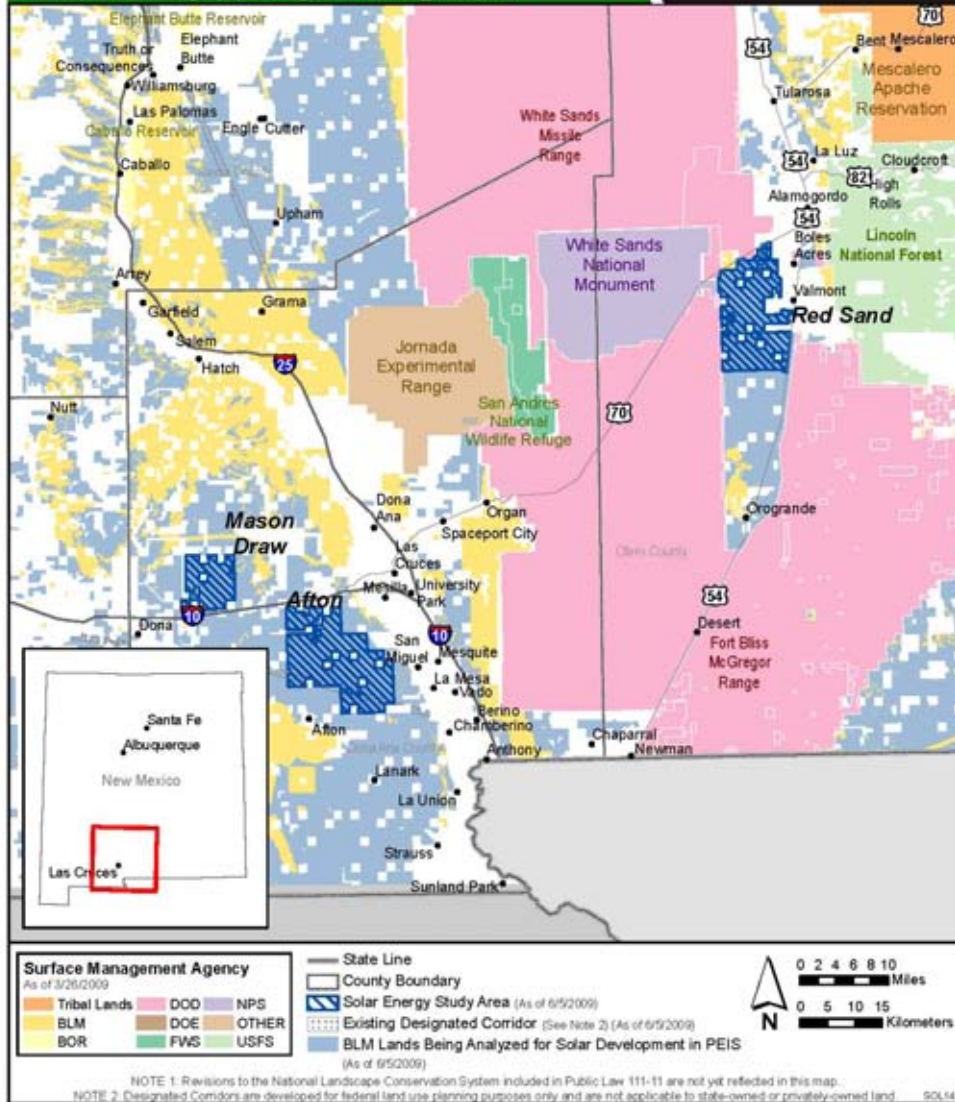
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Solar Energy Study Areas in New Mexico

Map Prepared June 5, 2009

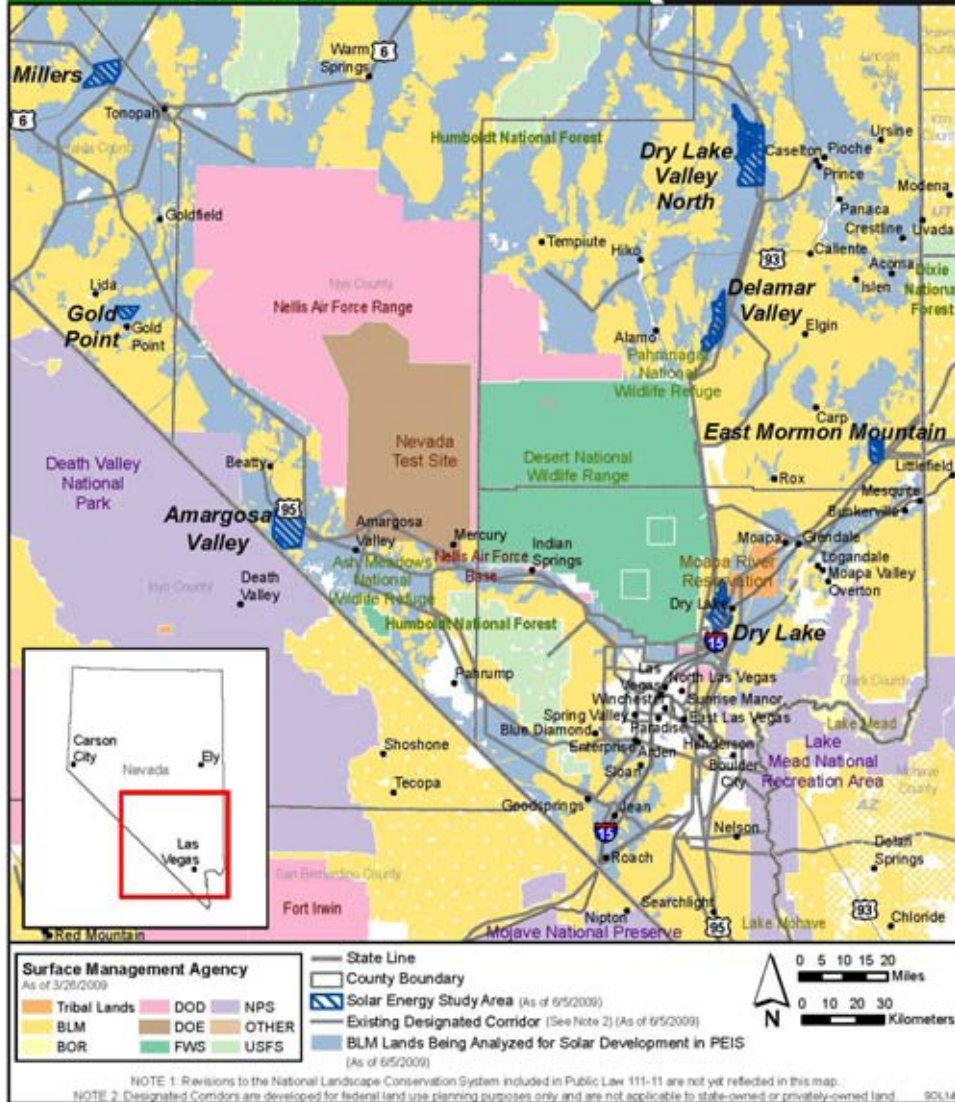
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Solar Energy Study Areas in Nevada

Map Prepared June 5, 2009

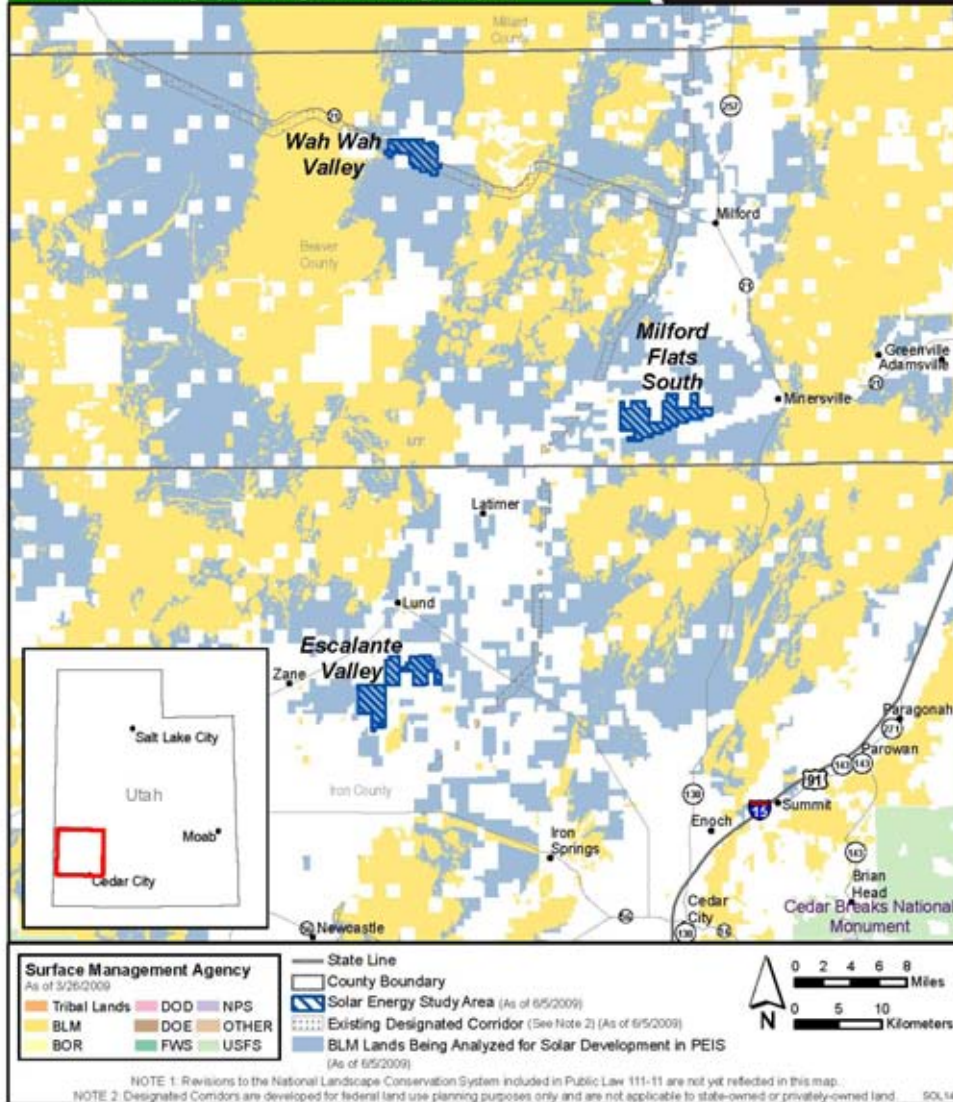
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Solar Energy Study Areas in Utah

Map Prepared June 5, 2009

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to Develop and Implement Agency-Specific Programs for Solar Energy Development



Bureau of Land Management
Solar Energy Programmatic Environmental Impact Statement
State Tribal Liaison and Deputy Preservation Officers

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SOLAR ENERGY PROGRAMMATIC ENVIRONMENTAL IMPACTS STATEMENT

DISTRIBUTION LIST

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Fort Washakie, WY 82514

Donnie Tofpi, Chairman
Kiowa Tribe of Oklahoma
P.O. Box 369
Carnegie, OK 73015

Robert Cournoyer, Chairman
Yankton Sioux Tribe
P.O. Box 248
Marty, SD 57361-0248

Michael Selvage, Chairman
Sisseton-Wahpeton Sioux Tribe
P.O. Box 509
Agency Village, SD 57262

John Billie, President
Navajo Nation, Aneth Chapter
P.O. Box 430
Montezuma Creek, UT 84534

Jeannie Borchardt, Chairwoman
Paiute Indian Tribe of Utah, Indian
Peak Band
440 N. Paiute Drive
Cedar City, UT 84720

Herman Farley, President
Navajo Nation, Red Mesa Chapter
P.O. Box 422
Montezuma Creek, UT 84534

Clarence Rockwell, Executive Director
Navajo Utah Commission
P.O. Box 570
Montezuma Creek, UT 84534

Rupert Steele, Chairman
Goshute Business Council
P.O. Box 6104
Ibapah, UT 84034

Rodney Bordeaux, President
Rosebud Sioux Tribal Council
P.O. Box 430
Rosebud, SD 57570

Michael Jandreau, Chairman
Lower Brule Sioux Tribal Council
187 Oyate Circle
Lower Brule, SD 57548

John Yellow Bird Steele, President
Oglala Sioux Tribal Council
P.O. Box 2070
Pine Ridge, SD 57770

James Black, President
Navajo Nation, Oljato Chapter
P.O. Box 360455
Monument Valley, UT 84531

Curtis Cesspooch, Chairperson
Ute Indian Tribe
P.O. Box 190
Ft. Duchesne, UT 84026

Bruce Perry, Chairman
Northwestern Band of Shoshone
Nation
707 N. Main St
Brigham City, UT 84302

Glenn Rogers, Chairman
Paiute Indian Tribe of Utah, Shivwits
Band
370 North 400 West #2
St. George, UT 84770

Ivan D. Posey, Chairman
Eastern Shoshone Business Council
P.O. Box 217
Fort Washakie, WY 82514



THE NAVAJO NATION

JOE SHIRLEY, JR.
PRESIDENT

BLM - UT - 950

2008 JUL -7 PM 10: 16

July 03, 2008

#910-JM3
due: 7-21-08

UTAH STATE OFFICE STATE DIRECTORS OFFICE			
RT	OFFICE	INITIAL	DATE
	SD	COO	
	ASD		
	LE		
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	EEO		BEN SHELLY
	NAT RES		VICE PRESIDENT
	LND MIN		
	SUP SVC		
			910 cy

Ms. Selma Sierra, State Director
Bureau of Land Management
P.O. Box 45155
Salt Lake City, Utah 84145

Subject: Tribal Consultation Request. Proposing to evaluate solar energy development on BLM lands in Arizona, California, New Mexico, Utah, Nevada and Colorado.

Dear Ms. Sierra:

Our apology for an oversight and missing the deadline date of our response to your request, please note that in reference to your letter of June 23, 2008, the Historic Preservation Department – Traditional Culture Program (HPD-TCP) received a request for consultation regarding the above undertaking and/or project. After reviewing your consultation documents, HPD-TCP has concluded the proposed undertaking/project area **will not impact** any Navajo traditional cultural properties or historical properties.

However, if there are any inadvertent discoveries made during the course of the undertaking, your agency shall cease all operations within the project area. HPD-TCP shall be notified by telephone within 24 hours and a formal letter be sent within 72 hours. All work shall be suspended until mitigation measures/procedures have been developed in consultation with the Navajo Nation.

The HPD-TCP appreciates your agency's consultation efforts, pursuant to 36 CFR Pt. 800.1 (c)(2)(iii). Should you have additional concerns and/or questions, do not hesitate to contact me. My contact information is listed below.

Sincerely,

Judy Martin for

Mr. Tony Joe, Program Manager
Historic Preservation Department – Traditional Culture Program

Tel: 928.871.7688 Fax: 928.871.7886 E-mail: tonyjoe@navajo.org

TCP 08-707
File: Office file/chrono

Janet Eidsness <jeidsness@bluelakerancheria-nsn.gov>

To
"linda_resseguie@blm.gov" <linda_resseguie@blm.gov>,
"Charlotte_Hunter@blm.gov"<Charlotte_Hunter@blm.gov>

07/09/2009 05:34 PM

cc

Subject
PEIS for Solar Energy Development, Six SW States including California -
Notice to Blue Lake Rancheria

Hello,

Thank you for providing notice of the BLM and DOE's efforts to develop a PA for Section 106 compliance for the subject undertaking, as described in correspondence to our Chairperson, Claudia Brundin, on July 1, 2009 (signed by Steven J. Borchard).

The California study area is located well outside the Blue Lake Rancheria Tribe's cultural area of geographical concern. We do not wish to participate in consultation at this time.

Best Regards and Good Luck!

Janet P. Eidsness, M.A. RPA
Tribal Heritage Preservation Officer
Blue Lake Rancheria
P.O. Box 428 (428 Chartin Road)
Blue Lake, CA 95525
Voice (707) 668-5101 Extension 329
Fax (707) 668-4272
jeidsness@bluelakerancheria-nsn.gov

From: Linda_Resseguie@blm.gov [mailto:Linda_Resseguie@blm.gov]
Sent: Monday, July 13, 2009 3:01 PM
To: Wescott, Konstance L.; Michael_D_Johnson@blm.gov
Subject: Solar PEIS - Klagetoh Chapter, Navajo Nation

Konnie and Michael, I wanted to confirm that Nancy Chee with the Klagetoh Chapter of the Navajo Nation called me last week to discuss our July 1, 2009, outreach letter. She indicated that the solar energy study areas were not close to Chapter lands and while there had previously been interest in locating solar energy projects on Chapter lands, there seemed to be less interest at this point. My understanding was that this Chapter is not interested in further consultation at this time.

Linda J. Resseguie
Realty Specialist WO - 350
202.452.7774; fax 202.452.7708

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2
3

AT LARGE

Jesse "Jay" Taken Alive

Margaret M. Carter

Charles W. Murphy

Dave Archambault II

Joseph McNeil Jr.

Jesse McLaughlin



Ron His Horse Is Thunder

Chairman

Avis Little Eagle

Vice Chairman

Geraldine Agard

Secretary

DISTRICTS

Robert Cordova
Cannonball District

Henry Harrison
Long Soldier District

Joe Strongheart Sr.
Wakpala District

Frank White Bull
Kenel District

Joe White Mountain Sr.
Bear Soldier District

Milton Brown Otter
Rock Creek District

Frank Jamerson Jr.
Running Antelope District

Richard D. Bird Jr.
Porcupine District

July 21, 2009

Steven, J. Borchard
BLM, California Desert District Manager
22835 Calle San Juan de los Lagos
Riverside, CA 92553

Re: CR CA610-09-01/8100 (CA610.25)

Dear Mr. Borchard,

In regards to the joint Programmatic Environmental Impact Statement for Solar Energy Development (PEIS), we offer the following comments.

We would ask that before any ground disturbance begins, you conduct a Class III archeological survey in order to potentially locate any Native American artifacts and/or items of cultural significance. We also ask that you utilize Native Americans who have been specifically trained to conduct these types of ground surveys.

Should you have any questions, please contact Waste' Win Young, Director of the Standing Rock Sioux Tribal Historic Preservation Office at 701-854-8512.

Sincerely,


Ron His Horse Is Thunder, Chairman
STANDING ROCK SIOUX TRIBE

BLDG. 1 NORTH STANDING ROCK AVE • P.O. BOX D • FORT YATES, NORTH DAKOTA 58538
PHONE: 701-854-7201 or 701-854-8500 • FAX 701-854-7299



Legal Department

P.O. BOX D
FORT YATES, NORTH DAKOTA 58538



Greg Miller
~~*Steven Bc*~~
BLM, Cal
22835 C
Riversid

9255393046 C034 illu

1
2

"Darrel Cruz" darrel.cruz@washoetribe.us

To

<Susan_McCabe@blm.gov>

07/28/2009 03:08 PM

cc

Subject

RE: Solar Programmatic Environmental Impact Statement
PEIS)/Washoe Tribe of California and Nevada

Hi Susan,

The areas look like they out of our territory. Based on the map depictions I will not be pursuing this matter. If you have contact with Mr. Kerwin please let him know that it is out of our territory. He has been calling Lynda Shoshone about it.

Thanks Susan,

Darrel

Darrel Cruz CRO/THPO
Tribal Historic Preservation Officer
919 Highway 395 South
Gardnerville, Nevada, 89410
Work (775) 888-0936
Cell (775) 546-3421
FAX (775) 888-0937
darrel.cruz@washoetribe.us



MOAPA BAND OF PAIUTES

MOAPA RIVER INDIAN RESERVATION

P.O. BOX 340

MOAPA, NEVADA 89025

TELEPHONE (702) 865-2787

Fax (702) 865-2875

July 28, 2009

Solar Energy PEIS
Argonne National Laboratory
9700 S. Cass Avenue
EVS/900
Argonne, IL 60439

Re: solar energy study area along the southwest boundary of the Moapa River Indian Reservation near the Arrow Canyon Range

Dear Staff:

The Moapa Band of Paiutes has just learned of the solar energy study area on BLM land along the southwest boundary of the Moapa River Indian Reservation near the Arrow Canyon Range. Because of the close proximity of the proposed site to the reservation I think it is important that the Tribe have an opportunity to study this proposal and provide comments to BLM and DOE.

We request an extension of 60 days for the submission of comments on the solar study area and the potential impact to the Moapa Band of Paiutes. The requested extension will give the Tribe the necessary time to evaluate the proposal and determine its impact, if any, on the reservation.

Sincerely,

A handwritten signature in cursive script that reads "Philbert Swain".

Philbert Swain
Tribal Chairman



**THE
NAVAJO
NATION**

JOE SHIRLEY, JR.
PRESIDENT

BEN SHELLY
VICE-PRESIDENT

August 7, 2009

Steven J. Borchard
California Desert District Manager
Bureau of Land Management
22835 Calle San Juan de los Lagos
Riverside, CA 92553

Dear Mr. Borchard:

Our apology for an oversight and missing the deadline date of our response to your request, and that the Navajo Nation Historic Preservation Department – Traditional Culture Program (NNHPD-TCP) is in receipt of the Bureau of Land Management’s (BLM) proposed project. BLM and the Department of Energy (DOE) were beginning to work on a joint programmatic Environmental Impact Statement for Solar Energy Development (PEIS) in six southwestern states: Arizona, California, Colorado, Nevada, New Mexico, and Utah.

After reviewing your consultation documents, HPD-TCP has concluded the proposed undertaking/project area **will not impact** any Navajo traditional cultural properties. The HPD-TCP, on behalf of the Navajo Nation has no concerns at this time.

However, the determination made by the HPD-TCP does not necessarily mean that the Navajo Nation has no interest or concerns with the proposed project. If the proposed project inadvertently discovers habitation sites, plant gathering areas, human remains and objects of cultural patrimony the HPD-TCP request that we be notified respectively in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA).

The HPD-TCP appreciates the Bureau of Land Management’s consultation efforts, pursuant to 36 CFR Pt. 800.1 (c)(2)(iii). Should you have any additional concerns and/or questions, do not hesitate to contact me electronically at tonyjoe@navajo.org or telephone at 928-871-7750. Mr. Kelly Francis will be taking over all Section 106 Consultations soon within the near future.

Sincerely,

Tony H. Joe, Jr., Supervisory Anthropologist (Section 106 Consultations)
Historic Preservation Department – Traditional Culture Program

TCP 2009-734
CC: Office File/Chrono

HISTORIC PRESERVATION DEPARTMENT P O BOX 4950 WINDOW ROCK, ARIZONA 86515 928.871.7198(V) 928.871.7886(FAX)



PUEBLO OF LAGUNA

P.O. BOX 104
LAGUNA, NEW MEXICO 87026



(505) 552-6598
(505) 552-6654
(505) 552-6656

Office of:
The Governor
The Secretary
The Treasurer

Rolla

August 14, 2009

Mr. Steve J. Borchard
California Desert District Manager
Bureau of Land Management
California Desert District
22835 Calle San Juan de los Lagos
Riverside, CA 92553

RECEIVED
BLM
09 AUG 20 AM 9:03
CALIFORNIA DESERT DISTRICT
RIVERSIDE, CALIFORNIA

Dear Mr. Borchard:

RE: CR CA610-09-01/8100 (CA610.25)

The Pueblo of Laguna appreciates your consideration to comment on the possible interest your project may have on any traditional or cultural properties.

The Pueblo of Laguna has determined that the undertaking WILL NOT have a significant impact at this time. However, in the event that any new archaeological sites are discovered and any new artifacts are removed, we request to be notified to review items. We also request photographs of items. According to our unpublished migration history, our ancestors journeyed from the north through that area and settled for periods of time before traveling to our present location. Therefore, the possibilities of some findings may exist.

We thank you and your staff for the information provided.

Sincerely,

John E. Antonio
John E. Antonio, SK
Governor, Pueblo of Laguna

From: Signa_Larralde@blm.gov [mailto:Signa_Larralde@blm.gov]
Sent: Friday, August 14, 2009 9:44 AM
To: Verhaaren, Bruce T.
Cc: Hartmann, Heidi M.; Wescott, Konstance L.
Subject: RE: Study Area data for NM - Solar PEIS

Bruce,

Thanks very much for all your help with shapefiles and your info about the maps. We had a good meeting with Zuni yesterday. Most of the time was taken up by a Sun Zia Transmission Line presentation, but I did give them a briefing about the Solar PEIS. In short, they advised working directly with their cultural resources people to review any concerns about the study areas, and also said that it may be important for them to visit the study areas.

Thanks again, and I'll be in touch--

Signa

Signa Larralde
State Archaeologist
New Mexico State Office
Bureau of Land Management
1474 Rodeo Road
Santa Fe, NM 87505
phone 505 438-7637
fax 505 438-7426



QUECHAN INDIAN TRIBE
Ft. Yuma Indian Reservation

P.O. Box 1899
Yuma, Arizona 85366-1899
Phone (760) 572-0213
Fax (760) 572-2102

September 3, 2009

Solar Energy PEIS
Argonne National Laboratory
9700 S Cass Avenue – EVS/900
Argonne, IL 60439

Re: Quechan Indian Tribe's Comments on Programmatic Environmental Impact Statement for Solar Energy Development

Dear Solar Energy PEIS Team,

Thank you for notifying us of the preparation of a Programmatic Environmental Impact Statement for the six southwestern states. Portions of BLM lands currently being analyzed for solar development fall within the traditional land area of the Quechan Indian Tribe. In addition, the Tribe has federal reserved rights in the waters of the Colorado River and is concerned about impairment of the quantity and quality of the water resources.

I. Cultural Resource Impacts

The Tribe's concerns regarding cultural resource protection and preservation must be taken into consideration by the United States. This is especially true when projects are proposed within the Tribe's traditional land area. In cases like this, where proposed projects are likely to affect cultural resources, the federal government has an obligation under existing resource protection laws, and pursuant to its trust obligation to the Tribe, to gather accurate information about the location of cultural resources so that it can make a fully informed decision, and then to adequately protect those cultural resources from harm.

The Quechan people and their ancestors have inhabited the area surrounding the confluence of the Colorado and Gila Rivers for centuries. The Indian Claims Commission found that the Quechan Tribe's historic lands extended well beyond the boundaries of the present day Fort Yuma Indian Reservation and includes certain lands to the north and west of the Fort Yuma Indian Reservation that fall within the solar energy study areas. *See 8 Ind. Cl. Com. 111, 130 (Sept. 30, 1959).*

The Quechan Tribe, who was here prior to the arrival of the Spaniards or Europeans, had several villages scattered throughout what is now Arizona and California. The traditional land area of the Tribe encompasses the lands from Blythe, CA into Mexico and from Gila Bend, AZ to Ocotillo, CA. It is within this geographic area that resources were utilized and the Tribe lived. Plants, animals, landforms, water, and cultural resources must all be considered as they are all used together to tell the history of the Quechan Tribe.

The area is rich in cultural resources that could be impacted by large-scale solar development projects. BLM's 2008 Final Environmental Impact Statement for the Yuma Field Office Resource Management Plan noted that over 4,300 archaeological sites have already been documented within BLM's Yuma Field Office planning area (which overlaps in part with the solar planning area). See page 3-58 of the BLM FEIS. This is especially impressive given that only 16% of that planning area has been surveyed for cultural resources, according to BLM's FEIS. Thus, there could be tens of thousands of additional resources that exist in the area and a portion of these could be impacted or permanently destroyed by new solar development projects. This highlights the importance of comprehensive surveys for resources, and appropriate protection measures, prior to any authorization for new development.

Having participated in numerous discussions for proposed solar projects, the Quechan Tribal Council along with the Quechan Cultural Committee has become aware of some of the problems these projects present.

Long-term loss of vegetation, habitat, and soil are of concern due to the need for a level project area. The potential destruction of traditional plant gathering areas and clay sources located within the project areas is quite concerning to the Tribe. The potential for animals of traditional importance to the Tribe to leave the area due to loss of habitation is also concerning. The projects also could result in a visual blight on the landscape. Moreover, given the size and scope of these projects, a significant amount of land will be disturbed for construction and operation – resulting in significant potential for permanent loss of cultural resources that exist within the Tribe's traditional area.

Due to each solar project having the potential to encompass several thousand acres, we are requesting that the clustering of these projects be prohibited, and that the projects not be located within the Tribe's traditional area that is rich in cultural resources. We are also requesting that any large-scale, centralized solar projects be placed on lands that have already been heavily disturbed, such as abandoned farm land. As mentioned previously, the Tribe has a large traditional land area with an extensive network of cultural resources and Traditional Cultural Properties (TCPs) located within. With each project the Tribe faces the loss of their culture as impacts to cultural resources affiliated with the Tribe, as well as the spiritual landscapes in which they are located, are impacted.

The Tribe is not opposed to solar energy development in general. However, the Tribe would like to recommend that BLM and other federal agencies consider the use of local

homes and buildings for the placement of solar panels. If each home, business and abandoned building were outfitted with solar panels, the need for large substations would be drastically reduced, thereby reducing the destruction of the Tribes' traditional homeland, the loss of animal habitat, and the need for water that is already at its capacity.

To alleviate the potential for impacts to cultural resources and/or spiritual landscapes we request to be consulted with at the inception of the project, prior to any plans being finalized. Experience has shown us that once the plans for a project are in place people are less open to discussing suggestions from us for mitigation. By contacting and consulting with the Tribe when the project is first proposed, it is our hope that we will be able to work through any potential concerns during the planning process.

II. Traditional Cultural Properties (TCPs) – Indian Pass

The Tribe is aware of numerous applications for solar development within or nearby the area known as Indian Pass, which is a Traditional Cultural Property area that is considered sacred to the Tribe. The Tribe opposes solar development in areas that have been identified as specific TCPs of the Tribe, such as Indian Pass.

The Indian Pass area is rich in cultural resources including a complex trail network, which includes the Xam Kwatcham trail that begins at Avikwame, in southern Nevada, and extends to Avikwalal, on the International Border. This trail is an integral part of the Tribes' creation story and contains both a physical and spiritual component. The surrounding area also includes significant cultural resources such as intaglio sites, desert pavement features, including cleared areas and rock alignments, and artifact scatters.

BLM must not allow the analysis in the programmatic impact statement to focus exclusively on archaeological site impacts, while failing to fully address impacts to resources such as cultural landscapes and TCPs. Cultural landscapes and TCPs, like Indian Pass, can not be piecemealed and need to be considered in their entirety. The focus should be on protection and preservation of the cultural significance of the area, not just its archaeological resources. It is also important to note that the introduction of any new element to this cultural landscape affects the significance of the property, which is why it is equally important to limit effects to the areas and not just to archaeological remains.

III. Water Resource Impacts

The Quechan Tribe's Fort Yuma Reservation was established at its current site in 1884, which gave the Tribe, under federal law, reserved rights to water in the Colorado River with a priority date of 1884. See *Arizona v. California I*, 376 U.S. 344 (1964); *Arizona v. California II*, 460 U.S. 605 (1983); *Arizona vs. California* (consolidated decree), 126 S. Ct. 1543 (2006). Pursuant to the 2006 Supreme Court decree, the Tribe has diversion rights of 71,616 acre-feet per year in California and diversion rights of 6,350 acre-feet per year in Arizona. These rights have a priority date of 1884.

Solar Energy PEIS
September 3, 2009
Page 4

The federal government must not approve projects that lack adequate water rights or that will result in any impairment to the Tribe's reserved water rights. In addition, the Tribe is also concerned that the proposed large-scale utility solar projects will have negative impacts on the quality of water in the Lower Colorado River Basin. In reviewing the potential impacts to environmental and cultural resources, the cumulative impacts of the solar projects must be considered.

Thank you for your consideration to the Tribe's comments. I look forward to meeting with officials at the local BLM offices to discuss the Tribe's concerns in more detail. If you have any questions, please do not hesitate to call me at (760) 572-2423.

Sincerely,



Mike Jackson, Sr.
President, Quechan Indian Tribe

cc: Senator Dianne Feinstein
Ken Salazar, Secretary of the Interior
Rahm Emanuel, White House Chief of Staff
Valerie Hauser, Advisory Council on Historic Preservation
Nancy Brown, Advisory Council on Historic Preservation
James Peterson, Deputy State Director – Senator Dianne Feinstein
Charlotte Hunter, BLM California State Office
Rolla Queen, BLM California State Office
Michael Taylor, BLM Arizona Deputy State Director
Linda Resseguie, BLM Arizona State Office
Eddie Arreloa, BLM Arizona State Office
Vicki Wood, BLM El Centro Field Office Manager
Carrie Simmons, BLM El Centro Field Office
Chris Dalu, BLM Palm Springs/South Coast Field Office
Bridget Nash-Chrabasz, Quechan Historic Preservation Officer
Dave Singleton, Native American Heritage Commission
Frank Jozwiak, Quechan Indian Tribe Attorney

Thank you for your comment

The comment tracking number that has been assigned to your comment is SolarM60214.

Comment Date: September 14, 2009 11:26:59AM
Solar Energy Development PEIS
Comment ID: SolarM60214

First Name: [Withheld by requestor]
Middle Initial:
Last Name: [Withheld by requestor]
Organization: Big Pine Paiute Tribe
Address: [Withheld by requestor]
Address 2:
Address 3:
City: [Withheld by requestor]
State: [Withheld by requestor]
Zip: [Withheld by requestor]
Country: [Withheld by requestor]
Email:
Privacy Preference: Withhold name and address from public record
Attachment: bppt_peis_scoping.pdf
Comment Submitted:

From: Linda_Resseguie@blm.gov [mailto:Linda_Resseguie@blm.gov]
Sent: Tuesday, September 08, 2009 1:59 PM
To: Tom_Burke@blm.gov; Kathleen_Sprowl@blm.gov
Cc: Wescott, Konstance L.; rolla_queen@blm.gov
Subject: Telephone contact with Moapa Band of Paiutes

I received and returned a telephone call from Ian Zabarte, with the Moapa Band of Paiutes' Department of Environmental Protection (telephone number 702-865-2077). Mr. Zabarte had questions concerning the deadline for comments on the solar energy study areas and also about tribal consultation. I offered to put him in touch with someone who could meet with the tribe, but he indicated that the tribe would address the consultation issue in its comments.

Linda J. Resseguie
Realty Specialist WO - 350
202.912.7337; fax 202.452.7708

September 11, 2009

Solar Energy PEIS
Argonne National Laboratory
9700 S. Cass Avenue--EVS/900
Argonne, IL 60439

Re: Solar Energy Study Area

To Whom It May Concern:

I am writing on behalf of the Native American Land Conservancy (NALC) regarding the designation of solar energy zones in the Mojave and Sonoran Deserts.

The NALC is an intertribal organization, with project affiliations with tribal communities in San Diego, Riverside, San Bernardino, and Imperial counties, as well as with tribal communities in Arizona, Nevada, and Utah. The NALC is a 501c(3) organization established in 1998 to promote the protective management of Native American cultural sites, areas, and resources throughout the traditional aboriginal territories of our member-tribes. The NALC also works to promote understanding and cooperation between our member-tribes and state, federal, and private sector groups, organizations, and agencies. We would like to take this opportunity to offer our comments regarding the potential impact solar development will have on culturally-significant landscapes in the region of interest.

We would first like to commend you both for the diligence and detail represented in the information provided about the solar energy zones. We would also like to make clear our support for the development of appropriate alternative energy resources. At the same time, we have grave concerns about the impacts the development of solar energy will have on culturally significant landscapes. Our concerns, discussed below, include: (1) the nature of the consultation process, (2) the impact of solar development on cultural landscapes, and (3) recommended action steps

The Consultation Process

If an area is destroyed, marred, or polluted, my people say, the spirits will leave the area. If pollution continues not only animals, birds, and plant life will disappear, but the spirits will also leave. This is one of the greatest concerns of Indian people.ⁱ

Our first concern with the consultation process is the manner in which tribal communities with a concern for impacts in their aboriginal territories were brought into the process. Native American governments and organizations have long made the point that it is vitally important to engage them in the front-end of the process. In this case it would include, but not be limited to, engaging the tribes in the initial analysis that sets forth the guidelines for identifying solar energy study areas. Unlike other groups or organizations, tribal communities have a conception of the

landscape that includes a unique evaluative framework based on historically-based understandings of the value and meaning of these sites, areas, and resources. The tribes also enjoy a government-to-government relationship with the United States that underscores the importance of early and frequent engagement of the tribes in a process of this magnitude.

It is crucial that this evaluative framework and these relations be represented in the initial, conceptual stages of development, particularly where a project will have a deleterious impact on the place-based identity of Native American communities. Instead, tribal communities are faced with a situation where they must respond to and select from—and thereby legitimate—alternatives and their embedded evaluative assumptions, principles, and guidelines that marginalize cultural values placed at-risk by the proposed solar projects. Broadly speaking, the effect is to impose a specific definition of reality on the tribal community and to structure the situation so as to limit their cultural and political autonomy. While it can be debated whether engaging the tribes at this level in the initial stages of development is, in the strictest sense, required by state or federal law, failure to do so will, at the very least, compromise the ethical and intellectual integrity and legitimacy of the consultation process.

This process of marginalization leads to our second, and related, concern for the consultation process. Embedded in the consultation is a predisposition to a scientific framework of evaluation grounded in an ontology that relies on a mechanical, push-pull conception of causation. Landscapes understood against this ontic background are conceived as de-totalized, utilitarian, rationalized, and economically useful, and often are characterized in terms of desanctified surface or volume set apart from people, myth, and history; that is, something of instrumental value to be controlled and used.

This hierarchized, formal scientific discourse and its dream of *mathesis universalis* is understandable, and is the typical evaluative framework deployed by land management agencies. However, this has the effect of altogether marginalizing the indigenous conception of the landscape that is sanctified and animistic, ritualized, mythic, totalized, symbolic, and historical, that engages a multilayered, supersensible, as well as serial causation common to indigenous cultures such as the Chemehuevi Indians. The remarks of Dr. Richard Stoffle, working with the Southern Paiute people of the Grand Canyon portion of the Colorado River, are germane this issue in the solar energy study zone. Dr. Stoffle discusses the “great variety of storyscapes that crisscross the landscape of American Indian holy lands,” including the Mojave and Sonoran Deserts. Many of these storyscapes involve a “time before today’s humans existed, what some would call a mythic time.” He emphasizes that the term “mythic” implies only another time before the present time but “it certainly does not imply that either that time or the stories were fictitious.”ⁱⁱ

While objective in its own terms, the scientific mode of inquiry at best marginalizes, subordinates, or provincializes the indigenous lifeworld and, at worst, altogether excludes the indigenous concept of landscapes and the impacts development on them. Facts—whether we speaking of the physical world of nature or the mental world of belief—are socially constructed. What matters is how the various, relative are truths are understood and treated in relation to each other. Each way of knowledge is relative to how it accords to a theoretical correspondence

which, in turn, is based on presuppositions that trace to deeply-held cultural beliefs, what the Native American writer posed as the metaphysical backdrop of truth. While this may seem to be an abstruse philosophical argument, it is very real in terms of the potential impact on traditional cultural sites, areas, resources, and landscapes—and the aboriginal lifeworld—in the region of interest. More generally, the consultation process—in its structure, process, and content—ignores any of these concerns as outside the limits of the law and beyond the borders of scientific mode of inquiry. More specifically, the impact on the StoryScape of the Salt Song trail and other cultural properties in the study area, the subject of our second concern with the proposed projects.

Impact of Solar Development on Cultural Landscapes

This is what makes the Salt Song—gives it its power—because it goes from station to station to station drawing the power of the land and bringing it back.
(Larry Eddy, Chemehuevi elder and Salt Song leader)

The significance of storied-landscapes of *Tiwiinyarivipi* includes Salt Song trail sites in the solar study area, and documented in tribal oral histories and by historians and anthropologists including Robert Manners, Isabel T. Kelly, and Carobeth Laird. These landscapes and Salt Song trails are associated with the healing agency of power-giving dreams, shamanic animal-familiars, as well as songs that describe the personal and the natural and supernatural landscape in a multi-dimensional reality that Salt Song singers say enable them to fly from place to place.

The Salt Songs remain an important part of the cosmology of these indigenous cultures. Vivienne Jake, a Kaibab Paiute elder, described how the songs talk about the upper world. The Mohave Indian elder Llewellyn Barrackman said these creation songs came from Spirit Mountain and serve as a map of their sacred territory. Matthew Leivas, a Chemehuevi traditionalist and tribal elder and Board Member of the Native American Land Conservancy, stated that the Salt Songs tell about the different sacred sites on the thousand-mile journey and explain the whole history of his people and the connections they have with the elements. Mr. Leivas has also spoken about how the Salt Songs have volition and a life all their own and live in certain caves along the Salt Song trail, as well as traveling throughout Chemehuevi territory.

One of the issues that remains to be addressed is the nature, extent, and consequences of solar energy development on these Salt Song trail sites. This is not only a question of mapping the sites but, as discussed in the previous section, how the sites and the trail are signified by way of scientific versus a discursive field that legitimates, rather than marginalizing, indigenous beliefs. It is difficult to imagine how a public agency, charged with assessing the impacts of development on Salt Song trail sites would respond to the following comments of Chemehuevi elder Larry Eddy:

The Indian doctor, he has, as a spirit, he has an animal friend. And nobody sees that animal but him. He calls to that animal through his Songs. He can do this, sing and sing, and when that animal arrives, he knows that he's going to save that person. Until that animal gets there, he doesn't really put on his power. That's hard to express or understand or hard to....He'd sing and sing until the red hawk eagle got there or whatever....They called and they called and that helper wherever he was he heard that Song he could hear it for miles and he heads in direction to that doctor. When he gets there, then the doctor knows, well, I'm going to save this guy....

It was all done in his Songs. He sang his Songs and his Songs were a beckoning to his familiar, whatever it may have been or whatever it was, and [his familiar] could come out from the mountain or from the valley or wherever he was at, he would come down to this doctor singing there and play around there. He'd play around the sick person and do this and do that and that may have been the healing process he's playing around there, playing around, and every now and then he'd jump towards or come towards the doctor and the doctor would sit there and watch him like he's nothing, like he's not paying attention. But as soon as he got close enough the doctor would grab him. And once he had his familiar in his hand or by him and captured him this is when that healing power would be transferred to him, to the doctor, to the patient. That's how they healed. They healed their sick person or ailing person. That's how they did it.

The issue takes another form in the potential impacts on traditional cultural sites such as those associated with Iron Mountain and the Chocolate Mountains. The archaeological importance of these sites has been well-documented by Catherine Fowler, among others. What is less well understood is the marginalizing effect the conventional concept of "mapping" has on the cultural legitimacy and meaning of this information. It is fair to describe the meaning of these locations as found in both the sites, themselves, and in the relationship between different sites in a give cultural ethnoscape. It is certainly important to protect the values inherent in these sites, but it is also important to understand—and to act on the understanding—that there is an important, sacred relationship between the sites that also gives them their sanctified meaning. Once again, the difficulty is in part how the situation is conceived and the pre-assumptions that go into this conception. With this in mind, we would like to recommend a number of steps we believe must be taken to take up and address the issues raised in this letter.

Recommended Action Steps

It is in the balancing of human values that we make healthy communities, that we find justice. Perhaps if [the United States] can begin making justice here in your nation sitting upon our many nations, you may also begin to envision how to honor others' values, make peace and see unity in the world....You have our earnest prayers.ⁱⁱⁱ (Mary Clearing-Sky)

Given the dimensions and multilayered complexity of the issue of the impacts of solar energy on the Native American sacred sites, areas, resources, and landscapes, we would like to recommend the following steps be taken before the EIS is finalized:

1. The agencies involved in the development of the solar energy study area re-convene a meeting with the affected tribes to assess and review through a series of Listening Sessions, the framework for assessing the impacts on cultural sites, areas, resources, and landscapes.
2. The agencies involved participate in a series of meetings with leaders of the Salt Song tradition to reach a better understanding of the values placed at-risk by the development of solar farms in the Salt Song trail ethnoscape.

We believe these two straightforward action steps would provide a major contribution not only for the this issue, but for other matters that might impact the Native communities in the eastern Mojave Desert. The Native American Land Conservancy is prepared to help in any appropriate way to bring together a better understanding on this matter in the hopes of coming to a solution that is fair to the values and beliefs of all the parties involved.

Respectfully yours,

Kurt W. Russo, Ph.D.
Executive Director
Native American Land Conservancy

K, Tilley illustrated the “major differences between a ‘scientific’ or abstract As Thomas Greider and Lorraine Garkovich put it, “meaning is not inherent in the nature of things.”^{iv} Instead, the meaning of the landscape is produced and reproduced through the process of negotiation and symbolic interactionism in a cultural context.

Conclusion Mary Clearing Sky

Twiinyarivipi

Mapping the land

ⁱ (Chief) John Snow, *These Mountains Are Our Sacred Places* (Toronto: Samuel-Stevens, 1977), 145.

ⁱⁱ Richard W. Stoffle, David B. Halmo, Diane E. Austin, “Cultural landscapes and traditional cultural properties: A Southern Paiute view of the Grand Canyon and Colorado River,” *American Indian Quarterly* Vol. 21, Iss.2 (Spring 1997), 232.

ⁱⁱⁱ Mary Clearing Sky, “Tallying up for Reparations: Asking for New Promises?” In *Reparations: Repairing the Psychological Harm* (Washington, DC: Office of Ethnic Minority Affairs, 2005), xii-xiv.

^{iv} Thomas Greider and Lorraine Garkovich, “Landscapes: The Social Construction of Nature and the Environment,” *Rural Sociology* Vol. 59, No. 1 (1994), 2.

September 14, 2009

VIA ELECTRONIC SUBMISSION
(<http://solareis.anl.gov/involve/comments/index.cfm>)

Solar Energy PEIS
Argonne National Laboratory
9700 S. Cass Avenue
EVS/900
Argonne, IL 60439



Re: Scoping Comments on the Solar Energy Study Areas and the Solar Energy Programmatic Environmental Impact Statement

To Whom It May Concern:

The National Trust for Historic Preservation (National Trust) commends the efforts of the Bureau of Land Management (BLM) to identify the most appropriate areas for solar energy development while limiting impacts to significant cultural resources. We feel strongly that by incorporating the results of tribal consultation and previous cultural resources inventories into the development of the solar Programmatic Environmental Impact Statement (PEIS) and the specific Solar Energy Study Areas (SESAs), BLM can facilitate efficient and cost-effective renewable energy development while protecting the invaluable, significant cultural resources that are present on America's federal public lands. At the same time, we believe that efficiency and reduction of energy use at private and public scales should be a focus of current and future energy planning. Rather than simply producing and transmitting more energy, we should simultaneously work to reduce our energy needs.

In general, the National Trust supports BLM's development of the PEIS and identification of the specific SESAs. Specifically, we strongly applaud BLM's decision to exclude all units of the National Landscape Conservation System (NLCS) and other areas that contain significant cultural resources. However, we recommend that BLM define two key terms used in the Federal Register notice for the SESAs. We also recommend that BLM evaluate whether several specific resources should be excluded from the SESAs and, if not, whether BLM needs to develop site-specific avoidance or mitigation measures to ensure that solar energy development does not adversely affect those resources.

Interests of the National Trust

The National Trust is a private charitable, educational, non-profit corporation chartered by Congress in 1949 to protect and defend America's historic resources, to further the historic preservation policy of the United States and to facilitate public participation in the preservation of our nation's heritage. See 16 U.S.C. §§ 461, 468. With the strong support of 235,000 members nationwide, the National Trust works to bring people together to protect, enhance and enjoy the places that matter to them. By saving the places where great moments from history – and the important moments of everyday life – took place, the National Trust helps revitalize neighborhoods and communities, spark economic development, promote environmental sustainability and protect public lands. The National Trust, which is headquartered in Washington, D.C., has nine regional and field offices, 29 historic sites and partner organizations in all 50 states.

I. In the PEIS, BLM should define two key terms from the Federal Register notice for the SESAs.

The National Trust commends BLM on identifying “sensitive resource areas” to be excluded from solar energy development, including all units of the National Landscape Conservation System, “Areas of known Tribal concern” and “Areas of known high cultural site density.” See Notice of Availability of Maps and Additional Public Scoping for Programmatic Environmental Impact Statement To Develop and Implement Agency-Specific Programs for Solar Energy Development; Bureau of Land Management Approach for Processing Existing and Future Solar Applications, 74 Fed. Reg. 31,307, 31,308 (June 30, 2009). However, the National Trust feels that BLM should clearly define the latter two terms in the PEIS to ensure consistent usage and application.

II. BLM should ensure that SESAs do not adversely affect internal or adjacent significant cultural resources.

BLM should clarify whether any “sensitive resource areas” are located within the external boundaries of SESAs or whether SESAs were chosen because they did not intersect with any sensitive resource areas. If SESAs do surround excluded sensitive resource areas, BLM must ensure that those resources are adequately buffered from visual and other indirect impacts from solar energy development. Even if SESAs do not surround sensitive resource areas, SESAs may have the potential to visually and otherwise indirectly impact significant cultural resources that are located outside but adjacent to SESAs. Units of the NLCS contain many of the most stunning and awe-inspiring vistas within the United States. Long views uncluttered by modern human constructions are an essential aspect of the experiences sought by visitors to these federal public lands, and the views and visitors’ experiences of them must be protected in order to maintain the integrity of NLCS units.

Therefore, for example, protecting the ruts, swales, buildings, inscriptions and other artifacts directly associated with national historic trails is not enough to preserve the suite of historic and cultural resources that make national historic trails significant. Rather, preserving whole settings and viewsheds of national historic trails—and other units of the NLCS—is vital for enabling visitors to have authentic and high quality experiences of the historic events for which the cultural resources are purportedly preserved. In the National Trails System Act, as amended, “high potential historic sites and high potential route segments” are recognized as the very best sections of national scenic and historic trails that retain the highest historical and cultural integrity. The physical manifestations and viewsheds of these segments, at least, should be completely preserved. Similarly, BLM must thoroughly consider and work to avoid adverse impacts to sacred landscapes that are significant to tribes. As with national historic trails, the significance of these landscapes and of Native American traditional cultural properties goes far beyond their constituent features and artifacts; viewsheds and settings must be uninterrupted by modern constructions in order to maintain the sacred integrity of the landscapes.

BLM also should recognize that many significant cultural sites exist at low densities, and historic trails that are not part of the National Trails System (e.g., the Ehrenberg Road and the Phoenix Stage Road in western Arizona) may cross one or more SESAs. Adverse effects to these regionally important historic resources also should be avoided whenever possible even if the resources do not technically fall within any of the sensitive resource area categories. In addition, BLM should take steps to ensure that sensitive resource areas are not directly or indirectly impacted by construction roads and transmission lines.

III. BLM should compile complete records of all known cultural resources located within the SESAs.

All data available for cultural resources (e.g., location, temporal affiliation, condition, significance) should be gathered for each of the SESAs and incorporated into a single geographic information system database as part of the evaluation of SESA efficacy. Compiling information into one location will enable BLM to consistently identify which portions of SESAs have already been thoroughly inventoried and which have not. Then the latter locations should be inventoried for cultural resources, at least at a Class II sampling level. Furthermore, thorough tribal consultation should be performed for each of the SESAs as part of their evaluation, even if consultation has been done in nearby areas in the past. Knowing what cultural resources are present in SESAs, at least at a broad landscape level, will help to streamline solar energy development within them while assuring that impacts to significant resources and landscapes are avoided. A similar approach should be taken for areas outside SESAs that are likely to be developed for solar energy production, with developers directed towards locations that have already been inventoried for cultural resources and that contain few or no significant resources.

IV. BLM should evaluate whether to exclude additional cultural resources from SESAs and whether site-specific measures are necessary to avoid or mitigate adverse effects on cultural resources.

Potential impacts to all cultural resources—including prehistoric, historic and traditional sacred and cultural properties—located within SESAs and in proposed solar project areas outside SESAs should be considered in the NEPA and NHPA processes. In addition, we believe that BLM should evaluate whether the cultural resources mentioned below should be excluded from the SESAs in light of their significance and whether BLM should include site-specific measures in the PEIS in order to avoid or mitigate the potential adverse effects of solar energy development on those resources. For example, BLM has not yet defined management boundaries or areas around national scenic and historic trails, except in Wyoming. In that case, during oil and gas development, BLM defined a one-half mile wide special management corridor along the four National Historic Trails that cross the state. BLM severely limited energy development within the trails corridors and required stringent mitigation of visual and other impacts in areas along the trails outside the corridor. We recommend that BLM develop similar protections for trails and other visually sensitive resource areas in the face of solar energy development.

A. Arizona

The three SESAs in Arizona appear to have been well chosen in regard to archaeological sites, as they consist largely of previously disturbed lands. However, some Native American tribes have already expressed concern about impacts of the SESAs on sacred landscapes. Thus, BLM should thoroughly consult with concerned tribes to resolve potential conflicts now. In addition, many nationally and regionally significant historic trails cross the state and could be directly or indirectly impacted by solar energy development both within and outside the SESAs. Of particular concern are trails located in open areas of southwestern Arizona, including the Juan Bautista de Anza National Historic Trail (NHT), El Camino del Diablo, the Ehrenberg Road and the Phoenix Stage Roads. The latter two, in particular, appear to be located close to the Brenda and Gillespie SESAs. While the Federal Register notice states that BLM excluded national trails from the SESAs, BLM must still consider any visual and other types of indirect impacts, such as from increased public access during project construction, that solar energy development may have on the trails. To that end, BLM should develop stipulations for avoiding or mitigating indirect impacts to trails during solar energy development.

Comment [a1]: Which tribes? We should mention them by name.

B. California

The National Trust is concerned specifically with potential adverse effects to cultural resources within the Riverside East SESA. This area partially overlaps with the boundaries of historic Camp Rice, part of the World War II (WWII) Desert Training Center/ California-Arizona Maneuver Area that has been recommended eligible for the National Register of Historic Places (National Register). Camp Rice is part of an interconnected landscape of similar WWII camp sites in southern California and Arizona and is highly significant both for its association with General Patton and for its contribution to our understanding of how American soldiers were trained during WWII. Still visible at Camp Rice are roads and walkways lined with large pieces of basalt. BLM should modify the boundary of the Riverside East SESA to exclude Camp Rice and other sites within this important WWII cultural landscape.

C. Colorado

The National Trust is concerned about potential adverse effects to cultural resources located within the De Tilla Gulch and Fourmile East SESAs. Both contain rare Paleoindian archaeological sites whose eligibility for the National Register has generally not yet been determined. Because of Paleoindian sites' potential significance, BLM should develop specific mitigation measures to resolve adverse effects to them. Finally, the National Trust requests that BLM take a close look at the potential of the Fourmile East SESA to directly or indirectly affect the Old Spanish National Historic Trail and adjust the boundaries of the SESA to avoid any negative effects.

D. Nevada

The National Trust is concerned about potential adverse effects to prehistoric cultural resources in the Delamar Valley SESA. Two significant and large rock art sites in this SESA are "The Gathering," located along the Alamo Road off Hwy. 93 and "Rattlesnake Road," located approximately 2.5 miles farther east on the Alamo Road. Because the sites are located adjacent to the road, increased construction traffic could lead to increased visitation and inadvertent or purposeful damage by visitors. In addition, the National Trust requests that BLM take a close look at the potential of the Dry Lake SESA to directly or indirectly affect the Old Spanish National Historic Trail and adjust the boundaries of the SESA to avoid any such effects.

E. New Mexico

The National Trust has no specific concerns about cultural resources located within or near the proposed SESAs in New Mexico.

F. Utah

The National Trust requests that BLM take a close look at the potential of the Escalante Valley, Milford Flats South and Wah Wah Valley SESAs to directly or indirectly impact the Old Spanish NHT and adjust the boundaries of the SESAs to avoid negative impacts to the trail.

IV. Conclusion

While planning for solar energy development on federal public lands, BLM must prioritize the protection of outstanding historic and cultural resources, including significant concentrations of prehistoric and historic archaeological sites, historic trails and Native American traditional cultural properties and sacred sites. Accordingly, BLM should thoroughly evaluate the potential direct and indirect impacts of solar energy development on cultural resources both within and outside SESAs. Definition of the terms "Areas of known Tribal concern" and "Areas of known high cultural site density" will facilitate consistent avoidance of impacts to significant cultural areas, although significant resources are likely found outside those areas. Additionally, compilation of known data into a single GIS system will help BLM to identify and then inventory areas within SESAs whose cultural resources are not yet known. Thorough consultation with tribes, State Historic Preservation Officers, local communities and other interested parties will support this effort. Then, BLM should consult with the above parties to develop measures to avoid or, less ideally, minimize or mitigate adverse effects of solar energy development on significant historic and cultural resources.

Argonne National Laboratory
September 14, 2009
Page 6

Please include the National Trust on all announcements, as well as all notifications associated with the PEIS process. We appreciate the opportunity to provide these comments and we look forward to participating further in this process.

Sincerely,



Anthea Hartig, Director
Western Office, National Trust for Historic Preservation



Barbara Pahl, Director
Public Lands Program and Mountains/Plains Office, National Trust for Historic Preservation



Jonathan Poston, Director
Southwest Office, National Trust for Historic Preservation

Cc: Nancy Brown, Advisory Council on Historic Preservation
Dr. Robin L. Burgess, Federal Preservation Officer
Carol Griffith, Arizona State Historic Preservation Officer
Milford Wayne Donaldson FAIA, California State Historic Preservation Officer
Edward Nichols, Colorado State Historic Preservation Officer
Alice Baldrice, Nevada State Historic Preservation Officer
Jan Biella, Acting New Mexico State Historic Preservation Officer
Wilson Martin, Utah State Historic Preservation Officer



BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY
Environmental Department
Big Pine Indian Reservation

September 14, 2009

Solar Energy PEIS
Argonne National Laboratory
9700 S. Cass Avenue
EVS/900
Argonne, IL 60439

Dear Preparers,

Subject: Comments on Solar Energy Development Programmatic EIS

The Big Pine Paiute Tribe of the Owens Valley (Tribe) is a federally recognized Tribe located in Owens Valley, California. The Tribe is committed to the preservation of American Indian cultural resources, religious practices, and sacred lands as well as the responsible stewardship of natural resources. Thank you for the opportunity to provide comments during this scoping process for the Solar Energy Programmatic Environmental Impact Statement concerning BLM lands in six southwestern states.

Tribal Consultation Process

A notice was released in the Federal Register on June 30, 2009. The Tribe's first formal notice was via letter received from the BLM California Desert District Manager, dated July 1, 2009. The Tribe requests a copy of the Draft EIS as soon as it is released.

Comments on Scoping Maps

The Tribe encourages the BLM to focus evaluations for possible solar development on lands recently disturbed and to avoid lands showing no evidence of recent disturbance. Although it was difficult to discern (from the documentation provided) the exact criteria used for identifying lands for further study, the level of previous disturbance does not appear to be a criterion, and this is unfortunate. Known restrictions (e.g. designated wilderness or critical habitat for an endangered species) were used to lower the land's suitability or even omit it from further consideration, but it appears an assumption was made along these lines: If the details of a particular resource on a given area of land are unknown, then we assume there may *not* be any noteworthy or valuable resources. In reality, the reverse should be the rationale. If there is no known history of disturbance for an area, then it should be presumed intact and the goal should be to preserve it intact. For BLM lands, therefore, recently disturbed areas not of historic significance, such as mined sites, abandoned farm fields, rail yards, towns, or airfields (etc.) should be given higher priority for development than undisturbed areas. If it is learned that BLM lands are generally minimally disturbed or undisturbed, then BLM lands are probably not the

P.O. Box 700 • 825 South Main Street • Big Pine, CA 93513 • Office 760-938-3036 • Fax: 760-938-2290

priority desert lands for further study for solar development. Certainly, disturbed desert lands do exist, they simply may be on private or other lands (e.g. military).

One BLM Planning Criterion states, “**Environmental protection and energy production** are both desirable and necessary objectives of sound land management practices and are not to be considered mutually exclusive priorities” (quoted from <http://solareis.anl.gov/eis/rmps/index.cfm>). The statement is problematic, because it can invoke many interpretations, some undesirable and unnecessary. The Tribe and many in the public have trusted the Federal Government with protecting our public lands for the long term and not leasing them to private, for-profit corporations for activities that, while perhaps beneficial to the public in some ways over the relative short term, actually degrade landscapes and resources for hundreds to thousands of years. By protecting the environment, the BLM protects the ability of the natural landscape to provide goods and services to the earth and all living organisms. With global climate change, our reliance on those goods and services is likely to increase. The Tribe feels protection of most all public lands should be a higher priority.

The information provided during the scoping process for this PEIS gives the misleading impression that the lands presented in the maps are the complete extents of lands to be considered for solar development in the six-state area. However, it is known that other areas are currently being studied or have been studied and are further along in the process to construct solar power facilities. For example, a site known as Ivanpah, has been evaluated, but it does not appear on the maps for this PEIS. It is unclear whether new sites, not highlighted in these maps, may be considered for evaluation at a later date. Either everything should be included in this PEIS, or a long, clear description of what is and isn't included, and why, should be presented. This is important for the public to understand the implications of full solar development on BLM desert lands, thus the extent of potential cumulative impacts.

The areas shown on the map for this PEIS are generally located outside the areas considered our Tribal homelands. It is our understanding that all Native Americans throughout the regions presented on the maps will provide specific knowledge on cultural resources to be considered. Even though the maps do not include our region, an important issue in our area has been export of water to fuel distant economies and energy generation. Taking resources from one area to develop resources in another should be avoided. It is imperative that availability of sufficient water resources is evaluated very early in the process. In addition, access to and the availability of any and all other necessary resources beyond insolation and transmission lines should be considered and any impacts associated with use of water and other resources for future solar facilities should be thoroughly evaluated. It is probable that many of the lands identified on the current maps need to be removed due to lack of feasible water supply or for other resource limitations.

The PEIS should make it clear that second tier/ site specific cultural and environmental analyses will still need to be intense once specific areas are identified for further study. The PEIS provides an overview, and not necessarily many details; the details deserve systematic scrutiny and evaluation.

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General Comments

If utility-scale solar is developed on BLM lands throughout the west, there will be impacts. Priorities should be first to avoid as many adverse impacts as possible. Secondly, resource impacts should be minimized if they are deemed necessary and steps should be taken as soon as possible to restore areas and ameliorate impacts. Finally, if sites cannot be fully restored, plans should be in place to compensate for the lost resources, goods, services, and values. The Tribe recommends a fund for mitigation be established for each developed site, and that considerable thought be given to the long-term and currently unquantifiable impacts such development will cause.

The PEIS should perform a thorough evaluation of royalties. Here, a royalty should be defined as the share of the profit paid to the grantor. Because the grantor for public (BLM) lands is the public, decide which public most deserves royalties. It could easily be argued that Native Americans who used resources on these lands long before solar development was anticipated should be the first to be considered for royalty agreements. Many Tribes throughout the desert region are now recognized as sovereign nations.

Sincerely,



Virgil Moose
Tribal Chairperson

P.O. Box 700 • 825 South Main Street • Big Pine, CA 93513 • Office 760-938-3036 • Fax: 760-938-2290

DOCUMENTATION OF TRIBAL CONTACT

Date of Call/Meeting: September 17, 2009

Type of Meeting: Field trip—one topic covered regarded Solar PEIS Study Area in Amargosa Valley

Follow-up:

1. **Call from Tribe:** _____
2. **Call to Tribe:** _____
3. **Face-to-face meeting with tribal representative:** Field visit in Amargosa Valley

Tribe: (include individuals' names and roles)

Barbara Durham, THPO for the Timbisha Shoshone Tribe

BLM: Kathleen Sprowl, BLM Pahrump F.O./RECO archaeologist

Major points raised in discussion:

During a field trip to visit sites within the Pahrump Field Office territory, Ms. Durham was asked if the Timbisha had any formal comments that they would like passed on to the planners of the Solar PEIS regarding tribal concerns. She said the main four concerns for the Amargosa study area are for water use, effects to the vegetation and the animals in the area, and any visual changes to the landscape.

Follow-up needed: None

Copies of this documentation sent to:

Email to: Barbara Durham
Tom Burke (BLM State Office)

Name of recorder: Kathleen Sprowl

From: Linda_Resseguie@blm.gov [mailto:Linda_Resseguie@blm.gov]
Sent: Thursday, September 17, 2009 11:50 AM
To: Michael_D_Johnson@blm.gov
Cc: rolla_queen@blm.gov; Wescott, Konstance L.
Subject: Telephone Conversation with Albert Tinhorn, Chilchinbeto
Chapter, Navajo Nation

I wanted to confirm that Mr. Albert Tinhorn, Community Services Coordinator, for the Chilchinbeto Chapter of the Navajo Nation called today to acknowledge receipt of our August 28, 2009, letter on the solar energy study areas. (I am assuming that this letter went out as part of Rolla's follow-up correspondence to tribes and chapters who did not pick up their certified copies of the original July notification letter.) Mr. Tinhorn's main message was that the solar energy study areas proposed were not located near the Chapter's interests. He did comment that "green friendly" renewable resource development that preserved the natural environment was culturally relevant to Navajo's and consistent with the Tribe's four sacred elements. The Chapter does not want further information on the Solar PEIS or study areas at this time as they are exceedingly busy with local projects.

Linda J. Resseguie
Realty Specialist WO - 350
202.912.7337; fax 202.452.7708

Gordon Yellowman<gyellowman@c-a-tribes.org>

To
"dan_haas@blm.gov"<dan_haas@blm.gov>
10/07/2009 09:53 AM

cc

Subject
consulting party

Dan, please consider this as a notice to participate as a consulting and cooperating party of interest with the Bureau of Land Management and the Department of Energy (DOE) on the joint Programmatic Environmental Impact Statement for Solar Energy Development (PEIS) in the southwestern states.
Gordon Yellowman

From: [Javier Loera](#)
To: [Verhaaren, Bruce T.](#)
Subject: RE: Solar Energy PEIS
Date: Tuesday, February 23, 2010 3:09:11 PM

CR CA610-09-01/8100 (CA610.25)

Steven J. Borchard
California Desert Manager
United States Department of the Interior
Bureau of Land Management
California Desert District
22835 Calle San Juan de los Lagos
Riverside, CA 92553

Dear Mr. Borchard:

This letter is in response to the correspondence received in our office in the summer of 2008. I am sorry that it has taken this long for our response, our previous NAGPRA representative must have misplaced it somewhere. In your letter you provide the Ysleta del Sur Pueblo the opportunity to comment on the proposed solar energy study areas being analyzed as part of the Programmatic Environmental Impact Statement for Solar Development (PEIS), being prepared jointly by the Bureau of Land Management and the U.S. Department of Energy.

While we do not have any comments on this impending proposed study and believe that this project will not adversely affect traditional, religious or culturally significant sites of our Pueblo and have no opposition to it; we would like to request consultation should any human remains or artifacts unearthed during this project be determined to fall under Native American Graves Protection And Repatriation Act guidelines. Copies of our Pueblo's Cultural Affiliation Position Paper and Consultation Policy are available upon request.

Thank you for allowing us the opportunity to comment on the proposed project.

Sincerely,

Javier Loera
War Captain/Tribal Historic and Preservation Officer
Ysleta del Sur Pueblo
119 S. Old Pueblo Rd.
P.O. Box 17579
El Paso, Texas 79917
Phone: (915) 859-8053
Fax: (915) 859-4252
E-mail: jloera@ydsp-nsn.gov

From: Verhaaren, Bruce T. [<mailto:brucev@anl.gov>]
Sent: Monday, February 22, 2010 4:45 PM
To: Javier Loera
Subject: Solar Energy PEIS

Dear Mr. Loera:

This is to follow up on your recent telephone conversation with Ellen Moret of Argonne National Laboratory, who was calling on behalf of the Bureau of Land Management.

Last July the Bureau of Land Management's California Desert District Office sent a letter to Governor Paiz seeking his views and comments regarding proposed solar energy study areas being analyzed as part of the Programmatic Environmental Impact Statement for Solar Energy Development (PEIS). The PEIS is being prepared jointly by the Bureau of Land Management and the U.S. Department of Energy.

Since it is possible that he may not have received that letter, dated July 1, 2009, I have attached a facsimile copy.

A draft of the PEIS is currently being prepared and the solar energy study areas are still in the process of being analyzed. Any views or comments the Ysleta del Sur Pueblo may wish to provide continue to be welcome as outlined in the attached letter.

We regret that the letter has not reached you in a timely manner. We value your input and will provide additional information as the project progresses.

Sincerely,

Bruce Verhaaren, Ph.D.
Environmental Science Division
Argonne National Laboratory
bverhaaren@anl.gov
630.252.3240

From: [Borchardt, Jeanine \(IHS/PHX\)](#)
To: [Verhaaren, Bruce T.](#)
Cc: [antha007@yahoo.com](#); [SmellvE@q.com](#); [lomeli20034@aol.com](#); [Corrina Bow; cbclctom@q.com](#); [Rollo, Gayle \(IHS/PHX\)](#); [Robb, Gaylord \(IHS/PHX\)](#)
Subject: RE: Blocked Paiute Website
Date: Tuesday, March 02, 2010 4:39:15 PM

Dear Mr. Verhaaren,

I am requesting more information regarding your project or at the least have the BLM contact me ASAP.

Jeanine Borchardt
Chairwoman



Paiute Indian Tribe of Utah
440 North Paiute Drive
Cedar City, Utah 84721
(435) 586-1112 ext. 102 Fax (435)867-2659
jeanine.borchardt@ihs.gov
www.utahpaiutes.org

From: Verhaaren, Bruce T. [mailto:brucev@anl.gov]
Sent: Tuesday, March 02, 2010 11:39 AM
To: Borchardt, Jeanine (IHS/PHX)
Subject: Blocked Paiute Website

Dear Ms. Borchardt:

I am a researcher at Argonne National Laboratory working with the BLM to produce the Solar Energy Programmatic EIS. The BLM sent a letter to Chairperson Lora Tom introducing the project and providing maps of proposed Solar Energy Study Areas near Cedar City. We would like to ensure that you have that information. If not, we would be glad to provide it, either in hard copy or by e-mail.

Would it be appropriate to provide this information to the leaders of the individual bands that make up the Paiute Indian Tribe of Utah as well? If so, could you provide us with contact information?

I tried to get that information from your website, <http://www.utahpaiutes.org/>, but found it was blocked by our cyber security department, because there was evidence of malware having compromised the site. I am attaching their message for your consideration. You may wish to have this checked.

Thank you

Bruce Verhaaren
Environmental Science Division
Argonne National Laboratory
Argonne, IL

630 252-3240

-----Original Message-----

From: rackow@anl.gov [mailto:rackow@anl.gov]
Sent: Tuesday, March 02, 2010 11:54 AM
To: Verhaaren, Bruce T.
Cc: 'cyber@anl.gov'; Huttenga, Andy A.; Wescott, Konstance L.; Rackow, Eugene A.
Subject: Re: Blocked Site

According to multiple info sources that we have, this site has been rather heavily compromised with malware that redirects people to various exploits kits.

This appears to have started in early 2009 and still remains as of Jan 27, 2010.

An example of the report is:

<http://www.myvot.com/en/scorecard/utahpaiutes.org>

Are you sure this is the site you need to be going to?

Is there someone that can confirm whatever problems they had on the system has been cleaned up? I'd rather not expose the lab to a site that multiple services claim to be malicious.

"Verhaaren, Bruce T." made the following keystrokes:

```
>--_000_53A26D9080464E46A38E98BDF7C99AB00112A19DF50ZZYanlgov_
>Content-Type: text/plain; charset="us-ascii"
>Content-Transfer-Encoding: quoted-printable > >Argonne appears to have
blocked http://www.utahpaiutes.org/ > >I would like to gain access to this
site if possible. It is needed as part= > of our research for the Solar
Energy Programmatic EIS project being conduc= >ted by Argonne's
Environmental Science Division.
>
>Thanks
>
>Bruce Verhaaren
```

>

/~\ The ASCII Gene Rackow email: rackow@anl.gov
\ / Ribbon Campaign Cyber Security Office voice: 630-252-7126
X Against HTML Argonne National Lab
/ \ Email! 9700 S. Cass Ave. / Argonne, IL 60439

From: [Sid Morris](#)
To: [Verhaaren, Bruce T.](#)
Subject: RE: Solar Energy PEIS info
Date: Thursday, March 04, 2010 1:52:06 PM

Thanks Bruce. Below is my contact information or future mailings.

Regards,

Sid

SID MORRIS
PLANNING AND DEVELOPMENT
SYCUAN BAND OF THE KUMEYAAI NATION
5485 CASINO WAY
EL CAJON, CA 92019

TEL (619) 445 - 6002 EXT. 1164
FAX (619) 445 - 4396

SMORRIS@SYCUAN-NSN.GOV
WWW.SYCUAN.COM

From: Verhaaren, Bruce T. [mailto:brucev@anl.gov]
Sent: Thursday, March 04, 2010 11:50 AM
To: Sid Morris
Cc: Wescott, Konstance L.; 'Linda_Resseguie@blm.gov'
Subject: Solar Energy PEIS info

Sid

As we discussed over the phone, I am attaching a facsimile copy of the letter that was sent out last July by the BLM informing the tribes of the locations of the proposed solar energy study areas. These SESAs do not include all the lands the BLM considers eligible for solar development. The letter includes the URL for the project website. You will find more information there. As to your specific questions regarding cooperative development of solar facilities you may want to contact Linda Resseguie in BLM's Washington Office. She is leading the Solar PEIS project and would have better information than I would.

I hope this helps.

Bruce Verhaaren
Argonne National Laboratory



**TELEPHONE
CONVERSATION RECORD**
Date: 4 Mar 2010
Time: 11:30 am

Office of the Chief Financial Officer
Procurement Department
Argonne National Laboratory
9700 South Cass Avenue, Bldg. 201
Argonne, IL 60439-4873

CALL FROM: Sid Morris			CALL TO: Bruce Verhaaren		
ORGANIZATION: Sycuan Band of the Kumeyaay Nation			ORGANIZATION: Argonne National Laboratory		
DIV.DEPT.:	LOCATION:	TELEPHONE:	DIV.DEPT.:	LOCATION:	TELEPHONE:
Planning &	El Cajon, CA	619.445.6002 x1164	EVS	Argonne, IL	630.252-3240

SUMMARY - HIGHLIGHTS - KEYPOINTS - AGREEMENTS - COMMITMENTS:

Mr. Morris called in response to our resending information on the SEZs for the Solar Energy PEIS. He is interested in developing solar energy on Sycuan tribal lands and wondered if there was some way to cooperate with a developer on BLM lands. I explained our interest in informing the tribes and that the PEIS was concerned with BLM lands only. Once the ROD is issued BLMs policies for solar energy development would be clearer.

GENERAL SUBJECT OF DISCUSSION:

Joint development of solar energy on tribal and BLM lands

ADDITIONAL DISTRIBUTION:

ANL PD-103 (8-06)

From: [Jenny Rothrauff](#)
To: [Verhaaren, Bruce T.](#)
Subject: RE: Solar Energy PEIS
Date: Thursday, March 04, 2010 7:58:56 PM

Dear Mr. Verhaaren,

Thank you for sending the attached information for the Viejas Band's review. The area referenced is not something Viejas would typically comment on since the project appears to be outside of the boundaries of San Diego limits.

Your consideration and respect of the Viejas Band's comments on this project is appreciated.

Regards,

Jenny

Jenny Rothrauff
Project Manager
Office of Chairman Bobby Barrett
P. O. Box 908
Alpine, CA 91901
jrothrauff@viejas-rsa.gov
Office (619) 659-2323
Cell (619) 843-9229
Fax (619) 445-5337

From: Verhaaren, Bruce T. [<mailto:brucev@anl.gov>]
Sent: Thursday, March 04, 2010 10:19 AM
To: Jenny Rothrauff
Subject: Solar Energy PEIS

Dear Ms Rothrauff:

This is to follow up on a recent telephone conversation between you and Lee Northcutt of Argonne National Laboratory, who was calling on behalf of the Bureau of Land Management.

Last July the Bureau of Land Management's California Desert District Office sent a letter to Chairman Barrett seeking his views and comments regarding proposed solar energy study areas being analyzed as part of the Programmatic Environmental Impact Statement for Solar Energy Development (PEIS). The PEIS is being prepared jointly by the Bureau of Land Management and the U.S. Department of Energy.

Since it is possible that Chairman Barrett may not have received that letter, dated July 1, 2009, I have attached a facsimile copy.

A draft of the PEIS is currently being prepared and the solar energy study areas are still in the process of being analyzed. Any views or comments the Viejas Band may wish to provide continue to be welcome as outlined in the attached letter.

We regret that the letter has not reached you in a timely manner. We value your input and will provide additional information as the project progresses.

Sincerely,

Bruce Verhaaren, Ph.D.
Environmental Science Division
Argonne National Laboratory
bverhaaren@anl.gov
630.252.3240

From: [Lucinda Henry](#)
To: [Verhaaren, Bruce T.](#)
Subject: Re: Solar Energy PEIS
Date: Friday, March 05, 2010 8:57:44 AM

Good Morning
After viewing the Solar Energy PEIS, it sounds good and interesting

Thanks for the information

--- On **Thu, 2/18/10, Verhaaren, Bruce T. <brucev@anl.gov>** wrote:

From: Verhaaren, Bruce T. <brucev@anl.gov>
Subject: Solar Energy PEIS
To: "lahenry08@yahoo.com" <lahenry08@yahoo.com>
Date: Thursday, February 18, 2010, 12:51 PM

Dear President Henry

This is to follow up on your recent telephone conversation with Lee Northcutt of Argonne National Laboratory, who was calling on behalf of the Bureau of Land Management.

Last July the Bureau of Land Management's California Desert District Office sent a letter to President Begay seeking his views and comments regarding proposed solar energy study areas being analyzed as part of the Programmatic Environmental Impact Statement for Solar Energy Development (PEIS). The PEIS is being prepared jointly by the Bureau of Land Management and the U.S. Department of Energy.

Since it is possible that you may not have received that letter, dated July 1, 2009, I have attached a facsimile copy.

A draft of the PEIS is currently being prepared and the solar energy study areas are still in the process of being analyzed. Any views or comments the White Rock Chapter may wish to provide continue to be welcome as outlined in the attached letter.

We regret that the letter has not reached you in a timely manner. We value your input and will provide additional information as the project progresses.

Sincerely,

Bruce Verhaaren, Ph.D.
Environmental Science Division
Argonne National Laboratory
bverhaaren@anl.gov
630.252.3240

March 8, 2010

Attn: Linda J. Resseguie, Realty Specialist
Bureau of Land Management
Washington, D.C. 20240

Re: Solar Energy Study Areas being Used Analyzed as Part of the Programmatic Environmental Impact Statement for Solar Energy Development

The Soboba Band of Luiseño Indians appreciates your observance of Tribal Cultural Resources and their preservation in your project. The information provided to us on said project has been assessed through our Cultural Resource Department, where it was concluded that although it is outside the existing reservation, the project area does fall within the bounds of our Tribal Traditional Use Areas. This project location is in close proximity to known village sites and is a shared use area that was used in ongoing trade between the Luiseno and Cahuilla tribes. Therefore it is regarded as highly sensitive to the people of Soboba.

Soboba Band of Luiseño Indians is requesting the following:

1. **Government to Government** consultation in accordance to Section 106. Including the transfer of information to the Soboba Band of Luiseno Indians regarding the progress of this project should be done as soon as new developments occur.
2. Soboba Band of Luiseño Indians continue to be a lead consulting tribal entity for this project.
3. Working in and around traditional use areas intensifies the possibility of encountering cultural resources during the construction/excavation phase. For this reason the Soboba Band of Luiseño Indians requests that Native American Monitor(s) from the Soboba Band of Luiseño Indians Cultural Resource Department to be present during any ground disturbing proceedings. Including surveys and archaeological testing.
4. Request that proper procedures be taken and requests of the tribe be honored (Please see the attachment)

Sincerely,

Joseph Ontiveros
Soboba Cultural Resource Department
P.O. Box 487
San Jacinto, CA 92581
Phone (951) 654-5544 ext. 4137
Cell (951) 663-5279
jontiveros@soboba-nsn.gov

Cultural Items (Artifacts). Ceremonial items and items of cultural patrimony reflect traditional religious beliefs and practices of the Soboba Band. The Developer should agree to return all Native American ceremonial items and items of cultural patrimony that may be found on the project site to the Soboba Band for appropriate treatment. In addition, the Soboba Band requests the return of all other cultural items (artifacts) that are recovered during the course of archaeological investigations. Where appropriate and agreed upon in advance, Developer's archeologist may conduct analyses of certain artifact classes if required by CEQA, Section 106 of NHPA, the mitigation measures or conditions of approval for the Project. This may include but is not limited or restricted to include shell, bone, ceramic, stone or other artifacts.

The Developer should waive any and all claims to ownership of Native American ceremonial and cultural artifacts that may be found on the Project site. Upon completion of authorized and mandatory archeological analysis, the Developer should return said artifacts to the Soboba Band within a reasonable time period agreed to by the Parties and not to exceed (30) days from the initial recovery of the items.

Treatment and Disposition of Remains

A. The Soboba Band shall be allowed, under California Public Resources Code § 5097.98 (a), to (1) inspect the site of the discovery and (2) make determinations as to how the human remains and grave goods shall be treated and disposed of with appropriate dignity.

B. The Soboba Band, as MLD, shall complete its inspection within twenty-four (24) hours of receiving notification from either the Developer or the NAHC, as required by California Public Resources Code § 5097.98 (a). The Parties agree to discuss in good faith what constitutes "appropriate dignity" as that term is used in the applicable statutes.

C. Reburial of human remains shall be accomplished in compliance with the California Public Resources Code § 5097.98 (a) and (b). The Soboba Band, as the MLD in consultation with the Developer, shall make the final discretionary determination regarding the appropriate disposition and treatment of human remains.

D. All parties are aware that the Soboba Band may wish to rebury the human remains and associated ceremonial and cultural items (artifacts) on or near, the site of their discovery, in an area that shall not be subject to future subsurface disturbances. The Developer should accommodate on-site reburial in a location mutually agreed upon by the Parties.

E. The term "human remains" encompasses more than human bones because the Soboba Band's traditions periodically necessitated the ceremonial burning of human remains. Grave goods are those artifacts associated with any human remains. These items, and other funerary remnants and their ashes are to be treated in the same manner as human bone fragments or bones that remain intact

Coordination with County Coroner's Office. The Lead Agencies and the Developer should immediately contact both the Coroner and the Soboba Band in the event that any human remains are discovered during implementation of the Project. If the Coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, the Coroner shall ensure that notification is provided to the NAHC within twenty-four (24) hours of the determination, as required by California Health and Safety Code § 7050.5 (c).

Non-Disclosure of Location Reburials. It is understood by all parties that unless otherwise required by law, the site of any reburial of Native American human remains or cultural artifacts shall not be disclosed and shall not be governed by public disclosure requirements of the California Public Records Act. The Coroner, parties, and Lead Agencies, will be asked to withhold public disclosure information related to such reburial, pursuant to the specific exemption set forth in California Government Code § 6254 (r).

Ceremonial items and items of cultural patrimony reflect traditional religious beliefs and practices of the Soboba Band. The Developer agrees to return all Native American ceremonial items and items of cultural patrimony that may be found on the project site to the Soboba Band for appropriate treatment. In addition, the Soboba Band requests the return of all other cultural items (artifacts) that are recovered during the course of archaeological investigations. Where appropriate and agreed upon in advance, Developer's archeologist may conduct analyses of certain artifact classes if required by CEQA, Section 106 of NHPA, the mitigation measures or conditions of approval for the Project. This may include but is not limited or restricted to include shell, bone, ceramic, stone or other artifacts.

Sent by:
"shanan M." <martineau@shivwits.org>
To
<linda_resseguie@blm.gov>
cc
<shayjaym@hotmail.com>
Subject
PEIS for Solar Energy
03/18/2010 12:08 PM

In Reference to: 1610 (300)

Linda

I am writing on behalf of Shivwits Band Council about the PEIS for Solar Energy Development. We are very much interested in this study, in fact we have had a company that had come to us wanting us to put solar energy here on the Shivwits reservation.

We would like some more information on what the government-to-government consultaion on the Solar PEIS is all about or any information that we may need to know about these issues.

You can contact me, Shanan Martineau at; 435-773-1821 or throught this e-mail. Also our Chairwoman Charlotte Lomeli at: 435-668-8997 or email: lomeli20034@aol.com

I am on Shivwits Council and also do the secretary duties for our Band.

Thanks

Shanan Martineau
Cultural Resources Manager
6060 W 3650 N
Ivins, UT 84738
phone: 435-773-1821
Fax: 435-656-8002

From: Linda_Resseguie@blm.gov
To: Verhaaren_Bruce.T
Cc: Michael_D_Johnson@blm.gov
Subject: confirmation on call with Gerald Ahasteen, Low Mountain Chapter, Navajo Nation
Date: Tuesday, March 30, 2010 11:57:28 AM

Bruce, I wanted to confirm that Gerald Ahasteen called today because he had received our Solar PEIS mailing. (The Chapter Web site identifies Mr. Ahasteen as the Chapter President.) He noted that the nearest BLM land was about 150 miles away from the Chapter location, and so they have no real interest in or concern with the BLM Solar PEIS effort.

Linda J. Resseguie
Realty Specialist WO - 350
202.912.7337; fax 912.7199

1 **K.2 CULTURAL RESOURCE CONSULTATION**

2
3 This section provides detailed information on the status of compliance with Section 106
4 of the NHPA and consultation on cultural resources for the Solar PEIS.
5

6
7 **K.2.1 Introduction**

8
9 The BLM is coordinating with and soliciting input from the State Historic Preservation
10 Offices (SHPOs) in each of the six states in the study area and the Advisory Council on Historic
11 Preservation (ACHP) in accordance with the National Historic Preservation Act (NHPA).
12 Section K.2.2 provides copies of the official correspondence to date regarding the PEIS. In
13 addition, the National Council of SHPOs (NCSHPO), the National Trust for Historic
14 Preservation,¹ and Tribal Governments (also see Section K.1) have been invited to consult on the
15 PEIS and the preparation of a National Programmatic Agreement (PA) regarding solar energy
16 development. The PA will provide for a phased consultation process for complying with
17 Section 106 of the NHPA related to potential adverse effects on historic, traditional, and cultural
18 resources as a result of developing a solar energy program under the PEIS and subsequent
19 activities that could tier from the PEIS Record of Decision. The PA is currently under
20 development and will be available as part of this Appendix (Section K.2.3) when it has been
21 completed. Copies of the 1997 National PA among the BLM, ACHP, and NCSHPO, as well as
22 the current state protocols of the six individual states involved in this PEIS have been included in
23 Section K.2.4 for reference.
24
25

¹ The NCSHPO and National Trust for Historic Preservation have participated in meetings (June and Aug. 2009) with the BLM, SHPOs, and ACHP, although no formal letter or correspondence has been sent to them directly from the BLM and is therefore not included in this Appendix. They are also intended to be concurring parties on the National PA for Solar Energy Development.

TABLE K-3 Index of Section 106 Consultation Letters

Date	Originating Organization	Recipient Organization	Page
Sept. 25, 2008	BLM, Minerals and Realty Management	Advisory Council on Historic Preservation	K-136
Dec. 3, 2008	Advisory Council on Historic Preservation	Minerals and Realty Management, BLM	K-138
Feb. 23, 2009	BLM	Arizona State Parks	K-139
	BLM	California Department of Parks and Recreation	K-141
	BLM	Colorado Historical Society	K-143
	BLM	New Mexico Historic Preservation Division	K-145
	BLM	Nevada State Historic Preservation Office	K-147
	BLM	Utah State History	K-149
July 1, 2009	Advisory Council on Historic Preservation	U.S. Department of the Interior; BLM; others	K-151
Sept. 9, 2009	BLM, Renewable Resources and Planning	Advisory Council on Historic Preservation	K-153

1
2

1 K.2.2 Letters
2



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Washington, D.C. 20240

<http://www.blm.gov>

September 25, 2008



In Reply Refer To:
1600 (300)

Mr. Don Klima, Director
Office of Federal Agency Programs
1100 Pennsylvania Avenue, NW., Suite 109
Washington, D.C. 20004

Dear Mr. Klima:

Please accept this letter as official notification of the Bureau of Land Management (BLM) and the Department of Energy's (DOE) intent to initiate a joint Programmatic Environmental Impact Statement (PEIS) to evaluate utility-scale solar energy development on BLM-administered lands. In accordance with Section 4(b)(1) of the National Programmatic Agreement among the BLM, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers, the BLM requests the advice, guidance, and assistance of the ACHP on the application of Section 106 of the National Historic Preservation Act to the PEIS for Solar Energy Development and on the process by which the BLM will meet its responsibilities for compliance with section 106.

The Energy Policy Act of 2005 establishes a goal for the BLM to approve a minimum of 10,000 megawatts of non-hydropower renewable energy on BLM-administered lands by the year 2015. The DOE and the BLM have identified utility-scale solar energy development, which distributes electricity to consumers through the electric power transmission grid, as one of several critical components in meeting this goal and the Nation's energy needs.

The study area for the PEIS has been limited to the States of Arizona, California, Colorado, New Mexico, Nevada, and Utah based on an initial resource assessment showing that these states encompass the most prospective solar energy resource suitable for utility-scale development over the next 20 years. The BLM has already received more than 200 utility-scale solar energy project proposals for BLM-administered lands, mainly in southern California, Nevada, and Arizona. A single utility-scale solar energy project can include hundreds or even thousands of acres. The PEIS is intended to provide a better understanding of the environmental effects of and appropriate mitigation measures for this type of large scale development on the public lands. The PEIS will not authorize any solar energy projects, and the BLM will continue to do site specific environmental analyses for individual projects.

Preparation of the PEIS is a multistep process that BLM projects to be completed by the summer of 2010. The effort will include the preparation of a draft PEIS, a final PEIS, and Records of Decision by the BLM and the DOE. As such, we anticipate very short, concurrent review time

3
4

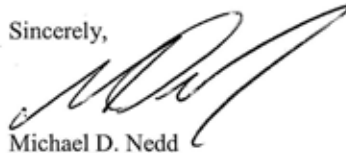
frames for the BLM and the DOE, our cooperating agencies, and consulting parties. The BLM has already begun the initial process of identifying consulting parties and formally notifying Tribal governments, and we anticipate that our local BLM offices will be contacting State Historic Preservation Offices (SHPOs) about the PEIS in the next few weeks.

We began the PEIS with initial public scoping which included 11 public meetings held in June and July 2008. Argonne National Laboratory is assisting the BLM and the DOE with the PEIS and is currently preparing a summary of public scoping comments that should be available later this month. All of the public comments received as well as the transcripts from the meetings are posted on the PEIS project Web site: <http://solarcis.anl.gov>.

Recently BLM and DOE staff met with you and others at the ACHP to explain the objectives and elements of the PEIS and to begin informal discussions on the way in which the agencies can meet their respective responsibilities under section 106. As a result, the BLM would like to continue to explore the possibility of a programmatic agreement with the ACHP and the affected SHPOs that would serve as a roadmap for section 106 consultation in the BLM's solar energy program. We look forward to our continued interaction and discussions with the ACHP on this issue.

The BLM point of contact for the Solar Energy Development PEIS is Linda Resseguie. She can be reached by telephone at 202-452-7774 or by electronic mail at linda_resseguie@blm.gov. Rolla Queen, the BLM Liaison to the ACHP, is also available as a point of contact and to facilitate and coordinate meetings with the ACHP for the PEIS.

Sincerely,



Michael D. Nedd
Assistant Director, Minerals and Realty Management



Preserving America's Heritage

December 3, 2008

Mr. Michael D. Nedd
BLM Assistant Director
Minerals and Realty Management
Bureau of Land Management
1849 "C" Street N.W.
Washington, D.C. 20240

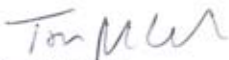
RE: *Solar Energy Development Programmatic Environmental Impact Statement
Arizona, California, Colorado, New Mexico, Nevada, and Utah*

Dear Mr. Nedd:

The Advisory Council on Historic Preservation recently received your notification of preparation of a Programmatic Environmental Impact Statement (PEIS) for Solar Energy Development. We are committed to working closely with BLM as it moves forward with this PEIS: it will address important policy questions and affect multiple states and historic resources. We appreciate the briefing BLM provided to our staff in September on this issue, and reiterate our advice that BLM develop a programmatic agreement to provide a clear and specific Section 106 process that this energy development will necessitate.

We look forward to working with BLM, the State Historic Preservation Officers, and other consulting parties regarding this undertaking. Should you have any questions or wish to discuss this matter further, please contact Nancy J. Brown by phone at (202) 606-8582 or by e-mail at nbrown@achp.gov.

Sincerely,


Reid J. Nelson
Assistant Director
Federal Property Management Section
Office of Federal Agency Programs

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
California Desert District
22835 Calle San Juan de los Lagos
Riverside, CA 92553
www.ca.blm.gov/cdd



In Reply Refer To:
CR CA610-09-01/8100 (CA610.25)

February 23, 2009

Mr. James Garrison
State Historic Preservation Officer
Arizona State Parks
1300 W. Washington
Phoenix, AZ 85007

Dear Mr. Garrison:

The Bureau of Land Management (BLM) and the Department of Energy (DOE) are currently preparing a joint Programmatic Environmental Impact Statement (PEIS) to evaluate utility-scale solar energy development on BLM-administered lands. The BLM is the lead federal agency for purposes of compliance with Section 106 of the National Historic Preservation Act (NHPA). The study area for the PEIS includes the states of Arizona, California, Colorado, New Mexico, Nevada, and Utah. This study area is based on an initial resource assessment showing that these states encompass the most prospective solar energy resource suitable for utility-scale development over the next 20 years. The PEIS is intended to provide a better understanding of the environmental effects of and appropriate mitigation measures for this type of large scale energy development on the public lands. The Energy Policy Act of 2005 establishes a goal for the BLM to approve a minimum of 10,000 megawatts of non-hydropower renewable energy on BLM-administered lands by the year 2015. The DOE and the BLM have identified utility-scale solar energy development, which distributes electricity to consumers through the electric power transmission grid, as one of several critical components in meeting this goal and the Nation's energy needs.

Preparation of the PEIS is a multistep process that BLM projects to be completed by the summer of 2010. We expect that the PEIS will result in the BLM identifying lands that would be open to solar energy development applications and mitigation measures that would be applied to all solar energy development projects on BLM-administered land. The PEIS will not authorize any solar energy projects, and the BLM will continue to do project specific environmental analyses, including section 106, for individual projects. The effort will include the preparation of a draft PEIS, a final PEIS, and Records of Decision by the BLM and the DOE. As such, we anticipate very short, concurrent review time frames for the BLM and the DOE, our cooperating agencies, and consulting parties. The BLM has already begun the process of identifying other consulting parties and has formally notified Tribal governments about the PEIS.

Scoping for the PEIS began with 11 public meetings held in June and July 2008. Argonne National Laboratory is assisting the BLM and the DOE with the PEIS and has prepared a summary of public scoping comments. All of the public comments received and the transcripts from the meetings are posted on the PEIS project Web site:

<http://solareis.anl.gov>

The BLM, pursuant to Section 4(b)(1) of the National Programmatic Agreement among the BLM, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO), has initiated consultation with the ACHP regarding the application of section 106 to the PEIS and on the process by which the BLM will meet its responsibilities for compliance with section 106. Because of the non-routine, interagency and interstate nature of the decisions being analyzed in the PEIS, BLM (in consultation with the ACHP) has determined that a phased or "tiered" approach provides the best strategy to identify and manage effects to historic properties. A Programmatic Agreement (PA) will be used to document the specifics of this tiered approach. The PA will be developed in consultation with the concerned State Historic Preservation Officers (SHPO), the ACHP, and other consulting parties and will serve as a roadmap for subsequent section 106 consultations in the BLM's and DOE's solar energy programs.

The BLM is inviting the SHPO to join the BLM and the ACHP in consultation on this PEIS and the development of the PA. For purposes of facilitating consultation and the development of the PA, the BLM has designated its California Desert District Office as the lead for this effort. Rolla Queen, BLM District Archaeologist, will serve as the principal point of contact and will be coordinating the consultation and working closely with the SHPOs, the ACHP, consulting parties, and the BLM headquarters and State Offices to draft a PA and successfully conclude our responsibilities under section 106. He can be reached by telephone at 951-697-5386 and by electronic mail at rolla_queen@ca.blm.gov. The BLM point of contact for the Solar Energy Development PEIS is Linda Resseguie in the BLM Washington Office. She can be reached by telephone at 202-452-7774 or by electronic mail at linda_resseguie@blm.gov. Please feel free to contact either Mr. Queen or Ms. Resseguie for additional information or clarification about the PEIS or the PA process.

The BLM plans to coordinate an initial conference call between the SHPOs, ACHP, and BLM to discuss this undertaking and the development of the PA. It would facilitate logistics and scheduling if your office could identify to Mr. Queen who your point of contact will be for this consultation. Mr. Queen also will be contacting your office shortly to follow-up on this letter, discuss this undertaking and the PA, and answer any questions you may have at this time. We hope to schedule a conference call with all the consulting parties to discuss the PEIS and the PA sometime in mid-March.

We look forward to our consultations on this important renewable energy initiative. If we can provide any additional information or answer any questions, please do not hesitate to contact us.

Sincerely,


Steven J. Borchard
District Manager

cc electronically

Robin Burgess, WO240
Linda Resseguie, WO350
Reid Nelson (Nancy Brown), ACHP
Linda Jorgenson, DOE
Byron Loosle, UT934

Dan Haas, CO931
Michael Johnson, AZ931
Tom Burke, NV933
Signa Larralde, NM930
Gina Jorgenson, CA930



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
California Desert District
22835 Calle San Juan de los Lagos
Riverside, CA 92553
www.ca.blm.gov/cdd



In Reply Refer To:
CR CA610-09-01/8100 (CA610.25)

February 23, 2009

Mr. Milford Wayne Donaldson
State Historic Preservation Officer
California Department of Parks and Recreation
Office of Historic Preservation
1416 9th Street, Room 1442-7,
Sacramento, CA 95814

Dear Mr. Donaldson:

The Bureau of Land Management (BLM) and the Department of Energy (DOE) are currently preparing a joint Programmatic Environmental Impact Statement (PEIS) to evaluate utility-scale solar energy development on BLM-administered lands. The BLM is the lead federal agency for purposes of compliance with Section 106 of the National Historic Preservation Act (NHPA). The study area for the PEIS includes the states of Arizona, California, Colorado, New Mexico, Nevada, and Utah. This study area is based on an initial resource assessment showing that these states encompass the most prospective solar energy resource suitable for utility-scale development over the next 20 years. The PEIS is intended to provide a better understanding of the environmental effects of and appropriate mitigation measures for this type of large scale energy development on the public lands. The Energy Policy Act of 2005 establishes a goal for the BLM to approve a minimum of 10,000 megawatts of non-hydropower renewable energy on BLM-administered lands by the year 2015. The DOE and the BLM have identified utility-scale solar energy development, which distributes electricity to consumers through the electric power transmission grid, as one of several critical components in meeting this goal and the Nation's energy needs.

Preparation of the PEIS is a multistep process that BLM projects to be completed by the summer of 2010. We expect that the PEIS will result in the BLM identifying lands that would be open to solar energy development applications and mitigation measures that would be applied to all solar energy development projects on BLM-administered land. The PEIS will not authorize any solar energy projects, and the BLM will continue to do project specific environmental analyses, including section 106, for individual projects. The effort will include the preparation of a draft PEIS, a final PEIS, and Records of Decision by the BLM and the DOE. As such, we anticipate very short, concurrent review time frames for the BLM and the DOE, our cooperating agencies, and consulting parties. The BLM has already begun the process of identifying other consulting parties and has formally notified Tribal governments about the PEIS.

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The BLM is inviting the SHPO to join the BLM and the ACHP in consultation on this PEIS and the development of the PA. For purposes of facilitating consultation and the development of the PA, the BLM has designated its California Desert District Office as the lead for this effort. Rolla Queen, BLM District Archaeologist, will serve as the principal point of contact and will be coordinating the consultation and working closely with the SHPOs, the ACHP, consulting parties, and the BLM headquarters and State Offices to draft a PA and successfully conclude our responsibilities under section 106. He can be reached by telephone at 951-697-5386 and by electronic mail at rolla_queen@ca.blm.gov. The BLM point of contact for the Solar Energy Development PEIS is Linda Resseguie in the BLM Washington Office. She can be reached by telephone at 202-452-7774 or by electronic mail at linda_reseguie@blm.gov. Please feel free to contact either Mr. Queen or Ms. Resseguie for additional information or clarification about the PEIS or the PA process.

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Sincerely,



Steven J. Borchard
District Manager

cc electronically

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Linda Jorgenson, DOE
Byron Loosle, UT934

Dan Haas, CO931
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In Reply Refer To:
CR CA610-09-01/8100 (CA610.25)

February 23, 2009

Mr. Edward Nichols
State Historic Preservation Officer
Colorado Historical Society
1300 Broadway
Denver, CO 80203

Dear Mr. Nichols:

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Steven J. Borchard
District Manager

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In Reply Refer To:
CR CA610-09-01/8100 (CA610.25)

February 23, 2009

Ms. Katherine Slick
State Historic Preservation Officer
Historic Preservation Division
Bataan Memorial Building
407 Galisteo Street, Suite 236
Santa Fe, NM 87501

Dear Ms. Slick:

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www.ca.blm.gov/odd



In Reply Refer To:
CR CA610-09-01/8100 (CA610.25)

February 23, 2009

Mr. Ronald James
State Historic Preservation Officer
Nevada State Historic Preservation Office
100 North Stewart Street
Carson City, NV 89701-4285

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In Reply Refer To:
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February 23, 2009

Mr. Wilson Martin
State Historic Preservation Officer
Utah State History
300 Rio Grande
Salt Lake City, UT 84101

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Michael Johnson, AZ931
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Signa Larralde, NM930
Gina Jorgenson, CA930

1 Richard Hanes/WO/BLM/DOI
2 07/01/2009 01:06 PM
3 To
4 Linda Resseguie/WO/BLM/DOI@BLM, Rolla Queen/CASO/CA/BLM/DOI@BLM
5 cc
6 Robin Burgess/WO/BLM/DOI@BLM
7 bcc
8
9 Subject
10 Fw: Solar Energy Study Areas and Historic Preservation
11
12 History:
13
14 This message has been forwarded.
15
16 fyi - a comment from the Advisory Council regarding the Monday press
17 conference.
18
19 Richard
20
21 ----- Forwarded by Richard Hanes/WO/BLM/DOI on 07/01/2009 01:05 PM -----
22 "John Fowler" <jfowler@achp.gov>
23 07/01/2009 12:08 PM
24 To
25 <Ned_Farquhar@ios.doi.gov>, <mike_pool@blm.gov>
26 cc
27 <Will_Shafroth@ios.doi.gov>, <Laura_Davis@ios.doi.gov>, "Caroline Hall"
28 <chall@achp.gov>, "Reid Nelson" <rnelson@achp.gov>, "Nancy Brown"
29 <nbrown@achp.gov>, "Nancy Schamu" <schamu@sso.org>, "D. Bambi Kraus"
30 <bambi@nathpo.org>, "Robin L. Burgess" <robin_burgess@blm.gov>, "Richard
31 Hanes" <richard_hanes@or.blm.gov>, "John" <jfowler@achp.gov>, "John Nau"
32 <Nau@sedbud.com>, "Lannis Jenkins" <ljenkins@sedbud.com>
33 Subject
34 Solar Energy Study Areas and Historic Preservation
35
36
37 I was pleased to see the Secretary's announcement Monday that the
38 Department has committed to identifying appropriate lands for solar energy
39 development that would limit conflicts with natural resources and
40 recreational land uses. While the absence of any references to cultural
41 resources may have simply been an oversight of the press office, I want to
42 bring to your attention that another critical part of this evaluation is
43 the consideration of historic properties, in particular those sites of
44 importance to Indian tribes. Integrating this into your identification
45 efforts will allow DOI to get an early start on assessing compliance needs
46 for Section 106 of the National Historic Preservation Act. Most
47 importantly, addressing historic resources in the effort to identify
48 appropriate lands will go a long way to avoid controversy and delay when
49 individual projects move through the approval process.
50
51
52

1 I was also encouraged by the parallel efforts that MMS has underway to
2 address similar issues for renewable energy projects on the Outer
3 Continental Shelf. We participated in their meeting last week on the
4 subject and are working with them to ensure effective and early engagement
5 with Section 106 as they move forward.

6
7 We at the ACHP, along with our partner State Historic Preservation
8 Officers and Tribal Historic Preservation Officers, look forward to
9 working closely with you and your staff on historic preservation matters
10 as you proceed with the expanded evaluation of the Solar Energy Study
11 Areas. Please let me know how we can be of assistance. John

12
13



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
<http://www.blm.gov>



SEP 09 2009

In Reply Refer To:
1610 (240)

Mr. John Fowler
Executive Director
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 109
Washington, D.C. 20004

Dear Mr. Fowler:

This letter is to acknowledge receipt of your July 1, 2009, email message responding to Secretary Salazar's announcement of the addition of 24 solar energy study areas to the joint Bureau of Land Management (BLM), Department of Energy Programmatic Environmental Impact Statement (PEIS) for Solar Energy Development on BLM-administered lands. Thank you for your support and encouragement as we move forward with the identification of areas suitable to solar energy development. We regret that our public announcement failed to highlight cultural resources as we consider the nation's cultural resources and environmental resources to be of equal import in this process.

On behalf of the BLM, we want to personally assure the Advisory Council that we are mindful of our responsibilities under Section 106 of the National Historic Preservation Act to take into account the effects solar energy development may have on historic properties. We anticipate a robust and effective section 106 consultation process in conjunction with the Solar PEIS and look forward to working with the Advisory Council, the Tribes, and other consulting parties in this effort.

If you have any questions concerning this correspondence or the Solar PEIS, please contact our Preservation Officer, Robin Burgess, at (202) 912-7241, or our Solar PEIS Project Manager, Linda Resseguie, at (202) 912-7337.

Sincerely,

Edwin L. Roberson
Assistant Director
Renewable Resources and Planning

Cc: 240 LS 204
Linda Resseguie/sdw:912-7337:Response to JF-ACHP

1 **K.2.3 National Programmatic Agreement for the Solar PEIS**

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3 The Programmatic Agreement is currently under development and will be provided when
4 available.

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7 **K.2.4 National Programmatic Agreement of 1997 and State Protocols**

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K.2.4.1 National Programmatic Agreement of 1997

**PROGRAMMATIC AGREEMENT
AMONG
THE BUREAU OF LAND MANAGEMENT,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS
REGARDING
THE MANNER IN WHICH BLM WILL MEET ITS RESPONSIBILITIES
UNDER THE NATIONAL HISTORIC PRESERVATION ACT**

Preamble

Bureau of Land Management. The Bureau of Land Management (BLM), consistent with its authorities and responsibilities under the Federal Land Policy and Management Act of 1976 (FLPMA), is charged with managing public lands principally located in the States of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming in a manner that will "protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values," and "that will provide for outdoor recreation and human occupancy and use."

The BLM also has specific responsibilities and authorities to consider, plan for, protect, and enhance historic properties and other cultural properties which may be affected by its actions in those and other States, including its approval for Federal mineral resource exploration and extraction, under the National Environmental Policy Act, the National Historic Preservation Act of 1966 (NHPA), the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, the Historic Sites Act of 1935, the Antiquities Act, the American Indian Religious Freedom Act, the Religious Freedom Restoration Act, Executive Order 13007 ("Sacred Sites"), and related authorities.

In carrying out its responsibilities, the BLM has developed policies and procedures through its directives system (BLM Manual Sections 8100-8160) to help guide the BLM's planning and decision making as it affects historic properties and other cultural properties, and has assembled a cadre of cultural heritage specialists to advise the BLM's managers and to implement cultural heritage policies consistent with these statutory authorities.

State Historic Preservation Officers. State Historic Preservation Officers (SHPOs), as represented by the National Conference of State Historic Preservation Officers (NCSHPO), have responsibilities under State law as well as under Section 101(b)(3) of the National Historic Preservation Act that include to "advise and assist as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities," and to "consult with the appropriate Federal agencies in accordance with [NHPA] on Federal undertakings that may affect historic properties, and the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties."

In certain cases others may be authorized to act in the SHPO's place. Where the Secretary has approved an Indian tribe's preservation program pursuant to Section 101(d)(2) of the NHPA, a Tribal Preservation Officer may perform some SHPO functions with respect to tribal lands. A local historic preservation commission acting through the chief local elected official may fulfill some SHPO-delegated functions, where the Secretary has certified the local government pursuant to Section 101(c)(1) of the NHPA, and its actions apply to lands in its jurisdiction. Pursuant to the regulations implementing Section 106 of the NHPA [36 CFR 800.1(c)], the Council may at times act in lieu of the SHPO.

Advisory Council on Historic Preservation. The Advisory Council on Historic Preservation (Council) has the responsibility to administer the process implementing Sections 106, 110(f), and 111(a) of the National Historic Preservation Act, to comment with regard to Federal undertakings subject to review under Sections 106, 110(f) and 111(a) in accordance with its implementing regulations (36 CFR Part 800), and to "review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under [NHPA]" under Section 202(a)(6) of the NHPA.

The above-named parties now wish to ensure that the BLM will organize its programs to operate efficiently, effectively, according to the spirit and intent of the NHPA, and in a manner consistent with 36 CFR Part 800; and that the BLM will integrate its historic preservation planning and management decisions with other policy and program requirements to the maximum extent. The BLM, the SHPOs, and the Council desire and intend to streamline and simplify procedural requirements, to reduce unnecessary paperwork, and to emphasize the common goal of planning for and managing historic properties under the BLM's jurisdiction and control in the public interest.

Basis for Agreement

Proceeding from these responsibilities, goals, and objectives, the parties acknowledge the following basis for agreement:

WHEREAS the BLM's management of lands and mineral resources may affect cultural properties, many of which are historic properties as defined by the National Historic Preservation Act and are therefore subject to Sections 106, 110(f), and 111(a) of the NHPA; and

WHEREAS, among other things, the BLM's program established in response to Section 110(a)(2) and related authorities provides a systematic basis for identifying, evaluating, and nominating to the National Register historic properties under the bureau's jurisdiction or control; for managing and maintaining properties listed in or eligible for the National Register in a way that considers the preservation of their archaeological, historical, architectural, and cultural values and the avoidance of adverse effects in light of the views of local communities, Indian

tribes, interested persons, and the general public; and that gives special consideration to the preservation of such values in the case of properties designated as having National significance; and

WHEREAS the BLM's program is also intended to ensure that the bureau's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, and the private sector; and

WHEREAS the BLM's program also has as its purpose to ensure that the bureau's procedures for compliance with Section 106 are consistent with regulations issued by the Council pursuant to Section 211 of the NHPA (36 CFR Part 800, "Protection of Historic Properties"), and provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and

WHEREAS the BLM's program also intends to ensure that its Section 106 procedures recognize the historic and traditional interests of Indian tribes and other Native American groups in lands and resources potentially affected by BLM decisions, affording tribes and other groups adequate participation in the decisionmaking process in accordance with Sections 101(d)(6), 110(a)(2)(D), and 110(a)(2)(E)(ii) of the NHPA, and provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with Section 3(c) of the Native American Graves Protection and Repatriation Act, in accordance with Section 110(a)(2)(E)(iii) of the NHPA; and

WHEREAS this agreement will not apply to tribal lands, but rather, a proposed BLM undertaking on tribal lands will require consultation among the BLM, the Tribal Preservation Officer, and the Council; or among BLM, tribal officials (where no Tribal Preservation Program exists) the SHPO, and the Council; and such consultation will be outside the compass of this agreement and will follow 36 CFR Part 800 or the Indian tribe's alternative to 36 CFR Part 800; and

WHEREAS the BLM's program, the elements of which were defined in the BLM Manual between 1988 and 1994, does not incorporate some recent changes in legal, regulatory, and Executive Order authorities and recent changes in the nature and direction of historic preservation relationships, rendering the program directives in need of updating, and this need is recognized by the BLM, the Council, and the NCSHPO as an opportunity to work jointly and cooperatively among themselves and with other parties, as appropriate, to enhance the BLM's historic preservation program; and

WHEREAS the States, particularly those containing a high percentage of public land under the BLM's jurisdiction and control, have a strong incentive in forming a cooperative

relationship with the BLM to facilitate and promote activities of mutual interest, including direction and conduct of a comprehensive statewide survey and inventory of historic properties, identification and nomination of eligible properties to the National Register of Historic Places, preparation and implementation of comprehensive historic preservation plans, and development and dissemination of public information, education and training, and technical assistance in historic preservation, and

WHEREAS the parties intend that efficiencies in the Section 106 process, realized through this agreement, will enable BLM, SHPO, and Council staffs to devote a larger percentage of their time and energies to proactive work, including analysis and synthesis of data accumulated through decades of Section 106 compliance; historic property identification where information is needed, not just in reaction to proposed undertakings; long-term preservation planning; purposeful National Register nomination; planning- and priority-based historic resource protection; creative public education and interpretation; more efficient BLM, SHPO, and Council coordination, including program monitoring and dispute resolution; and other activities that will contribute to readily recognizable public benefits and to an expanded view of the Section 106 context, and

WHEREAS the BLM has consulted with the Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation Officers (NCSHPO) regarding ways to ensure that BLM's planning and management shall be more fully integrated and consistent with the above authorities, requirements, and objectives;

NOW, THEREFORE, the BLM, the Council, and the NCSHPO mutually agree that the BLM, after completing the actions summarized in 1. below, will meet its responsibilities under Section 106, 110(f), and 111(a) through the implementation of the mechanisms agreed to in this agreement rather than by following the procedure set forth in the Council's regulations (36 CFR Part 800), and the BLM will integrate the manner in which it meets its historic preservation responsibilities as fully as possible with its other responsibilities for land-use planning and resource management under FLPMA, other statutory authorities, and executive orders and policies.

Components Of Agreement

1. Applicability

The Council's regulations (36 CFR Part 800) and existing State programmatic agreements will continue to apply to BLM undertakings under a State Director's jurisdiction until the Director and State Directors, with the advice of the Preservation Board, assisted by the Council, the NCSHPO, the SHPOS, and other participating parties, as appropriate, have updated and revised national BLM policies and procedures; developed State-specific BLM/SHPO operating

protocols; and trained all field managers and their cultural heritage staffs in the operation of the policies, procedures, and protocols. Field offices under a State Director's jurisdiction (including those under the jurisdiction of the Eastern States Director) will not begin to employ the streamlined procedures developed pursuant to this agreement until the Director has certified that the State Director's organization is appropriately qualified to do so.

2. Establishment of Preservation Board

a. The BLM's Director will establish a Preservation Board to advise the Director, Assistant Directors, State Directors, and field-office managers in the development and implementation of BLM's policies and procedures for historic properties. Authority, responsibilities, and operating procedures for the Preservation Board will be specified in the BLM Manual.

b. The Preservation Board will be chaired by the BLM's Preservation Officer designated under Section 110(c) of the NHPA, and will include a professionally qualified Deputy Preservation Officer from each State Office. The field management organization will be represented by at least three line managers (i.e., officials who are authorized by the Director's or State Directors' delegation to make land-use decisions).

c. The Preservation Board will perform primary staff work and make recommendations to the Director and State Directors concerning policies and procedures (3. below); bureauwide program consistency (3. below); training (6. below); certification and decertification of field offices (8. below); monitoring of field offices' historic preservation programs (9. below); and responses to public inquiries (9. below).

d. In addition, the Preservation Board will confer regularly with the Council and NCSHPO and involve them in its activities, as appropriate, including the development of the items listed in 2.c. The Preservation Board will also confer regularly with individual SHPOs and such other parties as have identified themselves to the Board as interested parties, including Tribal Preservation Officers, local governments, and preservation associations, to promote consistency with State, regional, and national practice, to identify recurrent problems or concerns, and to create opportunities in general to advance the purposes of this agreement.

e. The BLM will provide assistance, where feasible and appropriate, with reasonable and prudent expenses of the Council related to its activities pursuant to 2.c. and 2.d. above.

3. Revision of "Cultural Resource Management" Procedures

a. Within 6 months from the date of its establishment under 2. above, the Preservation Board will provide notice to Indian tribes and the public and, in accordance with 2.c. above, will

begin to review, update, revise, adapt, and augment the various relevant sections of its Manual (8100 Series). These are:

- 8100 - "Cultural Resource Management";
- 8110 - "Cultural Resource Identification";
- 8111 - "Cultural Resource Inventory and Evaluation";
- 8130 - "Cultural Resource Planning";
- 8131 - "Cultural Resource Management Plans";
- 8132 - "Cultural Resource Project Plans";
- 8140 - "Cultural Resource Protection";
- 8141 - "Physical and Administrative Protection";
- 8142 - "Recovery of Cultural Resource Data";
- 8143 - "Avoidance and/or Mitigation of Adverse Effects to Cultural Properties";
- 8150 - "Cultural Resource Utilization";
- 8151 - "Cultural Resource Use Permits";
- 8160 - "Native American Coordination and Consultation"; and
- H-8160-1 - "General Procedural Guidance for Native American Consultation."

b. Manuals will be revised in consultation with the Council, NCSHPO, and the SHPOs, and will consider the views of other interested parties who have identified themselves in response to 2.d. (above).

c. Procedures will be revised to be consistent with the purposes of (1) this agreement, (2) the principles and standards contained in the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800); (3) the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* regarding identification, evaluation, registration, and treatment, (4) the Office of Personnel Management's classification and qualification standards as revised under Section 112 of the NHPA, and (5) other applicable standards and guidelines, and will include time frames and other administrative details for actions referred to in this agreement.

d. The BLM will ensure adequate public participation and consultation with parties outside the BLM when revising policy and procedures under 3.a. The BLM's procedures for implementing the National Environmental Policy Act (NEPA) will be used as appropriate for ensuring adequate public participation in the BLM's historic preservation decision making. Provisions of Section 110 of the NHPA and the Council's regulations will be the basis for tailoring the NEPA procedures to historic preservation needs. Mechanisms for continuing public involvement in BLM's historic preservation process will be incorporated in BLM/SHPO protocols under 5. below.

e. The BLM will provide Indian tribes and other Native American groups with appropriate opportunities for involvement. Consultation with tribes pursuant to Sections 101(d)(6) and 110(a)(2)(E) of the NHPA will follow government-to-government conventions. Procedures to ensure timely and adequate Native American participation will follow the direction

in Sections 101(d)(6) and 110(a)(2)(E) of the NHPA, and BLM Manual Section 8160 and Manual Handbook H-8160-1, as revised pursuant to a. and b. above. Revisions to the 8160 Manual Section and Manual Handbook will treat the cited NHPA direction as the minimum standard for Indian tribes' and other Native American groups' opportunities to be involved. Provisions for Native American participation in BLM's procedures for historic property identification, evaluation, and consideration of adverse effects will be incorporated in BLM/SHPO protocols under 5. below. For Indian tribes with historic preservation programs approved by the Secretary under Section 101(d)(2) of the NHPA, Tribal Preservation Officers will be involved in place of SHPOs when tribal land would be affected. Such involvement will occur under the Council's and/or the Tribe's procedures in all cases, not under this programmatic agreement.

f. It will be the Preservation Board's duty in accordance with 3.b. above to ensure that the policies and procedures, as revised pursuant to this section, are being followed appropriately by field offices. Where problems with implementation are found, it will be the Preservation Board's duty to move promptly toward effecting correction of the problems. This responsibility of the Preservation Board, among others, will be spelled out in the BLM Manual under 2.a. above.

4. Thresholds for Council Review

a. The BLM procedures will identify circumstances calling for the Council's review.

b. At a minimum, the BLM will request the Council's review in the following classes of undertakings:

- (1) nonroutine interstate and/or interagency projects or programs;
- (2) undertakings directly and adversely affecting National Historic Landmarks or National Register eligible properties of national significance;
- (3) highly controversial undertakings, when Council review is requested by the BLM, an SHPO, an Indian tribe, a local government, or an applicant for a BLM authorization.

5. Cooperation and Enhanced Communication

a. Immediately following execution of this agreement, the BLM will offer each affected SHPO and the Council (and others who have identified concerns under 2.d. above) the following information, and will provide or update as needed:

- a reference copy of the existing BLM Manual Sections and Manual Handbooks related to "Cultural Resource Management;
- a copy of any Handbook, Manual Supplement, or other standard procedure for "Cultural Resource Management" used by the BLM within an individual State Office's jurisdiction
- a list of Preservation Board members;
- a list of BLM cultural heritage personnel within each State Office's jurisdiction;
- a map of the State showing BLM field office boundaries and responsibilities;
- the best available map of the State showing tribal lands, ceded lands, and ancestral use areas; and
- a brief summary of land holdings, major ongoing development projects or permitted uses, proposed major undertakings such as land exchanges or withdrawals, and particularly significant historic properties on BLM lands within each State Office's jurisdiction.

b. Within 6 months after revised policies and procedures become available, each State Director will meet with each pertinent SHPO to develop a protocol specifying how they will operate and interact under this agreement. Where a State Director has few interactions with an SHPO due to minimal public land holdings, protocols need not be pursued and historic preservation consideration will continue to be carried out under the procedures of 36 CFR Part 800. Adoption of protocols, as formalized by the State Director's and SHPO's signatures, will be a prerequisite for the certification described in 8. The Preservation Board and the Council will be kept informed of the progress of protocol development, and will receive an information copy of any signed BLM/SHPO protocol. The SHPO and State Director may ask the NCSHPO, the Preservation Board, and the Council to assist at any stage in developing protocols.

At a minimum, protocols will address the following:

- the manner in which the State Director will ensure the SHPO's involvement in the BLM State management process;
- data sharing, including information resource management development and support
- data synthesis, including geographical and/or topical priorities for reducing the backlog of unsynthesized site location and report information, and data quality improvement;
- public education and community involvement in preservation;
- preservation planning;
- cooperative stewardship;
- agreement as to types of undertakings and classes of affected properties that will trigger case-by-case review (case-by-case review will be limited to undertakings that BLM finds will affect historic properties; the parties to this agreement agree that such case-by-case review will be minimized);
- BLM/SHPO approaches to undertakings involving classes of, or individual examples of, historic properties for which the present BLM staff lacks specialized capabilities;
- provisions for resolving disagreements and amending or terminating the protocol; and
- relationship of the protocol to 36 CFR Part 800.

c. As agreed under the protocol, but at least annually, the BLM will regularly send to the SHPO copies of forms and reports pertaining to historic properties, in a format appropriate to the SHPO's established recording systems, and consistent with the confidentiality provisions of Section 304 of the NHPA, so that information can be shared to the maximum extent and contribute to State inventories and comprehensive plans as well as to BLM land use and resource management planning.

d. The State Director, with the assistance of the Preservation Board, will seek, as appropriate, the SHPO's active participation in the BLM's land-use planning and associated resource management activities so that historic preservation considerations can have a greater influence on large scale decisions and the cumulative effects of the more routine decisions, before key BLM commitments have been made and protection options have been limited. Where SHPO participation will be extensive, State Directors may provide funding, if available.

e. Relevant streamlining provisions of BLM Statewide programmatic agreements currently in force in Arizona, California, Colorado, Nevada, New Mexico, and Wyoming (and other programmatic agreements and/or formalized working arrangements between BLM and SHPOs in any State, relative to identifying undertakings, identifying properties, evaluating properties, determining effects, and protecting historic properties) may be incorporated in BLM/SHPO protocols as appropriate and as consistent with 5.b. above, after which the State Directors will notify the SHPO and Council that the Statewide agreements may be suspended for so long as this agreement remains in effect. Project and special purpose programmatic agreements will function normally according to their terms.

f. When potentially relevant to the purposes and terms of this agreement, the BLM will forward to the Council information concerning the following, early enough to allow for timely briefing and consultation at the Council's election:

- major policy initiatives;
- prospects for regulations;
- proposals for organizational change potentially affecting relationships addressed in this agreement;
- the Administration's budget proposals for BLM historic preservation activities;
- training schedules; and
- long-range planning and regional planning schedules.

6. Training Program

In cooperation with the Council and the NCSHPO, and with the active participation of individual SHPOs, the Preservation Board will develop and implement a training program to (a) instruct BLM line managers and cultural heritage program personnel on the policies underlying and embodied in this agreement, as well as specific measures that must be met prior to its

implementation, and (b) enhance skills and knowledge of other BLM personnel involved with "Cultural Resource Management" activities, including land use planning and resource management staffs. Training sessions will be open to Indian tribes, cultural resource consultants, and other parties who may be involved in the implementation of this agreement. The BLM may, where feasible and appropriate, reimburse the Council for assistance in developing training programs.

7. Professional Development

a. The Preservation Board, in consultation with the supervising line manager and cultural heritage specialist, will document each specialist's individual attainments as a preservation professional, consistent with OPM guidance and Section 112 of the NHPA and giving full value to on-the-job experience. Documentation will include any recommended limitations on the nature and extent of authorized functions. Where a field office manager's immediate staff does not possess the necessary qualifications to perform specialized preservation functions (e.g., historical architecture), the documentation will identify available sources of specialized expertise from outside the immediate staff, such as from other BLM offices, the SHPO, other Federal agencies, or non-governmental sources.

b. The Preservation Board, the supervising line manager, and the cultural heritage specialist will assess the manager's needs for special skills not presently available on the immediate staff, and the specialist's opportunities for professional development and career enhancement through training, details, part-time graduate education, and other means.

8. State Office Certification and Decertification

a. The Preservation Board, in consultation with the appropriate SHPO and the Council, will certify each BLM State Office to operate under this agreement upon determining that (1) managers and specialists have completed the training referred to in 7. above, (2) professional capability to carry out these policies and procedures is available through each field office's immediate staff or through other means, (3) each supervising line manager within the State has assigned and delimited cultural heritage specialists' duties, and (4) the State Director and the SHPO have signed a protocol outlining BLM/SHPO interaction in accordance with 5. above.

b. The Preservation Board may choose to review a field office's certification status. The field office's manager, the State Director, the Council, or the SHPO may request that the Preservation Board initiate a review, in which case the Preservation Board will respond as quickly as possible. If a field office is found not to have maintained the basis for its certification (e.g. the professional capability needed to carry out these policies and procedures is no longer available, or the office is not in conformance with the BLM/SHPO protocol, the procedures developed under 3. above, or this agreement) and the office's manager has not voluntarily

suspended participation under this agreement, the Preservation Board will recommend that the State Director decertify the field office. If a suspended or decertified field office is found to have restored the basis for certification, the Preservation Board will recommend that the State Director recertify the office.

c. A State Director may ask the Director to review the Preservation Board's decertification recommendation, in which case the Director will request the Council's participation in the review.

d. The Preservation Board will notify the appropriate SHPO(s) and the Council if the status of a certified office changes.

e. When a field office is suspended or decertified, the responsible manager will follow the procedures of 36 CFR Part 800 to comply with Section 106.

9. Accountability Measures

a. Each State Director will prepare an annual report in consultation with the appropriate SHPO(s), outlining the preservation activities conducted under this agreement. The annual report's content will be specified in the revised Manual. The report will be provided to the Council and made available to the public.

b. Once each year, the Council, in consultation with the BLM, SHPOS, and interested parties, and with assistance from the BLM, may select a certified State or States, or field offices within a State, for a detailed field review limited to the implementation of this agreement. Selecting parties may consider including other legitimate affected parties as participants in the review, as appropriate. The Preservation Officer and the appropriate Deputy Preservation Officer(s) and SHPO(s) will participate in the review. Findings and recommendations based on this field review will be provided to the Director, the State Director, and the Preservation Board for appropriate action.

c. The Preservation Officer and Deputy Preservation Officers will prepare responses to public inquiries for the Director's or a State Director's signature. This applies only to inquiries about the BLM's exercise of its authorities and responsibilities under this agreement, such as the identification, evaluation, and protection of resources, and not to general inquiries. Preparing responses will include establishing the facts of the situation and, where needed, recommending that the Director or State Director prescribe corrections or revisions in a practice or procedure.

d. Each meeting of the Preservation Board will be documented by a report. The Preservation Board will provide a copy of each report to the Council, the NCSHPO, and participating SHPOs.

10. Reviewing and Changing the Agreement

a. The parties to this agreement may agree to revise or amend it at any time. Changes that would affect the opportunity for public participation or Native American consultation will be subject to notice and consultation, consistent with 3.e. above.

b. Should any party to this agreement object to any matter related to its implementation, the parties will meet to resolve the objection.

c. Any party to this agreement may terminate it by providing 90 days notice to the other parties, provided that the parties will meet during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the BLM will comply with 36 CFR Part 800, including any relevant suspended State programmatic agreements (see 5.e. above).

d. Not later than the third quarter of FY 1999, and every two years thereafter, the parties to this agreement will meet to review its implementation.

Affirmation

The signatures below represent the affirmation of the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers that successful execution of the components of this agreement will satisfy the BLM's obligations under Sections 106, 110(f), and 111(a) of the National Historic Preservation Act.

/s/ Sylvia V. Baca	3/26/97
_____	_____
Director, Bureau of Land Management	Date
/s/ Cathryn B. Slater	March 26, 1997
_____	_____
Chairman, Advisory Council on Historic Preservation	Date
/s/ Judith E. Bittner	Mar 26, 1997
_____	_____
President, National Conference of State Historic Preservation Officers	Date

K.2.4.2 Addendum to the National Programmatic Agreement

5 Jan 2009

Addendum to the Programmatic Agreement among the Bureau of Land Management (BLM), The Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) Regarding the Manner in Which BLM will meet its Responsibilities under the National Historic Preservation Act (NHPA).

Basis for Addendum

WHEREAS, the undersigned recognize the complex and challenging mission of the BLM and the reliance of all signatories on the streamlining provisions and partnering commitments made possible by the subject national programmatic agreement (PA) for meeting the BLM's NHPA Section 106 compliance responsibilities;

WHEREAS, the BLM tribal consultation policy calls for State Directors, District Managers, and Field Office Managers to consult with tribes in government-to-government meetings to identify and consider their concerns in land use planning and decision-making, including development or revision of statewide cultural resource protocols and other agency guidance directing tribal consultation processes;

WHEREAS, the BLM has completed the following provisions in the 1997 PA: (1) establishment of a Preservation Board; (2) notification of Indian tribes and the public that it was beginning the review, revision, adaptation and augmentation of various relevant sections of its 8100 Manual series; (3) initial certification of the BLM State and Field Offices; and (4) establishment of a training program; and

WHEREAS, (1) the 36 CFR Part 800 regulations were revised in 1999 and 2004, (2) alternative procedures must be consistent with the regulations, and (3) the BLM is committed to ensuring that the BLM process for complying with the NHPA Section 106 affords tribes and consulting parties opportunities for participation consistent with 36 CFR Part 800 and Section 101 (d) (6) of the NHPA;

WHEREAS, the BLM completed a revision of the Guidelines for Conducting Tribal Consultation Handbook (H-8120-1 formerly H-8160-1), and Tribal Consultation under Cultural Resource Authorities Manual Section (8120 formerly 8160) and other manual sections to reflect the latest legal authorities in 2004;

WHEREAS, the signatories have determined the need to update the PA to incorporate further the role of Indian tribes;

WHEREAS, the BLM initiated an outreach effort in August 2008 that, through correspondence and listening sessions, invited tribal leaders to provide suggestions to the BLM on the PA and for making tribal coordination and consultation more effective;

NOW, THEREFORE, the BLM, the ACHP and the NCSHPO agree to the following addendum to this agreement:

Addendum 1: Consultation with Indian tribes:

The BLM shall continue holding listening sessions with tribes to achieve the goals of this addendum.

No later than 60 days from the date of the appointment of its new director, the BLM shall initiate the notification process to the public of its intent to update the PA in order to incorporate further the role of Indian tribes in the PA and any implementing mechanisms consistent with 36 CFR Part 800 and Section 101 (d) (6) of the NHPA.

No later than 6 months from the date of this addendum, the signatories (1) shall meet to discuss preliminary findings from tribal listening sessions, and (2) shall begin developing revisions to the PA consistent with 36 CFR Part 800 and Section 101 (d) (6) of the NHPA.

No later than 8 months from the date of this addendum, (1) the BLM shall provide signatories with a report on findings from the listening sessions, including any appropriate recommendations from the tribal listening sessions on the PA revisions, and (2) signatories shall report any new emphases resulting from the change in Administration that need to be considered.

No later than 12 months from the date of this addendum, the BLM, in consultation with the signatories and Indian tribes, shall develop mutually agreeable revisions to the PA to provide appropriate opportunities for tribal consultation and a process for developing subsequent implementing actions. Within 30 days after the BLM provides the proposed revisions, the signatories shall either (1) adopt the revisions; (2) determine that significant progress has been made to reach mutually agreeable revisions and allow additional time for such revisions to be made or a process for implementing actions to be developed; or (3) decide to revert to operation under 36 CFR Part 800.

BUREAU OF LAND MANAGEMENT

BY:  DATE: 1/16/09
JAMES L. CASWELL, DIRECTOR

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY:  DATE: 2/4/09
JOHN L. NAU, III, CHAIRMAN

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

BY:  DATE: 01-26-2009
JAY D. VOGT, PRESIDENT

1 Feb 2010

Amendment to Addendum to the Programmatic Agreement among the Bureau of Land Management (BLM), The Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) Regarding the Manner in Which BLM will meet its Responsibilities under the National Historic Preservation Act (NHPA).

WHEREAS, the BLM, the ACHP, and the NCSHPO executed the referenced Addendum on February 4, 2009;

WHEREAS, the signatories to the Addendum have determined it necessary to extend the time period provided in the Addendum for the development of mutually agreeable revisions to the Programmatic Agreement due to requests from consulting parties for an extension of the review period for various documents and due to the BLM's commitment to enhanced tribal consultation procedures under the agency's new leadership;

NOW, THEREFORE, the BLM, ACHP and NCSHPO agree to amend the referenced Addendum as follows:

In the first sentence of the last paragraph of the referenced Addendum, strike "No later than 12 months" and replace it with "No later than 18 months".

1 Feb 2010

Amendment to Addendum to the Programmatic Agreement among the Bureau of Land Management (BLM), The Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) Regarding the Manner in Which BLM will meet its Responsibilities under the National Historic Preservation Act (NHPA).

BUREAU OF LAND MANAGEMENT

BY: Robert V. Abbey DATE: 3-22-10

ROBERT V. ABBEY, DIRECTOR

K.2.4.3 Arizona Protocol

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

Purpose. This Protocol implements the Bureau of Land Management's (BLM) national cultural resources Programmatic Agreement (PA) in Arizona by describing how the Arizona State Historic Preservation Officer (SHPO) and the BLM will interact and cooperate under that agreement. The goal of this Protocol and the PA is to forge a more meaningful and productive partnership with the SHPO that will enhance the management of cultural resources under the BLM's jurisdiction.

Relationship of this Protocol to PMOA's and PA's. The Arizona statewide cultural resources Programmatic Memorandum of Agreement (PMOA) signed March 26, 1985, will be suspended when the State Director notifies the SHPO that Arizona BLM has begun operating under the terms of the national PA. The statewide PMOA will remain suspended for as long as the national PA and this Protocol are in effect.

The PMOA for land exchanges with the State of Arizona signed September 9, 1984, and its associated Memorandum of Agreement (MOA) signed December 31, 1984, will remain in effect and unmodified by the terms of the national PA. The land exchange PMOA and MOA are attached as Appendix 1.

Other PAs and 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 responsibility for Section 106 compliance, the BLM and the SHPO may agree to follow the procedures of the national PA instead of developing a separate PA or MOA for the undertaking. When more than one federal agency is involved in an undertaking, and an agency other than BLM takes lead responsibility for Section 106 compliance, the national PA will not apply.

Opportunities for Involvement 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:

Planning Efforts. 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 to comment on any proposed cultural resource use allocations, whether these are made in regional, local, or project plans. Field Offices will send all draft and final land use plans and cultural resource project plans to the SHPO for review and comment.

Field Tours. BLM Field Offices will invite the SHPO to participate on public field tours relating to land use planning efforts or specific undertakings whenever cultural resources may be affected. The SHPO's views will specifically be requested with regard to management of the cultural resources involved.

Annual Work Plans. When Annual Work Plans are made final for a fiscal year, each Field Office Manager and/or cultural resource program manager will, at the discretion of the SHPO, meet with the SHPO to discuss the major tasks planned by that Field Office that are likely to affect cultural resources. The BLM will make every effort to answer any questions the SHPO has and will welcome any suggestions the SHPO offers to facilitate the accomplishment of these tasks in ways that meet heritage preservation goals. Such meetings may be at the State Historic Preservation Office or the BLM Field Office, as agreed between the Field Office Manager and the SHPO. For fiscal year 1998, Field Office Managers will personally attend the Annual Work Plan meeting with the SHPO.

Meetings. The SHPO is encouraged to meet with the Arizona State Office or a Field Manager at any time to discuss annual work plans, specific undertakings, outreach efforts, or other issues related to the BLM's management of cultural resources. The BLM will make every effort to arrange such meetings in a timely manner and to provide information requested by the SHPO.

Informal Consultation. The SHPO and Field Office personnel 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.

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:

Sharing and Facilitating the Use of Data. Each Field Office will send the SHPO copies of all cultural resource inventory reports, treatment (data recovery) reports, and BLM Project Records (Form AZ-8111-4) generated by actions initiated or authorized by BLM. This includes project records and inventory reports for actions in which no cultural resources are identified. Field Offices will provide these documents to the SHPO semi-annually, in January and June, to assist in keeping the State repository files current. Standards for preparing inventory and treatment reports are attached as Appendix 2.

Each Field Office will ensure that records for cultural properties under its jurisdiction are entered into the statewide automated cultural resource database (AZSITE). Because the SHPO is a partner in this database, no additional submission of cultural property records by Field Offices will be necessary.

The BLM and the SHPO will work together on an interagency cooperative data sharing project to develop a second-generation AZSITE database that will better serve the needs of agencies, academia, and the private sector. In Fiscal Year 1998, the BLM will enter into a data assistance agreement with the SHPO to facilitate development and cooperative use of this statewide database. Once the new AZSITE database is operational, allowing data entry through BLM Field Office computer terminals, and Field Office personnel are trained in its use, each Field Office will ensure that its cultural property records are entered into the database quarterly. This applies to cultural properties recorded by contractors as well as BLM personnel. Each Field Office will also ensure that the boundaries of areas inventoried for cultural properties are entered into the AZSITE Geographic Information System (GIS) quarterly. Existing cultural property records that have not yet been entered into AZSITE will be submitted to Arizona State Museum for data entry by the end of Fiscal Year 1998. Boundaries of inventoried areas for all Field Offices will be digitized into BLM's GIS by the end of Fiscal Year 1998. The SHPO will have unrestricted, read-only access to this automated data. The BLM will not enter into AZSITE information about traditional cultural places identified by Indian tribes as sensitive.

The BLM and SHPO will collaborate on ways to synthesize and use BLM data to meet mutual goals. For example, BLM data might be used in developing historic contexts to assist in evaluating and treating cultural properties.

Public Outreach. The BLM and SHPO will continue to work together as follows:

- *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 Arizona schools statewide.
- *Archaeology Awareness Month.* Participate in Archaeology Awareness Month activities, including public presentations, field tours, and exhibits.
- *Avocational Societies.* Participate as advisors to avocational archaeological society members, encouraging their interest in learning about archaeology and their use of professional standards in field work.
- *Adventures in the Past.* Interpret cultural properties appropriate for use as exhibits-in-place, when funds are available, consistent with BLM's Adventures in the Past initiative.
- *Wonderful Outdoor World.* Participate in the Wonderful Outdoor World partnership program to increase environmental awareness, including historic preservation ethics, among urban youth.

Cooperative Stewardship. The BLM and SHPO will continue their strong partnership in the Arizona Site Steward Program. The BLM will support the Arizona Site Steward program financially, as funding permits, and through participation as land managers' representatives. In

some cases, BLM personnel may serve as Regional Coordinators to further the goals of the program.

Public Participation. The public will be encouraged to raise issues, express concerns, provide information and identify resources and places they would like the BLM to consider in decision making. The BLM will solicit such input through the public participation opportunities afforded by BLM's land use planning and environmental review processes. In addition, the BLM will be guided by the following document:

- *Public Participation in Section 106 Review: A Guide for Agency Officials*, issued by the Advisory Council on Historic Preservation, February 1989.

Native American Participation. The BLM, as an agency of the United States Government, has a unique legal relationship with Indian tribal governments that requires it to consult to the greatest extent practicable, and to the extent permitted by law, prior to taking actions that affect those tribal governments. The BLM recognizes that some cultural properties of traditional importance to Indian tribes can be identified only by those tribes, and that effects on such properties can be fully assessed only with tribal participation. The BLM also recognizes that, to be effective, consultation with tribes should be initiated at the beginning of project planning or land use planning. In meeting its responsibilities to consult with tribes under the National Historic Preservation Act, the BLM will, in addition to the public participation opportunities described above, be guided by the following documents:

- BLM Manual 8160, *Native American Coordination and Consultation*.
- BLM Handbook H-8160-1, *General Procedural Guidance for Native American Consultation*.
- *Suggested Consultation Guidelines for Agencies and Indian Tribes in Arizona*, developed at the Arizona Traditional Cultural Properties Workshop sponsored by the SHPO, October 5-6, 1995 (attached as Appendix 3).

Information pertaining to the nature and location of sites or areas that are of concern to Indian tribes or groups for religious or cultural reasons will be protected by BLM from public disclosure to the extent allowed by statute.

In meeting its responsibilities under the National Historic Preservation Act, the BLM will provide for the disposition of Native American human remains, funerary objects, sacred objects and objects of cultural patrimony from Federal land or tribal land in a manner consistent with section 3(c) of the Native American Graves Protection and Repatriation Act (NAGPRA). This may include the preparation of separate agreements with culturally affiliated tribes covering treatment and disposition of NAGPRA items.

Case-By-Case Review. The BLM will request the SHPO's review of the following kinds of undertakings. To facilitate review, the BLM will provide the SHPO with the associated environmental document for all such undertakings.

- Non-routine interstate and/or interagency projects or programs, as determined by either the BLM or the SHPO. Examples are interstate pipelines or transmission lines which involve multiple jurisdictions and require the preparation of Environmental Impact Statements.
- Undertakings directly and adversely affecting National Historic Landmarks or National Register-listed properties determined to be of national significance in accordance with Chapter V of *National Register Bulletin No. 16A*.
- Controversial undertakings when Council review is requested by the BLM, the SHPO, an Indian tribe, a local government, an applicant for a BLM authorization, or a member of the public who has a concern for an undertaking's effect on specific historic properties. 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.
- Undertakings that will have an adverse effect on historic properties when BLM determines that the adverse effect cannot be satisfactorily avoided, minimized or mitigated through treatment.
- Land exchanges and sales exceeding 640 acres of public land when the BLM proposes to do less than a Class III survey to identify cultural properties. In such cases, the BLM will consult with the SHPO to ensure that the survey will adequately characterize past human use of the area and address relevant research questions.

Obtaining Specialized Expertise. When the BLM is involved in an undertaking requiring expertise not possessed by available BLM staff (e.g., architectural history, Native American oral traditions), it will obtain that expertise for the purpose of determining National Register eligibility, effects and treatment for the cultural properties in question. The BLM may request the assistance of SHPO staff in such cases or may obtain the necessary expertise through contracts, BLM personnel from other states, or cooperative arrangements with other agencies.

Annual Report. The Arizona State Office will provide an annual report to the SHPO containing summary information on activities conducted under the PA. This report will be limited to information excerpted from the Cultural Resource Program Annual Report submitted to BLM's Washington Office and will be provided to the SHPO by December 15th each year. Any questions the SHPO may have about the information in this report will be answered by the Arizona State Office or the appropriate Field Office. The current format for the annual report to be provided to the SHPO is attached as Appendix 4.

Resolving Issues. If, at any time, the BLM or the SHPO question an action taken by the other under this Protocol, they will consult to resolve the issue. If the issue concerns an action taken by a Field Office, the questioning party will consult with the Field Manager to resolve it. If the issue cannot be resolved, the questioning party will request the Deputy Preservation Officer to assist in

resolving it. If the issue still cannot be resolved, the Deputy Preservation Officer will refer it to the BLM Preservation Board. The BLM Preservation Board will provide recommendations to the State Director, who will make a final decision.

If the BLM and SHPO do not agree on the National Register eligibility of a cultural property, the question will be referred to the Keeper of the Register for a final determination.

If a member of the public or an Indian tribe objects at any time to the manner in which this Protocol is being implemented, the BLM and the SHPO will together consult with the objecting party to resolve the issue. If the BLM, SHPO and objecting party are unable to resolve the objection, the BLM will refer the issue to the BLM Preservation Board. The BLM Preservation Board will provide recommendations to the State Director, who will make a final decision. In accordance with the 36 CFR 800 regulations, any member of an Indian tribe or the interested public may request the Council to review determinations made by the BLM or SHPO on a specific undertaking before the final decision has been made.

Amending the Protocol. If the BLM or the SHPO wish to amend this Protocol at any time, they will consult to consider requested changes. Amendments will become effective when signed by both parties.

Terminating the Protocol. The BLM or the SHPO may terminate this Protocol by providing ninety 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 resume operating under the provisions of its statewide PMOA.

Other State-Specific Procedures. In addition to the procedures described in Bureauwide directives, Arizona will be guided by manual supplements issued by the Arizona State Office. Presently, these consist of Arizona Manual Supplements 8111 (Inventory and Evaluation), 8141 (Physical and Administrative Protection Measures), 8142 (Recovery of Cultural Resource Data), 8143 (Avoidance and/or Mitigation of Effects), and 9239 (Unauthorized Uses). The BLM will update these manual supplements as needed to conform to Bureauwide directives, policies issued by the Arizona State Director, new laws, and new regulations. The SHPO will participate in revising the Arizona Manual Supplements.

Appendices:

1. Arizona PMOA and MOA for land exchanges with the State of Arizona.
2. BLM Standards for Preparing Cultural Resource Reports
3. Suggested Consultation Guidelines for Agencies and Indian Tribes in Arizona
4. Annual Report format

Approved by:

Denise P. Meridith
Arizona State Director, Bureau of Land Management

11/9/97
Date

James W. Garrison
Arizona State Historic Preservation Officer

11/7/97
Date

K.2.4.4 California Protocol

STATE PROTOCOL AGREEMENT

AMONG

THE CALIFORNIA STATE DIRECTOR OF THE BUREAU OF LAND
MANAGEMENT

AND

THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

AND

THE NEVADA STATE HISTORIC PRESERVATION OFFICER

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

Please note: Only the Main Protocol, Appendix D, and Appendix E are included in this EIS; the other portions of the document may be accessed online at:
http://www.blm.gov/pgdata/etc/medialib/blm/wo/Planning_and_Renewable_Resources/coop_agencies/cr_publications.Par.40951.File.dat/CA_Protocol_Distribution_Copy.pdf.

Revised 2007

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STATE PROTOCOL AGREEMENT

AMONG

**THE CALIFORNIA STATE DIRECTOR OF THE BUREAU OF LAND
MANAGEMENT**

AND

**THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
AND**

THE NEVADA STATE HISTORIC PRESERVATION OFFICER

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**

1 **PREAMBLE**

2

3 The Bureau of Land Management (BLM) has developed a National Programmatic
4 Agreement (National PA) that governs the manner in which the BLM shall meet its
5 responsibilities under the National Historic Preservation Act (NHPA).

6

7 This State Protocol Agreement has been developed pursuant to provisions of the National
8 Programmatic Agreement (Appendix A) and revises the provisions of State Protocol
9 Agreement between the California State Director of the Bureau of Land Management and the
10 California State Historic Preservation Officer, executed on October 25, 2004. This revised
11 State Protocol Agreement (Protocol) will have full force and effect upon its execution by
12 signature of all parties.

13

14 **Authorities and Responsibilities**

15

16 **Bureau of Land Management.** The California State BLM, consistent with its authorities
17 and responsibilities under the Federal Land Policy and Management Act of 1976 (FLPMA),
18 is charged with managing public lands located in the States of California and Nevada, in a
19 manner that will "protect the quality of scientific, scenic, historical, ecological,

1 environmental, air and atmospheric, water resource, and archaeological values," and "that
2 will provide for outdoor recreation and human occupancy and use."
3

4 Authorities for managing cultural resources and programs of historic preservation exist under
5 the National Environmental Policy Act (NEPA, Pub. L. 91-190), the Federal Lands Policy
6 and Management Act (FLPMA, Pub. L. 91-579), the Archaeological Resources Protection
7 Act (ARPA, 16 USC 470), the Native American Graves Protection and Repatriation Act
8 (NAGPRA, 25 USC 3001), the Historic Sites Act of 1935 (Pub. L. 73-292), the Antiquities
9 Act of 1906 (16 USC 431-433), the American Indian Religious Freedom Act (AIRFA, Pub.
10 L. 95-341), Executive Order 13007 ("Sacred Sites", 61 FR 105), and the National Historic
11 Preservation Act of 1966 as amended (NHPA, Pub. L. 89-665).
12

13 A National PA among the BLM, the Advisory Council on Historic Preservation (Council),
14 and the National Conference of State Historic Preservation Officers (NCSHPO) sets forth the
15 manner in which responsibilities deriving from the NHPA shall be met. In the event of
16 termination of the National PA, the parties to this Protocol shall promptly enter consultations
17 to convert this Protocol into a statewide Programmatic Agreement pursuant to 36 CFR 800.6
18 and 800.14(b) (August 5, 2004) (Appendix C).
19

20 In carrying out its responsibilities both under the National PA and statutory authorities, the
21 BLM has developed policies and procedures through its directives system (BLM Manual
22 Series 8100-8170) (Appendix B) to guide the BLM's planning and decision making as it
23 pertains to historic properties and historic preservation. BLM employs a professional staff of
24 Cultural Resource specialists to advise the BLM's managers, to represent the State Historic
25 Preservation Officers for California and Nevada solely for the purposes of Protocol
26 implementation, and to implement cultural resource policies consistent with these authorities
27 throughout its lands in California and those it manages in Nevada.
28

29 **State Historic Preservation Officers.** The State Historic Preservation Officers (SHPO) for
30 California and Nevada have responsibilities under Section 101(b)(3) of the NHPA including
31 to "advise and assist as appropriate, Federal and State agencies and local governments in
32 carrying out their historic preservation responsibilities," and to "consult with the appropriate
33 Federal agencies in accordance with the NHPA on Federal undertakings that may affect
34 historic properties, and the content and sufficiency of any plans developed to protect,
35 manage, or to reduce or mitigate harm to such properties." The acronymic term "SHPO" as
36 used in this Protocol refers to both the California and Nevada State Historic Preservation
37 Officers unless specified otherwise.
38

39 In certain cases others may be authorized to act in place of the SHPO; this Protocol
40 authorizes, within certain limits, BLM professional Cultural Resource staff to act in the place
41 of the SHPO for California and Nevada solely within the scope of this Protocol. Where the
42 Secretary of the Interior has approved an Indian tribe's preservation program pursuant to
43 Section 101(d)(2) of the NHPA, a Tribal Historic Preservation Officer (THPO) may perform
44 SHPO functions with respect to tribal lands. This Protocol does not apply to tribal lands.

1 **Purpose of this Protocol**

2

3 This Protocol prescribes the manner in which the BLM and the SHPO shall cooperatively
 4 implement the National PA in California and in portions of Nevada managed by California
 5 BLM. It is intended to ensure that the BLM organizes its programs to operate efficiently and
 6 effectively in accordance with the intent and requirements of the NHPA and that the BLM
 7 integrates its historic preservation planning and management decisions with other policy and
 8 program requirements. The Protocol streamlines the NHPA Section 106 (Section 106)
 9 process by eliminating case-by-case consultation with the SHPO on undertakings that
 10 culminate in “no historic properties affected” (36 CFR 800.4(d)(1)) and “no adverse effect”
 11 findings (36 CFR 800.5(b)). The Protocol also requires development and management of a
 12 Historic Preservation Program (Section 110 of the NHPA) and implementation of the
 13 Program by each Field Office in partial exchange for relief from the case-by-case procedural
 14 requirements of 36 CFR 800. The Historic Preservation Program (Appendix E) is attached to
 15 this Protocol and will have immediate force and effect upon execution of this Protocol.

16

17 Supplemental procedures attached to this Protocol by approved amendments provide
 18 procedures that are specific to individual programs or functions (refer to Stipulation IX.C).
 19 Such supplemental procedures may not necessarily have the same geographic scope as this
 20 Protocol. Such limits, if any, are defined within the Amendments or in an ancillary
 21 implementing agreement pertaining to a particular Amendment.

22

23 **Applicability of this Protocol**

24

25 This Protocol, subject to threshold limitations specified in Stipulation VI, applies to all
 26 programs, funding initiatives, actions or decisions under the statutory or regulatory authority
 27 of the BLM that, regardless of land ownership, may affect historic properties. Public lands
 28 administered by California BLM within California and Nevada and other public lands within
 29 California administered by the Arizona offices of BLM are included within the scope of
 30 applicability of this Protocol unless alternative agreements are reached subsequent to
 31 adoption of this Protocol and which are attached to this Protocol by approved amendments.
 32 However, this Protocol shall not apply to tribal lands, but rather, a proposed BLM
 33 undertaking on tribal lands will require consultation among the BLM, the THPO, tribal
 34 officials, the SHPO (where no Tribal Preservation Program exists), and the Council; and such
 35 consultation shall be outside the compass of this Protocol and shall follow 36 CFR Part 800
 36 or the Indian tribe's program alternative to 36 CFR Part 800.

37

38 **Effect of this Protocol**

39

40 This Protocol establishes the procedures that govern the interaction between BLM and the
 41 SHPO under the National PA. The goals of this Protocol and the National PA are to enhance
 42 management of historic properties under the BLM’s jurisdiction or control and to ensure
 43 appropriate consideration of historic properties beyond the BLM’s jurisdiction, but which
 44 may be affected by its actions. Undertakings involving non-federal lands for which BLM is
 45 the lead agency or for which the BLM has provided funding shall be considered federal
 46 actions and shall be subject to requirements outlined in this Protocol.

1 The BLM and the SHPO mutually agree that execution of this Protocol and implementation
 2 of its terms will evidence satisfactory compliance by the BLM with the requirements of the
 3 National PA and 36 CFR 800, the implementing regulations for Section 106 of the National
 4 Historic Preservation Act.

5
 6 **Roles of Agency Personnel with Responsibilities under this Protocol**
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8 **State Director:** Meets annually with State Historic Preservation Officer and may meet more
 9 frequently upon request of either the BLM or the SHPO. Enters into Programmatic
 10 Agreements of statewide, multiple states, or multiple Field Offices scope with the SHPO, the
 11 Council, and other Agencies for implementing Section 106 in specific circumstances not
 12 covered by this Protocol.

13
 14 **Field Office Managers:** Concur in recommendations and determinations developed by
 15 professional Cultural Resource staff, including but not limited to, Area of Potential
 16 Effect (APE), eligibility, no historic properties affected, and no adverse effect. Consult
 17 formally with SHPO as appropriate (Stipulation VI) and when there is unresolved
 18 disagreement with Cultural Resource staff determinations. Ensure necessary training for
 19 cultural staff, availability of cultural resources funding for preservation projects and
 20 implementation of the Historic Preservation Program and American Indian consultation for
 21 Section 106 projects consistent with Manual direction and 36 CFR 800. Execute Memoranda
 22 of Agreement for adverse effects and Programmatic Agreements which are limited to specific
 23 Field Offices. The Field Office Manager is responsible for ensuring that all cultural
 24 resources documentation for an undertaking is completed within 30 calendar days of the
 25 execution of its decision document. The Field Office manager may delegate the authority to
 26 operate under Protocol to others who have received the required training in its use and
 27 application.

28
 29 **Deputy Historic Preservation Officer:** Oversees implementation of the Protocol; conducts
 30 reviews and Protocol training; recommends certification, provisional certification,
 31 decertification, and recertification of Field Offices; reviews or develops Programmatic
 32 Agreements and Memoranda of Agreement; may lead consultation with the SHPO in specific
 33 cases; and submits reports and information to the SHPO concerning implementation of the
 34 Protocol.

35
 36 **Field Office Cultural Resource Staff:** Make, without formal SHPO consultation,
 37 determinations of Areas of Potential Effect (APE) and NHRP eligibility and make findings of
 38 no historic properties affected and no adverse effect. Develop sample-based inventories and
 39 seek informal opinion of SHPO staff when appropriate. Maintain cultural resource records
 40 and transmit reports and records to electronic and physical repositories appropriate for each
 41 State party to this Protocol. Maintain professional knowledge and ability. Develop and
 42 implement Section 110 programs and projects according to the guidance provided in the
 43 Historic Preservation Program (Appendix E).

1 **Definitions of Terms Used in this Protocol**

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The terms used in this Protocol are defined within the body of the Protocol itself or in appended documents. Definitions may be found in BLM Manual Series 8100 at "Glossary of Terms" and in 36 CFR 800.16 (a-z).

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I. RELATIONSHIP OF PROTOCOL TO OTHER AGREEMENTS

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Existing California statewide programmatic agreement documents were terminated in the Statewide Protocol executed on October 25, 2004. No programmatic agreements in Nevada were affected by that termination or are terminated by this Protocol.

Future development of programmatic agreement documents pertaining to specific aspects of the Cultural Resource Program is not precluded by this Protocol. Undertaking-specific programmatic agreements in force at the time of the execution of this Protocol shall continue to function normally according to their terms.

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II. PROCEDURES

The following procedures shall be implemented by the BLM under this Protocol:

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A. MEETINGS

The SHPO and the State Director, with their respective staffs shall meet annually, to review BLM's implementation of the Protocol, annual reports of activities, and other pertinent issues. The Advisory Council may be invited to participate in order to facilitate the Council's general oversight of the Section 106 process. At the annual meeting, the SHPO and BLM shall exchange information relevant to achieving the goals and objectives set forth in this Protocol. At any time the SHPO or the State Director may convene a meeting to discuss issues. This Protocol encourages its parties, including staff and cultural resource specialists, to meet and to consult informally and frequently in order to maintain appropriate communication, to seek informal opinion and advice, and share information and knowledge.

B. COMMUNICATING BY REPORTING

The BLM shall inform the SHPO of activities carried out under this Protocol by developing and submitting reports annually to the SHPO as specified below.

1. Field Offices.

- Information by Field Office detailing use of the Protocol, including exemptions and determinations of eligibility, for Section 106 actions no later than December 1 following the prior fiscal year, or by an alternative date negotiated with SHPO by the Deputy Historic Preservation Officer. Information may be provided by approved electronic means.

1 Information by Field Office detailing Historic Preservation Program (Section 110)
 2 accomplishments for each Field Office no later than December 1 following the prior fiscal
 3 year, or by an alternative date negotiated with SHPO by the Deputy Historic Preservation
 4 Officer. Information may be provided by approved electronic means.
 5

6 2. State Office. The Deputy Historic Preservation Officer shall review the annual reports on
 7 Section 106 actions and Section 110 activities submitted by the Field Offices. Based on that
 8 review, the Deputy Historic Preservation Officer shall develop a summary report for
 9 submission to SHPO by the State Director. The report may identify need for further review
 10 of specific Field Office programs if necessary. Information may be provided by approved
 11 electronic means.
 12

13 **C. PROFESSIONAL FINDINGS, DETERMINATIONS AND RECOMMENDATIONS**

14
 15 This Protocol authorizes BLM's professional cultural resource staff to act on the SHPO's
 16 behalf under limited circumstances. Within those limits, BLM's cultural resource staff may
 17 define APEs, define scope of inventory, conduct and oversee inventory, develop
 18 determinations of eligibility, no historic properties affected, and no adverse effect, and apply
 19 exemptions (Appendix D of this Protocol), without involvement of the SHPO. The Field
 20 Office Manager may elect to concur with the recommendations and determinations prepared
 21 by the Cultural Resource staff. When professional findings, determinations and
 22 recommendations are accepted by the Field Office Manager, no SHPO consultation is
 23 required. However, when professional determinations or recommendations including, but
 24 not limited to, APE, scope of inventory, determinations of National Register eligibility,
 25 findings of no historic properties affected and no adverse effect, and application of
 26 exemptions are not accepted by the Field Office Manager, the Field Office Manager shall in
 27 each such case initiate consultation with the SHPO under 36 CFR 800 and BLM Manual
 28 Series 8110.
 29

30 **D. SHPO INVOLVEMENT IN THE BLM CULTURAL RESOURCE PROGRAM**

31
 32 To encourage broad participation by the SHPO in the BLM Cultural Resource Program, the
 33 following involvement opportunities are extended to the SHPO:
 34

35 1. Planning Efforts. At the earliest stage of the planning process, each Field Office
 36 responsible for preparing a land use plan or significant amendments or revisions at the
 37 regional or local level shall ensure invitation of the SHPO to participate in the planning effort
 38 (Manual 8130), including seeking SHPO comment on proposed resource use allocations. In
 39 writing, the SHPO may elect not to participate in specific planning efforts. The BLM shall
 40 consider the views of the SHPO on specific planning efforts when those views are expressed
 41 in writing. An agreement document specific to the planning effort may be requested by
 42 either party. All draft and final land use plans shall be submitted to the SHPO for review and
 43 comment. Completion of the consultation process for planning will be indicated by BLM's
 44 written response to the SHPO's comments on the draft land use or cultural resource project
 45 plans. No decision documents for planning shall be issued prior to completion of the
 46 consultation.

1 2 Use Allocations. The BLM may invite the SHPO to comment on proposed use
2 allocations for evaluated cultural resources (Manual 8110.4); the SHPO may elect to review
3 resource use allocations at any time.
4

5 3. Field Tours. BLM Field Offices may invite the SHPO to participate in field tours relating
6 to land use planning efforts or specific undertakings whenever cultural resources may be
7 affected.
8

9 4. Contact. Formal consultation outside the scope of this Protocol will be conducted between
10 the SHPO and the BLM Field Office Managers in consultation with the Deputy Historic
11 Preservation Officer. BLM Field Office Managers, in coordination with Field Office
12 Cultural Resource staff, may also contact SHPO staff informally regarding specific project
13 review status. The SHPO staff and BLM Cultural Resource staff are encouraged to
14 communicate at their discretion on general concerns or issues related to specific
15 undertakings. Informal consultation shall be documented by BLM Field Office staff;
16 documentation shall be retained in appropriate files under the control of the BLM Field
17 Office Cultural Resources staff.
18

19 5. Internal BLM Program Review. BLM shall invite SHPO participation in internal Field
20 Office program reviews and shall provide reports of reviews, exclusive of findings and
21 recommendations specific to personnel matters. The scope of review opportunities is
22 detailed in Stipulation III.E of this Protocol.
23

24 In keeping with the Protocol's stated goal of encouraging participation by SHPO in BLM's
25 Cultural Resource Program, additional opportunities may be identified by BLM or may be
26 requested by the SHPO.
27

28 **III. PROGRAM DEVELOPMENT AND ACTIVITIES**
29

30
31 **A. Preservation Planning.** In return for the procedural flexibility that this Protocol provides
32 in meeting 36 CFR 800 responsibilities, BLM commits to fulfill the responsibilities
33 enumerated in Section 110 of NHPA. The State Director shall implement a Heritage
34 Preservation Program (HPP). The HPP (Appendix E) shall become an Amendment to this
35 Protocol and shall guide BLM in achieving measurable progress toward compliance with
36 Section 110 of NHPA. The HPP may include, but shall not be limited to, programs of
37 evaluation and National Register nomination, monitoring for historic property condition and
38 ARPA, stabilization and preservation, inventory, documentation of known but unrecorded
39 properties, research, interpretation, training and professional contributions, and public
40 involvement in historic preservation activities.
41

42 **B. Curation.** BLM will ensure to the greatest extent possible that curation and disposition of
43 all archaeological materials and data from Federal lands conform to Manual Sections 8110
44 and 8160 and other Sections as appropriate. Management of non-Federal archaeological
45 materials and data will be consistent with applicable law and professional curation
46 requirements as negotiated with non-Federal landowners or managers. Non-museum

1 collections may be maintained at Field Offices, but only under appropriate curatorial
2 conditions and with appropriate documentation.

3
4 **C. Data Sharing and Information Management.**
5

6 1. Documentation of Findings. All cultural resources investigations associated with
7 implementing this Protocol regardless of findings shall be documented to the standards
8 stipulated in Manual 8110.5 and written guidance of the SHPO of California and of Nevada.
9 BLM cultural staff shall document all determinations, findings, and recommendations made
10 under this Protocol. Such determinations, findings, and recommendations include, but are
11 not limited to, delineating areas of potential effect, determining National Register eligibility,
12 applying exemptions, findings of effect, and other findings and determinations. Documented
13 determinations, findings, and recommendations shall be retained as described in Stipulation
14 III.C.3 of this Protocol.
15

16 The procedures governing the manner in which such documentation is submitted to each
17 SHPO and the manner in which such documentation is incorporated into permanent
18 repositories shall be made explicit in codicillary agreements between or among the BLM and
19 the SHPO of California and Nevada within three months of the execution date of this
20 Protocol. Such agreements shall become part of this Protocol.
21

22 2. Exchange of Data. BLM has developed and maintains a geodatabase for cultural resources
23 and cultural resource investigations in a Geographic Information System (GIS) in accordance
24 with Section 112(2) of the NHPA and Manual 8110.5.52(B). The geodatabase shall be
25 updated with newly recorded and re-recorded resource and investigation data. Initiatives
26 shall be undertaken to input legacy data. BLM and SHPO shall jointly work to implement the
27 electronic submission of records for tracking agency actions. BLM and SHPO will work to
28 insure the program meets BLM and SHPO needs.
29

30 3. Records Management. BLM shall maintain complete, current, and permanent records for
31 cultural resources activities, including but not limited to survey areas, findings,
32 determinations, reports, historic property records, archaeological site records, and
33 correspondence, to fully document fulfillment of its responsibilities under this Protocol, and
34 other laws, regulations, and policies. Records management shall conform to the standards
35 and policies at Manual 8110.5 and standards and procedures developed subsequent to
36 execution of this Protocol. Records pertaining to undertakings shall be retained in files,
37 under the control of Field Office professional Cultural Resource staff, which document
38 inventory efforts, research designs, peer reviews, assessment of effects and impacts, and use
39 of exemptions (Appendix D). Records shall include, but shall not be limited to, site records,
40 monitoring and condition reports, effect findings, determinations of eligibility, images, use
41 allocations, and cross references to other files or archived documents which contain
42 information pertaining to the individual property.
43

44 Non-sensitive cultural resource compliance documents, including findings, determinations,
45 and recommendations may be disclosed to the public. However, the State Director has
46 determined, under the authority of Section 304 of NHPA and consistent with Section 9 of

1 ARPA, that public disclosure of the location and character of cultural resources may risk
 2 harm to those resources. Sensitive cultural resource information under the control of BLM,
 3 regardless of ownership of the resource, shall not be disclosed to the general public and such
 4 information shall not be stored in documents open to the general public. This determination
 5 notwithstanding, the BLM may characterize cultural resources in writing sufficiently for the
 6 purposes of required analyses under NEPA and cultural resource information may be
 7 disclosed when such disclosure is deemed to advance management purposes.
 8

9 **D. Professional Development and Training**

10 Training and development are key elements in maintaining the effectiveness of the Protocol.
 11 Field Managers and others who may act in the role of Field Office managers within the scope
 12 of this Protocol shall receive training at the beginning of their tenure and annually thereafter..
 13 The SHPO shall be offered the opportunity to assist the BLM in Protocol training
 14
 15

16 Annually, Cultural Resource staff shall receive training in the use and implementation of the
 17 Protocol including the procedural requirements of 36 CFR 800 which are to be implemented
 18 in instances where the Protocol does not apply. The Deputy Historic Preservation Officer
 19 shall identify and arrange annual opportunities for specialized cultural resource training.
 20 BLM Cultural Resource staff shall meet yearly, usually in conjunction with the Society for
 21 California Archaeology meetings, to participate in workshops, training, exchange
 22 information, and to discuss issues concerning the Cultural Resource program. The SHPO
 23 shall be offered the opportunity to assist the BLM in on-going training of supervisors and
 24 Cultural Resources staff in the implementation of the Protocol.
 25

26 Field Offices, in consultation with State Office Cultural Resources staff, shall devise
 27 professional development plans for their Cultural Resource staff to ensure that current
 28 professional standards in the discipline can be met and maintained, and training needs
 29 identified. Training received shall be reported as a component of annual reporting
 30 (Stipulation II.B).
 31

32 BLM recognizes that staying current in relevant professional literature and participation of
 33 Cultural Resource staff in professional societies and annual meetings (e.g., Society for
 34 California Archaeology, Society for American Archaeology, Society for Historical
 35 Archaeology, California Council for the Promotion of History, Society of Architectural
 36 Historians) is integral to staying abreast of developments and advances in the discipline, for
 37 enhancing professional knowledge and skills, and for providing opportunities for leadership
 38 and service to the profession.
 39

40 Annual participation by Field Offices in Protocol training and implementation of professional
 41 development in appropriate individual development plans (IDP) for Cultural Resource staff
 42 shall be key considerations for continuing certification of individual Field Offices.
 43
 44
 45
 46

1 **E. Reviews of Field Office Performance under this Protocol**

2
3 Professional review of Field Office program operations is an essential and mandatory
4 component of the BLM's Cultural Resource program and this Protocol, especially as it
5 pertains to certification (Stipulation VIII of this Protocol). Ensuring that such review takes
6 place is a primary function of the Deputy Historic Preservation Officer. Reviews may
7 involve any aspect of a program's function including, but not limited to, documentation,
8 findings and recommendations, record keeping and curation, security, and professional
9 contributions. The intent of such reviews is to improve operations at individual Field Offices
10 and to improve the Cultural Resource Program.

11
12 Three levels of internal review are available to the Deputy Historic Preservation Officer:
13 Annual Review; Technical Review; and Program Review.

14
15 Annual Review. Consistent with provisions of the National PA, the Deputy Historic
16 Preservation Officer shall assess annually each Field Office's ability to implement the
17 provisions of the Protocol. The Annual Review will be based primarily on information and
18 data submitted for the Annual Report required in Stipulation II.B of this Protocol, however,
19 other data may be considered. The Deputy Historic Preservation Officer shall document the
20 findings of the annual review and the State Director shall submit that report to the SHPO.
21 When recommendations to correct deficiencies receive SHPO concurrence and are accepted
22 by the State Director, implementation of such recommendations shall become the
23 responsibility of each Field Office manager who shall be required to initiate corrective
24 actions within sixty (60) days from the date the recommendations are accepted by the State
25 Director. Depending on the nature of the identified deficiencies, the State Director may elect
26 to place a Field Office in provisional status according to the procedures described at
27 Stipulation VIII.B of this Protocol.

28
29 Technical Review. Consistent with provisions of the National PA, the Deputy Historic
30 Preservation Officer shall determine whether Field Offices are maintaining an appropriate
31 level of technical capability and performance in particular program elements. Such elements
32 may include, but are not limited to, record-keeping, documentation of Protocol actions,
33 Section 110 actions, curation, inventory documentation, determinations, budget issues, and
34 findings from Annual Reviews. The Deputy Historic Preservation Officer shall document
35 the findings of the Technical Review and the State Director shall submit that report to the
36 SHPO. When recommendations to correct deficiencies receive SHPO concurrence and are
37 accepted by the State Director, implementation of such recommendations shall become the
38 responsibility of each Field Office Manager, who shall be required to initiate corrective
39 actions within sixty (60) days from the date the recommendations are accepted by the State
40 Director. Failure to initiate corrective actions within the specified time or failure to correct
41 the deficiencies shall require the State Director to consider, in consultation with the Deputy
42 Historic Preservation Officer and SHPO, actions under Stipulation VIII of this Protocol.

43
44 Program Review. Consistent with provisions of the National PA, the Deputy Historic
45 Preservation Officer shall determine whether Field Office Cultural Resource programs are
46 fully functional in their ability to implement the Protocol. Program reviews are broad-based

1 reviews of the entire Cultural Resource program at a Field Office, although such a review
 2 may focus on particular areas of interest. The Deputy Historic Preservation Officer shall
 3 invite the participation of the SHPO, document the findings of the Program Review and the
 4 State Director shall submit that report to the SHPO. Should deficiencies be identified, the
 5 Deputy Historic Preservation Officer shall develop corrective recommendations. When such
 6 recommendations receive SHPO concurrence and are accepted by the State Director,
 7 implementation of such recommendations shall become the responsibility of each Field
 8 Office manager, who shall be required to initiate corrective actions within sixty (60) days
 9 from the date the recommendations are accepted by the State Director. Failure to initiate
 10 corrective actions within the specified time or failure to correct the deficiencies shall require
 11 the State Director to consider, in consultation with the Deputy Historic Preservation Officer
 12 and SHPO, actions under Stipulation VIII of this Protocol.

13
 14 From time to time, in order to ensure that actions of BLM professional staff retain a high
 15 level of professionalism, the SHPO may request that particular documents be subjected to
 16 external professional peer review. BLM may prepare peer review guidelines in consultation
 17 with the SHPO or may elect to accept existing peer review guidelines proffered by the
 18 SHPO. The SHPO and the BLM agree that peer review shall not delay the implementation
 19 of undertakings.
 20

21
 22 **IV. AMERICAN INDIAN PARTICIPATION**
 23

24 BLM recognizes the importance of the continuing government-to-government relationship
 25 with tribal entities and the importance of consultation on specific undertakings. BLM shall
 26 follow 36 CFR 800.2(c)(2) and the procedures and guidelines established in BLM Manual
 27 8120 and BLM Handbook 8120-1 in order to conduct consultation with the American Indian
 28 community for undertakings under this Protocol or any of its Amendments. BLM supports
 29 and encourages the reciprocal sharing of sensitive cultural information with Federally
 30 recognized tribes during consultation for specific undertakings.
 31

32 Non-Federally recognized tribes, Indian communities and individual members shall be
 33 encouraged to raise issues, express concerns during public scoping for specific undertakings.
 34 BLM supports and encourages the reciprocal sharing of sensitive cultural information with
 35 non-Federally recognized tribes, Indian communities and individual members during
 36 planning for specific undertakings. The BLM shall solicit such input through the public
 37 participation opportunities afforded by BLM's land use planning and environmental review
 38 processes, government-to-government consultation and the development of Agency/Tribe
 39 protocol agreements. BLM shall take into account any confidentiality concerns raised by
 40 Indian tribes and American Indian traditional practitioners during the identification process.
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1 **V. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES**

2
3 **A. Consultation with Tribes and Traditional Practitioners**

4
5 Consultation with tribes and traditional practitioners underlies all subsequent identification
6 and evaluation activities conducted under this Protocol. The Field Office Manager shall
7 ensure that consultation with tribes and traditional practitioners takes place at the earliest
8 stages of planning for projects. The Field Office Manager shall be prepared to continue
9 consultation throughout the planning and implementation stages of an undertaking.
10 Guidance for consultation is provided in BLM Manual 8120 and BLM Handbook 8120-1.

11
12 **B. Public Involvement**

13
14 BLM shall provide adequate opportunity for the public to express views by seeking and
15 considering those views when carrying out actions under this Protocol. BLM shall
16 coordinate this public participation requirement with those of NEPA, FLPMA, other
17 pertinent statutes, and the BLM Planning System. Interested parties shall be invited to
18 consult early in the review process if they have expressed an interest in a BLM undertaking
19 or action subject to the Protocol. Such interested parties may include, but are not limited to,
20 local governments; grantees, permittees, or owners of affected lands or land surfaces; Indian
21 Tribes, organizations, families and individuals; and those seeking to participate as consulting
22 parties in a particular undertaking.

23
24 **C. Area of Potential Effect**

25
26 Field Office Cultural Resources Staff shall apply the definition of APE (36 CFR 800.16[d])
27 and shall document the determination and the rationale used in reaching that determination.
28 In defining the APE, the BLM shall consider potential direct, indirect, and cumulative effects
29 to historic properties and their associated settings as applicable, regardless of land ownership.
30 In cases where the APE is subject to question or in which there are multiple jurisdictions, the
31 Field Office shall seek the opinion of the SHPO.

32
33 **D. Identification**

34
35 Unless otherwise agreed in consultation with the SHPO, BLM shall ensure that project-
36 specific surveys and other efforts to identify historic properties are conducted in accordance
37 with the appropriate professional standards as defined in the BLM 8100 Manual series, and
38 to the extent prudent and feasible with the California Office of Historic Preservation
39 guidelines, and the Secretary's Standards and Guidelines. All surveys and other efforts to
40 identify historic properties shall be documented according to standards set forth by the
41 Secretary, the BLM 8100 Manual, and the SHPO. Prior surveys may be accepted as
42 adequate inventory for all or part of a project area based on review by the Field Office
43 cultural staff and completion of documentation of such review.

- 1 1. BLM will generally conduct BLM Class III inventory, as defined in BLM Manual 8110, to
 2 identify historic properties and traditional cultural properties on BLM-administered lands or
 3 other lands where a BLM undertaking will occur.
 4
- 5 2. In all cases where BLM's Cultural Resource staff determines that less than a Class III
 6 inventory is appropriate for an undertaking, a written justification and research design or
 7 strategy shall be prepared and retained in appropriate files. When Class II inventories
 8 (Probabilistic Field Survey) are deemed appropriate, Field Office Cultural Resource staff
 9 shall seek informally the views of the SHPO staff concerning the justification and research
 10 design/strategy for the reduced level of inventory. The SHPO may concur with the proposed
 11 approach or may determine that formal consultation shall be initiated (Stipulation VI.C).
 12 Class I inventories are limited to landscape level planning and are never sufficient for the
 13 purposes of Section 106 compliance for specific undertakings.
 14
- 15 3. Where Amendments to this Protocol apply to a particular undertaking and also address
 16 alternative inventory procedures, those alternative inventory procedures will be followed.
 17

18 **E. Evaluation**

- 19
- 20 1. Unless otherwise agreed to in consultation with SHPO, BLM will ensure that historic
 21 properties that cannot be protected are evaluated in accordance with BLM's 8110 Manual
 22 (Appendix B), the National Register criteria (36 CFR 60.4), and, to the extent prudent and
 23 feasible, with the Secretary's Standards and Guidelines for Archaeology and Historic
 24 Preservation (Vol. 48, Federal Register, No. 190, Part IV). This Protocol suspends the
 25 allocation of unevaluated cultural resources to "use categories" (BLM Manual 8110.4);
 26 however, this Protocol does not constrain allocation of evaluated cultural resources to use
 27 categories.
 28
- 29 2. BLM shall document all evaluations, including applicable National Register criteria, and
 30 disclose those evaluations in project tracking systems implemented by the Nevada SHPO and
 31 the California BLM. The SHPO may elect to review any evaluation as an element of its
 32 oversight role in this Protocol.
 33
- 34 3. Where the Protocol requires BLM to consult with the SHPO regarding the National
 35 Register eligibility of a property, any unresolved disagreement resulting from such
 36 consultation shall be submitted to the Keeper of the National Register in accordance with 36
 37 CFR 63.3(d).
 38
- 39 4. Where avoidance will be implemented as the management strategy for managing effects,
 40 BLM may treat cultural resources as potentially eligible for inclusion in the National Register
 41 of Historic Places without consultation with the SHPO. Such treatment for a particular
 42 property neither precludes nor prejudices evaluation in the future.
 43
 44
 45
 46

1 **F. Human Remains**

2

3 In the event that any human remains are encountered or in the event that unassociated
4 funerary objects, or grave goods are discovered, work in the immediate vicinity of the
5 discovery shall cease other than non-disturbing documentation and BLM shall comply with
6 applicable State laws, NAGPRA as outlined at 43 CFR 10, and ARPA at 43 CFR 7.

7

8 **G. Discoveries**

9

10 In the event that properties are discovered during implementation of an undertaking which
11 has been duly considered under the terms of this Protocol and in which the property cannot
12 be protected, BLM shall address the discovery in accordance with the provisions of 36 CFR
13 800.13. In consultation with the SHPO, BLM shall select the appropriate mitigation option.
14 In the event that properties are discovered during implementation of an undertaking which
15 has been exempted under Stipulation V.I., the discovery procedures set forth in Appendix D
16 shall be followed.

17

18 **H. Emergency Undertakings**

19

20 BLM shall amend this Protocol with procedures for protecting historic properties during
21 emergency undertakings, including wildfire. Until such an amendment is developed and
22 approved, the following shall apply: should BLM find it necessary to implement an
23 emergency undertaking as an immediate response to a declared emergency, undeclared
24 emergency, or another immediate threat to life or property, in a manner that would preclude
25 the use of this Protocol, BLM and its mutual aid partners, will implement to the extent
26 prudent and feasible any measures that could avoid or minimize harm to historic properties
27 and shall implement rehabilitation measures and evaluations for properties which may have
28 been adversely affected. BLM shall comply with the provisions of 36 CFR Part 800.12 and
29 36 CFR Part 78 for such emergency undertakings. BLM shall document properties
30 discovered or affected by the emergency undertaking or post-fire rehabilitation and shall
31 submit a report to the SHPO.

32

33 **I. Exempt Undertakings**

34

35 The definitions and procedures for application of Exemptions are developed in Appendix D.
36 Class A undertakings are generally exempt from further review or consultation. In addition,
37 Field Office Cultural Resource staff may determine that any specific undertaking subsumed
38 under the list of Class B undertakings qualifies as an exempt undertaking. Documentation
39 regarding an undertaking's exemption from review under this Protocol shall be retained and
40 entered into an electronic database. The list of exemptions may be revised to add, delete, or
41 modify specific exemptions.

42

43 However, the following exceptions apply:

44

45 1. Any Field Office may elect to review a normally exempted, specific undertaking under the
46 terms of this Protocol or 36 CFR Part 800.

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2. Should an objection by the public arise to a Class B exempt undertaking prior to implementation, the Field Office shall consult with the objecting party and the SHPO for not more than 30 calendar days following receipt to resolve the objection. If the objection is resolved within this timeframe, the parties shall proceed in accordance with the terms of that resolution. If the objection cannot be resolved within this time frame, and the Field Office and the SHPO have not agreed to extend the consultation period, the Field Office shall submit the disputed exemption for review by the SHPO either under this Protocol or under 36 CFR 800.

3. Any party to this Protocol may propose that Appendix D be modified by removal or revision of exempted undertakings or by addition of a previously non-exempted class of undertakings. Such proposals for modification of Appendix D shall be considered pursuant to the provisions for revisions of this Protocol at Stipulation IX.B. Appendix D may be revised as a component of Protocol revision or may be revised at any time upon written agreement of the parties to this Protocol.

VI. THRESHOLDS FOR SHPO REVIEW

BLM shall initiate formal consultation with the SHPO in the following situations and shall follow the procedures set forth in 36 CFR 800. Notwithstanding, BLM and SHPO may agree to proceed under the Protocol in consideration of specific conditions or characteristics of a specific undertaking which would normally require continuation of formal consultation.

A. Where undertakings may have an adverse effect as defined by 36 CFR 800.5(a)(1), including adverse effects to National Historic Landmarks (NHL) or properties either considered eligible for, or which are listed in, the National Register of Historic Places.

B. Where BLM acts either as lead agency on behalf of other Federal agencies or in cooperation with other Federal agencies for undertakings that may have effects beyond the boundaries of the State and which involve other State Historic Preservation Officers. In such cases, BLM will either consult with the respective SHPOs and agencies regarding an appropriate compliance process and proceed accordingly, or comply with 36 CFR 800.

C. Where BLM proposes to complete less than a BLM Class III survey of the affected (selected) lands and when informal consultation with SHPO staff yields consensus agreement to proceed with formal consultation (Stipulation V.D.2).

D. Where an undertaking involves a transfer or allocation of public lands exceeding 10,000 acres regardless of the survey class.

E. Where BLM proposes to transfer lands to the State of California absent an agreement document governing the undertaking.

F. Where traditional cultural properties or sacred sites may be affected.

1 G. Where professional cultural resources expertise necessary to implement this Protocol is
2 unavailable to a Field Office.

3
4 H. Where land use plans and amendments are initiated.

5
6 I. Where unresolved disagreements or disputes concerning professional findings exist
7 between Cultural Resource staff and Field Office Managers.

8
9 J. Where unresolved disagreements or disputes, internal to BLM, arise concerning an exempt
10 undertaking.

11
12 K. Where a Field Office declines to participate in any supplemental procedures
13 (Amendments) which would normally govern the undertaking or class of undertaking, and
14 when the undertaking cannot be covered under this Protocol.

15
16 L. Where protocols and procedures in the BLM 8100 Manual procedures may conflict with
17 the procedures established in 36 CFR 800.

18
19 M. Where data recovery or other treatment to mitigate adverse effect is proposed.

20
21 N. Where supplemental procedures appended to this Protocol require such consultation.

22
23 O. Where unanticipated, potentially adverse effects are discovered after completing the
24 procedural steps at Stipulation V of this Protocol.

25
26 P. Where an objection by the public arises to a Class B exempt undertaking, stipulated at
27 V.I.2 of this Protocol.

28
29 Q. Where BLM proposes to vacate a prior determination of eligibility or to remove a historic
30 property from the National Register of Historic Places (36 CFR 60.15).

31
32 In instances where the involvement of the SHPO occurs after steps have been taken under the
33 Protocol, the Field Office Manager or other Agency Official shall not be required to
34 reconsider previous findings or determinations unless those findings or determinations are
35 the subject of unresolved disputes or disagreements.

36

37
38 **VII. STAFFING**

39
40 **A. Professional Staff**

41
42 Under this Protocol Agreement, BLM operates with limited external oversight. In order to
43 successfully act on behalf of the SHPO and to maintain the trust of the SHPO, BLM shall
44 continually strive for a high level of professional capability. BLM is committed to
45 employing a professional staff. In hiring new full time professional staff, BLM will follow
46 Section 112(a)(1)(B) of the NHPA and select candidates that meet the Secretary of the

1 Interior's Professional Qualifications Standards or the education and experience standards set
 2 forth in the BLM Manual Series 8150.12.B.2. Field Offices shall ensure the availability of
 3 cultural resources expertise at the Field Office level. Field Offices which do not have the
 4 services of a BLM Cultural Resource professional, either on staff or through arrangement
 5 with another BLM administrative unit, shall consult with the SHPO on all undertakings.
 6

7 Student training programs, including the Student Career Employment Program (SCEP) and
 8 the Student Training Employment Program (STEP), may be used to recruit new staff that
 9 may assist the full time Cultural Resource Specialist in the Field Office. The student trainees
 10 shall not perform professional duties without appropriate oversight by qualified professional
 11 Cultural Resource staff and cannot act on behalf of the SHPO.
 12

13 **B. Professional Capability**

14
 15 When the BLM is involved in an undertaking requiring expertise not possessed by available
 16 BLM staff, the BLM may request the assistance of the SHPO in such cases or may obtain the
 17 necessary expertise through contracts, BLM personnel from other units, or arrangement with
 18 other agencies.
 19

20 **C. Non-Professional Cultural Resource Personnel**

21
 22 The BLM may employ Cultural Resource specialists and trained paraprofessionals (Heritage
 23 Resources Assistants) who do not meet Secretary of the Interior's standards for professional
 24 Cultural Resources personnel. In such instances, individuals who do not meet these
 25 Standards shall work under the direct technical supervision of BLM professional Cultural
 26 Resource staff and may not substitute for professional Cultural Resource staff in making
 27 findings, determinations, or recommendations regarding the identification and evaluation
 28 procedures set out in this Protocol or in Section 36 CFR 800. In addition, trained
 29 paraprofessionals may be used only when BLM has developed and implemented a
 30 paraprofessional program agreed to by the parties to this Protocol.
 31

32 **VIII. CERTIFICATION**

33 **A. Certification**

34
 35
 36
 37 The Preservation Board, in consultation with the SHPO and the Council, has certified each
 38 BLM Office to operate under this Protocol based upon the following: (1) managers and
 39 specialists have completed required training, (2) professional capability to carry out these
 40 policies and procedures is available through each Field Office's immediate staff or through
 41 other means, (3) and, each supervising line manager within the State has assigned and
 42 delimited Cultural Resource specialists' duties.
 43

44 The Deputy Historic Preservation Officer shall periodically consider the certification status
 45 of each Field Office during the review process delineated in Stipulation III.E of this Protocol.
 46

1 **B. Provisional Certification**
 2

3 The Deputy Historic Preservation Officer or the SHPO may recommend that the State
 4 Director place a Field Office on a provisional status based on findings from any of the
 5 reviews specified at Stipulation III.E of this Protocol. Provisional status may extend from
 6 one to two years, although the term of the provisional status shall be a matter of agreement
 7 between the parties to this Protocol and shall reflect the complexity of the deficiencies
 8 identified. While on provisional status, a Field Office will have the opportunity to correct
 9 deficiencies that have been identified and documented during review of Field Office
 10 practices under the Protocol. Upon expiration of the provisional status term, the parties to
 11 this Protocol shall convene to determine whether identified deficiencies have been
 12 satisfactorily corrected. Should the parties determine that such deficiencies remain
 13 uncorrected, or should new deficiencies be identified that the parties deem significant, the
 14 decertification process shall be initiated as described at Stipulation IX.C of this Protocol.
 15

16 **C. Decertification**
 17

18 The Preservation Board may choose to review a Field Office's certification status. The Field
 19 Office manager, the Deputy Historic Preservation Officer, or the SHPO may request that the
 20 Preservation Board initiate such a review, in which case the Preservation Board will respond
 21 under the terms of the National PA at Component Eight. If a Field Office is found not to
 22 have maintained the basis for its certification (e.g. the professional capability needed to carry
 23 out these policies and procedures is no longer available, or the office is not in conformance
 24 with this Protocol) and the Office Manager has not voluntarily suspended participation under
 25 this Protocol, the Preservation Board will recommend that the State Director decertify the
 26 Field Office.
 27

28 1. A Field Office may ask the State Director to review the Preservation Board's
 29 decertification recommendation, in which case the Director will request the Advisory
 30 Council's participation in the review.
 31

32 2. The Preservation Board will notify the SHPO and the Advisory Council if the status of a
 33 certified office changes. In consultation with the SHPO, the Deputy Preservation Officer
 34 will prepare a Plan of Action to address the identified deficiencies.
 35

36 3. When a Field Office is decertified, the responsible manager shall follow the procedures of
 37 36 CFR Part 800 to comply with Section 106.
 38

39 **D. Recertification**
 40

41 If a decertified Field Office is found to have restored the basis for certification, the
 42 Preservation Board will recommend that the State Director recertify the office.
 43
 44
 45
 46

1 **IX. REVISION, AMENDMENT, TERMINATION AND RESOLVING OBJECTIONS**

2
3 **A. Procedure for Resolving Objections**

4
5 1. The BLM or the SHPO may object to an action proposed or taken by the other pursuant
6 to this Protocol. The objecting party shall notify the other party in writing of the objection.
7 Within seven (7) calendar days following receipt of notification, the parties shall consult for
8 30 calendar days to resolve the objection. If the objection is resolved within this time frame,
9 the parties shall proceed in accordance with the terms of that resolution. If the objection is
10 not resolved within this time frame, and the parties have not agreed to extend the consultation
11 period, the Deputy Historic Preservation Officer shall refer the objection to the National
12 Preservation Board, which will provide the State Director with its recommendations. If the
13 State Director accepts the Board's recommendations, the State Director shall promptly notify
14 the SHPO of such acceptance, provide a copy of the Board's recommendations, and afford
15 the SHPO 30 calendar days following receipt of the notification to comment on the
16 recommendations. If the SHPO concurs in the Board's recommendations within this time
17 frame, the State Director and the SHPO shall proceed in accordance with the Board's
18 recommendations and the objection shall thereby be resolved. If either the State Director or
19 the SHPO rejects the Board's recommendations after consideration not to exceed 30 days, the
20 State Director shall promptly notify the Board in writing of the rejection, and immediately
21 thereafter submit the objection, including copies of all pertinent documentation, to the
22 Advisory Council on Historic Preservation for comment in accordance with Component Four
23 of the National PA. Within 30 calendar days following receipt of any Council comments, the
24 State Director shall make a final decision regarding resolution of the objection and in writing
25 notify the Board, the SHPO and the Council of that decision. The objection shall thereupon
26 be resolved. In reaching a final decision regarding the objection, the State Director shall take
27 into account any comments received from the Board, the SHPO, and the Council pursuant to
28 this stipulation.

29
30 2. If a member of the public or a Federally recognized Indian tribe or other American Indian
31 group, family or individual objects at any time to the manner in which this Protocol is being
32 implemented in a specific case, the BLM shall consult with the objecting party for a period
33 not to exceed 45 days and, if the objecting party requests, with the SHPO, to resolve the
34 objection. If the objecting party and the BLM resolve the objection within 45 days, the BLM
35 shall proceed in accordance with the terms of that resolution. If the objection cannot be
36 resolved, the Deputy Historic Preservation Officer shall refer the objection to the National
37 Preservation Board, which will provide the State Director and the objecting party with its
38 recommendations for resolving the objection. If the State Director and the objecting party
39 accept the National Preservation Board's recommendations, the State Director shall proceed
40 in accordance with these recommendations and the objection shall thereby be resolved. If
41 either the State Director or the objecting party rejects the National Preservation Board's
42 recommendations for resolving the objection, the State Director shall refer the objection to
43 the Council in accordance with Component Four of the National PA. Within 30 calendar
44 days following receipt of any Council comments, the State Director shall make a final
45 decision regarding resolution of the objection and shall, in writing, notify the Board, the
46 objecting party, the SHPO and the Council of that decision. The objection shall thereupon be

1 resolved. In reaching a final decision regarding the objection, the State Director shall take
 2 into account any comments received from the Board, the objecting party, the SHPO, and the
 3 Council pursuant to this paragraph. Any objection filed pursuant to this paragraph shall not
 4 prevent the BLM from proceeding with project planning; however, project implementation
 5 shall be deferred until the objection is resolved pursuant to the terms of this paragraph.
 6

7 **B. Revision of this Protocol**

8
 9 This Protocol is intended to be responsive to changing circumstances. Therefore, the BLM
 10 or the SHPO may propose revision of this Protocol, whereupon the parties shall consult to
 11 consider the proposed Revision. "Revision" as used herein refers to the process of review
 12 and rewriting of all or portions of the Protocol, including the addition, deletion, or
 13 modification of exempt undertakings. Revisions shall only become effective upon written
 14 concurrence of the parties.
 15

16 **C. Amendment of this Protocol**

17
 18 1. In keeping with the intended responsive nature of this Protocol, the BLM or the SHPO
 19 may propose amendment of this Protocol at any time, whereupon the parties shall consult to
 20 consider such amendment. "Amendment" refers to the process of adding supplemental
 21 procedures for specific BLM programs or projects when parties to the Protocol wish those
 22 procedures to be made explicit. The amendment process culminates in the issuance of
 23 Protocol Amendments, which are administratively appended to the Protocol on their effective
 24 date. Protocol Amendments shall be housed in Appendix E of this Protocol.
 25

26 2. The parties to this Protocol agree that upon termination or expiration of this Protocol, any
 27 and all Protocol Amendments may continue in full force and effect until a successor Protocol
 28 or Programmatic Agreement is executed, whereupon any and all such Protocol Amendments
 29 may be appended to the successor document with or without revision as the parties may
 30 agree.
 31

32 **D. Termination, Automatic Termination, and Review of this Protocol**

33
 34 1. The BLM or SHPO may terminate this Protocol or any Protocol Amendment. The party
 35 proposing termination shall in writing notify the other party of intent to terminate and explain
 36 the reasons for proposing termination. Within seven calendar days following receipt of such
 37 notification, the parties shall consult for up to 90 days to seek alternatives to termination.
 38 Should such consultation result in agreement on an alternative to termination, the parties
 39 shall proceed in accordance with the terms of that agreement. Should such consultation fail,
 40 the party proposing termination may terminate this Protocol or any Protocol Amendment by
 41 providing the other party with written notice of such termination. Termination hereunder
 42 shall render this Protocol or any terminated Protocol Amendment without further force or
 43 effect
 44

45 2. In the event of termination of this Protocol, the BLM shall comply with the provisions of
 46 36 CFR Part 800 for all undertakings covered by this Protocol, with the exception of those

1 Supplemental Procedures described in Protocol Amendments which, by written agreement of
2 the parties, may remain in full force and effect. In the event a Protocol Amendment is
3 terminated, BLM shall comply with 36 CFR 800 for the program or practices subsumed
4 under the Protocol Amendment except insofar as SHPO and the BLM in writing agree to
5 subsume such program or practices under this Protocol.
6

7 3. At midnight of the fifth anniversary of the date of its execution, this Protocol shall
8 automatically terminate and have no further force or effect, unless it is extended by written
9 agreement of the parties. Should the Protocol not be extended and should no successor
10 agreement document be in place at the time of automatic termination, BLM shall comply
11 with 36 CFR 800, except with regard to those activities addressed in Protocol Amendments
12 which the parties in writing agree shall remain in full force and effect.
13

14 **X. OTHER PROCEDURES**
15

16 BLM shall follow procedures and adhere to policies detailed in the BLM 8100 Manual Series
17 along with standards and guidelines promulgated by the Office of Historic Preservation.
18 BLM, in consultation with SHPO, may develop other guidance as necessary and shall
19 consider incorporating such guidance as supplemental procedures to this Protocol
20 (Stipulation IX.C).
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STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, CALIFORNIA



Mike Pool

Date: 10/15/07

STATE HISTORIC PRESERVATION OFFICER, STATE OF CALIFORNIA



By Stephen Mikesell
Deputy State Historic Preservation Officer

Date: 10/15/07

STATE HISTORIC PRESERVATION OFFICER, STATE OF NEVADA



By Alice M. Baldrice
Deputy State Historic Preservation Officer

Date: October 15, 2007

APPENDIX D

EXEMPT UNDERTAKINGS

1 INTRODUCTION

2

3 Undertakings listed in this Appendix to the Protocol may be exempt (categorically
4 excluded) from further review or consultation under the terms of this Protocol at
5 stipulation V.G. The listed classes of undertakings are subdivided into Class A and
6 Class B activities, which vary by the degree of review required of the Field Office
7 Cultural Resource staff.

8

9 **Class A Activities**

10

11 Class A activities are generally exempt but may require a records check to determine
12 whether the activity may affect a known historic property or an unevaluated cultural
13 resource. Cultural Resource staff shall determine whether a records check is appropriate
14 and shall conduct that check prior to exempting the activity. A Field Office may elect to
15 provide further and more robust review, including field inventory, by Field Office
16 Cultural Resource staff if that staff determines that a specific exempt undertaking may
17 affect a cultural resource which is significant, documented, known but not recorded, or
18 unevaluated.

19

20 Class A activities submitted for further review shall be documented and reported in
21 annual reports. Class A exemptions which are not submitted for further review shall be
22 documented in project case files in order to demonstrate compliance with Section 106 of
23 NHPA using an appropriate exemption tracking form.

24

25 **Class B Activities**

26

27 Class B activities may be exempt, depending on a finding by professional Field Office
28 Cultural Resource staff. The screening of potentially exempt Class B activities shall
29 consider the nature of the proposed activity, adequacy of prior inventory, adequacy of
30 documentation of historic properties and inventory efforts, information or knowledge of
31 potentially affected cultural resources which were unknown at the time of the original
32 inventory, and the nature or scope of any prior Section 106 review.

33

34 If the Field Office Cultural Resource staff determines that an undertaking may be treated
35 as exempt, then that undertaking shall be considered exempt under this Protocol and no
36 further review or consultation would be required. If Field Office Cultural Resource Staff
37 determines that an undertaking has an effect, may have an effect, or will continue an on-
38 going effect, the undertaking shall not be exempt and shall be subject to the provisions of
39 this Protocol or 36 CFR 800, as appropriate.

This version is effective: 10/15/07.
All earlier versions are superseded.

1 Class B reviews shall be documented on an appropriate exemption tracking form and
 2 reported in annual reports.

3

4 **Inadvertent Discoveries during Implementation of an Exempted Undertaking**

5

6 In the event of inadvertent discovery of cultural resources during implementation of an
 7 undertaking which has been exempted under Appendix D, the following procedure shall
 8 be undertaken. Field Office Cultural Staff and the Field Office Manager shall be
 9 immediately notified by personnel responsible for implementation of the exempted
 10 undertaking. All work shall cease at the site of discovery and all other work which may
 11 damage the cultural resource shall also cease. The Field Office Cultural Staff shall make
 12 an assessment of the situation and, in consultation with the Field Office Manager, may
 13 prescribe the emergency implementation of appropriate physical and administrative
 14 conservation measures as enumerated in BLM Manual Series 8140. The Field Office
 15 Cultural Staff shall notify the SHPO in order to develop an agreement on the appropriate
 16 course of action, and such agreement shall reflect the intent of BLM Manual Series
 17 8140.28B. The agreement shall be memorialized in writing and documented in project
 18 files. The Field Office Cultural Staff shall document implementation of the agreed-upon
 19 steps and shall report the discovery event and the manner of its resolution in the annual
 20 accomplishment reporting required under this Protocol.

21

22 **Addition, Deletion or Modification of Exemptions**

23

24 This list of exemptions may be changed through addition, deletion, or modification of
 25 exemptions as described in stipulation V.I. of the Protocol. When the list of exemptions
 26 is modified a new Appendix D shall be issued with its effective date entered on the face
 27 of the Appendix. Upon issuance, all prior versions of Appendix D shall be superseded
 28 and shall have no further force or effect. When a specific exemption is deleted, its
 29 deletion shall be shown by striking through its text and, similarly, when terms in a
 30 specific exemption are modified, the modified terms shall be denoted by strikethrough.

CLASS A ACTIVITIES

- 1
2
3 **A1:** Activities which involve no more than two (2) square meters of cumulative surface
4 disturbance and no more than one (1) square meter of contiguous disturbance in any
5 given location.
6
7 **A2:** Routine maintenance of existing facilities, including minor routine and preventative
8 maintenance of BLM facilities which do not disturb additional ground surface area or
9 historic properties at the facility including the facility itself.
10
11 **A3:** Rendering formal classification of Federal lands in the United States pursuant to 43
12 CFR 2400 (Formal Land Classification Procedures).
13
14 **A4:** Removal of log jams and debris dams using hand labor or small mechanical devices.
15
16 **A5:** Special land use designations which do not authorize surface disturbance including
17 ACECs, Wilderness Study Areas, environmental education areas, and Natural Areas.
18
19 **A6:** Alteration of structures which are known to be less than 40 years old in their entirety.
20
21 **A7:** Removing modern materials and trash scatters less than 50 years old and not
22 associated with a larger eligible or unevaluated cultural entity. Abandoned vehicles and
23 modern trash dumps are included in this class.
24
25 **A8:** Withdrawal continuations or extensions which would only establish a specific time
26 period and where there would be essentially no change in use and/or no new uses would
27 be permitted and continuation would not lead to environmental degradation.
28
29 **A9:** Withdrawal terminations, modifications or revocations that, because of overlying
30 withdrawals or statutory provisions, involve merely a record clearing procedure.
31
32 **A10:** Withdrawal terminations, modifications, or revocations and cancellations of
33 classification and opening orders where the land would be opened to discretionary land
34 laws and where future actions would be subject to review under the terms of this
35 protocol.
36
37 **A11:** Withdrawal terminations, modifications or revocations and opening orders that the
38 Secretary of the Interior is under a specific statutory directive to execute, and where
39 future actions would be subject to review under the terms of this protocol.
40
41 **A12:** Transfer of use authorization from one Federal agency to another when an action
42 such as a boundary adjustment necessitates changing a right-of-way from one federal
43 agency to another (e.g., Forest Service Special Land Use Permit to a BLM Title V Right-
44 of-Way).
45

This version is effective: 10/15/07.
All earlier versions are superseded.

- 1 **A13:** Rights-of-way for overhead line (no pole or tower on BLM land) crossing over a
 2 corner of public land.
 3
- 4 **A14:** Right-of-way which would add or remove another radio transmitter to an existing
 5 communication site that is neither an historic property nor located on or within the
 6 proximate area of an historic property.
 7
- 8 **A15:** Apiary sites adjacent to a designated road or route of travel and which do not
 9 involve ground disturbance.
 10
- 11 **A16:** Acquisition of lands and easements.
 12
- 13 **A17:** Transferring lands or interest in lands to other Federal agencies where future
 14 management will be subject to the Section 106 process.
 15
- 16 **A18:** Cadastral survey.
 17
- 18 **A19:** Designating areas closed to vehicles or areas limited to travel only on existing roads
 19 and trails where such designation does not require or involve Plans or Plan amendments
 20 and where access to traditional or sacred sites by Native Americans is not an issue.
 21
- 22 **A20:** Installation of routine signs or markers on shoulders of existing roads and markers
 23 adjacent to existing roads, or placing recreational, special designation or information
 24 signs, or visitor registers, unless within known historic properties. Disturbance cannot
 25 exceed the restrictions set forth in Exemption A1.
 26
- 27 **A21:** Issuance and modification of regulations, orders, standards, notices to lessees and
 28 operators and field rules where the impacts are obviously limited to administrative,
 29 economic or technological effects.
 30
- 31 **A22:** Approval of off-lease storage in existing facilities.
 32
- 33 **A23:** Approval of suspensions of operations and suspensions of production.
 34
- 35 **A24:** Approval of royalty determinations such as royalty rate reduction and operations
 36 reporting procedures.
 37
- 38 **A25:** Approval of conversion of an existing oil and gas well for disposal of produced
 39 water meeting the standards of NTL-28, when no new ground disturbance will result.
 40
- 41 **A26:** Approval of conversion of an unsuccessful oil and gas well or an exhausted
 42 producer to a water source or observation well when no new ground disturbance will
 43 result.
 44
- 45 **A27:** Routine downhole fracturing of rock formation to enhance production or injection.
 46

This version is effective: 10/15/07.
 All earlier versions are superseded.

- 1 **A28:** Operations in, and reclamation of, existing materials borrow sites when the activity
2 is entirely within the disturbed area.
- 3
- 4 **A29:** Administratively determining that land is mineral in character.
- 5
- 6 **A30:** Continued development of borrow sources which have previously removed all
7 Holocene and Pleistocene sediments and will not extend into any area which contains
8 Holocene and Pleistocene sediments.
- 9
- 10 **A31:** Dispersed non-commercial recreation activities such as rock collection, Christmas
11 tree cutting, pine nut gathering, and personal use fuelwood.
- 12
- 13 **A32:** Issuance of special recreation permits:
 - 14
 - 15 **a.** River use permits where camping and put-in/take-out sites are established facilities
16 where previous Section 106 consultation has been completed.
 - 17
 - 18 **b.** Long-term visitor use permits in established Long Term Visitor Areas for which
19 previous Section 106 consultation has been completed.
 - 20
- 21 **A33:** Placement of recreational, special designation or information signs, visitor registers,
22 portable kiosks and portable sanitation devices.
- 23
- 24 **A34:** Modification of existing fences, gates, grills, or screens to provide improved
25 wildlife ingress and egress where such modification does not affect the integrity of
26 potentially historic adits, stopes, or shafts.
- 27
- 28 **A35:** Reintroduction of endemic or native animal species into their historical habitats
29 where no ground-disturbing facilities will be constructed.

This version is effective: 10/15/07.
All earlier versions are superseded.

1 **CLASS B ACTIVITIES**

- 2
- 3 **B1:** Repair or stabilization of historic properties using in kind workmanship and
4 materials.
- 5
- 6 **B2:** Emergency repair or stabilization of historic properties using methods that do not
7 have an effect upon the values that make the properties significant.
- 8
- 9 **B3:** Resource management actions which do not utilize motorized vehicles or create new
10 surface disturbance and that do not have the potential to affect access to or use of
11 resources by American Indians.
- 12
- 13 **B4:** Hazards abatement, including elimination of toxic waste sites, filling, barricading, or
14 screening of abandoned mine shafts, adits, and stopes where such features are not historic
15 or contributing properties.
- 16
- 17 **B5:** Removal of, recent (less than 50 years old) structures and materials not associated
18 with older remains which may qualify for listing in the National Register and where no
19 historic properties will be affected.
- 20
- 21 **B6:** Limited archaeological testing and/or artifact collection during field identification,
22 evaluation, and recording activities, so that the significance or research potential of a
23 cultural property may be better understood but not substantially diminished. Limited
24 testing is defined as affecting no more than four (4) cubic meters of an archaeological
25 deposit or more than 25% of the surface area of the deposit.
- 26
- 27 **B7:** Wildland fire use or prescribed burns which will have no effect on historic
28 properties, which do not disturb structures, or might affect rock art, or require disturbance
29 of the ground surface (cutting line, dozer work, fire breaks, fire regarding drops, helipads,
30 etc.), or adversely affect access or use by California and Nevada Indians to harvest or
31 gather traditionally used plant materials.
- 32
- 33 **B8:** Wildfires, including initial attack, where suppression activities have required no
34 mechanical disturbance of the surface of the ground, including surfaces which may
35 contain prehistoric art, and where no structures have been disturbed.
- 36
- 37 **B9:** Issuance of permits, leases, and rights-of-way where no surface or resource
38 disturbance is authorized, that have no potential for adverse effects, and that do not have
39 the potential to affect access to or use of resources by American Indians.
- 40
- 41 **B10:** Designation of existing transportation and utility corridors under Section 503 of
42 FLPMA when current BLM information indicates that such corridors have low
43 probability of containing or being in proximity to historic properties.
- 44
- 45 **B11:** Activities at designated communication sites that do not affect historic properties
46 and where Section 106 consultation has been previously completed.

This version is effective: 10/15/07.
All earlier versions are superseded.

- 1 **B12:** Approval of minor modifications to or minor variances from activities described in
 2 an approved mineral exploration plan that does not affect historic properties.
 3
- 4 **B13:** Approval of minor modifications to or minor variances from activities described in
 5 an approved underground or surface mining plan of operations that does not affect
 6 historic properties for which previous Section 106 consultation has been completed.
 7
- 8 **B14:** Seismic operations on maintained roads or trails, and those involving no use of
 9 explosives, grading, or other land modifications, and resulting in no appreciable
 10 disturbance or compaction of vegetation, soils, or desert pavement by vehicle movement
 11 or other means, in areas in which previous Section 106 consultation has been completed.
 12
- 13 **B15:** The removal of oil well stand pipes where there is no other evidence of historic or
 14 archaeological remains.
 15
- 16 **B16:** Approval of Application of a Permit to Drill (APD) or applications for rights-of-
 17 way for ancillary facilities within an established, utilized or developing oil and gas field
 18 for which Section 106 consultation has been completed or that does not involve historic
 19 properties.
 20
- 21 **B17:** Issuance of special recreation permits where permitted use is consistent with
 22 planning decisions or OHV designations for which previous Section 106 consultation has
 23 been completed, and where there will be no new surface disturbance.
 24
- 25 **B18:** Placement or removal of monitoring equipment (e.g., stream gauges) which does
 26 not disturb potentially sensitive ground surface or historic properties or other cultural
 27 resource.
 28
- 29 **B19:** Maintenance of roads that does not widen or otherwise extend surface disturbance,
 30 unless archaeological features are exposed and which have not been evaluated.
 31
- 32 **B20:** Renewals or reassignment of land use authorization where the action conveys no
 33 additional rights beyond those granted in the original authorization and where Section
 34 106 consultation has been previously completed.
 35
- 36 **B21:** Upgrading or adding new lines (power or telephone) to existing pole(s) when there
 37 is no change in pole configuration or number, and when the lines are not historic
 38 properties and no other cultural resources issues are known.

Appendix E - Amendments

SUPPLEMENTAL PROCEDURES FOR DESERT ROUTES OF TRAVEL

A CULTURAL RESOURCES AMENDMENT
TO
THE STATE PROTOCOL AGREEMENT

BETWEEN

CALIFORNIA BUREAU OF LAND MANAGEMENT
AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

1 The purpose of this Amendment is to provide procedures for resolution of foreclosure of the
2 opportunity of the Advisory Council on Historic Preservation (Council) to comment on the
3 effects to cultural resources of the designation of routes of travel in the California Desert
4 District (CDD) of the California Office of the Bureau of Land Management (BLM). It is also
5 the purpose of this Amendment to provide BLM the approach, tools, information, and
6 management procedures necessary to complete the transition to a fully developed and mature
7 program for management of cultural resources in the context of routes of travel, both in the
8 CDD and on other public lands managed by BLM in California.
9

10 These supplemental procedures are an Amendment to the State Protocol dated April 6, 1998,
11 which is scheduled for termination on October 25, 2004. These supplemental procedures will
12 remain in effect when that Protocol is terminated and automatically will become an
13 Amendment to a successor Protocol document. These supplemental procedures include the text
14 of the Amendment and an administratively appended Interim Management Program
15 (Attachment 1: *Interim Management Program for Identifying, Evaluating, and Protecting*
16 *Cultural Resources along Designated Routes of Travel in the California Desert Conservation*
17 *Area*) that provides implementation and technical details; neither document stands alone.
18

19 This Amendment deviates from the Protocol in Section VI, Thresholds for SHPO (State Office
20 of Historic Preservation) Review, which states, "*BLM shall complete the inventory, evaluation*
21 *and assessment of effects and document all findings, including negative inventories and no*
22 *effect determinations, in BLM files before proceeding with project implementation.*" This
23 Amendment would allow for implementing decisions regarding land management plans for
24 planning regions within the CDCA: Northern and Eastern Colorado Desert Coordinated
25 Management Plan (NECO), the Northern and Eastern Mojave Desert Management Plan
26 (NEMO), and the Western Mohave Off Road Vehicle Designation Project (WEMO). This
27 Amendment will allow BLM to resolve foreclosure for the two planning regions as long as
28 Protocol direction, the BLM 8100 Series Manual guidelines (Protocol Amendment B), the
29 attached Interim Management Program (Attachment 1), the following specific stipulations, and
30 any requirements or stipulations subsequently added to this Amendment, are followed.

Specific Stipulations

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I. Develop Assessment of the Cultural Resources Database for CDCA

The Interim Management Program (Attachment 1) provides for an assessment of the cultural resources database. The purpose of this assessment is to determine the adequacy of the corpus of legacy site records for management purposes. The steps outlined in Task I of the Interim Management Program shall be completed within one year of the date of the execution of this Amendment.

II. Develop Information on the Impacts of Route Usage on Cultural Resources

The Interim Management Program provides for field inspection of a sample of previously recorded cultural resources along existing routes of travel. The purpose of these field inspections is to provide an informed analysis of the impacts of OHV use and related activities on cultural resources of various classes. The steps outlined in Task II of the Management Program shall be completed within three years of the date of the execution of this Amendment.

III. Develop and Evaluate Predictive Model

The Interim Management Program provides for development of a predictive model which can be used as a tool for prediction of archaeological sensitivities. The model will be tested using data developed during additional archaeological inventory of the route system. The purposes of this model are to provide an aide for project planning and to guide the selection of areas for inventory and targeted management of cultural resources. The approach and steps outlined in Task III of the Management Program shall be completed within four years of the date of the execution of this Amendment.

IV. Inventory Program

The Interim Management Program provides guidance for conduct of archaeological survey along certain routes of travel. The focus of this inventory effort will be on routes and route segments which are deemed to be highly sensitive for discovery of cultural resources where those trails and trail segments correlate with areas of high use. The purpose of this inventory is to most efficiently locate potentially significant properties which may be receiving unacceptable levels of impact so that protection measures may be applied. All of the high sensitivity/high use trails and trail segments shall be inventoried by the termination date of this Amendment.

1 V. Develop Standard Protection Measures

2

3 The Interim Management Program provides for the development of standard protection
4 measures that are based in the findings and determinations made in Steps I-III. The purpose
5 of these protection measures is to provide adequate protection for specific classes of sites
6 under specific circumstances. These standard protection measures are intended to
7 supplement existing, accepted protection measures, namely avoidance of effect through re-
8 routing or route closure. The approach and steps outlined in Task V of the Management
9 Program shall be completed within four years of the execution of this Amendment.

10

11

12 VI. Develop and Implement Monitoring Program

13

14 The Interim Management Program also provides for annual programs of monitoring (Task
15 VI). The purposes of the monitoring program are to evaluate the effectiveness of the
16 standard protection measures and to provide long-term condition assessment of a selected
17 sample of cultural properties. The monitoring program will be designed in conjunction
18 with the development of standard protection measures and the program will be
19 implemented at the beginning of the fifth year following execution of this Amendment.

20

21

22 VII. Developing Capabilities

23

24 Underlying the resource management and research activity planned in the Interim
25 Management Program will be an ongoing, systematic, and thorough program of
26 development and sustaining agency capability to accomplish the activity. The approach
27 and steps outlined in Task VII shall be completed annually throughout the life span of this
28 Protocol Amendment and efforts under this task will be planned annually in consultation
29 with SHPO and reported annually as part of the reporting required under Stipulation X.

30

31

32 VIII. Tribal and Interested Party Consultation

33

34 The California Desert District will be responsible for ensuring that Tribes and interested
35 parties are contacted and consulted as outlined in 36 CFR 800 and the 8120 manual
36 guidelines. This will also meet BLM government-to-government responsibilities for
37 consultation.

38

39

40 IX. Managing Cultural Resources Prior to Termination of Amendment

41

42 Nothing in this Amendment shall be construed to mean that management of cultural
43 resources impacted by routes of travel is limited to the cultural resources selected for
44 actions under this Amendment. Undertakings within and along routes of travel will be
45 managed according to the terms of the Protocol during the period of time when the steps
46 outlined in this Amendment are being implemented.

47

1 X. Planning and Reporting

2

3 The California Desert District shall develop and provide to the SHPO an annual plan of
4 work for accomplishing the actions contemplated in the Interim Management Program,
5 including planning for inventory. This plan of work shall establish responsibilities,
6 deadlines, milestones, and provide evidence that funding has been appropriated to
7 accomplish the work. The plan of work for the first year increment of work shall be
8 submitted to the SHPO no later than three months following the execution of this
9 Amendment. Thereafter, annual plans of work shall be submitted to the SHPO
10 concurrently with the annual accomplishment report.

11

12 The California Desert District shall report annually on the accomplishments under this
13 Amendment. Reporting shall include, but shall not necessarily be limited to, status of
14 planned tasks, summaries of accomplishments and findings, tabular summaries of cultural
15 resources inventoried, evaluated, and treated, and any other reporting stipulated in this
16 Protocol Amendment or enumerated in the Interim Management Program. The reporting
17 shall be incorporated into the Protocol Annual Report. The annual reporting required in
18 this Amendment does not substitute for the formal documentation of results that is required
19 in the Interim Management Program.

20

21

22 XI. Transition to Permanent Program

23

24 In order to provide for protection of cultural resources within and along routes of travel
25 within the named planning units of the CDD, BLM shall develop and enter into a Protocol
26 Amendment or other agreement with the SHPO. This agreement will be developed prior to
27 the planned termination date of this Amendment. This agreement shall include, but shall
28 not be limited to, standard protection measures and annual programs of inventory,
29 monitoring, and reporting. The scope of such an agreement may be limited to the CDCA or
30 it may refer to all or specified Public Lands managed by BLM in California.

31

32

33 XII. Revision and Termination

34

35 The parties to this Amendment shall annually review its terms of and the accomplishments
36 achieved under its aegis in order to determine whether continuation, amendment, or
37 termination is appropriate. Either party may propose to revise or terminate this Amendment
38 by providing 60 days written notice. During the period following notice of the intent to
39 revise or terminate, both parties to this Amendment shall enter active negotiations to
40 develop revisions or to seek alternatives to termination. Should such consultation result in
41 agreement on revisions or on an alternative to termination, the parties shall proceed in
42 accordance with the written terms of that agreement. Should consultation on termination
43 fail, the party proposing termination may terminate this Amendment by providing the other
44 party with written notice of such termination. Termination hereunder shall render this
45 Amendment without further force or effect.

46

1 This Amendment shall expire and have no further force or effect at midnight of the fifth
2 anniversary of Amendment's execution date.

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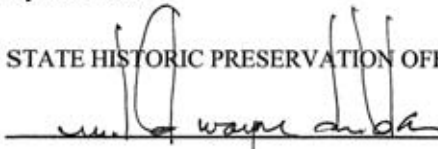
STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, CALIFORNIA



By Mike Pool

Date: 10/25/04

STATE HISTORIC PRESERVATION OFFICER, CALIFORNIA



25 OCT 2004

By Milford Wayne Donaldson

Date: _____

I Concur:

DISTRICT MANAGER, CALIFORNIA DESERT DISTRICT

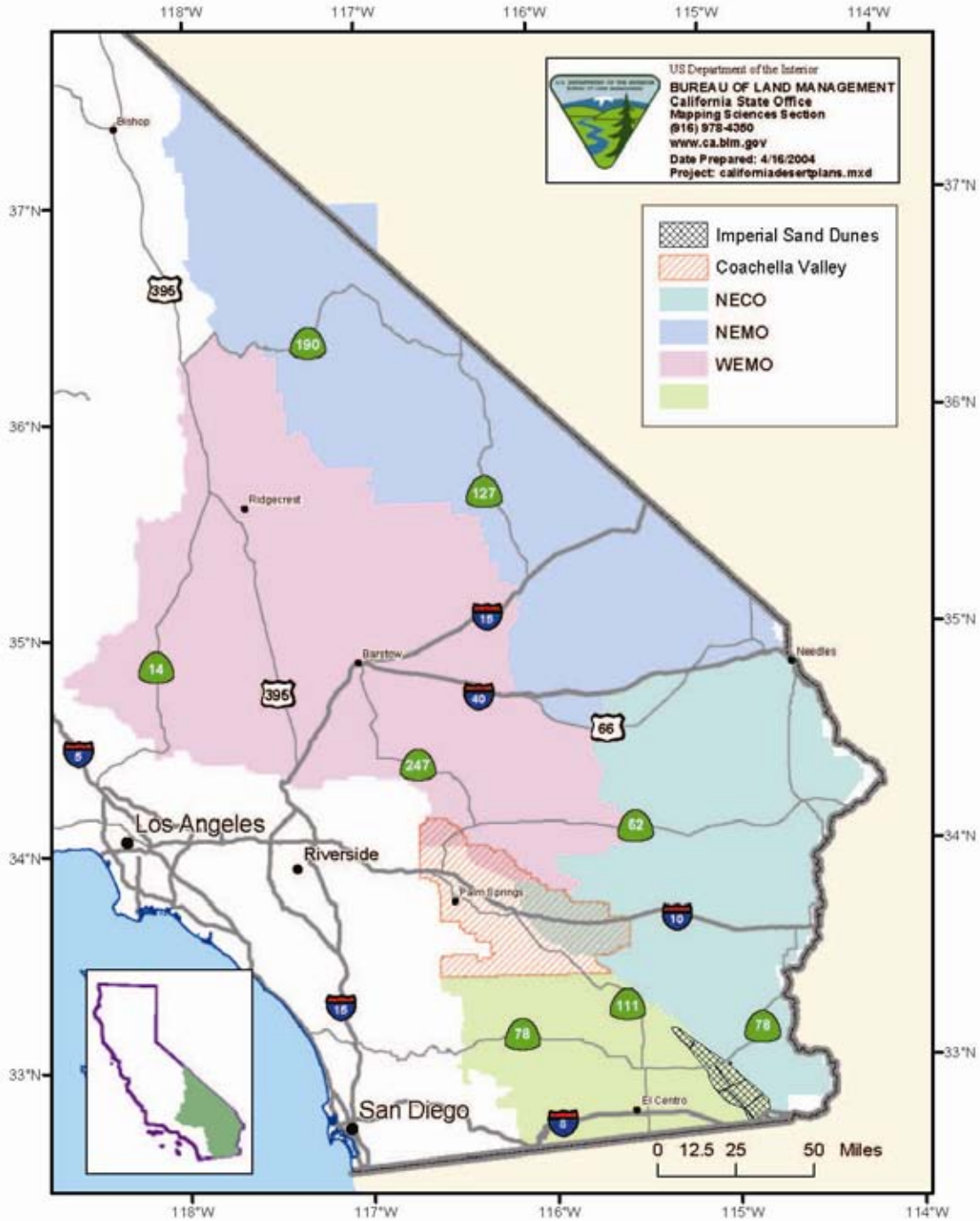


By Linda Hansen

Date: October 21, 2004

Attachment One: Interim Management Program

Figure 1: California Desert Conservation Area



ATTACHMENT ONE

INTERIM MANAGEMENT PROGRAM

FOR

IDENTIFYING, EVALUATING, AND PROTECTING CULTURAL RESOURCES

ALONG

DESIGNATED ROUTES OF TRAVEL IN THE
CALIFORNIA DESERT CONSERVATION AREA

1 **INTRODUCTION**

2

3 This document is attached to the California Protocol Amendment entitled *"Supplemental*
4 *Procedures for Desert Routes of Travel: A Cultural Resources Amendment to the State*
5 *Protocol Agreement between California Bureau of Land Management and the California State*
6 *Historic Preservation Officer"*. The referenced Amendment provides information for
7 administration of the Amendment and an overview of the Interim Management Program.
8

9 The Interim Management Program provides operational details and a design for research and
10 other investigations that are intended to resolve the issue of foreclosure of the Council's
11 opportunity to comment on decisions concerning route designation in the California Desert
12 Conservation Area (hereafter "foreclosure").
13

14 This Interim Management Program presents an approach to understanding the effects of
15 motorized vehicles on cultural resources along existing designated open routes within the
16 California Desert Conservation Area (CDCA). The information that will be developed through
17 implementation of the work envisioned in the Interim Management Program is focused on
18 management of cultural resources. It is not intended to explore such areas of research as
19 prehistoric chronology, mobility, or lifeways. This Interim Management Program will address
20 prehistoric and historic sites with tangible properties, not traditional cultural properties lacking
21 tangible properties and other non-tangible locations.
22

23 Although the management concerns that underlie this Interim Management Program have been
24 recognized for some time, they have risen in importance through recent planning activities.
25 The BLM has initiated consultation with the SHPO on the effects of route designation on
26 cultural resources. This Interim Management Program in conjunction with its Protocol
27 Amendment establishes the agreed-upon approach for resolution of the issue of foreclosure.
28 This Interim Management Program is envisioned as the basis for continuing consultation and
29 communication between the SHPO and BLM. Reporting and ongoing consultation on findings
30 and planned work are essential to this Program and are a requirement of the Protocol
31 Amendment to which this Interim Management Program is attached.
32

1 This document provides background information concerning administrative actions, and
2 cultural and natural history. The planned activities are segregated into a research component
3 and an administrative component. It is the ultimate goal of this Interim Management Program
4 to develop the tools, information, and management requirements to enable BLM to undertake a
5 mature program of cultural resource management along routes of travel within CDCA.
6

7

8 **BACKGROUND OF THE DECISIONS LEADING TO FORECLOSURE**

9

10 The California Desert Conservation Area, encompassing 25 million acres in Southern
11 California, was designated by Congress in 1976 through the Federal Land Policy and
12 Management Act (FLPMA). The Bureau of Land Management's California Desert District
13 administers 10.5 million acres within the CDCA. The CDCA Plan, completed in 1980, is
14 BLM's land use guide for managing public lands within the CDCA. Since 1980, there have
15 been 150 or more amendments to the plan. The most recent amendments designating routes of
16 travel in an extensive area of the CDCA are the undertakings at issue, specifically within the
17 Northern and Eastern Colorado (NECO), the Northern and Eastern Mojave (NEMO), and the
18 Western Mojave Desert (WEMO) planning areas (Figure 1).

19

20 Vehicle access designation and their locations in the CDCA are established by the CDCA Plan.
21 Legislation and policy require BLM to designate public land in the California Desert as open,
22 closed, or limited to vehicle use, and route designations are generally a consequence of area
23 designations (Multiple Use Classes: Closed, Limited, Multiple, and Intensive). An open route
24 allows access by motorized vehicles, while closed routes are prohibited to motorized vehicles
25 with exceptions for emergency vehicles or for special authorized use. Access on other routes is
26 limited with respect to number of vehicles, types of vehicles, time or season of use, permitted
27 or licensed use, and establishment of speed limits. An existing route of travel is a route
28 established before 1980 with a minimum width of two feet and showing significant surface
29 evidence of prior vehicle use or, for washes, having a history of prior use. Stopping, parking,
30 and camping are authorized within 300 feet of a route, except for sensitive areas such as Areas
31 of Critical Environmental Concern where the width is 100 feet. In some locations, parking or
32 camping areas may be signed closed or open to protect fragile or sensitive resources adjacent to
33 the route or to provide a safe place to stop.

34

35 The Cultural Resource Element of the CDCA Plan states that "Vehicle route approval in
36 Classes L and M and closures in Class M are other tools for cultural and paleontological
37 resource protection. Cultural and paleontological resource data will be used during the route
38 approval process to help minimize or eliminate adverse impacts on these resources from access
39 and vehicle use (see Motorized-Vehicle Access Element)." The Motorized-Vehicle Access
40 Element cites 43 CFR 8342.1 "Areas and trails shall be located to minimize damage to soil,
41 watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of
42 wilderness suitability." During recent planning efforts, BLM failed to follow the CDCA Plan's
43 guidance to use cultural resource data to help minimize or eliminate adverse impacts from
44 motorized vehicle use during revision of route networks through plan amendments: the
45 Northern and Eastern Colorado Desert Coordinated Management Plan, Northern and Eastern
46 Mojave Desert Management Plan, and the Western Mojave Desert Off Road Vehicle
47 Designation Project. Moreover, BLM failed to recognize early in the planning process that

1 route designation through approval of plan amendments was an undertaking subject to Section
2 106 review.

3
4 Both before and since adoption of the CDCA Plan, BLM has taken a number of steps to
5 designate a network of motorized vehicle routes on public lands. Between 1973 and 1980,
6 BLM managed motorized vehicle use under an Interim Critical Management Program which
7 allowed motorized vehicle use on existing routes until designation of routes was accomplished.
8 With implementation of the CDCA Plan, BLM followed the set of guidelines established under
9 that plan for designation. Significant route designations took place in the mid-1980s, and other
10 designations occurred as part of site specific planning efforts.

11
12 Since these designations were accomplished, several regulatory changes have taken place,
13 including the listing of species by the U.S. Fish and Wildlife Service (USFWS), as well as
14 management concern for special status species. When species are listed, the Endangered
15 Species Act requires federal agencies to consult with USFWS on the adequacy of current land
16 use plans to provide for their recovery. BLM's response to these newly listed species and other
17 species of concern was to amend the CDCA Plan, including updating the existing route
18 designations to reflect these changes in management responsibility and to adopt the revised
19 network as a component of the CDCA Plan.

20
21 For planning purposes, the CDCA was divided into planning regions, among which the
22 Northern and Eastern Colorado Desert, Western Mojave Desert, and Northern and Eastern
23 Mojave Desert, are the focus of this Interim Management Program. Recent plans for those
24 regions are actually comprised of multiple plan amendments, and designation of routes of travel
25 is a component. In May 2000, BLM asked SHPO for comments on the Northern and Eastern
26 Colorado Desert Coordinated Management Plan (NECO) and in June 2000, BLM sought
27 comments on the Northern and Eastern Mojave Desert Management Plan (NEMO).

28
29 In 2001, BLM initiated consultation with SHPO regarding NECO, and in July 2002, the scope
30 of consultation was broadened to include NEMO. In April 2003, the Western Mojave Desert
31 Off Road Vehicle Designation Project was included in formal consultation. BLM proposed
32 development of an agreement to provide for the phased identification and evaluation of cultural
33 resources that would be affected by the designation of routes of travel, and proposed that the
34 agreement would apply to all of the CDCA.

35
36 BLM, in its formal correspondence to SHPO, referenced the California State Protocol and the
37 1980 Programmatic Memorandum of Agreement (PMOA) for the CDCA Plan. When
38 consultation began, the California State Protocol was correctly referenced; however, the 1980
39 PMOA had been amended in 1985 and was superseded in 1986 by a Statewide PMOA.

40
41 In consulting on designation of routes of travel, BLM did not reach concurrence with SHPO
42 and complete the Section 106 process before Records of Decision were signed on the plan
43 amendments. Dates for completing the plan amendments were driven by a settlement
44 agreement, reached in response to a lawsuit regarding the Endangered Species Act, and BLM
45 lacked the option of delaying Records of Decision until the Section 106 review had been
46 completed.

1
2 **CULTURAL RESOURCE OVERVIEW**

3
4 **Native American History**

5
6 The California Desert has been inhabited for 8,000 to 10,000/12,000 years and perhaps longer,
7 although most of the extant remains date to much later periods. Evidence of the earliest
8 occupations is sparse and difficult to date or interpret. Between 8,000 to 12,000 years ago
9 settlement was centered on lakes, which are now the dry playas so characteristic of the Mojave
10 Desert and Great Basin. These lakes, and especially marsh environments along their edges,
11 were particularly rich in plant and animal species that provided food, fibers, medicines, tools,
12 clothing, and ritual objects necessary for daily existence. From 8,000 to 6,000 years ago,
13 climatic change caused the lakes to dry, necessitating cultural adaptation to the loss of a prime
14 habitat. One of the adaptations included increased use of upland areas. Around 6,000 years ago,
15 food gathering and land use patterns began to appear that continued into the historic period.
16 These involved use of a greater variety of habitats and plant and animal resources. Grinding
17 implements such as manos and metates made their appearance. Around 2,000 years ago a shift
18 in projectile point types from larger forms (e.g. Elko and Gypsum points) to smaller forms (e.g.
19 Rose Spring and Eastgate Points) may indicate the introduction of the bow and arrow to replace
20 spears and atlatls. The expansion of bow-and-arrow technology is indicated by the late
21 prehistoric introduction of Desert Side-Notched and Cottonwood Triangular points, which are
22 found throughout the area. These point styles are key indicators of the age of archaeological
23 sites in which they occur. By this time, because of the drier climate, primary habitation sites
24 were located near reliable water sources such as springs and flowing streams. Secondary
25 habitation sites were established as needed in areas in which particular resources were
26 seasonally collected. Sites relating to ritual or religious activity, such as rock art sites,
27 sometimes occurred near habitation sites but were also remote from such sites to protect the
28 sacred nature of the sites and the ritual activities. People generally followed a pattern of using
29 seasonally available resources by moving through a roughly defined homeland, usually
30 returning to a primary habitation during winters. This pattern of seasonal movement from place
31 to place resulted in use of large areas by relatively small populations and left the remains that
32 are now archaeological sites widely scattered over the landscape.

33
34 **Recent Exploration and Development of the Sonoran (Colorado) Desert**

35
36 The earliest recorded explorations of the Colorado River occurred in the mid-16th and early-17th
37 century by Spaniards: Hernando de Alarcon, Melchior Diaz, and Juan de Onate. A century
38 later, Father Eusebio Kino explored the area of Sonora and reached the Colorado River on two
39 trips. In 1771, Father Francisco Garces led an exploring expedition from Tucson to the river,
40 made friends with the Yumans (Quechan), and opened a trail between Sonora and the
41 California frontier at Calexico. A better trail was traveled by Juan Bautista de Anza in 1774
42 from Tubac, Arizona to San Gabriel, California, and in 1775-1776, Anza and Garces led an
43 emigrant party over the same route. The de Anza/Garces success led to the establishment of
44 the earliest, but short-lived, Spanish settlements at the Colorado River crossing. In 1824-1825,
45 Santiago Arguello discovered a short cut to the Yuma Road via Carrizo Corridor. The Yuma
46 Road, connecting New Mexico and northern Sonora with California, was used by numerous
47 and varied expeditions. A short-lived post called Laguna Chapala was established near
48 Brawley.

1
 2 In 1846 and 1847, American military forces guided by Kit Carson and commanded by General
 3 Stephen Kearney crossed the Colorado Desert enroute to Southern California. They were
 4 shortly followed by the Mormon Battalion. The job of surveying and marking the boundary
 5 between the United States and Mexico began in 1849 under direction of Lt. William H. Emory.
 6 The great number of emigrants using the Yuma Road and the harsh environment forced the
 7 government to provide military escorts and establish camps at the Colorado River crossing
 8 (Camp Yuma) and near Calexico (Camp Salvation). Stages began to use the route, but
 9 maintained their own relay stations. Wells were dug to provide water for travelers. In 1857,
 10 Dr. Isaac Smith surveyed a route along the eastern shore of the Salton Sink, shortening the
 11 travel between Los Angeles and Yuma. A second major route crossing the Colorado River was
 12 developed; the Bradshaw Route paralleled the old Cocomaricopa Trail and served mining
 13 camps near La Paz, Arizona.

14
 15 In 1873, a military telegraph line was run from San Diego to Fort Yuma, going through the
 16 mountains and closely following the boundary with Mexico. A military road was constructed
 17 parallel with the telegraph line.

18
 19 Surveys for railroads were conducted in the mid- and late-19th century. In 1877, a rail line was
 20 built from San Geronio Pass to Yuma and in 1919, a rail line was completed between San
 21 Diego and Yuma.

22
 23 The first automobile roads used existing wagon roads. The Mountain Spring Grade and some
 24 miles of primitive plank roads across the sand dunes were constructed early in the 20th century.
 25 The plank road crossing the dunes was redesigned and reconstructed several times in an effort
 26 to improve transportation. By 1926, Highway 80 was completed, using new construction
 27 design and methods.

28
 29 Exploration of mineral resources began in 1780 at the Cargo Muchacho and Potholes districts.
 30 In the mid-19th century mining began throughout the Colorado Desert, resulting in boom years
 31 between 1870 and 1890. Railroad branches and spurs were built to serve the mining industry.

32
 33 Farming, sustained by well water, began in the early-20th century. The agricultural industry
 34 was supported by a canal bringing water from the Colorado River, and small farming
 35 communities developed. By 1940, the Imperial Dam and All American Canal had been built to
 36 deliver river water for farming. The Los Angeles Aqueduct, delivering Colorado River water
 37 to that city, was built between 1934 and 1941.

38
 39 The eastern Colorado Desert was used as a military training ground called the California-
 40 Arizona Maneuver Area during World War II. Other areas were used as artillery ranges, air
 41 fields, armored division training, and weapons testing.

42
 43 **Recent Exploration and Development of the Mojave Desert**

44
 45 The first documented exploration of the Mojave Desert by non-indigenous people occurred in
 46 the mid-1700s when Francisco Garces, a Spanish Franciscan priest, looked for a practical route
 47 from Arizona to northern California. Between Garces' exploration in 1776 and 1880, only
 48 agriculture or precious metals attracted Spanish-Mexican and American settlers. Much of the

1 history of the region turns on its use as a corridor. In the early 19th century, fur trappers and
2 caravans crossed the desert. Jedediah Smith led the way in 1826, followed by other mountain
3 men like Ewing Young in 1829; both followed the Mojave Indian Trail. Antonio Armijo is
4 credited with leading the first caravan of pack animals across the Mojave in 1830. Traders
5 William Wolfskill and George C. Yount used the Old Spanish Trail in 1830-1831. Other groups
6 who used the trail during Mexican control of the western Mojave include Don Jose Aveita's
7 commercial caravan in 1833-1834, Jacob P. Leese in 1834, William Slover and Isaac Pope in
8 1837, and Jose Antonio Salazar's caravan in 1839-1840. John C. Fremont, a lieutenant in the
9 U.S. Army Corps of Topographical Engineers, described his survey and travel in 1844 along a
10 variant route. Other trails arising from commerce include the Mojave Trail and Salt Lake Trail,
11 both of which run through present-day Barstow. Joseph Walker is credited with pioneering a
12 trail across the Sierra Nevada Range, enabling access between the San Joaquin Valley and the
13 desert. Settlement by Americans and the growth of coastal and inland trade culminated in the
14 annexation of California by the United States in 1848. In that same year, gold was discovered
15 in California and the gold rush was on, ushering in a massive influx of prospectors. The Death
16 Valley forty-niners, led by William Lewis Manly, traveled along Indians Big Trail, also known
17 as Owens River Road, the Midland Trail, and Bullion Road, which connected the northern
18 Mojave and Owens Valley area with Los Angeles, via connections with the Tehachapi Pass
19 road and Walker's Pass road. In the late-19th century, these roads were used to transport goods,
20 people, livestock, food and ore between the Mojave Desert and Los Angeles. Temporary camps
21 or stage stops were set up along the routes, including Indian Wells Station, Coyote Holes
22 Station, and Panamint Station. The western Mojave Desert became a major contributor to
23 California's mining industry. Small mining towns, such as Calico and Coolgardie, and ranching
24 operations were established and proposed. The California Gold Rush contributed to pressure to
25 establish railroad routes across the desert. Railroad surveys began in 1853 with Lieutenant
26 Amiel Weeks Whipple and Lieutenant Robert Stockton Williamson conducting surveys in the
27 western Mojave. The San Pedro, Los Angeles and Salt Lake Line, predecessor of the Union
28 Pacific through the Mojave Desert, was completed in 1905, and the Tonopah and Tidewater
29 finished its line from Ludlow on the Atlantic & Pacific via Death Valley Junction to Beatty,
30 Nevada in 1907. Spur lines were constructed to serve mines and mining camps. The Harvey
31 house originated from an early railroad roadhouse located at the junction of the Santa Fe
32 Mojave-Needles line and the California Southern line coming north from Cajon Pass.
33 Development of automobile routes began in the early-20th century and increased in importance
34 in the second quarter of the 20th century. Following completion of the Atlantic & Pacific
35 Railroad, a road was constructed in 1914 parallel to the tracks, which road became the
36 precursor of U.S. 66. In 1925, construction began on U.S. 91, a new alignment of an older trail,
37 which opened up the desert to the general public. Ranching and agricultural industries at the
38 beginning of the 20th century and increasing populations in Los Angeles, created a need for
39 more water than the immediate landscape could supply. In rural areas, the demand was met by
40 small irrigation ditches and canals, but Los Angeles' need was met by construction of the Los
41 Angeles Aqueducts in 1908-1913 and in the 1920s. Military bases were established in the
42 desert prior to U.S. entry into World War II. Large tracts of land were set aside for military use
43 near Ridgecrest, Barstow, Lancaster, and Twentynine Palms.
44

1 **NATURAL RESOURCES OVERVIEW**

2

3 **The Sonoran Desert Environment**

4 The Sonoran Desert is an arid region covering 120,000 square miles in southwestern Arizona
5 and southeastern California, as well as most of Baja California and the western half of the state
6 of Sonora, Mexico. Subdivisions of this hot, dry region include the Colorado and Yuma deserts.
7 Irrigation has produced many fertile agricultural areas, including the Coachella and Imperial
8 valleys of California.

9 This is the hottest of our North American deserts, but a distinctly bimodal rainfall pattern
10 produces a high biological diversity. Winter storms from the Pacific nourish many West Coast
11 annuals such as poppies and lupines, while well-developed summer monsoons host both
12 annuals and woody plants originating from the south. Freezing conditions can be expected for a
13 few nights in winter.

14 Trees are usually well developed on the desert ranges and their bajadas. Often abundant on
15 these well-drained soils are Little-leaf Palo Verdes, Desert Ironwoods, Catclaw and Saguaro.

16 The understory consists of three, four or even five layers of smaller woody shrubs. Tall chollas
17 may occur in an almost bewildering array of species. The alluvial lowlands host communities
18 of Desert Saltbush, wolfberry and bursage. On coarser soils, Creosote Bush and bursage
19 communities may stretch for miles. Where the water table is high, Honey or Velvet Mesquite
20 may form dense bosques or woodlands.

21 Other species are restricted to alkaline areas. Stream sides may be lined with riparian
22 woodlands composed of Arizona Ash, Arizona Black Walnut, Fremont Cottonwood and
23 various willows, with a dense understory of Arrow-weed, Seepwillow and Carrizo. The Sonora
24 Desert is rich in animal life as well, with many species in all groups derived from tropical and
25 subtropical regions.

26 The western part of the Sonora Desert (sometimes called the "Colorado Desert") is closer to the
27 source of Pacific storms and is noted for spectacular spring flowering of ephemerals when there
28 is winter-spring rainfall. (This phenomenon is not limited to here.) However, the western
29 portion is relatively depauperate, lacking many of the species such as the Saguaro that depend
30 on good summer rainfall

31 **The Mojave Desert Environment**

32 The transition from the hot Sonoran Desert to the cooler and higher Great Basin is called the
33 Mojave Desert. This arid region of southeastern California and portions of Nevada, Arizona
34 and Utah, occupies more than 25,000 square miles.

35 On the northwestern boundary it extends from the Sierra Nevada range to the Colorado Plateau
36 in the east; it abuts the San Gabriel-San Bernardino mountains in the southwest. Near the Great
37 Basin-Mojave border lies Death Valley, the lowest point in North America and a national park.

1 The Mojave's desert climate is characterized by extreme variation in daily temperature and
 2 average annual precipitation of less than 5 inches. Almost all the precipitation arrives in winter.
 3 Freezing temperatures occur in winter, while summers are hot, dry and windy.

4 The Mojave has a typical mountain-and-basin topography with sparse vegetation. Sand and
 5 gravel basins drain to central salt flats from which borax, potash and salt are extracted. Silver,
 6 tungsten, gold and iron deposits are worked.

7 While some do not consider the Mojave a desert in its own right, the Mojave Desert hosts about
 8 200 endemic plant species found in neither of the adjacent deserts. Cacti are usually restricted
 9 to the coarse soils of bajadas. Mojave Yucca and, at higher elevations Desert Spanish Bayonet,
 10 a narrow-leafed yucca, are prominent. Creosote Bush, Shadscale, Big Sagebrush, Bladder-sage,
 11 bursages and Blackbush are common shrubs of the Mojave Desert.

12 Occasional Catclaws grow along arroyos. But, unlike the Sonoran Desert, trees are few, both in
 13 numbers and diversity. The exception is the Joshua-tree. While this unusual tree-like yucca is
 14 usually considered the prime indicator of Mojave Desert vegetation, it occurs only at higher
 15 elevations in this desert and only in this desert.

16 **INTERIM MANAGEMENT PROGRAM**

17 The Interim Management Program consists of a Research Component and an Administrative
 18 Component. Throughout the implementation of the Interim Management Program are
 19 numerous opportunities for consultation and reporting between BLM and the SHPO to ensure
 20 the confidence of each party that satisfactory progress is being made.

21 **RESEARCH COMPONENT OF THE INTERIM MANAGEMENT PROGRAM**

22 **Research Questions and Objectives**

23 The California Desert District of BLM has found that the management of cultural resources has
 24 been hampered by a number of factors. Some of these factors are beyond the control of BLM,
 25 including the extremely large land area involved (10.5 million acres within CDCA) and the
 26 sheer scale of the over 16,000 miles of designated open routes within the three planning areas of
 27 interest to this Interim Management Program. However, some factors are within the power of
 28 BLM to change and these include the state of the cultural resource data base, the absence of a
 29 valid and useful predictive model for cultural resources, conducting inventory and evaluation,
 30 and providing protection for significant cultural values.

31
 32 The database of cultural resources is of varied quality and usefulness for management. BLM
 33 has a large number of archaeological site records which do not meet modern standards. These
 34 legacy records are often very brief, containing little in the way of useful cultural information
 35 and are accompanied by unreliable locational (provenience) information. As a consequence,
 36 the database is of limited utility as a planning tool for decision-making concerning
 37 undertakings and is of no more than mixed value in identifying preservation needs.

38
 39 While the BLM understands that operation of motorized vehicles on routes may have impacts
 40 to cultural resources, that understanding is not refined. There is a tendency to assume that all

1 impacts are adverse, with a consequent tendency to close or re-route routes without
2 consideration of alternative treatments that may be less disruptive to established patterns of
3 recreation use. There is a clear need on the part of decision makers for a detailed and
4 thoughtful understanding of the range of impacts and how those impacts may affect specific
5 classes of cultural resource under specific conditions.

6
7 The BLM often has a need for a reliable predictive model for planning. Currently, the
8 predictive models that are applied for planning and for inventories are largely personal,
9 intuitive and subjective. While such models are useful, they do not provide an objective basis
10 for planning decisions and for conducting inventories with less than complete coverage.
11 Moreover, the development of an objective and reliable predictive model will help the agency
12 direct its scarce resources to the best historic preservation effect.

13
14 It is the purpose of this Interim Management Program to achieve substantial progress in
15 resolving these issues insofar as the work can be done with a focus on data specific to routes of
16 travel. When the work is complete, BLM will be in a position to further refine the predictive
17 model, plan for re-recording legacy cultural resources, and design appropriate treatments for
18 cultural resource protection in the context of OHV use and other types of uses.

19
20 The research component of Interim Management Program proposes the investigation of three
21 questions divided into three categories: Assessment of the Database, Assessment of Impacts,
22 and Development / Testing of a Predictive Model.

23
24 **Task 1: Assessment of the Database**

25
26 *Which legacy site records within and adjacent to routes of travel are useable for management?*

27
28 BLM proposes to conduct a physical review of the approximately 900 site records that pertain
29 to the designated open routes and that are situated within 300 feet on either side of centerline.
30 This review will be conducted under the supervision of a qualified cultural resource
31 professional. The following determinations will be made:

32
33 Does the site record and sketch map contain detailed information on cultural
34 constituents sufficient to understand the nature of the site?

35
36 Is the locational information in the site record and accompanying USGS map credible?

37
38 The results of the review will be documented in a spreadsheet and report. The spreadsheet will
39 contain the site identifier, documentation of the determinations, and will contain space for
40 additional observations made by the reviewer. This review of a sample of the entire cultural
41 resource data base will provide a reasonable basis for characterizing the condition of the entire
42 data base.

43
44 The immediate application of the information developed during this review will be in the
45 selection of a sample of sites for a study of the impacts of OHV and recreation on cultural
46 resources within and along routes of travel.

47

1 In addition, the information will be used in the future to select legacy sites for re-recording
2 and monitoring, especially within the context of Section 110 activities. In addition, the
3 spreadsheet may be incorporated into the metadata behind the GIS cultural resource layers.

4
5 **Task II: Assessment of Impacts**

6
7 *What are the OHV and associated impacts to historic sites and to prehistoric habitation, lithic*
8 *and rock art sites?*

9
10 BLM proposes to conduct field inspections of a sample of sites along routes of travel and for
11 which site records have been determined to be useful through the prior inspection process. The
12 sample will be stratified by route use level (high, medium, and low) and by site type (historic
13 and prehistoric lithic, habitation, and rock art).

14
15 The sample size will not exceed 50 sites. BLM has determined that a sample this size is
16 sufficiently large enough to produce the needed results.

17
18 BLM proposes as part of its assessment of impacts to cultural resource sites to collect empirical
19 data associated with site attributes impacted by OHV and associated activities. The assessment
20 will describe, record, and analyze the types of activities that have impacted each cultural
21 resource site. A description and recordation of each site's environmental features and impacts
22 to environmental features shall also be undertaken. The environmental features associated with
23 a site could be the key factor in what attracts people to a site or contributes physically to the
24 degree of impacts to a site. A methodology for collecting and documenting this information
25 shall be developed and reviewed by peers prior to implementation. Training for personnel
26 collecting data shall be undertaken to insure uniform and consistent data collection.

27
28 The data collected in the assessment will allow for an analysis of what types of OHV and
29 associated activities impact cultural resource sites and the degree the different activities impact
30 the sites. This information will also be useful in developing appropriate protective or
31 mitigation measures for site protection.

32
33 **Task III: Development and Testing of Predictive Model**

34
35 *What environmental variables predict location of cultural resources?*

36
37 BLM proposes to develop a GIS-based tool for the identification of areas that are likely to
38 contain archaeological sites. BLM intends to develop the most fine-grained assessment of
39 archaeological sensitivity as is possible with existing databases of environmental variables
40 believed to be site predictors. The basic approach is to compare known site locations with each
41 set of predictor environmental variables within a GIS. As currently envisioned, the
42 environmental predictors are believed to be topography (slope, aspect, landform type, and
43 elevation), distance to surface water including ancient bodies of water, vegetation, soil, and
44 geology.

45
46 Data are available within the GIS to enable comparison with site locations. Topographic data
47 will be extracted from a Digital Elevation Model using routines in ArcView. Surface water
48 will be modeled using the National Hydrography Dataset. Vegetation will be modeled using

1 the most fine-grained regional digital dataset available. Soils will be modeled with NRCS
2 digital soils datasets and geology will be modeled using the most fine-grained regional digital
3 dataset available. Paleoenvironmental data available to the model are expected to be coarse-
4 grained and will be based on existing reconstructions. Cultural resource information will be
5 derived from the existing GIS cultural resource data and from the literature including data on
6 hunger-gatherer behavior and land-use patterns and from ethnographic information on resource
7 use, population movement and settlement. Even though the quality of individual site records
8 and survey coverage may vary widely, these variations are assumed to be random with respect
9 to the environmental variables.

10
11 Evaluation of the predictive model will occur within the context of additional inventory. The
12 inventory effort will be directed toward areas of high, medium, and low probability as predicted
13 by the model. The inventory work will be guided by a subsequent work plan or research design
14 that will determine sample size and strategy; the development of the plan for inventory will be
15 accomplished in consultation with SHPO.

16
17 The predictive model is envisioned as a dynamic tool which can be refined through use and
18 testing. The model will only be as accurate as the environmental and cultural data provided to
19 it. Future enhancements of the model could include adding variation in the distribution of sites
20 through time, but such an enhancement would require substantial investment in dating large
21 portions of the archaeological record. Further, the model will be readily extensible through the
22 addition of new environmental data as they become available. The approach taken in the
23 predictive model is expected to inform similar approaches as BLM undertakes consideration of
24 routes of travel and other large-area studies elsewhere within California. The results of the
25 effort to develop and evaluate the predictive model will be disseminated to the professional
26 cultural resource community and interested parties through the presentation of professional
27 papers and publication of results.

28

29

30 **MANAGEMENT COMPONENT OF THE INTERIM MANAGEMENT PROGRAM**

31

32 **Task IV: Inventory Program**

33

34 In addition to the inventory envisioned for testing of the predictive model, a program of
35 inventory of high sensitivity/high use routes and route segments shall be designed and
36 implemented. By the scheduled termination date of the Protocol Amendment, all the high
37 sensitivity/high use routes and route segments shall have been surveyed for cultural resources.
38 Annually, the CDD will consult with SHPO in developing a plan to inventory a portion of the
39 high sensitivity/high use routes and route segments. Among the elements of the annual
40 inventory plan shall be methods, personnel and funding, planned variation from the 600 ft.
41 wide route impact corridor, and identification of the routes selected for the annual increment of
42 survey. The plan of work will be incorporated into the planning documentation submitted
43 annually to SHPO, as described in Stipulation X of the Protocol Amendment. The inventory
44 program will document cultural resources on Archaeological Site Record forms (DPR form 523
45 or equivalent) and site location information will be recorded using GPS. Site records will be
46 maintained in physical copy and as .pdf files or other electronic equivalent. Site records and
47 shape files will be submitted annually to the appropriate Information Center and shall be
48 incorporated into GIS data for CDD. The inventory program will document impacts to sites

1 from trail use and other sources of impact. The total area surveyed each year may be credited
2 as Section 110 inventory accomplishment. Previously recorded cultural properties situated
3 within survey units shall be re-recorded where legacy site record documents have been
4 determined not to meet current standards or which are otherwise determined to be inadequate.

5

6 **Task V: Develop Standard Protection Measures**

7

8 The findings and determinations that will result from the research activities of this Interim
9 Management Program are not intended to stand in isolation from the management of cultural
10 resources. Standard Protection Measures will be developed and applied to a selected sample of
11 sites in a program of efficacy testing. Protection measures currently in place, closure and re-
12 routing, are derived from the 1980 CDCA Plan and are based on the assumption that OHV
13 impacts are typically both adverse and additive. It is the intent of this Interim Management
14 Program to develop a deeper understanding of OHV impacts and, based in that understanding,
15 create a host of prospective standard protection measures that are crafted for specific classes of
16 impacts, in specific environments, and for specific classes of cultural resources. These
17 measures may be few or many, depending on the findings and determinations of the research
18 component.

19

20 **Task VI: Develop and Implement Monitoring Program**

21

22 Monitoring is the bridge between the results of research activities and the development,
23 implementation, and evaluation of efforts to preserve significant cultural values. The program
24 of recurring monitoring envisioned in this Interim Management Program has two interrelated
25 purposes.

26

27 First, the monitoring program will, through empirical observations, evaluate the efficacy of the
28 prospective standard protection measures. This monitoring program will continue until each
29 standard protection measure is completely evaluated. Those standard protection measures that
30 are deemed appropriate both for effectiveness and efficiency will become incorporated into an
31 ongoing management program for cultural resources along routes of travel.

32

33 Second, the monitoring program will, through empirical observations, monitor the condition of
34 a selected sample of bellwether cultural properties. Monitoring observations at the sample of
35 sites are expected to mirror conditions in the larger corpus of sites situated along and within
36 routes of travel and, therefore, can help BLM plan adjustments in site management strategies.

37

38 **Task VII: Develop Capabilities**

39

40 In order to successfully fulfill the work stipulated in the Protocol Amendment, CDD will need
41 to develop and sustain capability through funding, training, and incorporation of volunteers into
42 the work program.

43

44 Annually, the BLM, through its California Desert District, will plan for and seek private and
45 public grants and donations and obtain appropriated funds in order to meet the costs of the work
46 to be accomplished under the Interim Management Program. Further, these sources of funds
47 will be important as a means to meet the costs of cultural resources management on routes of
48 travel after the Protocol Amendment has been successfully fulfilled. BLM will train its

1 permanent and temporary cultural resources staff in the methods and techniques that are
 2 necessary to accomplish the tasks outlined in the Protocol Amendment. BLM will utilize
 3 volunteers to the greatest extent possible. The California Archaeological Site Steward Program
 4 (CASSP) is prepared to train volunteer surveyors; other volunteer programs may provide
 5 personnel for survey or other in-kind contributions.
 6

7 **Task VIII: Transition to Permanent Program**
 8

9 The effort that BLM will put into this Interim Management Program will ultimately be
 10 valueless without a corresponding effort to develop a mature, ongoing cultural resource
 11 management program for routes of travel. It is the ultimate goal of this Interim Management
 12 Program, and the Protocol Amendment to which it is attached, that the BLM develop such a
 13 mature program for the desert and for other Public Lands in California. A programmatic
 14 agreement document or new Protocol Amendment directed toward routes of travel will be
 15 developed prior to expiration of the current Protocol Amendment. To the maximum extent
 16 possible, that future agreement will incorporate, as a template, the lessons from implementation
 17 of the work in the Interim Management Program.
 18
 19
 20
 21
 22

23 Table 1: Scheduled Completion Dates for Major Tasks by Component
 24

25 Research Component
 26

Task	Completion Date
• Task I: Assessment of CDCA database	End of Year One
• Task II: Route Usage Impacts	End of Year Three
• Task III: Develop/Evaluate Predictive Model	End of Year Four

31
 32 Administrative Component
 33

Task	Completion Date
• Task IV: Inventory High Sensitivity/High Use	End of Year Five
• Task V: Standard Protection Measures	End of Year Four
• Task VI: Monitoring Program	End of Year Five
• Task VII: Developing Capabilities	Annually
• Planning and Reporting	Annually (first year plan due three months following execution date of Amendment)

SUPPLEMENTAL PROCEDURES FOR LIVESTOCK GRAZING PERMIT/LEASE RENEWALS

A CULTURAL RESOURCES AMENDMENT
TO
THE STATE PROTOCOL AGREEMENT

BETWEEN

CALIFORNIA BUREAU OF LAND MANAGEMENT
AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

The purpose of this amendment is to address the National Historic Preservation Act (NHPA) Section 106 compliance procedures for processing approximately 400 grazing permit/lease (hereafter "permit") renewals scheduled for 2004 through 2008. This amendment shall cover grazing permit renewals for livestock as defined in 43 CFR 4100.0-5 as "...domestic livestock – cattle, sheep, horses, burros, and goats." The following procedures will allow for renewal of the permits while maintaining compliance with the NHPA. Alternative approaches to this amendment may be developed by individual Field Offices, but such approaches shall fall under the Section 106 regulations of the NHPA (36 CFR Part 800) and shall require individual Field Office consultation with the SHPO.

These supplemental procedures are an amendment to the State Protocol dated April 6, 1998, which is scheduled for termination on October 25, 2004. These supplemental procedures will remain in effect when that Protocol is terminated and will become an amendment to a successor Protocol document.

This amendment deviates from the Protocol in *Section VI. Thresholds for SHPO Review*, which states, "*BLM shall complete the inventory, evaluation and assessment of effects and document all findings, including negative inventories and no effect determinations, in BLM files before proceeding with project implementation.*" This amendment would allow for renewal of an existing grazing permit prior to completing all NHPA compliance needs as long as Protocol direction, the BLM 8100 Series Manual guidelines (Protocol Amendment F), and the following specific stipulations are followed:

I. Planning

Grazing permit renewals of any acreage size shall be scheduled for cultural resource compliance coverage over the next ten years. Such long term management includes scheduling for inventory, evaluation, treatment, and monitoring, as appropriate. Schedules for inventories of all renewals to be covered by this amendment shall be delineated by each participating Field

Office and submitted to the SHPO and the State Office at the first annual reporting cycle for FY 2004.

This amendment shall only apply to the reissuance of grazing permit authorizations and existing range improvements. All new proposed undertakings for range improvements shall follow the established procedures within the Protocol or 36 CFR 800, the implementing regulations for Section 106 of NHPA.

II. Inventory Methodology

To address the impacts of grazing on cultural resources, a Class II sampling or reconnaissance survey strategy shall be devised by the cultural resource specialist in consultation with range staff which focuses inventory efforts on areas where livestock are likely to concentrate within areas of high sensitivity for cultural resource site locations. Congregation areas where it has been shown that the greatest levels of impact are likely to occur are generally around springs, water courses, meadows, and range improvement areas such as troughs and salting areas.

All existing range improvements within areas of high sensitivity for the location of cultural resource sites shall be inventoried. However, due to the fact that cattle trailing occurs along fence lines and the area of impact is limited to a one meter wide swath and impacts to cultural resources are generally restricted to this corridor, existing linear improvements will not be inventoried except in areas of high sensitivity for the location of cultural resource sites.

Salting areas may change from season to season making locating these areas problematic. Salting locations will be assessed by the cultural resource specialist in consultation with range staff and the permittee. The permittee will be asked to provide a map designating salting areas and these locations will be inventoried if they occur in areas where the probability for the occurrence of cultural resources is high. All livestock loading and unloading areas and corral areas will also be inventoried within areas of high sensitivity for the location of cultural resources.

A Class I records search will also be conducted for each allotment to ascertain previously recorded site locations and areas of prior survey coverage which can be accepted as meeting current standards. Sites located within livestock congregation areas will be visited to evaluate grazing impacts.

All areas identified for inventory in the survey strategy shall be covered intensely. All unrecorded site locations will be recorded and a report of findings for each allotment will be completed. These investigations shall only address public lands administered by BLM. Private, state and county in-holdings will not be evaluated.

III. Tribal and Interested Party Consultation

Field Offices will be responsible for contacting and consulting with Tribes and interested parties as outlined in 36 CFR 800 and the 8120 manual guidelines. This will also meet BLM government-to-government responsibilities for consultation.

IV. Evaluation

Determinations of eligibility to the National Register of Historic Places shall only be undertaken on sites or properties where it can be reasonably ascertained or it is ambiguous that range activities will continue to impact sites and further consultation with SHPO could be required.

V. Effect

A. Range undertakings where historic properties are not affected may be implemented under the Protocol without prior consultation with SHPO. These undertakings shall be documented in the Protocol Annual Report.

B. Range undertakings where historic properties are identified within APes, and where historic values are likely to be affected or diminished by project activities, require consultation with SHPO, and ACHP if necessary, on a case-by-case basis, pursuant to 36 CFR 800.5-6.

VI. Treatment

Standard Protective Measures can include but are not limited to:

A. Fencing or enclosure of livestock from the cultural resource sufficient to ensure long-term protection, according to the following specifications:

1. the area within the enclosure must be inventoried to locate and record all cultural resources; and
2. the enclosure (i.e.) fence must not divide a cultural resource so that a portion is outside of the fence; and
3. the cultural resource specialist will determine the appropriate buffer to be provided between the cultural resource and its enclosing fence.

B. Relocation of livestock management facilities / improvements at a distance from cultural resources sufficient to ensure their protection from concentrated grazing use.

C. Removal of natural attractants of livestock to a cultural resource when such removal, in the judgment of the cultural resource specialist, will create no disturbance to the cultural resource (e.g. removing vegetation that is providing shade).

- D. Removal of the area(s) containing cultural resources from the allotment.
- E. Livestock herding away from cultural resource sites.
- F. Use salting and/or dust bags or dippers placement as a tool to move concentrations of cattle away from cultural sites.
- G. Locating sheep bedding grounds away from known cultural resource sites.
- H. Other protective measures established in consultation with and accepted by SHPO.

The Standard Protective Measures defined above may be used to halt or minimize on-going damage to cultural resources. If the standard protection measures can be effectively applied, then no evaluation or further consultation with SHPO on effects will be necessary. The adopted Standard Protective Measures shall be added to grazing permit "Terms and Conditions" as appropriate for each grazing permit issued or reissued as fully processed permits (completed NEPA analysis, consultation, and decision). The "Terms and Conditions" for each permit may be modified by the addition, deletion, or revision of Standard Protective Measures as described in Section VII of these Supplemental Procedures.

VII. Monitoring

A. Field Offices shall adopt the following monitoring guidelines:

1. monitoring shall be conducted yearly and documented to ensure that prescribed treatment measures are effective; and
2. when damaging effects to cultural resources from grazing activities are ambiguous or indeterminate, Field Offices shall conduct monitoring, as necessary, to determine if degrading effects are resulting from grazing activities and if they are continuing to affect the characteristics that may make properties eligible to the NRHP or if they are otherwise adversely affecting the values of cultural resources.

B. When monitoring has yielded sufficient data to make effect determinations, the following apply:

1. When no additional degrading damage will likely occur because standard treatment measures are adequate to prevent further damage from rangeland management activities, SHPO consultation on a case-by-case basis is unnecessary.
2. When no additional degrading damage will likely occur, even without implementation of standard treatment measures, then no further treatment

consideration of those resources is necessary, even if past grazing impacts to the ground surface are evident.

3. When additional degrading damage will likely occur, mitigation of adverse effects shall be addressed on a case-by-case basis, pursuant to 36 CFR 800.5-6.

When monitoring results or case-by-case consultation result in a determination concerning addition or deletion of Special Treatment Measure(s) for a specific allotment, then that Measure(s) will be added to, or deleted from, the Terms and Conditions of the fully processed permit for that allotment.

VIII. Disagreements

When a Field Office Cultural Heritage staff and Field Office Manager fail to agree on inventory, evaluation, monitoring, and application of Special Treatment Measures, then the Field Office Manager shall initiate consultation with the SHPO.

IX. Reporting and Amending

A. Each participating Field Office shall report annually to the SHPO and the State Office, a summary of activities carried out under this amendment to the Protocol during the previous fiscal year. The reporting shall be included in the Protocol Annual Report.

B. Annual reports shall summarize activities carried out under this amendment. These reports are not meant to be compilations of the individual project reports prepared for the range projects; they are meant to be programmatic summaries of data and significant findings.

C. Annual reporting shall include at least three major sections:

1. schedules and status of accomplishments in meeting schedules for cultural resource activities in relation to the range management program as identified in Stipulation I; and
2. results, as annual summaries of accomplishment and significant findings resulting from rangeland management cultural resource activities; and
3. appendices to the report that would include project, coverage and cultural resource location maps and tabular summaries of total number of cultural resources located, new cultural resources located, cultural resources evaluated, types of treatment measures employed at each location, and cultural resources monitored.

- D. Annual reports may contain recommendations for new or revised treatment measures.
- E. Either party to this amendment may initiate a process to negotiate new or revised treatment measures or to revise the schedule of inventories. When such a process is initiated, the parties to this amendment shall negotiate new or revised treatment measures or schedule of inventories and such revisions or additions shall be issued as Attachments to these Supplemental Procedures.

STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, CALIFORNIA

JAMES WEELEY ABBOTT

MP By Mike Pool

Date: 8/17/04

STATE HISTORIC PRESERVATION OFFICER, CALIFORNIA

Milford Wayne Donaldson

By Milford Wayne Donaldson

Date: 8/18/2004

**SUPPLEMENTAL PROCEDURES FOR
PROTECTION OF CULTURAL RESOURCES
FROM PRESCRIBED FIRE EFFECTS**

A CULTURAL RESOURCES AMENDMENT
TO
THE STATE PROTOCOL AGREEMENT

BETWEEN

CALIFORNIA BUREAU OF LAND MANAGEMENT
AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

1 These supplemental procedures amend the State Protocol Agreement (Protocol) dated
2 October 25, 2004.

3
4 The purpose of this Protocol Amendment is to provide procedures for considering the effects
5 of prescribed fire on cultural resources within the lands administered by California Bureau of
6 Land Management (BLM) and on lands outside BLM's jurisdiction, but which may be affected
7 by BLM-managed prescribed fire. This Amendment extends to BLM considerable latitude to
8 exercise its own discretion in managing effects of prescribed fire without further consultation
9 with the California State Historic Preservation Officer (SHPO). Individual Field Offices of BLM
10 may elect not to follow these supplemental procedures; in such cases Protocol stipulation VI.K.
11 requiring consultation with the SHPO, shall apply.

12
13 With the concurrence of both parties, these supplemental procedures may remain in effect in the
14 event of termination of the Protocol. With the concurrence of all parties, these supplemental
15 procedures may amend a successor State Protocol Agreement or Programmatic Agreement.

16
17 This Amendment is adopted under Section IX.C. of the Protocol. This Amendment deviates
18 from the Protocol in Section VI, Thresholds for SHPO Review, which states, "*BLM shall*
19 *complete the inventory, evaluation and assessment of effects and document all findings,*
20 *including negative inventories and no effect determinations, in BLM files before proceeding with*
21 *project implementation.*" This Amendment would allow for phased inventory, avoidance of
22 effects, and implementation of prescribed fire projects prior to completion of all phases of
23 inventory.

24
25 These supplemental procedures include the text of the Amendment and attached Standard
26 Protection Measures (Attachment One) and flow chart of processes and decisions (Attachment
27 Two). Except where specified in these supplemental procedures, the Protocol shall apply.

Key Concepts

1
2
3 Reintroduction of fire into the wildland landscape managed by BLM is an essential technique for
4 reducing fuel loads that may otherwise translate into catastrophic wildfires. General benefits of
5 the reintroduction of fire into the landscape include ecosystem health, perpetuation of fire-
6 adapted vegetation, and protection of life and property. Benefits for cultural resources and their
7 management include subjecting cultural resources to controlled and comparatively cool fire
8 rather than uncontrolled, hotter wildfires and the removal of dense fuel loads that may preclude
9 or inhibit the identification of cultural resources during field surveys. Most California
10 ecosystems are adapted to cycles of natural and human-caused fires resulting in vegetation
11 communities that are fire-adapted or fire-dependent. Virtually every archeological site on BLM-
12 administered lands has been subjected to the effects of wildfire.

13
14 Benefits of Prescribed Fire. Low- to moderate-intensity prescribed fires generally have few
15 direct impacts to non-combustible cultural resources that have previously been exposed to
16 wildland fire. However, the physical alterations that are known to occur, including spalling and
17 alteration of hydration bands of obsidian artifacts, and the increased exposure of artifacts theft,
18 are surpassed by the benefits of prescribed fires to management of cultural, and other, resources.

19
20 Special Management Activities and Expertise. The principal goal of these alternative procedures
21 is streamlining within the context of the Protocol. Prescribed fire has a number of unique
22 conditions which warrant development of specific alternative procedures. These conditions
23 include the wildfire exposure of nearly all archeological sites across time, dense vegetation and
24 ground cover which limit the accuracy of surveys conducted for prescribed fire projects, benefits
25 of prescribed fire to cultural resources management, and the capability of BLM to design and
26 implement protection and avoidance measures. BLM possesses, in its Cultural Resource and
27 Fire/Fuels Management Staff, the requisite expertise to manage effects of prescribed fire while
28 providing for meeting fuels reduction objectives.

29
30 Phased Inventory. Phased inventory is an alternative procedure for identification of cultural
31 resources within the Area of Potential Effect (APE) of a prescribed fire. Phased inventory is a
32 procedure whereby the identification effort is divided into pre-burn and post-burn survey efforts.
33 Post-burn surveys are warranted where pre-burn vegetation density and limited ground visibility
34 limit the accuracy and increase the cost of survey efforts; where at-risk cultural resources may be
35 suspected but which were not identified during pre-burn inventory; and where effectiveness
36 monitoring is necessary. Post-burn surveys may also be conducted within the perimeter of
37 escaped fires that occur coincident to implementation of a prescribed fire. Pre-burn surveys shall
38 be conducted for all ground-disturbing activities planned for a prescribed fire, for areas where
39 inflammable (combustible) cultural resources may be expected, and for areas where other at-risk
40 cultural resources may be expected.

41
42 At-Risk Cultural Resources. These supplemental procedures recognize that many classes of
43 cultural resources are unlikely to be at-risk from the effects of a prescribed fire. Other classes of
44 cultural resources, however, may be at substantial risk and it is to these "at-risk" resources that

1 these supplemental procedures are directed. At-risk cultural resources types are listed, eligible,
 2 or potentially eligible National Register properties which are susceptible to direct or indirect
 3 damage through the use of prescribed fire. Such resources may include those constructed of
 4 combustible materials, rock art, artifacts with sensitive resident data, and those properties which
 5 may become more exposed to theft and vandalism following removal of protective, obscuring
 6 vegetative cover.

7
 8 Standard Protection Measures. Protection and avoidance measures (Attachment One) have been
 9 developed that, when implemented, are expected to mitigate or avoid effects to significant or
 10 potentially significant cultural resources which may be at-risk from prescribed fire.

11
 12
 13 **Definitions**

14
 15 At-Risk Cultural Resources. At-risk cultural resources types are listed, eligible, or potentially
 16 eligible National Register properties and susceptible to direct or indirect damage through the use
 17 of prescribed fire. Such resources may include those constructed of combustible materials, rock
 18 art, artifacts with sensitive resident data, and those properties which may become more exposed
 19 to theft and vandalism following removal of protective, obscuring vegetative cover.

20
 21 Phased Inventory. Inventory is divided into pre-burn and post-burn components. Pre-burn
 22 inventory is directed toward literature review and survey of areas where, in the judgment of the
 23 Field Office Cultural Resource Specialist, there is a high probability of discovering at-risk
 24 cultural resources. Survey of areas of dense vegetative cover may be deferred until completion
 25 of the burn project where such cover precludes or makes difficult the discovery of cultural
 26 resources. Post-burn survey is undertaken in areas where both fuels have been removed and
 27 where there is a high to moderate likelihood of discovering cultural resources.

28
 29 Prescribed Fire. An intentionally ignited fire that burns under specified conditions (prescription)
 30 that allow the fire to be confined to a predetermined area and produce both the fire behavior and
 31 fire characteristics required to achieve planned fire treatment and resource management
 32 objectives. Instances of Wild Fire Use are not considered prescribed fires and are not included
 33 within the scope of this Protocol Amendment.

34
 35 Fire/Fuels Management Staff. In this Amendment, Fire/Fuels Management Staff is intended to
 36 refer to individuals responsible for planning and implementing prescribed fire projects.

37
 38
 39 **Specific Stipulations**

40
 41 This Amendment would allow for considering the effects of prescribed fire on cultural resources
 42 when compliance with the Protocol, the BLM 8100 Series Manual guidelines (Protocol
 43 Amendment F), and the following specific stipulations are followed:

44
 45
 46
 47

1 I. Scoping the Undertaking

2

3 Identification activities should use a discovery procedure consistent with the needs for
4 information and the character of the area in which the planned prescribed fire shall occur.
5 Careful selection of methods, techniques and level of detail is necessary so that the information
6 developed or gathered may provide a sound basis for making decisions.

7

8 Individuals responsible for planning and implementing prescribed fires shall, as soon as a
9 prescribed fire is proposed and with as much lead time as possible, notify the Field Office
10 Cultural Resource Staff of the proposed undertaking. Information provided to the Field Office
11 Cultural Resource Staff shall include: boundary of the burn project, map of projected burn
12 intensities, proposed ground disturbance, and other information deemed pertinent to planning by
13 the Field Office Cultural Resource Staff in consultation with Fire Management staff.

14

15 II. Identification

16

17 A. Assessing Information Needs. The Field Office Cultural Resource Staff shall conduct
18 background research to identify cultural resources known or thought to exist within the APE of
19 the proposed prescribed fire. Based on this background research, "at-risk cultural resources"
20 shall be identified. Sources of information that shall be consulted include Cultural Resource
21 inventory files at Field Offices or Information Centers, land use and ownership records, fire
22 history atlases, geological maps, and documented areas of natural resources valued or used by
23 Native Americans.

24

25 B. Identifying At-Risk Cultural Resources. At-risk cultural resources are documented individual
26 properties or classes of cultural resources that: (1) are eligible, or potentially eligible for the
27 National Register of Historic Places and (2) for which the significant attributes of the known
28 individual property or class of cultural resource may be substantially damaged or destroyed by
29 the prescribed fire.

30

31 At-risk cultural resources within prescribed fire areas will usually include potentially significant
32 artifact classes and potentially significant combustible standing structures and features. At-risk
33 cultural resources may also include individual properties or classes of properties which, through
34 the vegetation clearing effect of the fire, become accessible to artifact theft or damage.
35 Professional judgment plays an important role in identifying at-risk cultural resources,
36 particularly when the effects of fire on certain types of archaeological materials or resident data
37 are poorly understood.

38

39 C. Developing a Cultural Resources Inventory and Management Strategy. Cultural resources
40 identification and management strategies for each of the prescribed fires shall be guided by a
41 Cultural Resources Inventory and Management Strategy (Strategy). The Strategy shall be
42 developed in collaboration between Cultural Resources and Fire/Fuels Management Staffs. The
43 Strategy document need not be lengthy or complex, but shall, at a minimum, include:

44

45 Project description (e.g. planned burn techniques and preparation, projected burn intensities,
46 and timeline);

47

- 1 Bibliography or list of references consulted during assessment of information needs;
2
3 A table of at-risk cultural resources expected to occur within the project area including a
4 brief rationale for designation, either individually or by resource class;
5
6 Identification methods proposed for at-risk cultural resources;
7
8 Identification of areas with a high probability for presence of at-risk cultural resources, but
9 which also possess ground cover conditions that preclude or significantly hamper site
10 identification;
11
12 Procedures to be implemented if the prescribed fire escapes;
13
14 Plan for monitoring effectiveness of protection measures; and,
15
16 Planned post-burn survey, if any, with rationale and specific information on location, survey
17 area, and projected costs including costs to be incurred in subsequent fiscal periods.

18
19 **D. Locating At-Risk Cultural Resources.**
20

21 1. **Methods and Techniques.** Methods for locating at-risk cultural resources should be
22 appropriate to the nature and visibility of the resource classes. Reconnaissance-level (non-
23 intensive) techniques may be appropriate for the identification of certain aboveground
24 resources and selective examination of specific features (e.g. rock outcrops) may be
25 appropriate to other classes of at-risk cultural resources. The methods selected for
26 identification efforts, and the rationale for these methods, shall be documented in the
27 Strategy.
28

29 Areas of proposed ground disturbance shall be intensively surveyed (e.g. pre-treatment,
30 control lines, new or reconstructed access roads, helipads, staging areas and camps). Prior
31 survey coverage, if deemed acceptable in the professional judgment of Field Office Cultural
32 Staff, may be accepted in lieu of new survey for all or part of an APE.
33

34 2. **Post-burn Identification.** At the discretion of the Field Office Cultural Staff, field survey
35 may be deferred for areas where preexisting vegetation conditions prevent reliable and
36 efficient survey. These areas may be selectively examined after the prescribed fire, when
37 ground visibility has improved. All such post-implementation surveys shall be completed
38 within one year of implementation.
39

40 3. **Documentation.** All cultural resources including at-risk cultural resources shall be
41 documented on DPR primary record forms. At-risk-cultural resources shall be further
42 documented on appropriate subforms. All documented properties shall be submitted to the
43 appropriate Information Center for assignment of a primary number and trinomial
44 designation. Inventory reports shall be submitted to the appropriate Information Center.
45 Submission of such documentation may occur up to one year following project
46 implementation.
47

1 III. Evaluation

2
3 Unevaluated, at-risk cultural resources situated within prescribed burn areas shall be evaluated
4 pursuant to 36 CFR 800.4(c) prior to project implementation unless specific protective or
5 avoidance measures (Attachment One, Standard Protection Measures) are implemented. The
6 Field Office Cultural Resource Staff shall consult with Fire Management or other project
7 planning staff to determine the feasibility and likely effectiveness of avoidance and protection
8 measures proposed for implementation. Standard protection measures are described in
9 Attachment One of this document. BLM shall evaluate all at-risk cultural resources where
10 adverse effect cannot be avoided. In such cases, the procedures at Protocol VI. shall be followed.

11
12 Cultural Resources determined not to be at risk need not be evaluated but may be evaluated if
13 such evaluation furthers the Heritage Preservation Plan or other objective.

14

15 IV. Protection and Treatment

16

17 A. When No At-Risk Cultural Resources Are Found. If no at-risk cultural resources are situated
18 within the APE of the prescribed fire, BLM may proceed with the prescribed fire without further
19 consideration to cultural resources. The information gathering and inventory process shall be
20 documented.

21

22 B. When At-Risk Cultural Resources Are Present. When at-risk cultural resources are present
23 within the APE of the prescribed fire, BLM shall choose one of two alternatives, according to
24 specific circumstances.

25

26 1. When Protection Is Possible and Desirable. Cultural resources at risk may be protected
27 from damage through the application of standard protection measures (Attachment One). A
28 report shall be completed which documents the inventory process, resource evaluations and
29 protective measures selected for the at-risk cultural resources; such report may be completed
30 after project implementation when phased, post-fire survey is planned.

31

32 2. When Cultural Resources Will Not Be Protected. BLM may determine that the protection
33 of at-risk cultural resources is neither feasible nor desirable. Should BLM elect not to protect
34 at-risk cultural resources, BLM shall evaluate those resources by applying the National
35 Register of Historic Places criteria for eligibility described at 36 CFR 60.4. When such
36 evaluation determines that at-risk cultural resources are NRHP eligible or retain moderate to
37 high cultural values, and the BLM determines that it cannot protect those resources by
38 applying the Standard Protection Measures described in Attachment One, then the BLM shall
39 initiate Section 106 consultation under Protocol stipulations VI.A, VI.M. and/or VI.N. prior
40 to completion of environmental analysis. A report shall be completed which documents the
41 inventory process and resource evaluations.

42

43 V. Post-Burn Inventory

44

45 Post-burn inventory is an important feature of these supplemental procedures. Post-burn

1 inventory is intended to inventory a sample of land previously inaccessible, including areas
2 where at-risk resources may be expected, monitor effectiveness of pre-burn survey and
3 effectiveness of standard protection measures applied to at-risk cultural resources, and identify
4 need or opportunity for further management of cultural resources. Re-entry for inventory in the
5 post-burn area may be either complete survey or sample survey, but in either case the level of
6 survey shall be intensive. When sample survey is planned the percentage of surveyed area shall
7 reflect the general cultural resource sensitivity of the area and selected survey areas shall reflect
8 the professional judgment of the Field Office Cultural Resource Staff. The rationale for selecting
9 post-burn survey areas and methods of inventory shall be included in the Strategy document
10 prepared prior to burn implementation. Post-burn survey may be directed to previously
11 unsurveyed lands, previously surveyed lands, areas thought to contain cultural resources or
12 samples within different environmental strata.

13
14 Post-burn survey shall be conducted within one year of the fire and shall be scheduled to take
15 advantage of optimum post-burn ground visibility. The results of post-burn survey shall be
16 documented and that documentation shall detail the survey areas selected and the survey methods
17 employed.

18 VI. Inadvertent Effects

19
20
21 Should a prescribed fire become uncontrolled or damage at-risk cultural resources in
22 unanticipated ways, the BLM Field Office Cultural Resource Staff shall take the following steps.

23
24 A. Discovery. The SHPO shall be notified by BLM immediately upon discovery that a
25 prescribed fire damaged a property that was planned for avoidance or protection, or a previously
26 unidentified at-risk cultural resource. If the undertaking has not been completed at the time the
27 effect is discovered, all activities local and threatening to the property shall cease and efforts
28 shall be taken to avoid further harm to the property until the following consultations are
29 completed.

30
31 1. Should the discovery involve failure of standard protection measures listed in Attachment
32 One or a BLM failure to ensure that such measures were adequately implemented, then the
33 cultural resource report shall describe the failure, the reason for that failure, and measures
34 that shall be taken to prevent similar future occurrences. The discovery situation shall be
35 documented in the Annual Report of activities undertaken under the Protocol.

36
37 2. Consultation shall be initiated between BLM and the SHPO within seven days following
38 discovery to develop an interim course of action to avoid further effects to cultural resources.
39 If agreement on an interim course of action cannot be reached between the BLM and the
40 SHPO, then the BLM shall initiate the procedures for resolving objections set out at Protocol
41 IX.A.

42
43 B. Escaped Prescribed Fire. When a prescribed fire escapes, it shall be treated according to the
44 unit's Fire Management Plan. The Field Office shall initiate consultation with SHPO within 24
45 hours of the escape with the focus of consultation directed toward planned actions to protect
46 cultural resources from suppression damage and fire effects.

1 VII. Reporting

2
3 Projects completed under this Amendment to the State Protocol Agreement shall be listed in the
4 BLM/SHPO Annual Report. Project information to be incorporated in the Annual Report shall
5 include the name and planned acreage of each prescribed fire; a summary of the results of each
6 study, including area surveyed before; analysis of the effectiveness of the Standard Protection
7 Measures and after the prescribed fire and the numbers of at-risk cultural resources identified,
8 evaluated, or protected; and, a summary of inadvertent effects.
9

10 VIII. Revision and Termination


11
12 The parties to this Amendment shall review the terms of this Amendment, including its
13 Attachments, during scheduled reviews of the Statewide Protocol Agreement in order to
14 determine whether continuation, revision, or termination is appropriate. Either party may
15 propose revisions or terminate this Amendment by providing 90 days notice. During the period
16 following notice of the intent to terminate, both parties to this Amendment shall enter active
17 negotiations to avoid termination.
18

19 This Amendment shall expire and have no further force or effect at midnight of the second
20 anniversary of the Amendment's date of execution unless continuation for a specific period is
21 mutually agreed between the parties. Expiration of this Amendment notwithstanding, any
22 prescribed burn projects for which pre-burn inventory has been completed under the terms of this
23 Amendment may continue to follow these procedures to the completion of the project.
24
25
26
27
28

29 **STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, CALIFORNIA**

30 
31 _____
32
33 By Mike Pool Date: 8/11/05

37
38 **STATE HISTORIC PRESERVATION OFFICER, CALIFORNIA**

39 
40 _____
41
42 By Milford Wayne Donaldson Date: 8/12/05

Attachment One: Standard Protection Measures

Appendix E--Prescribed Fire Effects 9

ATTACHMENT ONE

STANDARD PROTECTION MEASURES

FOR

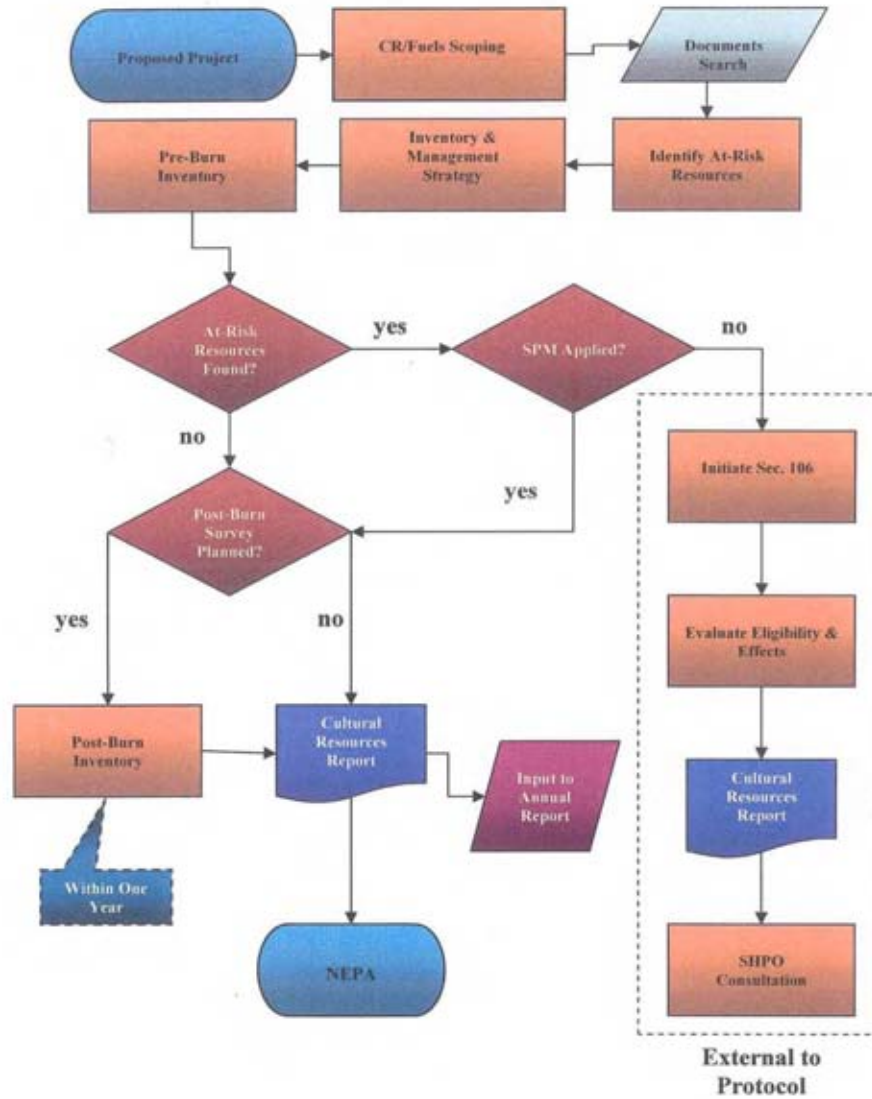
CULTURAL RESOURCES IN PRESCRIBED FIRE AREAS

- 1 If California BLM chooses to defer National Register evaluation of previously unevaluated at-
 2 risk cultural resources by protecting or avoiding effects to those resources, or chooses to protect
 3 or avoid effects to cultural resources included in, or previously determined eligible for, inclusion
 4 in the National Register of Historic Places, the following standard protection measures may be
 5 applied by the BLM, singly or in any effective combination, and prescribed fire may be applied
 6 to the area surrounding the resource(s) without further SHPO consultation.
 7
- 8 1. Communication. The locations, boundary information, and prescriptions (avoidance or
 9 protective measures) for at-risk cultural resources shall be conveyed in writing and depicted
 10 on maps from the Field Office Cultural Resource Staff to the Project Planner.
 11
 - 12 2. Flagging. Resources of interest within the proposed fire area shall be clearly delineated by
 13 flagging or tagging site boundaries prior to the fire. Flagging must clearly identify areas to
 14 be avoided or protected and may include a buffer zone to extend the protection area around
 15 properties, as described below.
 16
 - 17 3. Buffer Zones. The establishment of a buffer zone surrounding an at-risk cultural resource
 18 may be employed to reduce the likelihood that inadvertent effects from project
 19 implementation might occur.
 20
 - 21 a. The use of buffer zones in conjunction with other avoidance measures are particularly
 22 applicable where setting may contribute to the property's eligibility under 36 CFR
 23 60.4, or where it may be an important attribute of some types of historic properties
 24 (e.g., historic buildings or structures; properties important to Native Americans).
 25
 - 26 b. A Field Office Cultural Resource Staff on a case-specific basis must determine the
 27 size of buffer zones and may consult with specialists or those with particular interest,
 28 including Native Americans.
 29
 - 30 c. The distinction between cultural resource boundaries and buffer zones must always
 31 be clear in site documentation and reports.
 32

- 1 4. Prescribed fires may be redesigned to exclude the area containing and surrounding the
2 cultural resource(s), such that no additional special protective measures are necessary to
3 ensure that the fire or fire control activities shall not affect the resource(s) and their setting(s).
4
- 5 5. Cultural resources may be protected by creating fire breaks that provide a sufficient buffer to
6 ensure that the resources are not impacted by fire, as long as the environment (setting) of the
7 resource within which the fire break is created could not contribute significantly to its
8 importance. Fire breaks may be created without previous cultural resources inventory only
9 when hand-clearing brush and vegetation, or when previous fire breaks are re-established by
10 removing vegetation and existing graded or cleared surfaces (e.g., roads).
11
- 12 Mechanical equipment may be used to create fire breaks or grade existing roads or previous
13 fire breaks only if the areas to be graded have been examined by a cultural resource specialist
14 and found not to contain archaeological or historical resources.
15
- 16 At the discretion of the Field Office Cultural Resource Staff in consultation with the
17 Fire/Fuels Management Staff or other project planning staff, back burning may be used to
18 remove brush and vegetation from the buffered perimeter of cultural resources in order to
19 protect cultural resources from prescribed fires. However, the Field Office Cultural Resource
20 Staff or designee must be present during these procedures to ensure that the at-risk cultural
21 resources are not impacted.
22
- 23 6. Fire shelter fabric or other reflective materials may be placed over cultural resources to
24 protect them from burning when fuel removal is done to prevent high levels of radiant heat.
25
- 26 7. Fire retardant foam wetting agents without dyes or colorants may be applied to cultural
27 resources and/or areas surrounding cultural resources to protect them from fire damage.
28 Where feasible, wetting agents should be applied to the perimeter of cultural resources rather
29 than directly on resources, although circumstances may warrant aerial or direct application.
30
- 31 8. Prescribed fires should be scheduled or designed to avoid burning cultural resources
32 important to Native Americans. In other instances, fires should be scheduled or designed to
33 maximize desirable natural resource productivity for areas important to Native Americans.

Attachment Two: Flow Chart of Activities
Required for Implementation

Flow Chart of Activities Required for Implementation of the Protocol Amendment for Prescribed Fire Effects



SUPPLEMENTAL PROCEDURES FOR
FLUID MINERALS LEASING

A CULTURAL RESOURCES AMENDMENT
TO
THE STATE PROTOCOL AGREEMENT

BETWEEN

CALIFORNIA BUREAU OF LAND MANAGEMENT
AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER

1 Section 106 of the National Historic Preservation Act (NHPA) requires agencies to make a
2 reasonable and good faith effort to identify historic properties that may be affected by an
3 agency’s undertakings and take those effects into account in making decisions. Leasing actions
4 are undertakings for the purpose of NHPA. For the purposes of this document, Fluid Minerals
5 leasing activities include both oil and gas and geothermal development. These undertakings
6 include environmental analysis and decision making for landscape level proposals for the
7 leasing of lands. These supplemental procedures specifically address the appropriate
8 identification efforts for Section 106 compliance under NHPA at the leasing stage. Site-
9 specific land disturbing activities, which may be associated with these undertakings, would be
10 identified and addressed in environmental documentation and decision making at a later date.

11
12 These supplemental procedures are an amendment to the State Protocol dated October 15,
13 2007.

14
15 This amendment deviates from the Protocol in *Section VI. Thresholds for SHPO Review*,
16 which states, “Where BLM proposes to complete less than a BLM Class III survey of the
17 affected (selected) lands and when informal consultation with SHPO staff yields consensus
18 agreement to proceed with formal consultation” by allowing for a Class I record search and
19 Tribal consultation to be considered adequate inventory and identification methodology for the
20 purposes of Fluid Minerals decisions at the leasing stage. BLM shall require a Class III survey
21 of all leased lands when surface occupancy is requested. In addition, BLM will make every
22 reasonable effort to avoid effects to historic properties identified as a result of these surveys.
23 The Class I record search and tribal consultation at the time of leasing are proposed to identify
24 any potential adverse effects to historic properties which should be considered during the
25 earliest phases of planning. This amendment would allow for this deviation from the protocol
26 as long as Protocol direction, the BLM 8100 Series Manual guidelines (Protocol Appendix B),
27 and the following specific stipulations are followed:

28
29
30

1 I. Inventory Methodology

2
3 At the leasing stage the appropriate level of inventory is a Class I record search and
4 consultation with Tribes, on a government-to-government basis, and with tribal communities
5 and traditional practitioners. Completion of the Class I record search and consultation with
6 Tribes and tribal communities allows for the identification of historic properties that, due to
7 their size, spacing, and/or sensitivity, cannot be adequately considered or protected following
8 issuance of a lease.

9
10 A Class I record search for the purposes of this amendment will include reviewing all
11 pertinent existing documentation to assess the presence of significant historic properties.

12
13
14 II. Tribal and Interested Party Consultation

15
16 Field Offices will be responsible for contacting and consulting with Tribes, tribal
17 communities and traditional practitioners, and other interested parties as outlined in 36 CFR
18 800 and the BLM 8120 Series Manual guidelines. This will also meet BLM government-
19 to-government responsibilities for consultation. As this consultation will be conducted on a
20 landscape level scale, it is imperative to provide information and maps that are easily
21 understood by tribal members in the consultation process.

22
23
24 III. Findings and Effects

25
26 A. Where no significant historic properties or properties of significance to the
27 Tribes, tribal communities, or other interested parties are identified, then "No
28 Adverse Effect" shall be the appropriate determination for the undertaking. It should
29 be noted that as the development of the lease progresses and specific ground
30 disturbing actions are identified, there may be a potential for effect; however,
31 historic properties can typically be avoided as ground disturbing activities are
32 identified and considered under the National Environmental Policy Act (NEPA) and
33 NHPA.

34
35 B. Where the Class I records search or tribal consultation identifies significant
36 historic properties or properties of cultural significance to Tribes and traditional
37 practitioners (such as Traditional Cultural Properties), and may be affected by this
38 landscape level proposal, consultation with the SHPO under 36 CFR 800 will be
39 required.

40
41 C. All documentation and determinations associated with these undertakings shall
42 be completed and considered within the timeframe of the NEPA process for the
43 undertaking and prior to any decision point for lease issuance.

44
45
46
47
48

1 IV. Reporting

2

3 A. Each participating Field Office shall report annually to the SHPO and the State
4 Office, a summary of activities carried out under this amendment to the Protocol
5 during the previous fiscal year. The reporting shall be included in the Protocol
6 Annual Report.

7

8 B. Annual reports shall summarize activities carried out under this amendment.
9 These reports are not meant to be compilations of the individual project reports
10 prepared for leasing projects; they are meant to be programmatic summaries of data
11 and significant findings.

12

13

14 V. Revision and Termination

15

16 The parties to this Amendment shall review the terms of this Amendment during scheduled
17 reviews of the Statewide Protocol Agreement in order to determine whether continuation,
18 revision, or termination is appropriate. Any party may propose revisions or terminate this
19 Amendment by providing 90 days notice of the intent to terminate; all parties to this
20 Amendment shall enter active negotiations to avoid termination.

21

22 This Amendment shall expire and have no further force or effect at midnight of the fifth
23 anniversary of the Amendment's date of execution unless continuation for a specific period
24 is mutually agreed between all parties.

STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, CALIFORNIA

[Handwritten signature]

for

By Mike Pool

Date: Jan. 17, 08

STATE HISTORIC PRESERVATION OFFICER, CALIFORNIA

[Handwritten signature]

By Milford Wayne Donaldson

Date: 22 JAN 2008

STATE HISTORIC PRESERVATION OFFICER, NEVADA

[Handwritten signature]
Deputy for

By Ronald M. James

Date: 2/7/08



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
 California State Office
 2800 Cottage Way, Suite W1834
 Sacramento, CA 95825
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October 20, 2008

In Reply Refer To:
 8100 (CA930)P

EMS TRANSMISSION: 10/20/08
 Instruction Bulletin No. **CA-2009-002**

To: All CA Field Managers
 All CA Field Office Archaeologists

From: Deputy State Director, Natural Resources

Subject: Protocol Supplemental Procedures/Amendments for Renewable Energy and Prescribed Fire

Enclosed are finalized supplemental procedures that will meet compliance with Section 106 of the National Historic Preservation Act under our Protocol Agreement with the State Historic Preservation Officers (SHPO) from California and Nevada. The two amendments are associated with wind and solar energy applications and prescribed fire undertakings.

Development of the amendment to our Protocol for renewable energy began over a year ago and has included the involvement of the SHPOs from California and Nevada, California Energy Commission, and the Native American Heritage Commission. An integrated team from Minerals, Lands, and Cultural Resources at the State Office and four field units developed this draft amendment. The team included: Duane Marti, James Haerter, Rolla Queen, Erik Zaborsky, Carrie Simmons, Sharynn-Marie Blood, and Gina Jorgenson. The amendment for prescribed fire is a replacement for a previous amendment that expired last year.

If you have any questions regarding the supplemental procedures, please contact any member of the team or Ken Wilson, State Archaeologist and Tribal Liaison, at (916) 978-4648.

Signed by:
 Tom Pogacnik
 DSD, Natural Resources

Authenticated by:
 Richard A. Erickson
 Records Management

Attachments – 2

- 1 – Supplemental Procedures for Protection of Cultural Resources from Prescribed Fire Effects (13 pp)
- 2 – Supplemental Procedures for Solar and Wind Power Generation Applications (12 pp)

SUPPLEMENTAL PROCEDURES FOR
SOLAR AND WIND POWER GENERATION APPLICATIONS

A CULTURAL RESOURCES AMENDMENT
TO
THE STATE PROTOCOL AGREEMENT

BETWEEN

CALIFORNIA BUREAU OF LAND MANAGEMENT
AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER

1 The purpose of this Supplemental Procedure is to provide guidance and a consistent strategy for
2 completing cultural resources review of both Solar and Wind Applications. The strategy is
3 focused to the extent practicable on completing cultural resources reviews of energy
4 applications in accordance with the *Statewide Protocol Agreement* (Protocol) with the
5 California and Nevada State Historic Preservation Officers (SHPO) in order to satisfy our
6 responsibilities pursuant to Section 106 of the National Historic Preservation Act (NHPA). This
7 guidance is intended to be consistent with the both the *Wind Energy Development Policy* of
8 August 24, 2006 (IM No. 2006-216) and the *Solar Energy Development Policy* of April 4, 2007
9 (IM No. 2007-97).

10
11

12 I. Background

13
14

15 A. Section 106

16
17

18 Section 106 of the NHPA requires that Federal agencies take into account the effect of
19 undertakings on historic properties eligible to or listed on the National Register of Historic
20 Places. Undertakings are defined to include activities that require a Federal permit, license or
21 approval (Federal action). Because of unique differences in the way that realty actions for Solar
22 and Wind applications are processed by the Bureau of Land Management (BLM), it is
23 necessary to employ different procedures/strategies at specific stages in each process to comply
24 with the requirements of the Protocol In any case, agency review under Section 106 must be
25 concluded prior to the issuance of the Federal permit, license or approval.

26
27

28 B. Cultural Resources Literature Review and Records Search

29
30

31 For the purposes of analyzing these undertakings at the landscape level, a records search and
literature review is required with the objective of developing sufficient information and
contexts for the purpose of identifying significant resources and issues that may be relevant to
the assessment of effects for the undertaking. However, the records search and literature review
may not necessarily require a full BLM Class I cultural overview and documentation as defined

1 in the BLM 8100 Manual. Documentation sufficient for a records search and literature review
 2 may include records provided by information centers or other repositories, such as historical
 3 societies, museums, and BLM land records, and may include copies of site records, maps,
 4 historic maps, lists of reports, surveys, previous cultural resources overviews, and regional
 5 research designs. The purpose of the records search and literature review is to identify any
 6 potentially significant properties or issues that may pose difficulties for the proposed
 7 undertaking and future management decision-making.
 8

9 C. Tribal Consultation

10
 11 One of the defining characteristics of most proposed energy projects is their size and scale.
 12 Because of the large land areas involved, it is essential to effect the early identification and
 13 analysis of landscape level resources and issues that might normally not be identified in
 14 conventional cultural resources survey. As part of this analysis, it is extremely important to
 15 identify and contact Native American tribes and other interested parties that may have
 16 information on historic properties, sacred sites, traditional cultural properties, or other cultural
 17 resources that may be located within the Area of Potential Effect (APE) or may be affected by
 18 the proposed undertaking. It is essential that rigorous and meaningful tribal consultation be
 19 carried out early in the application process to identify issues and concerns that may rise above
 20 and beyond specific archaeological or historic properties, which may involve sacred sites,
 21 traditional cultural landscapes or other issues that would not normally be identified.
 22

23 Tribal consultation/contact should be focused on working with tribes at the earliest stages of the
 24 proposed undertaking to gather ethnographic information, property information, and other
 25 resource information to help identify significant properties or issues, especially information
 26 about traditional cultural properties, sacred sites, and cultural landscapes. This will assist in
 27 identifying significant issues and resources that are not identified through the course of normal
 28 cultural resources survey. The objective of consultation is to identify any potentially significant
 29 properties or issues that may pose difficulties for the proposed undertaking and future
 30 management decision-making. As this consultation will be conducted on a landscape level
 31 scale, it is imperative to provide information and maps that are easily understood by tribal
 32 members in the consultation process. Because of the number, size and scale of proposed energy
 33 projects in any given area, BLM offices should consider additional strategies for tribal
 34 consultation beyond consultation on project specific basis. Offices should consider combining
 35 consultations on multiple projects or inviting tribes to meetings where multiple projects may be
 36 discussed and coordinated in order to facilitate coordination and information exchange,
 37 minimize confusion about the large number of projects, and provide for a more effective and
 38 productive process of tribal consultation.
 39

40 Field units will be responsible for contacting and consulting with Tribes, tribal communities
 41 and traditional practitioners, and other interested parties as outlined in 36 CFR 800 and the
 42 BLM 8120 Series Manual guidelines (Protocol Appendix B). This will also meet BLM
 43 government-to-government responsibilities for Tribal consultation.
 44

45 D. Differences between Wind Energy and Solar Energy Applications as "Federal Actions"
 46 requiring Section 106 review.
 47

1 The essential difference between Wind and Solar applications as it relates to defining the
 2 Federal action and "undertaking" for purposes of Section 106 review is a product of the
 3 specific realty actions associated with the initial application and associated reservations of land
 4 for future development privileges. The Wind energy application usually results in the issuance
 5 of a 3 year Right-of Way (ROW) for the project area which provides a first-in-line preference
 6 to submit a Plan of Development (POD). For the purposes of Section 106, the issuance of a
 7 ROW for the project area is the Federal action triggering Section 106 review. For Solar energy
 8 projects, the equivalent preference interest to submit a POD for an area is guaranteed by the
 9 submission of the application on a first in time basis. There is no equivalent associated realty
 10 action for Solar applications; therefore the Federal action and undertaking for Solar energy
 11 projects is identified at the submission of the application and the POD.
 12

13 E. Wind Energy Applications, Undertakings, and the Section 106 Process 14

15 Because of the unique realty process associated with Wind energy applications, it is useful to
 16 understand how different proponent's application strategies generally interact with review and
 17 compliance activities under the Protocol and Section 106. Wind energy projects are classified
 18 into 3 categories.
 19

20 (1) Class 1 Wind Projects 21

22 For Class 1 Wind projects, the Applicant applies only for a ROW for Meteorological
 23 (MET) tower and testing. There is no associated ROW application for a project area.
 24 This type of application is not common and is typically limited to research by
 25 universities and state or local governments. Testing is not generally oriented towards
 26 future development scenarios. Section 106 compliance for Class 1 Wind projects can
 27 generally be handled by completing a records search and literature review, BLM Class
 28 III cultural resources survey and tribal consultation. The application can normally be
 29 reviewed and processed under the Protocol. The compliance strategy is to locate MET
 30 towers where there are no cultural resource issues.
 31

32 (2) Class 2 Wind Projects 33

34 For Class 2 Wind projects, the Applicant usually applies for both a MET Tower testing
 35 ROW (undertaking) as well as a ROW for a larger project area (undertaking). This is
 36 the typical application process for most Wind projects. The ROW for the project area
 37 only reserves a first-in-line interest to submit a POD for the area, but conveys no
 38 authority to construct or the implication that, at the end of the ROW testing period,
 39 approval of a POD is automatic. A separate environmental review process will be
 40 carried out at the time of submission of a POD. BLM requires that a records search and
 41 tribal consultation be conducted for the ROW for the larger project area for the purpose
 42 of identifying significant resources and issues that might not normally be identified
 43 during normal archaeological survey. In addition, as with Class 1 Wind projects, a BLM
 44 Class III cultural resources survey for the proposed MET Tower locations and tribal
 45 consultation must be completed prior to the issuance of the MET tower ROW grant (3).

1 **Class 3 Wind Projects**
 2

3 For Class 3 Wind projects, the Applicant submits a POD for a specific area without
 4 necessarily testing or having applied for a ROW for a project area. The Class 3 Wind
 5 project encompasses a specific proposal for the development of a Wind farm and will be
 6 treated like any other major project for purposes of Section 106. BLM would require
 7 full Class III cultural resources survey and tribal consultation for the POD.
 8

9 **F. Solar Energy Applications, Undertakings, and the Section 106 Process**
 10

11 Cultural resources review of Solar projects begins at the time an application is accepted. The
 12 application itself reserves a first-in-line interest but conveys no rights. Unlike Wind energy,
 13 there is no associated realty action that reserves first-in-line interest (ROW, permit, license, or
 14 other decision). Usually the Applicant submits a POD with the application. With the
 15 submission of the POD, BLM would require that a Class III cultural resources survey and tribal
 16 consultation be completed for the entire POD. However, the Applicant may follow one of
 17 several strategies in identifying and delineating the specific area to be developed from a larger
 18 land area. As such, this may require a "phased" identification approach for cultural resources.
 19 Nevertheless, phased identification will result in the identification of a "core" area (APE) that
 20 will be surveyed at the Class III level.
 21
 22

23 **II. Procedures for Evaluating Wind Energy Projects**
 24

25 A. BLM will complete its responsibilities to identify and take into account effects to historic
 26 properties that may be affected by proposed Wind energy projects pursuant to Section 106 of
 27 the National Historic Preservation Act (NHPA). Depending on the scale, complexity, and
 28 issues of a specific Wind energy proposal, BLM may comply with Section 106 by either
 29 utilizing the provisions of the BLM Protocol or by following the procedures provided in 36
 30 CFR § 800 (Protection of Historic Properties). BLM will utilize the Protocol to process
 31 applications until a threshold condition is met per Section VI of the Protocol. If BLM
 32 determines that the undertaking is outside the scope of the Protocol, BLM shall notify SHPO,
 33 consulting parties, and other interested parties and the public that BLM intends to use 36 CFR
 34 §800 to complete Section 106 responsibilities. For projects involving other State or local
 35 agency review and approval, the integration of data adequacy requirements will be achieved by
 36 involving appropriate agency cultural staff in meetings with the Applicants to insure that both
 37 BLM and other agency data adequacy requirements are clearly presented to the Applicant.
 38

39 B. BLM strategy for managing the Section 106 review of Wind energy projects, which involves
 40 testing and specific ROW actions for large land areas, will generally incorporate the following
 41 guidelines and requirements:
 42

43 **(1) Class 1 Wind Energy Projects**
 44

45 For Class 1 Wind projects, the Applicant applies only for a ROW for MET tower and
 46 testing. There is no associated ROW application for a project area. This type of
 47 application is not common and is typically limited to research by universities and state

1 or local governments. Testing is not generally oriented towards future development
2 scenarios.
3

4 A BLM Class III cultural resources survey will be completed. Tribal consultation will
5 be conducted. BLM will be responsible for identifying tribes that may have an interest
6 in the project area, notifying the tribes of the project, and formally consulting with the
7 tribes pursuant to agency responsibilities under 36 CFR § 800.2(c)(B)(ii) and the
8 *Executive Memorandum of April 29 1994* (FR Doc. 94-10877). It is anticipated that
9 MET tower locations will be selected to avoid affects to historic properties. Section 106
10 will be completed in accordance with the Protocol.
11

12 (2) Class 2 Wind Energy Projects 13

14 For Class 2 Wind projects, the Applicant usually applies for both a MET Tower testing
15 ROW (undertaking) as well as a ROW for a larger project area (undertaking). This is
16 the typical application process for most Wind projects. The ROW for the project area
17 only reserves a first-in-line interest to submit a POD for the area, but conveys no
18 authority to construct or an implied approval that at the end of the ROW period that
19 approval of a POD is automatic. A separate environmental review process will be
20 carried out at the time of submission of a POD.
21

22 *Records Search and Tribal Consultation:* For Class 2 Wind projects, a records search
23 and literature review will be submitted for the entire lands initially proposed in the
24 application, regardless of the eventual size of the proposed undertaking. It is assumed
25 that the records search and literature review will be utilized as part of the screening
26 strategy to eliminate lands and reduce the size of the actual acreage needed to arrive at a
27 "core" area that will likely become the area for the proposed POD and on which the
28 ROW would be granted. This will define the APE for review under Section 106.
29 Applicants and their consultants should work with BLM to make sure that the records
30 search and literature review takes into account the available information in not only the
31 California Historic Resources Information System (CHRIS) and Nevada Cultural
32 Resources Information System (NVCRIS), but also information that BLM may have for
33 these areas.
34

35 As part of the records search and literature review, Applicants will be expected to work
36 with BLM to identify and contact Native American tribes that may have information on
37 historic properties, sacred sites, traditional cultural properties, or other cultural
38 resources that may be located within the APE or may be affected by the proposed
39 undertaking. BLM will be responsible for identifying tribes that may have an interest in
40 the project area, notifying the tribes of the project, and formally consulting with the
41 tribes pursuant to agency responsibilities under 36 CFR § 800.2(c)(B)(ii) and the
42 *Executive Memorandum of April 29 1994* (FR Doc. 94-10877). The Applicant and its
43 consultants may assist BLM in completing these responsibilities. It is essential that
44 rigorous and meaningful tribal consultation be carried out early in the application
45 process to identify issues and concerns that may rise above and beyond specific
46 archaeological or historic properties, which may involve sacred sites, traditional cultural
47 landscapes or other issues. This consultation would help identify resources that would
48 not normally be identified during archaeological survey.

1 A Class III survey and inventory will be required for proposed MET tower locations.
2

3 *BLM Class II Survey and Inventory:* For proposed projects for which a large initial
4 project area has been identified, within which a smaller POD will eventually be
5 submitted, the Applicant may propose to conduct a BLM Class II (sampling) survey for
6 the purpose of identifying sensitive archaeological or cultural areas as part of a strategy
7 to eliminate areas of archaeological or cultural concern and to develop a site plan that
8 will eliminate or minimize effects to historic properties. Provision for completing a
9 Class II survey is consistent with 36 CFR § 800.4(b)(2) which allows for the phased
10 identification and evaluation of historic properties where large land areas are involved.
11 The decision to conduct a Class II survey is at the discretion of the Applicant and is not
12 required, although BLM would encourage Applicants to consider the value of utilizing a
13 Class II survey, in addition to the records search and literature review, to assist in the
14 identification, screening and/or elimination of sensitive archaeological and cultural
15 areas from the eventual APE. BLM will generally be supportive of any Class II strategy
16 that the Applicant wishes to employ to assist in the identification of sensitive areas and
17 the screening and elimination of lands that may contain sensitive resources or
18 potentially sensitive cultural issues.
19

20 (3) Class 3 Wind Energy Projects 21

22 For Class 3 Wind projects, the Applicant submits a POD for a specific area whether or
23 not prior testing has occurred or the Applicant has received a ROW for a project area.
24 This application type is not common, but would be processed in similar fashion as any
25 POD for all energy projects. BLM would require full Class III cultural resources survey
26 and tribal consultation.
27

28 *BLM Class III Survey and Inventory:* For all projects for which a specific or "core"
29 project area has been identified (APE) and a POD submitted, the entire project area
30 incorporated within the APE and any buffer areas will be surveyed at the BLM Class III
31 cultural resources survey level. The Applicant will be expected to work with BLM to
32 identify and contact Native American tribes that may have information on historic
33 properties, sacred sites, traditional cultural properties, or other cultural resources that
34 may be located within the APE or may be affected by the proposed undertaking. BLM
35 will be responsible for identifying tribes that may have an interest in the project area,
36 notifying the tribes of the project, and formally consulting with the tribes pursuant to
37 agency responsibilities under 36 CFR § 800.2©(B)(ii) and the *Executive Memorandum*
38 *of April 29 1994* (FR Doc. 94-10877). The Applicant and its consultants may assist
39 BLM in completing these responsibilities. It is essential that rigorous and meaningful
40 tribal consultation be carried out early in the application process to identify issues and
41 concerns that may rise above and beyond specific archaeological or historic properties,
42 which may involve sacred sites, traditional cultural landscapes or other issues. This
43 consultation would help identify resources that would not normally be identified during
44 archaeological survey.
45

1 C. Procedures Common to All Classes of Wind Energy Projects
2

3 **(1) Coordination and Reporting**
4

5 BLM should establish general processes, following the BLM Memorandum of
6 Understanding (MOU) with the California Energy Commission (CEC) that provides for
7 coordination on requirements to meet the needs of other federal, state, and local
8 agencies that may be involved in a proposed energy project. The purpose of
9 coordination on this process is to provide Applicants clear and consistent guidelines
10 regarding data needs and data adequacy and to help the Applicant move through the
11 process in an efficient and cost effective manner. At the onset of the proposed project,
12 BLM and other agencies should provide the Applicant guidance regarding conditions
13 and stipulations for fieldwork, reporting requirements, and other expectations, as well as
14 answer any questions the Applicant may have regarding process. BLM should follow to
15 the extent possible these same general procedures for consistency and work closely with
16 the appropriate State or County agency, or investor owned utility to ensure that the
17 requirements of National Environmental Policy Act (NEPA), California Environmental
18 Quality Act (CEQA), and the NHPA are being met. In all cases, BLM authorizes field
19 survey activities on public lands and is responsible for compliance with Section 106. All
20 reports must be submitted and approved by BLM prior to submittal to outside agencies
21 unless otherwise agreed to by BLM. BLM letters initiating consultation with the SHPO
22 should be posted on the California alternative energy web site soon after the letter is
23 sent to SHPO.
24

25 **(2) Native American Consultation**
26

27 Consultation with appropriate Tribes will be required for each project. At the time of
28 acceptance of a complete application, BLM will be responsible for identifying tribes
29 that may have an interest in the project area, notifying the tribes of the project, and
30 formally consulting with the tribes pursuant to agency responsibilities under 36 CFR §
31 800.2(c)(B)(ii) and the *Executive Memorandum of April 29 1994* (FR Doc. 94-10877).
32 The Applicant and its consultants may assist BLM in completing these responsibilities.
33 It is essential that rigorous and meaningful tribal consultation be carried out early in the
34 application process to identify issues and concerns that may rise above and beyond
35 specific archaeological or historic properties, which may involve sacred sites, traditional
36 cultural properties, landscapes or other issues that would not normally be identified
37 during archaeological survey and where potential effects may not be easily resolved.
38 Early initiation of Native American consultation may begin when an applicant applies
39 for authorization to conduct early evaluation procedures, e.g., Wind energy testing,
40 geotechnical testing, well or other borings, etc. Native American consultation letters on
41 individual proposed projects should be posted on the California Desert District
42 alternative energy web page soon after the letters are signed for those Field Offices
43 within the California Desert District.
44

45 **(3) Consultation with SHPO**
46

47 The BLM will endeavor to process these applications under the Protocol to the extent
48 possible until a thresholds condition is reached requiring consultation with SHPO as

1 defined in Section VI of the Protocol. If BLM determines that the undertaking is
 2 outside the scope of the Protocol, BLM shall notify SHPO, consulting parties, and other
 3 interested parties and the public that BLM intends to use 36 CFR §800 to complete
 4 Section 106 responsibilities.
 5
 6

7 III. Procedures for Evaluating Solar Energy Projects 8

9 A. BLM will complete its responsibilities to identify and take into account effects to historic
 10 properties that may be affected by proposed Solar energy projects pursuant to Section 106 of
 11 the NHPA. Depending on the scale, complexity, and issues of a specific Solar energy proposal,
 12 BLM may comply with Section 106 by either utilizing the provisions of the BLM Protocol or
 13 by following the procedures provided in 36 CFR § 800 (Protection of Historic Properties).
 14 BLM will utilize the Protocol to process applications until a threshold condition is met per
 15 Section VI of the Protocol. If BLM determines that the undertaking is outside the scope of the
 16 Protocol, BLM shall notify SHPO, consulting parties, and other interested parties and the
 17 public that BLM intends to use 36 CFR §800 to complete Section 106 responsibilities.
 18

19 For projects involving the CEC review and approval (solar thermal proposals greater than 50
 20 mega-watts in capacity; does not include passive solar, photo-voltaic proposals), the integration
 21 of CEC data adequacy requirements will be achieved according to the terms of the MOU
 22 between the CEC and BLM. BLM will involve CEC cultural staff in meetings with the
 23 Applicants to insure that both BLM and CEC data adequacy requirements are clearly presented
 24 to the Applicant. Where the CEC is not involved, BLM will follow these same general
 25 procedures for consistency and work closely with the appropriate State or County agency, or
 26 investor owned utility to ensure that the requirements of NEPA, CEQA, and the NHPA are
 27 being met.
 28

29 B. BLM strategy for managing the Section 106 review of Solar energy projects, which require
 30 large land areas, may follow differing strategies depending on the nature of the proposal, but
 31 will generally incorporate the following guidelines and requirements:
 32

33 (1) Records Search and Tribal Consultation 34

35 a. For all projects, a records search and literature review will be submitted for the
 36 entire lands initially proposed in the application, regardless of the eventual size of
 37 the proposed undertaking. It is assumed that the records search and literature review
 38 will be utilized as part of the screening strategy to eliminate lands and reduce the
 39 size of the actual acreage needed to arrive at a "core" area that will likely become
 40 the area for the proposed POD and on which the right-of-way would be granted.
 41 This will define the APE for review under Section 106. Applicants and their
 42 consultants should work with BLM to make sure that the records search and
 43 literature review takes into account the available information in not only the
 44 California Historic Resources Information System and Nevada Cultural Resources
 45 Information System, but also information that BLM may have for these areas.
 46

47 b. As part of the records search and literature review, Applicants will be expected
 48 to work with BLM to identify and contact Native American tribes that may have

1 information on historic properties, sacred sites, traditional cultural properties, or
 2 other cultural resources that may be located within the APE or may be affected by
 3 the proposed undertaking. At the time of acceptance of a complete application,
 4 BLM will be responsible for identifying tribes that may have an interest in the
 5 project area, notifying the tribes of the project, and formally consulting with the
 6 tribes pursuant to agency responsibilities under 36 CFR § 800.2(c)(B)(ii) and the
 7 *Executive Memorandum of April 29 1994* (FR Doc. 94-10877). The Applicant and
 8 its consultants may assist BLM in completing these responsibilities. It is essential
 9 that rigorous and meaningful tribal consultation be carried out early in the
 10 application process to identify issues and concerns that may rise above and beyond
 11 specific archaeological or historic properties, which may involve sacred sites,
 12 traditional cultural landscapes or other issues. This consultation would help identify
 13 resources that would not normally be identified during archaeological survey.
 14

15 **(2) BLM Class II Survey and Inventory**
 16

17 a. For proposed projects for which a large initial project area has been identified,
 18 within which a smaller POD will eventually be submitted, the Applicant may
 19 propose to conduct a BLM Class II (sampling) survey for the purpose of identifying
 20 sensitive archaeological or cultural areas as part of a strategy to eliminate areas of
 21 archaeological or cultural concern and to develop a site plan that will eliminate or
 22 minimize effects to historic properties. Provision for completing a Class II survey is
 23 consistent with 36 CFR § 800.4(b)(2) which allows for the phased identification and
 24 evaluation of historic properties where large land areas are involved. The decision to
 25 conduct a Class II survey is at the discretion of the Applicant and is not required,
 26 although BLM would encourage Applicants to consider the value of utilizing a
 27 Class II survey, in addition to the records search and literature review, to assist in
 28 the identification, screening and/or elimination of sensitive archaeological and
 29 cultural areas from the eventual APE. BLM will generally be supportive of any
 30 Class II strategy that the Applicant wishes to employ to assist in the identification of
 31 sensitive areas and the screening and elimination of lands that may contain sensitive
 32 resources or potentially sensitive cultural issues. When the Applicant has identified
 33 a "core" area that will become the area for which the POD is likely to encompass,
 34 those lands will be surveyed in accordance with BLM Class III guidelines and, for
 35 projects involving the CEC, must also meet data adequacy requirements of the CEC.
 36

37 **(3) BLM Class III Survey and Inventory**
 38

39 a. For all projects for which a specific or "core" project area has been identified and
 40 a POD submitted, the entire project area incorporated within the ROW and any
 41 buffer areas will be surveyed at the BLM Class III inventory level.
 42

43 **(4) Coordination and Reporting**
 44

45 a. BLM has established a general process, with the CEC, for coordination on
 46 requirements to meet the needs of both agencies. The purpose of this process is
 47 provide Applicants clear and consistent guidelines regarding data needs and data
 48 adequacy and to help the Applicant move through the process in an efficient and

1 cost effective manner. At the onset of the proposed project, BLM and CEC will
 2 provide the Applicant guidance regarding conditions and stipulations for fieldwork,
 3 reporting requirements, and other expectations, as well as answer any questions the
 4 Applicant may have regarding process. Where the CEC is not involved, BLM will
 5 follow these same general procedures for consistency and work closely with the
 6 appropriate State or County agency, or investor owned utility to ensure that the
 7 requirements of NEPA, CEQA, and the National Historic Preservation Act are being
 8 met.

9
 10 b. In all cases, BLM is responsible for authorizing field survey activities on public
 11 lands and is also responsible for compliance with Section 106. All reports must be
 12 submitted and approved by BLM prior to submittal to outside agencies unless
 13 otherwise agreed to by BLM. BLM letters initiating consultation with the SHPO
 14 should be posted on the California alternative energy web site soon after the letter is
 15 sent to SHPO

16
 17 **(5) Native American Consultation**

18
 19 Consultation with appropriate Tribes will be required for each project. At the time of
 20 acceptance of a complete application, BLM will be responsible for identifying tribes
 21 that may have an interest in the project area, notifying the tribes of the project, and
 22 formally consulting with the tribes pursuant to agency responsibilities under 36 CFR §
 23 800.2(c)(B)(ii) and the *Executive Memorandum of April 29 1994* (FR Doc. 94-10877).
 24 The Applicant and its consultants may assist BLM in completing these responsibilities.
 25 It is essential that rigorous and meaningful tribal consultation be carried out early in the
 26 application process to identify issues and concerns that may rise above and beyond
 27 specific archaeological or historic properties, which may involve sacred sites, traditional
 28 cultural landscapes or other issues that would not normally be identified during
 29 archaeological survey and where potential effects may not be easily resolved. Early
 30 initiation of Native American consultation may begin when an applicant applies for
 31 authorization to conduct early evaluation procedures, e.g., solar energy testing,
 32 geotechnical testing, well or other borings, etc.

33
 34 **(6) Consultation with SHPO**

35
 36 The BLM will endeavor to process these applications under the Protocol to the extent
 37 possible until a thresholds condition is reached requiring consultation with SHPO as
 38 defined in Section VI of the Protocol If BLM determines that the undertaking is outside
 39 the scope of the Protocol, BLM shall notify SHPO, consulting parties, and other
 40 interested parties and the public that BLM intends to use 36 CFR §800 to complete
 41 Section 106 responsibilities.

42
 43
 44 **IV. Reporting**

45
 46 A. Each participating Field Office shall report annually to the SHPO and the State Office, a
 47 summary of activities carried out under this amendment to the Protocol during the previous
 48 fiscal year. The reporting shall be included in the Protocol Annual Report.

1 V. Revision and Termination

2

3 The parties to this Amendment shall review the terms of this Amendment during scheduled
4 reviews of the Statewide Protocol Agreement in order to determine whether continuation,
5 revision, or termination is appropriate. Any party may propose revisions or terminate this
6 Amendment by providing 90 days notice of the intent to terminate; all parties to this
7 Amendment shall enter active negotiations to avoid termination.

8

9 This Amendment shall expire and have no further force or effect at midnight of the fifth
10 anniversary of the Amendment's date of execution unless continuation for a specific period
11 is mutually agreed between all parties.

12

1 STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, CALIFORNIA

2
3
4 James Wesley Annett

5
6 ~~for~~ By Mike Pool Date: 9/5/08

8
9 STATE HISTORIC PRESERVATION OFFICER, CALIFORNIA

10
11
12 Milford Wayne Donaldson

13
14 By Milford Wayne Donaldson, FAIA Date: 10 SEP 2008

15
16
17
18 STATE HISTORIC PRESERVATION OFFICER, NEVADA

19
20 Allen M. Baldric, Deputy, for

21
22
23 By Ronald M. James Date: 9/17/08

24

K.2.4.5 Colorado Protocol

**STATE PROTOCOL AGREEMENT BETWEEN
THE COLORADO STATE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT
[BLM] AND THE COLORADO 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 [NHPA] AND THE NATIONAL PROGRAMMATIC
AGREEMENT [NPA] AMONG THE BLM, THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION [COUNCIL], AND THE NATIONAL CONFERENCE OF STATE
HISTORIC PRESERVATION OFFICERS [NCSHPO]**

I. INTRODUCTION

A. This Protocol Agreement [Protocol] supplements the NPA, and describes how the Colorado SHPO and the BLM will interact. The goal of this Protocol is to improve the management of cultural resources on BLM lands in Colorado and those that might be affected by BLM's actions.

B. " Undertakings" are actions assisted, licensed, permitted, approved, funded, or authorized by BLM, as defined in the Code of Federal Regulations [36 CFR 800.2(o)]. Undertakings for which BLM is considered the lead agent, whether or not they involve federal lands, are federal actions and subject to this Protocol.

II. RELATIONSHIP OF THIS PROTOCOL WITH OTHER AGREEMENTS, LAWS AND REGULATIONS

A. This Protocol substitutes for Sections 106, 110, 111(a) and 112 (a) of the NHPA. It also replaces the 1987 Colorado "Programmatic Agreement Among U.S. Department of the Interior, Bureau of Land Management, Colorado, and Advisory Council on Historic Preservation" [CPA], which is terminated.

B. SHPO and BLM agree that:

(1) BLM conducts programs and carries out specific undertakings that involve land disturbance and modification of the built and natural environments, and;

(2) BLM is legally responsible for carrying out undertakings consistent with the NHPA and the National Environmental Policy Act [NEPA], and that;

(3) If any BLM office in Colorado fails to follow the process set forth in this Protocol, it will follow the procedures detailed in 36 CFR 800 regarding individual undertakings. Those procedures will remain in effect until a resolution is reached. Dispute resolution procedures are detailed in Section XII (A) below.

(4) The following procedures will be implemented by the BLM to fulfill its responsibilities mandated by the above-mentioned laws and regulations.

III. ADMINISTRATIVE INTERACTION AND REPORT PROCEDURES

A. Reports . All reports will be distributed to the BLM and SHPO.

(1) BLM will send cultural resource project logs (Attachment A) and NEPA logs to the SHPO at the time BLM prepares its annual report to Congress, usually in November or December.

(2) By June 30th of each year, BLM will prepare an annual summary report (Attachment B) that describes the implemented actions taken in the previous fiscal year and actions that are anticipated in the coming fiscal year. This report will include information detailed in Attachment B.

(3) By July 30th of each year, the SHPO will prepare a report that assesses the effectiveness of BLM's implementation of this Protocol and makes recommendations for actions to be taken by BLM. The BLM will consider SHPO's assessments and recommendations for future actions and will apply them to the plan for the following fiscal year, as appropriate. If SHPO is not satisfied with BLM's response, dispute resolution procedures [Section XII (A), below] may be followed.

B. Meetings .

(1) The SHPO, a BLM line manager (or the BLM Colorado State Director, if possible), BLM's Deputy Preservation Officer [DPO] for Colorado, and representatives of the BLM Colorado Cultural Resources Matrix Team will meet annually, no later than September 30, or more often as needed, to discuss pertinent issues. The Council will be invited to participate. At the August meeting, the SHPO and BLM will exchange information relevant to the goals and objectives set forth in this Protocol.

(2) Other meetings to address emerging issues and their effects on cultural resources may be arranged as necessary.

(3) Within six months after signing, BLM and SHPO will meet to review the implementation of this Protocol.

IV. SHPO INVOLVEMENT IN BLM PLANNING PROCESSES

BLM shall provide the SHPO the opportunity to participate at the development stage and all subsequent phases of land use planning in accordance with 43 CFR 1610.3 (Coordination with Other Federal Agencies, State and Local Governments, and Indian Tribes). BLM will provide the SHPO with all land management plans (e.g., Resource Management Plans, Cultural Resource Management Plans), special use plans (e.g., Fire Management Plans) and appropriate NEPA documents. Such plans will document methods to gain public input.

V. COOPERATIVE PROGRAM DEVELOPMENT AND ACTIVITIES

A. Shared Database and Information Management .

(1) SHPO and BLM will improve the exchange of information regarding the location and evaluation of cultural resources. Each agency will assure that such locational information is protected from unauthorized use.

(2) Cultural resources information exchange between BLM and SHPO will be through an automated database, managed by the SHPO. BLM will assist the SHPO in developing the system by providing financial, personnel, hardware and software resources, as funding becomes available.

(3) The SHPO will incorporate the results of BLM cultural resources inventories into the database as the results are produced, and will make the data available in order to update the statewide historic contexts.

(4) A review and analysis of the database status will be performed by BLM and SHPO annually, in time for the August meeting.

(5) The SHPO will provide the BLM with automated cultural resources information and with reasonable amounts of hard copy information not yet available in the database. Charges may be assessed by the SHPO and are subject to negotiation at the annual August meeting.

B. State-Level Historic Preservation Training .

The SHPO will be offered the opportunity to assist the BLM in on-going training of field managers and supervisors, as well as of cultural heritage specialists, for certification purposes. Training resources might include, but are not limited to: the BLM Colorado "Handbook For Cultural Resource Inventory, Evaluation and Mitigation" [Handbook], planning documents, and Colorado historic context documents. Review of training needs will occur on a yearly basis and will be conducted by the SHPO and BLM, in time for discussion at the annual meeting.

C. Public Outreach and Participation .

(1) BLM will develop and implement plans in support of public education and community outreach, along with cooperative stewardship and site protection, in consultation with SHPO. BLM will strive to develop at least one of these plans each year.

(2) BLM will seek and consider the views of the public when carrying out the actions under the terms of this Protocol. BLM may coordinate this public participation requirement with those of the NEPA and the Federal Land Policy and Management Act of 1976 [FLPMA], along with other pertinent statutes. Interested parties shall be invited to consult in the review process [Section VIII (C) below] if they have interests in the effect of a BLM undertaking on cultural resources.

(3) Interested parties may include local governments, especially those with historic preservation ordinances or resolutions (Attachment C); grantees, permittees, or owners of affected lands or land surfaces; Indian Tribes; and other interested parties, as determined by the BLM and SHPO.

VI. NATIVE AMERICAN PARTICIPATION

BLM will comply with relevant sections of the NHPA, American Indian Religious Freedom Act [AIRFA], and the Native American Graves Protection Act [NAGPRA] if a property or project is subject to those laws. BLM will seek and consider the views of an Indian tribe that is able to demonstrate a cultural affiliation with Colorado cultural resources within project's area of potential effects (APE).

VII. IDENTIFICATION AND EVALUATION OF CULTURAL RESOURCES

A. Identification .

BLM will identify all historic properties and sacred sites on all lands within Colorado that are within the APE of a BLM undertaking. BLM will ensure that the identification of cultural resources is conducted in accordance with professional standards detailed in the Secretary of the Interior's Standards and Guidelines [Secretary's Standards] and the Handbook.

B. Determinations of Eligibility and of Effect (Evaluation) .

(1) For routine undertakings, BLM will make determinations of eligibility according to criteria listed in 36 CFR Part 60.4 and determinations of effect according to 36 CFR 800.9 without consulting SHPO, except in certain instances [Section VIII (C)(2)(a), below]. When necessary, BLM will confer with SHPO if questions about eligibility and/or effect arise.

(2) During all inventories, BLM will ensure that cultural resources are evaluated in a manner consistent with the criteria cited above in Section VII (B)(1), as well as the Secretary's Standards, the Colorado historic context documents, BLM's 8100 manuals, appropriate National Register bulletins, and the Handbook.

(3) As appropriate, BLM will invite interested parties to consult.

VIII. REPORTING AND SHPO REVIEW PARAMETERS

A. Timing of Undertaking Implementation .

(1) BLM shall complete the inventory, evaluation and assessment of effects of cultural resources, along with the placement of written documentation of these findings in BLM's files, before proceeding with undertaking implementation.

(2) Most of BLM's undertakings [except those listed below in Section VIII (C)(2)(a)] are routine in nature, and will normally be permitted to proceed without SHPO review of **formal** documentation. Formal documentation is defined as final versions of reports and Colorado Office of Archaeology and Historic Preservation [OAHP] site and isolated find forms [site forms]. BLM will confer with SHPO in cases where there is any uncertainty.

B. Reporting .

(1) Quality Assurance .

(a) BLM will provide documentation in the form of complete and accurate site forms, Limited Results Survey Reports, or full-length inventory reports, as appropriate, to the SHPO, for all undertakings. BLM will ensure that Colorado State Report Guidelines [State Guidelines] and the Secretary's Standards are met in all documentation produced in-house.

(b) BLM will review the work of permitted contractors and will ensure that State Guidelines and the Secretary's Standards are met in all documentation prepared by contractors.

(c) Only qualified cultural heritage specialists will make determinations of eligibility and effect, and those individuals making determinations shall be identified in reports sent to SHPO.

(2) Timing of Documentation Submission .

(a) Formal documentation [as defined above in Section VII A (2)] should be submitted to the SHPO's office at the time BLM gives an undertaking notice to proceed, but not later than **three months** following completion of the fieldwork. Prompt transmission of this documentation will assure an updated database and will prevent future development of backlogs. If a final report will not arrive at the SHPO's office within the three month deadline, the BLM will notify the SHPO in writing, and will include in the correspondence a plan for completion and the expected date of submission.

(b) Backlog documentation [backlog] is defined as outstanding site forms, inventory reports and treatment reports in BLM's files that predates the implementation of this Protocol. All backlog will be submitted to the SHPO within twelve months of the Protocol signature date. If the documentation will not arrive at the SHPO's office before the deadline, BLM will notify SHPO in writing, and

will include in the correspondence a plan for completion and the expected date of submission. Mutually acceptable progress toward elimination of the backlog is a condition of continuing field office certification.

C. Review Processes .

(1) Routine Undertakings .

Except in the case of consultation thresholds listed below in Section VIII (C)(2)(a), an informational letter (Attachment D, informational) will accompany all final, formal BLM documentation that is sent to SHPO. If necessary, SHPO may comment, in writing, on BLM's findings. The BLM will respond, in writing, to any SHPO comments. Both parties will include such comments and responses in the annual report that assesses effectiveness of the Protocol.

(2) Exceptions .

(a) Consultation Thresholds . BLM will consult with SHPO on determinations of eligibility, [except when determinations have already been made, as under (1) (b) and (2) (b) below], of effect, and of treatment; and will consult with Council on determinations of effect and of treatment.

(1) SHPO and Council Review . BLM will conduct consultation with both SHPO and Council in the following situations:

- (a) non-routine interstate and/or interagency projects or programs
- (b) undertakings affecting National Historic Landmarks or National Register eligible or listed properties of national significance
- (c) undertakings that are determined by BLM, the SHPO or the Council to be highly controversial (e.g., undertakings which have the potential to affect significant cultural resources and that receive unusual public attention and/or involve conflict)

(2) SHPO Review . BLM will conduct consultation with SHPO only, in the following situations:

- (a) land exchanges, land sales, Recreation and Public Purpose leases, and transfers
- (b) undertakings affecting National Register eligible or listed properties
- (c) when BLM professional staff lack the appropriate regional experience or professional expertise, and until performance is mutually acceptable to the BLM DPO and SHPO
- (d) when BLM's cultural heritage specialists wish to bring a particular project to the attention of SHPO

(b) Consultation Processes.

(1) SHPO Consultation Only .

(a) BLM will submit formal documentation, as defined in Section VIII (A)(2) above, to SHPO, along with a letter requesting concurrence with its determinations of eligibility and of effect (Attachment D, concurrence).

(b) SHPO will have ten (10) working days to respond to BLM. If SHPO agrees with BLM, BLM will allow the undertaking to proceed.

(c) If SHPO disagrees with BLM, procedures for resolving disagreements of eligibility and effect, detailed below in Section VIII (C)(4), will be followed.

(2) SHPO and Council Consultation

(a) BLM will submit formal documentation, as defined in Section VIII (A)(2) above, to SHPO, along with a letter requesting concurrence with its determinations of eligibility and of effect (Attachment D, concurrence).

(b) SHPO will have ten (10) working days to respond to BLM.

(c) Once BLM receives SHPO's decision, it will forward all formal documentation, along with a copy of the concurrence letter signed by both BLM and SHPO and a cover letter asking for Council review to Council.

(d) Council will have 30 working days to respond to BLM and SHPO.

(3) Treatment

(a) If a property, group of properties, or class of properties that have been determined eligible for inclusion in the National Register of Historic Places [NRHP] will be affected by an undertaking, BLM will determine, in consultation with SHPO, whether a Memorandum of Agreement [MOA] or a Treatment Plan is appropriate, and will document this determination in the concurrence letter (Attachment D, concurrence).

(b) Treatment Plans or MOAs will take into account national policies set forth in Section 2 of NHPA, the Secretary's Standards, the Council's "Treatment of Archaeological Properties: A Handbook", and "Preparing Agreement Documents".

(c) BLM and SHPO will jointly prepare MOAs. Following submission of a first draft by BLM to SHPO, SHPO will have ten (10) working days to comment. After BLM receives SHPO's comments, it will have ten (10) working days to respond. The ten-working-day comment periods will continue in this fashion until final agreement is reached.

(d) Following the preparation of a treatment plan, BLM will submit it to SHPO. SHPO will have ten (10) working days in which to comment.

(4) Resolving Disagreements about Project Eligibility, Effect and Treatment

(a) If, after its first ten-working-day review, SHPO disagrees with BLM on determinations of eligibility, effect or treatment, the two parties will attempt to resolve the issue(s) over the following ten (10) working days (see flow chart in Attachment E).

(b) If the Field Office manager and SHPO are unable to resolve their disagreement after the second ten-day period, they will negotiate a course of action and a timeframe for resolution.

(c) If BLM and SHPO cannot agree on a course of action and a timeframe, BLM will request the Colorado DPO, acting on behalf of the Preservation Board [Board], to attempt to resolve the issue with SHPO during a ten-working day period.

(d) If the Colorado DPO and SHPO still cannot agree, the parties will suspend operation of the national PA and protocol and will consult under provisions of 36 CFR 800.

IX. BLM REVIEWS AND SHPO MONITORING

A. BLM Review .

BLM's Deputy Preservation Officer will conduct reviews of each field office (Attachment F), at least annually, in sufficient detail, to determine:

- (1) whether qualified cultural heritage specialists are available;
- (2) whether undertakings are receiving cultural resource consideration;
- (3) whether project documentation is completed and is being sent to SHPO in a timely manner (three months unless there is an agreement with SHPO in place);
- (4) whether cultural heritage specialists are making accurate professional judgements;
- (5) whether cultural resource identification, evaluation and treatment has occurred before undertakings proceed;
- (6) whether final reports of treatment are being completed and sent to the SHPO;
- (7) whether follow-up monitoring, where required by avoidance stipulations, MOA or treatment plan specifications, is being completed.

B. SHPO Monitoring.

The SHPO may monitor BLM's activities pursuant to this Protocol through field visits and inspection of records. The BLM will cooperate with the SHPO's monitoring activities.

X. DISCOVERIES

(A) In the event that potentially eligible cultural resources are discovered during the course of ground disturbance and cannot be avoided, work in the immediate vicinity of the discovery will cease.

(B) BLM will ensure that the cultural resources are protected from further disturbance until decisions about treatment are made and treatment is completed.

(C) Within 48 hours of the discovery, BLM will evaluate the site and, in consultation with the SHPO, select the appropriate mitigation option. The BLM will implement the mitigation in a timely manner.

(D) The process will be fully documented (in reports, site forms and photographs), and the documentation will be forwarded to the SHPO. Large-scale projects will include a discovery process in the treatment plan.

XI. STAFFING

A. Professional Qualifications .

(1) BLM will strive to meet the Secretary's Standards for Historic Preservation Professionals consistent with Office of Personnel Management guidance and section 112 of the National Historic Preservation Act, while giving full value to on-the-job experience.

(2) If a BLM office does not have a full-time, permanent cultural heritage specialist on staff, it must have access to a cultural heritage specialist who has been certified to operate under this protocol and an approved plan that outlines how the work will be accomplished. The plan will be approved and closely monitored by the Colorado DPO. If there is no full-time, permanent cultural heritage specialist on staff and no plan, the office will be at risk of being de-certified and therefore will operate under 36 CFR 800 procedures and timeframes.

B. Certification .

- (1) BLM-Colorado will ensure that expertise in prehistoric archaeology, historic archaeology, industrial archaeology, history, architectural history, historic architecture, Native American coordination, public outreach/heritage education and Traditional Cultural Properties (identification, evaluation and treatment) is available to all BLM-Colorado cultural heritage specialists.
- (2) If BLM determines that it does not employ a cultural heritage specialist with a particular skill, it will obtain that expertise for the purpose of determining National Register eligibility, effects, and treatment for the cultural resources in question. The BLM may request the assistance of SHPO staff in such cases or may obtain the necessary expertise through contracts, BLM cultural heritage specialists from other offices, or cooperative arrangements with other agencies. If a particular BLM office seeks help from another BLM office, from the SHPO, from the Anasazi Heritage Center, or from other experts, this does not imply that certification is at risk.
- (3) When personnel changes occur, e.g., cultural heritage specialists or managers leave, and until positions are filled and training [as discussed below in (4)] is completed, the BLM field manager will ensure and document that qualified cultural heritage specialists are available to conduct the tasks outlined in this Protocol. If decertification is a possibility, the procedures in Section 8 of the NPA will be followed.
- (4) Certification training for new field managers and cultural heritage specialists will include, at a minimum, the NPA, the Protocol, and a review of the Handbook.
- (5) The qualifications of cultural heritage specialists will be reviewed by the DPO and SHPO to determine whether any on-the-job training, mentoring, or additional experience is necessary before the cultural heritage specialist is qualified to make determinations of eligibility and effect. The recommendations will be presented to the Colorado BLM State Management Team for review and approval.
- (6) The BLM Board, in consultation with SHPO, will certify that each field office has a full-time, permanent cultural heritage specialist on staff:
 - (a) capable of carrying out the historic preservation responsibilities described in this Protocol; and
 - (b) trained as specified under Stipulation V B.

If the Board determines that a field office lacks such a staff person, it will document to SHPO that office's access to a qualified cultural heritage specialist who has been certified by the Board, pursuant to Stipulation XI A (2). The Board will also certify, in consultation with SHPO, that BLM has available to all of its Colorado cultural heritage staff the various kinds of expertise specified in Stipulation XI B (1). BLM shall make use of partnership opportunities with other

agencies to provide expertise in such fields. In addition, BLM shall make available to its Colorado cultural heritage staff opportunities for continued professional development through classes, mentoring, and participation in state and national organizations such as the Colorado Council of Professional Archaeologists, the Society for American Archaeology, and the Register of Professional Archaeologists.

(7) SHPO will evaluate the field offices' determinations of eligibility and effect under this Protocol as described in Attachment G.

C. Para-Archaeologists .

(1) Para-archaeologists will work only under the supervision of a qualified cultural heritage specialist. The use of para-archaeologists will be at the discretion of the cultural heritage specialist.

(2) Para-archaeologists will not substitute for cultural heritage specialists when the specialists are absent, nor will para-archaeologists be considered adequate replacements for seasonal or term employees.

(3) Para-archaeologists will not conduct cultural resources inventories for undertakings with which they have direct involvement (e.g., which they have sponsored, for which they are a team leader). Exceptions are at the discretion of the cultural heritage specialist.

(4) Inventories conducted by para-archaeologists will

(a) Not exceed ten acres in a block inventory or two linear miles in a corridor survey.

(b) Not include recording of sites. Whether individual para-archaeologists will record isolated finds is at the discretion of the cultural heritage specialist.

(5) Individuals wishing to serve as para-archaeologists will apply for and be accepted as para-archaeologists at the discretion of the cultural heritage specialist.

(6) All prospective para-archaeologists are required to undergo 40 hours of classroom and field training along with 40 hours of supervised field experience.

(7) Para-archaeologists will be reviewed annually by the cultural heritage specialist to determine whether a refresher course is needed.

(8) A statement of ethics will be reviewed and signed annually by the para-archaeologist. BLM will not tolerate abuse of the para-archaeology program. Para-archaeologists that violate these guidelines or exhibit unethical behavior will be immediately de-certified and will not be reinstated.

XII. PROTOCOL DISPUTE RESOLUTION PROCEDURES, AMENDMENTS, AND TERMINATION

A. Protocol Dispute Resolution Procedures .

- (1) Should the BLM or the SHPO object, in writing, within thirty (30) working days, to an action taken by the other party to this Protocol, they will consult to resolve the objection.
- (2) If the dispute cannot be resolved, BLM and SHPO will mutually determine a course of action. Options might include consultation with the National Board, the Council or alternative dispute resolution procedures.
- (3) If alternative arrangements are not mutually agreeable, the dispute will be referred to Council. BLM and SHPO will abide by the decision of Council.
- (4) If a member of the public wishes to object to a BLM action, they will follow standard Interior Board of Land Appeals [IBLA] procedures.

B. Protocol Amendments .

The BLM or the SHPO may request amendment of this Protocol at any time, whereupon the parties will consult to consider such amendment. Amendments will become effective upon signature of both parties and will be attached to this protocol.

C. Protocol Termination .

- (1) BLM or SHPO may terminate this Protocol by providing ninety (90) days written notice to the other party, as long as the parties consult during this period to seek agreement on amendments or other actions that would avoid termination. Either may request the assistance of the State Director, the Board, and/or Council.
- (2) In the event of termination, the BLM will operate under the provisions of 36 CFR Part 800.

XIII. OTHER STATE-SPECIFIC PROCEDURES

BLM will follow procedures and adhere to policies detailed in the Handbook and other supplemental manual guidance, along with SHPO Cultural Resource Report Guidelines. BLM and SHPO will jointly develop and revise handbooks and other guidance as necessary

XIV. ATTACHMENTS

Attachments may be added to this Protocol with the mutual approval of the SHPO and the BLM. Referenced attachments are:

- A. Example Cultural Resource Project Log Page

- B. Outline of Topics Covered in Colorado BLM/SHPO Annual Report
- C. Entities with Historic Preservation Ordinances and Certified Local Governments, Etc.
- D. Letters
- E. Flow Chart Illustrating Process for Resolving Disagreements about Eligibility, Effect and Treatment
- F. BLM Review Form
- G. SHPO Evaluation of BLM Determinations

BUREAU OF LAND MANAGEMENT

By Ann Morgan, Colorado State Director Date
/s/ 4/29/98
COLORADO STATE HISTORIC PRESERVATION OFFICER

By James Hartmann, Colorado State Historic Preservation Officer Date
/s/ 4/28/98

**Addendum 1 to the Colorado Protocol:
Section 106 Requirements For
Comprehensive Travel and Transportation Management Planning**

Background

As part of its comprehensive travel and transportation management planning program (CTTM), the Bureau of Land Management (BLM) is required to designate travel management routes and areas on public lands as open, limited, or closed to off-highway vehicle (OHV) use (as required by Executive Order 11644 ((as amended by Executive Order 11989) and regulation (43 CFR Part 8340)) and other travel use in every land use plan (LUP). CTTM planning considers both motorized and non-motorized travel, such as, OHV's, horseback riding, biking, and hiking.

Absent designation, routes and areas are subject to uncontrolled travel. Designation of routes and travel network areas generally has the beneficial effect of controlling impacts of travel on public lands, including on cultural resources. Designation provides a purposefully designed and clearly delineated travel network, reduces the potential for user caused route proliferation, and facilitates travel management and law enforcement. 43 CFR Part 8340 authorizes the closure of routes and areas to the types of OHV travel that have caused or may cause adverse effects to cultural resources. In addition, route designations prohibit indiscriminate cross-country travel that may cause adverse impacts to cultural resources.

Purpose

The closure and reduction of unmanaged cross-country travel is intended to protect cultural resources across a broad landscape. It is in the interest of cultural resource protection to complete the designation process as soon as possible. Most existing routes are user-created and have not been inventoried for cultural resources and the effects to them are not well documented. Because of the large number of existing and new routes and areas that will be designated by each planning effort, a phased identification effort is needed to complete BLM Section 106 responsibilities pursuant to 36 CFR 800.4 (b)(2). This phased identification effort is integrated into three steps of CMMT: planning, route development, and route maintenance.

This Addendum replaces two Programmatic Agreements (PA's) regarding travel management in the Royal Gorge Field Office (RGFO) and the Kremmling Field Office (KFO). The signatories of the PA for the RGFO includes the BLM, Colorado State Historic Preservation Office (SHPO), the Advisory Council on Historic Preservation (ACHP) with the Comanche as a concurring party initiated on June 3, 2003. The PA for the KFO includes the BLM and the SHPO with the Southern Ute as a concurring party initiated on January 11, 2005. Both PA's will be terminated on the effective date of this Addendum following the procedures in these agreements. BLM will notify all signatories of the PA's of the termination and the implementation of this Addendum.

Development of Planning Alternatives:

Selection of specific route networks and imposition of other use limitations, will avoid impacts on cultural resources where possible. In accordance with 43 CFR 8342, existing cultural resource information must be considered when choosing among the range of alternatives for the design of a planning area travel system, including the potential impacts on cultural resources when determining whether each of the routes or areas in a planning area should be designated as open, limited, or closed. Eligible and potentially eligible (need data) cultural resource sites may be protected through rerouting, excavation of archaeological resources, limitations on vehicle type and time or season of travel, closure, and other less common mitigation strategies. Evaluation of routes or areas to be designated as closed to protect cultural resources should be based on existing inventory information and should not be postponed until additional information is acquired.

Plan Development, Maintenance and Modification

A BLM cultural resource specialist will be involved *throughout* the planning process and on any team working on periodic plan maintenance or on a plan amendment. Cultural resource inventory and monitoring information, gathered after a plan is approved, maintained, or amended, should be used to review and update the route network as necessary in any plan maintenance or plan amendment process.

Compliance with Section 106

Designation of routes and areas are considered undertakings for the purposes of Section 106 of the National Historic Preservation Act (NHPA). The signing of existing routes – does not include the construction of kiosks or other structures being used to hold information – is not considered an undertaking under NHPA. Route and area designation is considered a non-routine undertaking under the Colorado Protocol because of the magnitude and scope of this action and requires an addendum to the Protocol to address these requirements. Given the nature and potential adverse effects to historic properties from the designation of routes and areas in planning documents, Section 106 compliance for these undertakings will be accomplished as described below.

Area of Potential Effect (APE)

The APE includes a corridor that extends at least 50 feet on both sides of the centerline of the road or trail. A 300-foot use corridor will be used when parking, camping and staging areas are allowed adjacent to roads. Additional areas may be inventoried when the cultural resource specialist believes alterations in trails or roads, or changes in their use, may result in indirect impacts, such as vandalism, to cultural resources. Nickens, Tucker and Larralde (1981), *A Survey of Vandalism To Archaeological Resources in Southwestern Colorado*, provides useful information about the potential for vandalism and other indirect impacts to cultural resources from road access. This publication is accessible at http://www.blm.gov/heritage/adventures/research/StatePages/CO_pubs.html

Inventory Requirements

Three principal guidelines will be followed:

- Proposed designations that allow continued use of existing routes and keep an open area open may have adverse effects to cultural resources. When the BLM cultural resource specialist determines that existing information reveals areas where adverse effects to cultural resources have occurred, are occurring, or have a reasonable expectation of occurring from travel, some degree of Class III inventory in the APE will be required.
- Proposed designations that impose new limitations on an existing route, close an open area or travel route and keep a closed area closed are unlikely to adversely affect cultural resources. No further field inventory of these routes and areas is required.
- Proposed designations of new routes or areas as open to travel are subject to Section 106 compliance in the same manner as any undertaking. Class III inventory in the APE is required **prior to designation** of new routes or areas as open to travel, and for new locations proposed as camping areas, staging areas or similar areas of concentrated travel.

Phases of Identification:

- Phase 1: Planning: This phase primarily involves using existing information to identify the field inventory needs for designated routes or areas and for route closures in the APE. The plan implementation schedule will identify field inventory needs, needed funding and the schedule of completion. The plan will reference this addendum.
- Phase 2: Route development: This phase involves the Class III inventory of most designated routes scheduled for inventory in the APE.
- Phase 3: Route maintenance: This phase involves the Class III inventory of the lowest priority designated routes scheduled for inventory in the APE.

Existing cultural resource information: Every new, revised and amended LUP must incorporate sufficient information to identify the nature and importance of all cultural resources known or expected in the LUP area. Where this information is lacking or out of date, the LUP Preparation Plan should include provision for developing or revising this information as part of the overall plan development, revision, or amendment process. Cultural resource information from the planning area's Class I overview, or existing cultural resources records search and literature review, will be considered when choosing among the range of possibilities in designing a planning area travel system for proposed designation.

The records search and literature review will include the field office and the SHPO database and records, information from the most recent regional overview for the field

office, the statewide context documents, and knowledge of the cultural resource specialist.

Field Inventory: Field inventory requirements, priorities and strategies will vary depending on the nature and potential effect of the proposed travel activity and associated use levels (See Definition section) and the expected density and nature of cultural resources based on existing cultural resource information.

Federal interstate highways and State highways (primary and secondary) are not included here because Section 106 actions are the responsibility of the Federal Highway Administration, as implemented by the Colorado State Department of Transportation.

Existing routes that have been regularly maintained (Types 3A-C) do not require field inventory. [See Definitions section]

Existing routes that have not been regularly maintained (Types 4-6F) require further field inventory. [See Definitions section]

Class II inventory will be conducted on designated routes and areas in the APE that allow continued use of an existing route and keep an open area open. Class II inventory will require field visitation of known "need data" and eligible cultural resources located within or immediately adjacent to existing routes. Also, Class III inventory will be conducted on an existing route or routes in the APE that best represents the topographical/vegetation variation in the travel management area. Inventory will include the documentation of impacts from travel and the need for further Class III inventory.

Class III field inventory will be conducted in the APE for the following undertakings: (1) some designated routes and areas that allow continued use of an existing route and keep an open area open based on the results of Class II inventory, (2) all new construction of routes and the maintenance of route types 4-6F located either in the footprint or outside the footprint, such as, drainage pitch-out, culvert replacement, cattle-guard placement, facility maintenance, and restoration, and (3) route closure actions that disturb the ground both in and outside the existing route footprint. Closure actions that only impact the disturbed surface, such as hand-brushing actions, are considered to have no effect on cultural resources. Class III inventory will follow the standards identified in the Colorado Handbook of Guidelines and Procedures for Identification, Evaluation, and Mitigation of Cultural Resources – Chapter 3 (1998) attached to the Colorado Protocol.

Adverse Effects

For all adverse effects to historic properties, the cultural resource specialist will follow the evaluation, treatment, mitigation, and reporting procedures outlined in the Colorado Protocol.

Monitoring

Areas and routes that are designated open to travel in the APE will be monitored for impacts to resources, and a BLM cultural resource specialist will be included on the team

responsible for developing and implementing the monitoring standards and process. The monitoring standards and process will consider the intensity and type of travel, the density and sensitivity of cultural resources, and the potential for adverse indirect and cumulative impacts, including route proliferation. When monitoring identifies adverse effects to cultural resources from route or area designation, the decision record should make it clear which mitigation actions will be taken, and when they should be taken, in order to minimize additional environmental analysis required prior to implementation.

Monitoring will be based on the schedule identified in each plan. The BLM cultural resource specialist, as part of the monitoring team, will identify an appropriate monitoring schedule for cultural resources. The monitoring results will be reported to the SHPO in the annual report required under the Protocol. Any changes in monitoring will be identified and agreed to at the annual meeting with the SHPO on the Protocol and implemented upon an agreed time frame.

Emergencies

All travel management is subject to prohibitions against operation of vehicles on public lands in a reckless, careless, or negligent manner; and in excess of established speeds or in a manner causing or likely to cause undue damage to cultural and other resources. Where an authorized officer determines that OHVs are causing or likely to cause adverse effects to cultural resources, 43 CFR 8342 requires immediate closure to the type or types of vehicles causing the adverse effect until the adverse effects are eliminated and measures implemented to prevent recurrence. Field inventory is not required prior to the emergency closure.

The Authorized Officer will notify the SHPO and other consulting parties by telephone within 48 hours and identify the steps being taken to address the emergency, describe the discovered cultural resource and its significance, and describe the emergency work and potential adverse effects on the discovery. Consultation will begin as soon as possible after notification to determine what mitigation measures are needed. Within 30 days following this notification, the Authorized Officer will document to the SHPO and consulting parties the actions taken to minimize effects and the work's present status. The results of mitigation will be fully documented in reports, site forms and photographs meeting the requirements in the Protocol. The documentation will be forwarded to the SHPO in accordance with the timetables established in Section X of the Protocol.

Discoveries

Discoveries may be identified during implementation and monitoring and will follow the procedures identified in Section X of the Colorado Protocol. Work in the immediate area of the discovery will cease until the discovery has been evaluated pursuant to Section VII of the Colorado Protocol. This may require the closure of the route until mitigation is completed. Within 48 hours of the discovery the SHPO and consulting parties will be notified of the discovery, and consultation will begin to determine an appropriate mitigation measure. BLM will ensure that the discovery is protected from further disturbance until mitigation is completed.

Pursuant to 43CFR10.4(g), the BLM authorized officer must be notified, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43CFR10.4 (c) and (d), activities must stop in the vicinity of the discovery and the discovery must be protected for 30 days or until notified to proceed by the authorized officer. All reasonable measures will be taken to resolve any issues regarding affiliation and disposition of discovered remains within a 30 calendar day period beginning with the agency certification of initial notification.

For Native American human remains and associated cultural items discovered on Federal land, the BLM will meet the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) for all inadvertent discoveries and discovery situations on a case-by-case basis in accordance with 43 CFR 10. For all other human remains and associated artifacts, the procedures identified in the 1989 Guidelines, Colorado Inadvertent Burial Discovery Procedures will be followed.

Consultation

Consultation with the SHPO and affected Tribes is required for all planning efforts and, as necessary, with other consulting parties. The SHPO will be consulted during planning and invited to participate in the development and implementation of identification, monitoring, and treatment options. The planning team will consult with potentially affected Tribes to solicit concerns relative to planning options and to ensure that appropriate identification and treatment options are developed and implemented during or after the planning effort. Consistent with BLM Manual 8120 and Handbook H-8120-1, additional consultation may be required for specific planning decisions and project implementation.

Funding

Route and area designation is an undertaking initiated by the planning program. The cultural resource program provides administrative support from the BLM cultural resource specialist during the planning effort. This work includes conducting the needed records and literature search and providing the input for all National Environmental Policy Act documentation. The planning program can assist with costs associated with consultation and Class I overviews.

Benefiting programs are expected to fund most cultural resource needs during development and maintenance phases to accomplish the field inventory and other needed work to satisfy BLMs requirements under Section 106 of NHPA and the Colorado Protocol. The cultural resource program can fund cultural resource work in areas and on sites that are identified in the State Strategic Plan as high priority for proactive inventory and for protection of "at-risk" cultural resources. These accomplishments are reportable under the cultural resource program elements identified in the Management Information System database.

CO-010-10-0012
10/26/10

Definitions

Route types (based on typology used by the engineering program):

- [1]-[2]: Federal interstate highways, and State highways (primary and secondary).
- [3A-3B]: BLM regularly maintained road (light-duty/constructed/gravel and paved).
- [3C]: BLM regularly maintained road (light-duty/constructed/dirt).
- [4]: BLM not-regularly-maintained road (primitive/constructed).
- [5]: BLM not-regularly-maintained road (primitive/user-created).
- [6A-B]: BLM motorized trail (single and double track/ATV, motorcycles).
- [6C-F]: BLM non-motorized road and trail (single track/foot, horse, mountain bike).
- [7]: BLM closed road

Use Levels (based on terms commonly used in travel management planning):

Decreased Use: This reduces the current use level by lowering the number and density of existing routes.

Maintain Current Use: This maintains the existing number and density of existing routes.

Increased Use: This may include a low increase (a small increase in the number of routes and density) or a high increase (a high number of routes and density).

BUREAU OF LAND MANAGEMENT

Linda M. Anafia, Deputy State Director

10/26/10

Date

COLORADO STATE HISTORIC PRESERVATION OFFICER

Georgianna Contiguglia, State Historic Preservation Officer

October 19, 2010

Date

1
2

K.2.4.6 Nevada Protocol

STATE PROTOCOL AGREEMENT

between

The Bureau of Land Management, Nevada

and

The Nevada State Historic Preservation Office

for

Implementing the National Historic Preservation Act

Finalized October 26, 2009

Please note: Only the Main Protocol through Appendix G are included in this EIS; the other portions of the document may be accessed online at: http://www.blm.gov/pgdata/etc/medialib/blm/nv/cultural/permits.Par.99806.File.dat/State_protocol%20agreement%20amended%20thru%2005.pdf.

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PREAMBLE

The Bureau of Land Management (BLM) has developed a nationwide Programmatic Agreement (National Programmatic Agreement, or NPA, Appendix J of this Protocol) governing the manner in which the Bureau shall meet its responsibilities under the National Historic Preservation Act (NHPA). This State Protocol Agreement (or Protocol) has been developed pursuant to provisions of the NPA.

In carrying out its responsibilities, the BLM has developed policies and procedures through its Cultural Resources Manual (Sections 8100-8170) to guide planning, decision-making, and activities. The Nevada State Office of the Bureau of Land Management (BLM) has professional Cultural Resource staff to advise the BLM's managers and to implement cultural resource policies. It is the intent of this Protocol to provide a process for consistent compliance with Sections 106, 110 and 112 of the NHPA by the BLM. Where referenced, the provisions of 36 Code of Federal Regulations (CFR) 800 (Protection of Historic Properties), effective August 5, 2004, apply; those regulations are included as Appendix L in this Agreement.

This Protocol prescribes the manner in which the BLM and the Nevada State Historic Preservation Office (SHPO) shall cooperatively implement the NPA in Nevada. It is intended to ensure that the BLM organizes its programs to operate efficiently and effectively in accordance with the intent and requirements of the NHPA and NPA, and that the BLM integrates its cultural resource planning and management decisions with other policy and program requirements. The Protocol streamlines the Section 106 process by eliminating case-by-case consultation with the SHPO on undertakings that culminate in no effect or no adverse effect determinations.

This State Protocol Agreement supersedes in all ways the provisions of State Protocol Agreement between the Nevada State Director of the Bureau of Land Management and the Nevada State Historic Preservation Officer, executed on June 4, 1999, which will terminate and have no further force and effect with the last signature on this Protocol. However, undertaking-specific agreements in force at the time of the execution of this Protocol shall continue to function according to their terms.

PURPOSE

This Protocol defines how the SHPO and the BLM will interact under the NPA for implementing the NHPA. The goal of the NPA and this Protocol is a more meaningful and productive partnership between the SHPO and the BLM (the Parties) to enhance cultural resource management on public lands managed by the BLM in Nevada.

The NPA and this Protocol addresses all work done by BLM under provisions of the NHPA, including Section 106, Section 110 and Section 112 in particular.

PART 1. SECTION 106 ACTIVITIES

I. DEFINING AN UNDERTAKING

BLM activities that are undertakings, as defined below, are subject to compliance with Section 106 of the NHPA and this Protocol.

A. Establishing an Undertaking

A qualified BLM Cultural Resource Specialist (CRS) will determine if a planned action is an undertaking subject to compliance with the NHPA. Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of the BLM. Undertakings also include those carried out by or on behalf of BLM; those carried out with BLM's financial assistance; and those requiring a BLM permit, license or approval, after 36 CFR 800.16(y).

1. If a proposed action is not an undertaking, no notice to SHPO is necessary.
2. If a proposed action is determined to be an undertaking and if it has the potential to cause effects on historic properties, assuming that historic properties are present, then it is subject to the provisions of this protocol.
3. If the undertaking does not have the potential to cause effects on historic properties, assuming such historic properties were present, the BLM has no further obligations under Section 106 of the NHPA.

If a disagreement concerning the definition of an undertaking occurs between the CRS and a District- or Field-level manager (Manager), the determination as to whether a planned action is an undertaking will be referred to the Deputy Preservation Officer (DPO), defined in part 2.b of the NPA signed in 1997. The DPO will first discuss the matter with the Manager to determine whether an undertaking exists and will make a recommendation to the Manager. The DPO may discuss the situation informally with the SHPO. If the DPO and Manager cannot agree, the DPO will convey a recommendation to the Deputy State Director for Resources, Lands and Planning (DSD) for a decision. If the DPO and DSD cannot agree, the BLM will consult with SHPO per terms of this Protocol per terms of XIV.A of this Agreement. The State Director will make the final BLM decision following consultation.

B. SHPO Notification of Proposed Undertakings

In the earliest feasible planning stage for any undertaking, BLM will determine the information needed to identify and evaluate historic properties within the Area of Potential Effect (APE). Such determinations will be based on a file search of the SHPO/BLM cultural resource records, aerial photographs, GLO records, BLM land records, resource management plans, project-specific NEPA documents of the proposed project area, available cultural resource planning models, and on information sought and obtained from the SHPO and from interested persons. As needed BLM will gather the necessary information through appropriate levels of inventory or interviews with appropriate members of the public, professionals, and tribal experts. Sites of religious and cultural significance to Native American tribes must be included in determining inventory needs, based on appropriate notification and consultation, as required per BLM Manual 8120 and BLM Handbook H-8120-1, as well as any additional relevant instruction or guidance.

1. Inventory Needs Assessment Form—Electronic Format. A qualified CRS will prepare an Inventory Needs Assessment form (Attachment 1) establishing the inventory and any other appropriate recommendations for the undertaking. The completed form will be forwarded to the responsible Manager or other responsible agency official for approval.

a. One copy of the form will be included in the case file to document the information gathering decision; and

b. One copy of the form will be sent to the SHPO and one copy to the State Office prior to authorizing the undertaking.

c. The SHPO will have two working days from when the completed written form is electronically transmitted by BLM (e.g., via e-mail, via facsimile transmission) to notify BLM via electronic transmittal or by telephone that either:

(1). the SHPO wants to consult on the undertaking, or

(2). the SHPO may provide recommendations within the same electronic transmittal regarding additional parties that might be consulted or inventory recommendations. These recommendations will not require formal consultation unless the CRS and SHPO cannot agree upon an acceptable inventory strategy or the CRS declines to follow the SHPO's recommendations.

d. If the SHPO has not responded by the Close of Business on the second working day, the BLM will assume that the SHPO does not want to consult and will proceed with the undertaking.

e. As other tracking systems come on line and are agreed to by BLM and SHPO, these will be used for the Inventory Needs assessment and SHPO notification process.

f. The format of the Inventory Needs Assessment form is established by the Nevada State Office. District or Field offices may implement modified formats after approval by the Deputy State Director, Resources, Lands and Planning.

2. When BLM delivers a paper version of the Inventory Needs Assessment Form via standard U.S. surface mail when no electronic notification process is available,

a. The distribution will be the same as for the electronic version, including the case file, SHPO and State Office.

b. The SHPO will be allowed five working days from when the form is received to notify BLM that the SHPO wants to consult on the undertaking. The SHPO's response will be made using electronic transmission or telephone whenever BLM's corresponding systems are operative.

c. If SHPO has not responded by the Close of Business on the fifth working day, the BLM will assume that the SHPO does not want to consult and will proceed with the undertaking.

3. Information in the general project case file is available for public inspection and should provide a clear rationale for determinations of the need for inventory or other action. The case file should also be managed to ensure appropriate confidentiality, including withholding of information from disclosure to the public, as necessary to protect the resource (BLM Manual 8110.55).

4. BLM will provide a new notification to SHPO if BLM determines the previous assessment must be updated to reflect significant changes in project location, the kinds of resources expected (including those that exceed BLM's in-house expertise), or important new information.

5. BLM and SHPO will coordinate in developing standards for the electronic format of submissions.

II. UNDERTAKINGS REQUIRING SHPO CONSULTATION

Under the regulations at 36 CFR 800, undertakings are subject to SHPO consultation on identification, eligibility, effect and treatment prior to authorization. This Protocol modifies the process by developing a set of understandings and standard operating procedures (SOPs) that eliminate the need for SHPO consultation prior to authorization in most, but not all, cases. Specifically, the Protocol streamlines the Section 106 process by eliminating case-by-case consultation with the SHPO on undertakings that culminate in no effect or no adverse effect determinations. A determination of adverse effects requires that BLM consult with SHPO per the regulations at 36 CFR 800, as do certain other conditions or situations stipulated below.

A. Required Consultation with SHPO.

BLM will initiate consultation with SHPO on the categories of undertakings shown in II.A.1 to II.A.9, below. BLM will consult with SHPO on the following categories of undertakings to determine whether SHPO wants to be consulted under 36 CFR 800 or SHPO agrees that BLM can utilize this State Protocol Agreement:

1. that involve interstate or interagency projects or programs for which BLM Nevada is the lead Federal Agency;
2. that adversely affect National Register listed or eligible properties;
3. that require an Environmental Impact Statement (EIS);
4. that are phased, segmented or would otherwise require a project-specific Programmatic Agreement (PA) (as specified in Section II B) prior to implementation;
5. when the BLM lacks access to appropriate expertise;
6. that are determined by either party to be beyond the scope of this Protocol;
7. that involve land transfers out of Federal management;
8. when SHPO agrees to consult on an undertaking because SHPO review has been requested by a tribal government, a local government, an applicant for a BLM authorization, a member of the public, or other interested person;

9. where BLM's treatment options for historic properties may be limited due to land status or statutory authority.

B. Undertakings Requiring SHPO Consultation on a Project-Specific Agreement Prior to Authorization

Other agreements will be developed to define project-specific procedures or manage specific undertakings. These include:

1. Multiple Agency and Interstate Undertakings

Undertakings involving other federal agencies or states other than Nevada (except for undertakings on lands in other states managed by BLM Nevada) require a multiple party PA per 36 CFR 800.14 among the involved agencies and the SHPOs from other states to define how the undertaking will be managed to comply with the NHPA.

a. With the agreement of all federal agencies and SHPOs involved, this Protocol will apply when more than one Federal agency is involved in an undertaking and Nevada BLM is the lead agency for NHPA compliance.

(1). Each agency agreeing to follow this Protocol will provide BLM and SHPO with a letter of agreement.

(2). When agencies and/or SHPO cannot agree that a Federal agency will follow the protocol, the affected agency and SHPO will negotiate a separate consultation process within the project-specific PA.

b. When more than one Federal agency is involved in an undertaking, and the BLM is not the lead agency for NHPA compliance, the BLM may agree that the lead agency's procedures will be followed.

(1) The BLM will provide the lead agency and SHPO with a letter of agreement.

c. When agencies intend to deviate from either this protocol, or the lead agency's procedures, or if the agencies cannot agree on whose procedures to follow, the agencies and SHPO will negotiate a PA prior to initiating work on the undertaking.

d. Undertakings on lands in other states managed by BLM Nevada may be processed without a project-specific PA when the BLM state office and SHPO from the other state have certified the relevant BLM Nevada personnel (i.e., CRS, managers) to work in that state.

2. Phased or Segmented Undertakings

The BLM or SHPO may determine that large or complex undertakings should be segmented or phased using an incremental approach to identification, evaluation or treatment.

a. Undertakings that are phased over time or otherwise segmented require a PA among the BLM office(s), SHPO, and other participants prior to initiating work on the undertaking. This applies to undertakings initiated after this Protocol is approved.

b. The BLM and SHPO agree that BLM will conduct appropriate identification and evaluation activities to determine the presence of historic properties in an APE prior to authorizing an undertaking.

c. BLM will also take effects into account prior to authorizing an undertaking and will prepare an appropriate treatment plan prior to initiation of the undertaking. The BLM will ensure that the treatment represented in the plan occurs before historic properties are affected by activities associated with an undertaking.

3. Multiple BLM Office Undertakings

a. Undertakings involving more than one Nevada BLM District or Field office will be reported to the DPO by the lead field office, or by all involved field offices if there is no lead. The DPO will recommend to the Deputy State Director, Resources, Lands and Planning, Nevada State Office (DSD) as to the need for a PA among the involved BLM offices, the State Office, and the SHPO to define how the undertaking will be managed to comply with the NHPA. This determination will be based on factors such as project magnitude, complexity, and the opportunities to achieve improved project management by means of a PA. The DSD will determine the need for a PA and will also determine the timing to initiate field work in relation to development of the PA.

b. As necessary, the DSD will consult with involved Managers to determine the lead office. When a PA has been determined necessary by the Nevada State Office, the lead office will have responsibility for preparation of the agreement.

c. Undertakings involving minor crossings of BLM office boundaries (including, but not limited to seismic surveys, local power lines, small phone lines, and fence lines) and for which one field office is processing the undertaking for all involved field offices and is coordinating cultural resource management decisions among field offices, do not require a project-specific PA. However, these projects must also be identified to the DPO.

4. BLM Office Responsibilities during Preparation of Memorandum of Agreement

a. In efforts to avoid, minimize or mitigate adverse effects to historic properties, BLM will negotiate a memorandum of agreement (MOA) with the SHPO and with other parties as appropriate.

C. Undertakings Not Requiring SHPO Consultation prior to Authorization

1. The BLM and SHPO agree that the BLM's professional cultural resources staff may conduct inventory, develop determinations of eligibility and effect and apply exemptions, without involvement of SHPO, except those specified in Section II.A.

a. When professional staff determinations and recommendations, or recommendations of appropriately qualified permittees or BLM contractors are approved by the appropriate

BLM Manager, no SHPO consultation is required.

b. If the BLM Manager does not accept the professional determinations or recommendations of the cultural resource specialist, including but not limited to the scope of inventory, determinations of eligibility, findings of effect, and application of exemptions, the BLM Manager may either opt to employ the dispute resolution process in XIV.A of this Agreement, or may initiate consultation with the SHPO under 36 CFR 800.

D. Undertakings Requiring Council Consultation prior to Authorization

The BLM will consult with the Advisory Council on Historic Preservation (Council) and seek concurrence with BLM decisions for undertakings when:

1. BLM and SHPO consultation is not productive;
2. National Historic Landmarks or National Register-eligible properties of national significance are directly and adversely affected; or
3. Council review has been requested by the BLM, the SHPO, a Native American tribe, local government, an applicant for a BLM authorization, member of the public or other interested person.

III. NOTIFICATION/REPORTING TIME FRAMES

A. Notification

1. Requirements for providing SHPO with a notification of an undertaking are found in I.B, above.
2. Undertakings Requiring SHPO Consultation Prior to Authorization: Unless otherwise agreed, the SHPO shall have 35 calendar days from receipt of appropriate documentation to respond to any BLM consultation request regarding identification, evaluation, treatment, or effect for undertakings specified in Section II.B.
3. Time frames for Discovery Situations are found in Section VI.
4. If the SHPO does not respond within the designated time limit, the BLM may assume SHPO concurrence and can proceed with the BLM's proposed course of action.
5. If BLM or its consultant discovers buildings or structures over 50 years of age are present, the BLM shall consult with SHPO under provisions of II.A.5.

B. Reporting

For undertakings, BLM will select an appropriate format (i.e., inventory report, testing plan, treatment plan, data recovery plan, treatment report, etc.) to document its actions and decisions made in accordance with Section V of this Agreement. This will also include determination of the APE, the nature and intensity of information gathering efforts, level of public involvement, tribal and other Native American consultation, resource identification activities, National Register status, intensity of effect, and treatment needs for resources potentially affected by an undertaking. If an undertaking is

phased, additional appropriate format(s) may provide for the resolution of adverse effects.

Except when working under a project-specific PA, or by other arrangement with SHPO, the reports, site records, and related documentation compiled in accomplishing provisions of Section V of this Agreement will be forwarded to SHPO within 35 days of authorizing the undertaking. Reports not forwarded to SHPO within this time frame or a time frame made by other arrangement with SHPO will be documented as described in Appendix A, including a date for completion and submission.

When working under a project-specific PA, the results of all other NHPA compliance activities shall be documented and reported as specified in the agreement.

C. Reporting Standards

The BLM and the SHPO will collaborate on the development of standards for preparing inventory and treatment reports, and jointly developing isolated artifact, isolated feature, and site forms. Until this is done, the standards (but not the process) in the Statewide Programmatic Agreement, dated July 29, 1990, and the 4th edition of the *BLM Nevada Cultural Resources Inventory General Guidelines* will remain in force.

1. The BLM and SHPO agree that the current edition of the Intermountain Antiquities Computer System (IMACS) site record forms, encoding and accompanying definitions and dictionaries comprise the standard for archaeological site documentation and recording, except where the two agencies have made mutually agreed upon modifications or exceptions.
2. Standing buildings and structures will be documented by qualified persons using the SHPO's Historic Resources Inventory Forms, which are referenced in Appendix I. Reporting requirements for standing buildings and structures, also in Appendix I, will be followed.
3. Treatment of standing buildings and structures will be documented according to Appendix G, Documentation Standards for Historical Resources of Local and State Significance.
4. Archaeological resources and standing building or structure resources will be documented in separate reports.
5. During inventory and recording phases, digital photography may be used. Requirements for digital photography during inventory and recording are found in Appendix M.

D. Backlog Reports

This Protocol is predicated in part on the assumption that the parties have need for and access to an automated site and project database that is as up-to-date as possible given circumstances of funding and staffing to aid in management planning, undertaking processing, and resource modeling. The available data from Nevada repositories has been or is being entered in the Nevada Cultural Resource Information System (NVCRIS) maintained by the SHPO, with the goal of creating one consolidated record-keeping system. One way in which NVCRIS can be impaired is by allowing a backlog of basic resource information and reports of identification, evaluation, and treatment to develop in field offices. Therefore, the Parties agree that:

1. Each Field Office will notify SHPO when documentation will take longer than 35 days, or

will be completed outside of the time frames in a project-specific PA or cultural resources management plan (testing, treatment, data recovery, interpretation, etc.).

2. Projects initiated prior to the implementation of the Protocol dated June 4, 1999, can be cleared from a BLM office backlog by sending SHPO site records (including completed encoding forms) and maps, with project maps showing project boundary, APE, area inventoried, resource locations and a one page description of the project and how its associated cultural resource data were acquired. Unless a BLM office makes other arrangements directly with SHPO, the backlog in this category will be cleared within one calendar year after this agreement is signed by BLM and SHPO.

3. Projects that are or were cancelled prior to report preparation can be cleared from a field office backlog by sending SHPO site records (including completed encoding forms) and maps. If available, project maps showing project boundary, APE, area inventoried, resource locations and a one page description of the project and how its associated cultural resource data were acquired should also be forwarded to SHPO. Unless a BLM office makes other arrangements directly with SHPO, the backlog in this category will be cleared on or before September 30 of the year in which the project occurred, or within six months of project cancellation.

4. There may be projects which can no longer be reconstructed or retrieved sufficiently to create the minimum necessary records. Examples include projects where the specialist who did the work is no longer available, or there is insufficient information to allow the production of site or project records. These projects need to be identified and cleared from the BLM office backlog by informing the SHPO that they will never be completed and should be eliminated from BLM office files, data repository paper records, and NVCRIS. Unless a BLM office makes other arrangements directly with SHPO, the backlog in this category will be completed within six months after the last signature is applied to this Agreement.

IV. DEFINING THE AREA OF POTENTIAL EFFECTS (APE)

As early as possible in developing or processing an undertaking, the BLM CRS will define an appropriate APE that is sufficient to allow analysis and treatment of potential effects associated with the undertaking. In defining the APE:

A. The APE boundary is not limited by the physical footprint of the undertaking. It should be large enough to encompass all potential direct and indirect effects, including visual effects.

B. Levels of intensity in identification, evaluation, and treatment should be scaled by the scope of the undertaking and the nature of potential effects as follows:

1. Direct Physical Effects: The physical footprint of the undertaking and any other associated areas likely to experience primary physical effects will be inventoried to standards determined appropriate in the Inventory Needs Assessment process, or as defined in appendices to this Agreement; resources also will be evaluated, and effects will be treated as specified in Section V.

2. Indirect Physical Effects: If the undertaking creates or has the potential to create secondary physical effects, such as increased vandalism, erosion, or traffic, the physical footprint of those effects will be inventoried to standards determined appropriate in the Inventory Needs Assessment process, resources will be evaluated, and all effects will be treated as specified in Section V.

3. **Effects to Setting:** If the undertaking creates direct or indirect effects (i.e., changes that diminish the integrity of location, design, setting, materials, workmanship, feeling, and association that contribute to the property's significance) to an historic property's setting, then the APE will be defined to include appropriate consideration of those effects, using the Inventory Needs Assessment process. This determination may or may not lead to additional Class III inventory; however it will lead to some additional work such as visual simulation of changes, and development and evaluation of possible alternatives intended to reduce the effect on setting, including development of project design and location alternatives.

C. Although an APE is defined early in the identification process, the APE may be modified by BLM during the process when resources are avoided with the Standard Measures in Appendix H. If, in this case, the final APE does not contain historic properties, the BLM can document the lack of historic properties within the redefined APE and proceed with the undertaking using terms of section V.C.

1. Documentation for the undertaking will contain maps of both the original APE and the redefined APE, along with the basis for the redefinition.

2. Documentation will also include site records and maps for all resources located in the initial inventory and subsequently excluded from the APE through redesign (including deletion) as well as all resources within the redefined APE.

V. IDENTIFICATION, EVALUATION, AND TREATMENT OF HISTORIC PROPERTIES

The BLM will ensure that historic properties that may be affected by any undertaking are identified and evaluated in accordance with the procedures established below. The BLM will ensure that undertaking-specific surveys and other efforts to identify and evaluate historic properties are conducted in accordance with appropriate professional standards. These standards are defined in BLM Manual 8110, *Identifying and Evaluating Cultural Resources*, BLM Manual 8140, *Protecting Cultural Resources*, Nevada BLM supplements to this agreement, the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716), and relevant written SHPO guidance.

A. Determining Information Needed

1. **Level of Field Inventory:** The BLM and SHPO agree that Class III inventory will be the standard level of field inventory required to identify archaeological resources. Therefore, when the APE will be investigated with a Class III inventory, the BLM need not seek SHPO consultation on identification efforts prior to initiating the inventory unless consultation occurs per Section II.A or unless a PA or similar agreement is required or anticipated, per IIB.

a. If the undertaking is subject to SHPO review, and the BLM decides to investigate an APE at less than Class III intensity, BLM will consult with the SHPO on the adequacy of the inventory design prior to initiating the inventory or authorizing the proposed undertaking.

b. If the undertaking is not subject to SHPO review, the BLM will inform the SHPO per Section I.B, using an Inventory Needs Assessment Form, of its intent to deviate from Class III inventory standards prior to initiating the undertaking and allow SHPO to consider initiation of consultation within the time frames found in Section I.B.

c. The basis for the decision to deviate and the nature and coverage of the inventory, as well as the date and means of notifying the SHPO, must be documented in the report on the undertaking.

2. Exemptions from Inventory Requirement: Undertakings exempted from inventory requirements and from Section 106 review are identified in Appendix C. Other classes of exempted undertakings may be added to Appendix C if the BLM and the SHPO agree that such undertakings qualify.

3. The BLM CRS will, after determining information needed to identify and evaluate cultural properties, determine if specific undertakings should appropriately be exempted from further Section 106 review when the undertaking is not located within a historic property unless the specific provisions in Appendix C apply, as follows:

a. Disturbed Areas: If the CRS determines that previous ground disturbance has modified the surface of an APE so that the probability of finding intact cultural properties within the APE is negligible, then the disturbed portion of the APE should be excluded from further inventory and treatment.

b. Previous Adequate Inventory: If the BLM CRS determines that the APE, or any portion of the APE, is included in the area inventoried by an adequate Class III inventory completed within the last 10 years, and was previously reviewed by the SHPO, the BLM may proceed with determining eligibility and effect without additional inventory.

(1) Inventories more than 10 years old will be evaluated by the 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 an assessment of need for further consultation with Indian tribes.

(a) BLM will notify SHPO prior to authorizing an undertaking when an inventory more than 10 years old is determined adequate for identification purposes.

c. Areas with Low Potential for Containing Historic Properties: Areas that have not been inventoried, or appropriately modeled, will be treated as if they contain high sensitivity historic properties, unless the BLM and the SHPO 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:

(1). Project-Specific: If the proposed undertaking is not listed in the exemptions found in Appendix C, the BLM will seek the concurrence from the SHPO on project-specific exemptions due to low site probability;

(2). Supplemental Protocol Agreements: Low site probability areas, identified through appropriate models and appropriately validated, may be exempted through a Supplemental Protocol Agreement between the BLM and the SHPO.

4. When properties of religious and cultural importance to Indian tribes are identified, consultation with tribes to comply with the NHPA will be guided by BLM Manual 8120, *Tribal Consultation Under Cultural Resources Authorities*, and BLM Handbook H-8120-1, *Guidelines for Conducting Tribal Consultation*.

5. Reporting: A record listing all undertakings authorized under this section will be documented in the Annual Report in accordance with the information requirements stipulated in Appendix A.

6. Resources Extending Outside the APE: The extent of inventory area outside of an APE, and the extent to which cultural resources outside of the APE are recorded shall be at the discretion of the BLM CRS.

a. BLM's objective is to have site boundaries and characteristics determined completely whenever reasonably possible. Where a site is large in area and extends beyond a project's APE, the extent of recording and collection of information should be sufficient to support evaluation of significance of the resource as a whole, per V.B.2.b, as determined by the BLM CRS.

B. Evaluation for National Register Eligibility

1. Categorical Determinations:

a. Classes of Properties Not Eligible for the National Register: The BLM and the SHPO may jointly determine a class or classes of properties to be not eligible for listing on the National Register (Appendix E).

b. Classes of Properties Eligible for the National Register: The BLM and the SHPO may jointly determine a class or classes of properties to be eligible for listing on the National Register.

2. Evaluation Standards: All resources discovered or rerecorded within the APE during an inventory shall be evaluated for inclusion in the National Register.

BLM evaluations shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Evaluation* (48 FR 44729), BLM Manual 8110, *Identifying and Evaluating Cultural Resources*, Nevada BLM supplements to this agreement, and relevant written SHPO guidance.

a. Resources within the APE: The BLM will ensure that all resources identified within an APE are evaluated in accordance with the provisions of this Protocol.

b. Resources extending outside the APE: Sites located within an APE but extending outside of the APE must be evaluated as a whole. Except for contributing elements 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.

c. Linear features will be evaluated according to Appendix D.

d. Resources outside the APE: Resources completely outside of an APE and that will not be affected by the undertaking do not have to be evaluated.

3. Properties Eligible under Criterion D only: Using the guidelines referenced at Section VII, a professionally qualified BLM CRS can determine eligibility under National Register Criterion D for resources for which they are qualified (i.e., prehistoric and/or historic period archaeological sites) without initiating specific SHPO consultation.

a. Professionally qualified means that the cultural resource specialists have been determined to meet requirements expressed in Section VII.A.

b. A qualified consultant who is making recommendations to BLM will hold a BLM-issued Cultural Resources Use Permit which documents qualifications appropriate to the resources being evaluated.

4. Properties with Associative or Design Value under Criteria A, B, or C: This provision applies to properties significant for their association to events (Criterion A), their association with important persons (Criterion B), or because they are representative of a distinctive design or construction (Criterion C). Excluding property types discussed under V.B.3., the BLM's evaluation of National Register eligibility depends on BLM access to appropriate expertise. BLM's access to such expertise may be provided by a qualified BLM employee, a qualified person working directly for BLM under contract or other arrangement, or by a qualified person working for a BLM permittee or other consulting group.

a. Since BLM does not permit historians, historic architects, or architectural historians, consultants in these areas must meet personnel qualifications listed in Appendix I.

b. If the undertaking is being reviewed by the SHPO pursuant to Section II.A, 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.

c. If the undertaking is not being reviewed pursuant to Section II.B, and

(1) the BLM has access to professionally qualified consultants, and the BLM CRS agrees with the consultant's eligibility recommendations, the BLM can proceed with the undertaking without specific SHPO consultation on eligibility. Or,

(2) If the BLM cultural resource specialist disagrees with the consultant's recommendations, the BLM must consult with SHPO regarding eligibility before proceeding with the undertaking. Or,

(3) If BLM has professionally qualified staff, the BLM can make eligibility determinations and proceed with the undertaking without specific SHPO consultation.

d. Historic period linear features will be evaluated as specified in Appendix D.

5. Provisions for evaluation extend to properties of religious and cultural significance to Indian tribes. Eligibility determinations are made by the BLM Manager based on consultation with affected Indian tribes and on recommendations made by professionally qualified cultural resources staff. The BLM also acknowledges that Indian tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance. The BLM's consultation process should follow Manual 8120 (*Tribal Consultation Under Cultural Resources Authorities*) and Handbook 8120-1 (*Guidelines for Conducting Tribal Consultation*).

6. Disagreement on Eligibility:

a. The BLM decision regarding eligibility may differ from a consultant's recommendations, in keeping with qualifications of BLM's qualified staff. The BLM will not require the consultant to amend the final report to conform to the BLM's decision. Instead, the BLM's decision, not the consultant's recommendations, will form the basis for Section 106 compliance.

b. When a consulting party, defined in 36 CFR 800.2(c), other than the consultant making the determination, disagrees with BLM eligibility determinations, BLM will request the view of the SHPO on an eligibility determination.

If the SHPO and BLM cannot agree whether the eligibility criteria are met, or if the Council so requests, the BLM will seek a formal determination of eligibility from the Keeper of the National Register pursuant to 36 CFR Part 63.2.

c. 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 affected tribe may ask the Advisory Council on Historic Preservation to request that the BLM to seek a determination of eligibility from the Keeper of the National Register.

C. No Adverse Effects

1. No Historic Properties Present: If, as a result of an appropriate inventory (as defined in BLM Manual 8110 and this Protocol), the BLM determines that there are no historic properties within the APE, BLM will report to SHPO as per Section III.B of this Agreement, notify interested persons, if any, and proceed with the undertaking.

2. No Historic Properties Affected: If the BLM determines that identified historic properties will be avoided with the Standard Measures in Appendix H, the BLM can determine that the undertaking will have no effect on historic properties and proceed with the undertaking without SHPO consultation. Documentation for the undertaking will include the basis for this determination.

3. Effect Situations: In determining if an undertaking has an effect on historic properties, the BLM will follow 36 CFR 800 and apply the Criteria of Effect and Adverse Effect.

a. Effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places.

b. 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.

4. SHPO Involvement. If the undertaking is being reviewed by the SHPO pursuant to Section II, the BLM will determine effects in consultation with SHPO. Issues relating to BLM's findings of effect or treatment which cannot be resolved between BLM and SHPO shall be referred to the Advisory Council for review.

a. Effects to historic properties located within an APE but extending outside of the APE must be treated as if the property is completely within the APE.

b. In accordance with the Council's *Treatment of Archaeological Properties - A Handbook*, Principles; 36 CFR part 68 (1995); and BLM Manual 8140, avoidance is the preferred strategy for treating potential adverse effects on cultural properties. When an undertaking is planned within or around the boundaries of historic properties, and the BLM treats potential effects to properties potentially affected--including properties eligible or important for reasons other than the information they contain--with the Standard Measures in Appendix H, so that the undertaking will not affect the qualities that contribute to the significance of the properties, the undertaking will be considered to have ~~no~~ adverse effect." In these cases, the BLM need not consult with the SHPO on effect before proceeding with the undertaking.

c. If avoidance is not prudent or feasible, the BLM will consider a range of alternative physical or administrative treatments to minimize potential effects. The BLM may make a determination of effect resulting from implementation of these treatments as described in section V.C.5. The BLM will provide appropriate documentation including a report on identification and evaluation efforts and a treatment plan intended to minimize effects to the SHPO, in accordance with V.C.5.

5. No Adverse Effect Situations include but are not necessarily limited to:

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 Part 68 and applicable guidelines);

b. transferring, leasing, or selling a historic property with adequate restrictions and legally enforceable restrictions or conditions included in the transfer documents to ensure the long-term preservation of the property's historic significance; or

c. conducting applicable undertakings in accordance with Appendix F, Categorical No Adverse Effect Situations; or,

d. 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.

D. Adverse Effects. BLM will consult with SHPO for any undertaking resulting in an adverse effect determination. Undertakings resulting in adverse effect determinations are those for which treatment includes some or all of the following:

1. Implementing 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) and is accomplished using a Memorandum of Agreement or other agreement document involving SHPO and other appropriate parties;

2. Undertakings resulting in an adverse effect determination are those affecting properties of local or state significance and for which treatment can be achieved through the following:

- a. documenting, to the standards in Appendix G, the significant architectural, historical, or engineering attributes of an architectural or historic building, structure, or feature; or

- b. implementing a treatment plan resulting in interpretation, public education, collection of oral histories, or other methods agreed to by BLM and the SHPO.

- c. Adverse effects to properties that are National Historic Landmarks, or otherwise eligible or listed as nationally significant will be determined and treated in consultation with the SHPO and Council, pursuant to Section II.D. As early as possible in the planning process, BLM will notify the SHPO and Council if an undertaking may have an adverse effect on a NHL or other nationally significant property. In these cases, the BLM's determination of effect with supporting documentation can be sent to the Council and SHPO for concurrent review.

- d. An undertaking's potential effects to properties of religious and cultural significance, as defined in BLM Manual 8120, and reasonable treatments for those effects can only be determined in consultation with the people who value the property. For Indian tribes and for Native American individuals, consultation shall be guided by BLM Manual 8120, *Tribal Consultation Under Cultural Resources Authorities* and BLM Handbook H-8120-1, *General Procedural Guidance for Native American Consultation/Guidelines for Conducting Tribal Consultation*. BLM Manual 8120 will also be used as a basis for determining and treating adverse effects to historic properties of religious and cultural significance.

- (1) The BLM, with tribal concurrence, may seek the assistance of the SHPO in resolving disputes about effects on properties of religious and cultural significance.

- (2) If Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered during an undertaking involving BLM managed

lands, the parties will comply with the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations at 43 CFR Part 10, Subpart B. Human remains and associated grave goods on private land will be handled according to the provisions of Nevada statute NRS 383.

e. BLM will prepare a Memorandum of Agreement addressing adverse effects when BLM and SHPO agree on the measures to be taken.

(1) If BLM and SHPO cannot agree on the measures to be taken to address adverse effects from an undertaking, the dispute resolution measures in Section XIV will be implemented.

E. Treatment Limitations

Where BLM's treatment options for historic properties on non-Federal lands may be limited due to land status or statutory authority, appropriate treatment actions will be developed by BLM in consultation with the SHPO. The BLM will inform the SHPO of potential limitations to treatment as early as possible in the planning process. An adverse effect is created when treatment limitations are so severe that BLM and SHPO cannot develop appropriate treatment.

VI. DISCOVERY SITUATIONS

A. Planning For Discoveries

The BLM will require discovery plans for large and complex undertakings and those involving land disturbance in areas known to contain buried sites. If the undertaking is being reviewed by the SHPO pursuant to Section II, the proposed discovery plan will be forwarded to the SHPO for review along with BLM's determination of effect for the undertaking. With SHPO concurrence, the discovery plan will govern how discoveries will be handled.

B. Unplanned Discoveries

If a Discovery Plan is not developed, and the BLM determines, after completion of the review process outlined in this Protocol, that an undertaking may affect or has affected a previously unidentified property that may be eligible for the National Register, the BLM will:

1. Ensure that activities associated with the undertaking within 100 meters of the discovery are halted and the discovery is appropriately protected, until the BLM Authorized Officer issues a Notice to Proceed (NTP).

a. If the undertaking is not being reviewed by the SHPO pursuant to Section II, BLM will determine if an adverse effect exists. If an adverse effect is found, BLM will identify the applicable criteria of significance and will propose actions to resolve the adverse effects. BLM will notify SHPO, the Council, affected tribes and any other identified consulting parties, who will have 48 hours from the initial notification to respond to BLM, which will take any recommendations into account regarding eligibility and proposed treatment, and will then implement appropriate actions. A copy of the resulting report will be provided to consulting parties within 90 days after report completion and acceptance by BLM.

b. Notices to Proceed (NTP) may be issued by the BLM under any of the following conditions:

- (1) evaluation of potentially eligible resource(s) results in a determination that the resource(s) are not eligible; or
- (2) the fieldwork phase of the treatment option has been completed; and
- (3) the BLM has accepted a summary description of the fieldwork performed and a reporting schedule for that work;

2. If the undertaking was approved under the stipulations at Section II, the BLM shall notify the SHPO and consider SHPO's initial comments on the discovery. If the undertaking was approved under the stipulations at Section II.D, the BLM shall notify the SHPO and the Council and consider the SHPO's and Council's initial comments on the discovery.

a. Within two working days of notification to the SHPO, the BLM shall notify the proponent, tribes, and other interested persons as appropriate, of the BLM's decision on eligibility and proposed treatment, if any, and solicit comments on the BLM's proposed course of action;

b. The SHPO, Council, tribes, and other interested persons as appropriate, will be asked to provide BLM with comments within two working days of BLM's notification. Any timely comments offered by the SHPO, Council, Tribes, and other interested persons will be documented, considered in dealing with the discovery, and, subject to confidentiality requirements, be made available for public inspection;

c. The BLM shall notify the SHPO, Council, tribes, and other interested persons of its decision regarding evaluation and treatment and shall ensure that treatment actions, if any, are implemented; and

d. The BLM shall ensure that reports of treatment efforts for discovery situations are completed in a timely manner and conform to the stipulations of this agreement. Final reports on the treatment effort shall be sent to the SHPO, Council, tribes, and other interested persons as appropriate, for informational purposes, within 90 days after BLM has accepted the report.

e. Potential treatment options include archaeological excavation and removal under terms of an approved data recovery plan reflecting the Advisory Council's Guidance on the Recovery of Significant Information from Archaeological Sites (May 18, 1999).

VII. STAFFING AND OBTAINING SPECIALIZED CAPABILITIES

A. Staffing

1. Per the NHPA, Section 112, the BLM will ensure identification and evaluation of cultural resources by specialists who meet the qualifications and are classified in the appropriate professional series by the Office of Personnel Management (e.g., Series 193 for archaeologists). Specialists at, or below, the GS-7 level are considered to be performing duties in a trainee or developmental capacity. Reports prepared by GS-7 or below specialists, District Archaeological Technicians, volunteers or any

cultural resource consultant, must be submitted to the SHPO after review by a GS-9 or higher grade cultural resources specialist. Any involved resources will be evaluated by a GS-9 or higher grade cultural resources specialist.

2. When new managers or cultural resources specialists are hired by a BLM office, the BLM will ensure that the new managers or cultural resources specialists receive orientation and training, within 90 days, in BLM Manual procedures and procedures for operating under this Protocol; the BLM and SHPO may agree to an alternative time frame in specific cases. It shall be the responsibility of the BLM DPO to provide appropriate orientation and training to new managers and cultural resource specialists; the DPO will coordinate with SHPO to involve SHPO in training. Training needs will be reviewed during the annual review meeting. As funding is available, BLM may provide assistance to SHPO for purposes of this training. Prior to the orientation, the BLM office will be required to follow the procedures at 36 CFR Part 800 when no trained cultural resource specialists are on staff. Once the orientation and training are completed, the State Director will notify the SHPO and the affected BLM office that new staff may implement the procedures of this Protocol.

a. The SHPO will invite BLM to participate in training of new SHPO review and compliance personnel.

3. The BLM may utilize the services of qualified consultants for purposes of inventory, evaluation, treatment, and management. BLM will ensure that consultants, who may also be represented as permittees or as contractors, either working directly for the BLM or for a land-use proponent, will meet the educational and experience requirements established in the Secretary of the Interior's Historic Preservation Professional Qualification Standards (36 CFR 61, Appendix A [1983]). Persons working in the capacity of a consulting archaeologist must qualify according to standards established in BLM Manual 8150.12B2b and by Nevada BLM, including separate provisions for qualifications relating to prehistoric archaeology and historic period archaeology.

B. Specialized Capabilities

When the BLM is involved in an undertaking requiring expertise not possessed by available BLM staff (e.g., architectural history), it will obtain that expertise to determine National Register eligibility, effects, and treatment for the cultural properties in question. The BLM may request the assistance of the SHPO staff in such cases or may obtain the necessary expertise through contracts, BLM personnel from other states, or cooperative arrangements with other agencies. Those persons will be qualified per those criteria set forth in VII.A.3, above.

VIII. RELATIONSHIP TO OTHER AGREEMENTS AND OTHER AUTHORITIES

A. In the event the NPA is suspended or terminated, this agreement will remain in effect until a replacement for the NPA is made. Existing project specific agreements remain in effect.

This protocol will be implemented in accordance with provisions of 36 CFR 800 issued August 5, 2004, and in effect at the time of signing.

B. BLM and SHPO may agree, by reference or by incorporation, to use procedures and related appendices of this State Protocol Agreement in other plans, memoranda and agreements, including programmatic agreements. The procedures and related appendices include:

1. notification or consultation with SHPO,
2. definition of an undertaking or the APE,
3. identification and evaluation of cultural resources, including definitions and determinations of resource types which are categorically not eligible (Appendix E),
4. reporting procedures and recording of cultural resources,
5. tribal involvement,
6. public participation,
7. professional qualifications,
8. unplanned discoveries,
9. reporting,
10. documentation standards for historical resources of local and state significance (Appendix G), and
11. avoidance measures.

IX. ADMINISTRATIVE INTERACTION AND REPORTING REQUIREMENTS

The BLM Nevada State Office, with input from the district offices, will prepare a report to the SHPO that describes the implemented actions taken in the previous federal fiscal year. This report will be due to the SHPO in December of each year and will include the information outlined in Appendix A.

X. SHPO INVOLVEMENT IN RESOURCE MANAGEMENT PLANNING

The BLM and SHPO have agreed to limit SHPO involvement in case-by-case undertaking review and to increase SHPO participation in the BLM land-use planning process. In order to allow broad and active participation by SHPO in BLM's planning activities, the BLM and SHPO agree that:

A. Resource Management Planning

Each District Office responsible for preparing or amending a land use plan (Resource Management or Management Framework Plan) or preparing an Activity Plan (such Fire Management Plans, Allotment and Habitat Management Plans, Cultural Resource Management Activity Plans, Travel Planning and Recreation Management Planning) that may affect cultural resources will invite the SHPO to participate, as a cooperating agency, from the beginning of the planning process. The SHPO agrees to provide the BLM with technical assistance in preparing National Register nominations.

B. Project Planning

As early as possible in the scoping/planning process for major undertakings (i.e., large surface disturbing projects, land transfers, rights of way, etc.), the appropriate BLM Manager will contact the SHPO to discuss likely effects to cultural resources. This discussion should focus on facilitating these projects to meet cultural resource preservation goals. Project planning discussions may be by telephone, correspondence, or meetings, as agreed between the parties.

C. Informal Consultation

The SHPO is encouraged to meet with the BLM State Office or a BLM Manager at any time to discuss annual work plans, specific undertakings, outreach efforts, or other issues related to Cultural Resource Management. The BLM will make every effort to arrange such meetings in a timely

manner and to provide information requested by the SHPO. The SHPO and BLM personnel may confer informally, at their discretion, on specific undertakings or the BLM Cultural Resource Management Program.

Field Tours: BLM Field Offices will notify the SHPO, in writing, of public field tours relating to land use planning efforts (RMPs and RMP amendments) or to Environmental Impact Statement (EIS) planning efforts that may affect cultural resources. The BLM should also invite SHPO's participation in other projects or activities that may be subject to Environmental Analysis (EA) land use planning efforts and involve very sensitive or controversial cultural resources issues.

PART 2. SECTION 110 AND OTHER ACTIVITIES

XI. COOPERATIVE ACTIVITIES

The BLM and the SHPO recognize the advantages of working together on a wide range of cultural resource preservation activities, pursuant to NHPA sections 110 and 112. Accordingly, BLM and SHPO will cooperatively pursue the following efforts:

A. Data Sharing and Information Management

The BLM and the SHPO will work jointly in regard to Data System Management, to include a statewide automated cultural database which will be accessible from all BLM Offices and available to appropriate persons. The BLM and the SHPO will further collaborate on ways to synthesize and use the automated cultural data to develop Geographic Information System (GIS) capabilities. The BLM and the SHPO will continue to cooperate in this endeavor by providing financial, personnel, hardware, and software resources as funding becomes available. The SHPO agrees to be responsible to maintain this system (currently known as the Nevada Cultural Resources Information System, or NVCRIS), or systems. To the extent allowed by current funding levels, the BLM will support and cooperate with SHPO in developing and maintaining NVCRIS to support BLM's activities, particularly in planning and inventory.

B. State BLM Supplemental Guidance

In addition to the procedures described in Bureau-wide directives and Manuals, Nevada BLM will be guided by procedural supplements (guidelines or handbooks) issued by the Nevada State Office. The BLM will update these supplements as needed to conform to Bureau-wide directives, policies issued by the Nevada State Director, new laws, new regulations, and operational needs. The SHPO will be invited to participate in development and subsequent revisions of all supplements and handbooks. BLM will also be guided by procedural supplements (guidelines or handbooks) issued by the SHPO for historic archaeology and historic architecture. The BLM will be invited to participate in developing any subsequent revisions of all SHPO supplements and handbooks.

BLM field procedures will be detailed in a Nevada BLM Handbook as a supplement to BLM Manual procedures. Until this is done, the standards (but not the processes) in the Statewide Programmatic Agreement, dated July 29, 1990 and the 4th edition of the *BLM Nevada Cultural Resources Inventory General Guidelines* will remain in force. All changes or amendments to the handbook procedures will be made in cooperation with the SHPO.

C. Public Outreach, Site Stewardship, and Heritage Education

The BLM and the SHPO will work cooperatively to promote and enhance public education and outreach in Historic Preservation and Cultural Resources Management through the following programs:

1. Archaeology Awareness and Historic Preservation Month: The BLM and the SHPO will participate in and support financially, as funding permits, *Archaeology Awareness and Historic Preservation Month* activities, including public presentations, field tours and excavations, exhibits, archaeology fairs, posters, brochures, and educational activities.

2. Project Archaeology: The BLM and the SHPO will support *Project Archaeology* as a component of BLM's Heritage Education Program, by encouraging staff archaeologists to be trained and serve as facilitators in the program, with the goal of

integrating the teaching of archaeological concepts and preservation ethics in Nevada schools statewide.

3. Adventures in the Past/Heritage Education: The BLM and the SHPO may, as funding permits, cooperatively work on the interpretation of cultural resources through a variety of media including, but not limited to exhibits, brochures, lectures, radio and television promotions, Internet web pages, and interpretive signs.

4. Nevada Archaeological Association: The BLM and the SHPO are encouraged to work cooperatively with the Nevada Archaeological Association to promote preservation ethics, good science, and professional standards statewide to amateur archaeologists by participating in society meetings, serving as chapter advisors, providing presentations and demonstrations, and providing assistance as appropriate.

5. Professional Organizations: The BLM and SHPO cultural resource specialists are encouraged to participate in and work cooperatively with professional historic preservation organizations to promote preservation ethics, science, history, and professional standards statewide, and open dialogue regarding historic preservation issues.

6. Site Stewardship:

a. The BLM is committed to supporting the SHPO statewide site stewardship program and will:

(1) identify cultural resources locations where BLM desires monitoring to occur and will share related cultural resources data;

(2) provide training support (including accompaniment during an initial site visit) and training opportunities to site stewards, as possible within limitations of funds and staff time. BLM will also support the program by limiting site stewards to those enlisted BLM volunteers that have been appropriately trained in the SHPO program.

(3) where possible, BLM field offices will designate a cultural resources specialist as the point of contact responsible for coordinating site stewardship

activities.

b. The SHPO agrees to:

- (1) coordinate the statewide program and related documentation,
- (2) maintain a roster of appropriately trained stewards
- (3) work with BLM to match stewards with resources to be monitored, and
- (4) provide reporting data to BLM regarding site steward activities and accomplishments.
- (5) SHPO will coordinate with BLM to ensure that site stewards working on BLM managed lands are enrolled as BLM volunteers prior to working as site stewards.

D. Historic Context and Research Design Development

The BLM and the SHPO will jointly develop standards and guidelines for historic contexts and research designs and will strive to involve other land-managing agencies and the public in this effort. The BLM and the SHPO will jointly develop statewide priorities for historic context or research design needs and develop high priority contexts and designs, as funding permits. Project-specific contexts may be developed as needed.

Historic contexts must be consistent with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716). In accordance with Section 101(b)(3) of the NHPA, the SHPO shall review and provide comments on BLM historic context documents developed as general guidance independent of any particular undertaking. Non-undertaking specific historic contexts that define site eligibility criteria, levels of adequate inventory, site documentation requirements, standards for assessment of effects, or appropriate treatment of historic properties shall require SHPO concurrence prior to implementation.

As supplements to this Protocol, the BLM and SHPO may jointly develop research plans, or treatment approaches, designed to answer specific questions, or deal with recurring treatment issues, in ways that programmatically resolve the issue. Such supplements will include a clear process for resolving the issue and funding commitments to ensure that the issue is resolved in a timely manner.

E. Public Participation

The BLM will seek and consider the views of the public when considering undertakings in compliance with this Protocol through the public participation opportunities mandated by the National Environmental Policy Act (NEPA), and the Federal Land Policy and Management Act (FLPMA), as implemented at 43 CFR Part 1610.3. Interested parties shall be invited to consult early in the review process if they have expressed an interest in a BLM undertaking or action subject to the Protocol, or if they have expressed an interest in a particular class of cultural resources (e.g., historic trails). Such interested parties may include, but are not limited to, local governments; grantees, permittees, or owners of affected lands or land surfaces; Indian Tribes, organizations, and individuals; and those seeking to participate as consulting parties in a particular undertaking. Participation shall be guided

by 36 CFR 800 and by BLM Manual 8110.12. American Indian participation shall be guided by the provisions of BLM Manual 8120 and Handbook H-8120-1 and by 36 CFR 800.

F. SHPO Planning

The SHPO will invite BLM to participate in the identification of problems, issues and potential solutions in the SHPO's State Historic Preservation Plan (SHPP). The BLM will reflect those components of the SHPP in its planning process, as appropriate.

PART 3. PROGRAM REVIEW AND MONITORING

XII. PROGRAM REVIEW

The NPA assigns duties to the Preservation Board to ensure that the cultural resources policies and procedures are being followed appropriately by the BLM offices. Further, where problems are identified, the Preservation Board is assigned the responsibility for movement to correct the matter.

The Preservation Board may choose to review an office's certification status to operate under terms of the NPA and state protocol agreement. The State Director, a BLM manager, the ACHP, or the SHPO may request that the Preservation Board initiate a review.

This Protocol establishes an internal process of program review in order to ensure that Nevada offices are operating in conformance with policies and procedures laid out in the NPA and this Protocol, prior to invoking assistance from the Preservation Board.

A. Review. Professional review of field office programs is a component of certification. Such reviews are intended to improve operations at individual BLM offices having responsibilities under this Protocol as well as the cultural resource program statewide. The DPO will ensure that reviews take place. Reviews may involve any aspect of a program's function including, but not limited to, documentation, findings and recommendations, record keeping and curation, security, and professional contributions.

1. If the SHPO documents a pattern of failure to comply with the terms of this Protocol, the SHPO may ask the State Director for a program review of a district or field office's status and its capability for carrying out the terms of the NPA and this Protocol.
2. A district or field office manager or the BLM State Director may request reviews that would be organized or led by the DPO.

B. Levels of DPO Review. Three levels of review are available to the DPO: annual review, technical review and program review. Findings of reviews shall be relevant for purposes of assessing certification status of the BLM's offices. The SHPO or a BLM Manager may also request a review of a BLM office's status and its capability for carrying out the terms of the NPA and this Protocol.

1. Annual Review. The DPO shall assess annually each office's ability to implement the provisions of the Protocol. The Annual Review will be based primarily on information and data submitted for the Annual Report required in Appendix A of this Protocol; however, other data also may be considered.

2. Technical Review. The DPO shall determine whether BLM offices are maintaining an appropriate level of technical capability and performance in particular program elements such as documentation of protocol actions, Section 110 actions, curation, inventory documentation, determinations and findings from Annual Reviews.

3. Program Review. The DPO shall determine whether BLM offices' Cultural Resource programs are fully functional in their ability to implement the Protocol. Program reviews are broad-based reviews, some of which take place at the district or field office. Review teams will consist of the DPO, representation from the Nevada State Historic Preservation Office and any other BLM staff the Nevada State Office deems appropriate. A review team shall have the ability to interview cultural resource staff, other resource staff and managers, have access to Cultural Resources Management records and maps, NEPA files, and other appropriate documentation. The team would be responsible for developing findings and generating a set of recommendations to be reviewed by the State Director. When the State Director accepts the report, the report will be sent to the appropriate district or field office manager. Reporting will occur per terms of XII.B.4.

4. Reporting. The DPO shall document the findings of the review and following acceptance by the State Director, forward the findings with the report to the SHPO. When recommendations to correct deficiencies receive SHPO concurrence and are accepted by the State Director, implementation of such recommendations shall become the responsibility of the BLM Manager to initiate corrective actions within sixty (60) days from the date the recommendations are accepted by the State Director. Depending on the nature of the identified deficiencies, the State Director may elect to place a Field Office in provisional status according to the procedures describes in Stipulation XIII of this Protocol.

XIII. DECERTIFICATION FOR CAUSE

A. Action Plans

The State Director shall be informed if review by the DPO determines that there are compliance problems with a district or field office. The BLM State Director may ask the DPO to prepare an action plan, in consultation with the SHPO, that when implemented would bring that office into compliance with this Protocol. The DPO, in consultation with the SHPO, may also recommend that the State Director place a district or field office on a provisional status based on findings from any of the reviews specified in Stipulation XII of this Protocol.

The BLM State Director may request a review and recommendations from appropriate staff and/or the Preservation Board.

B. Provisional Status

A BLM office is under Provisional status when the State Director has directed the office to implement an Action Plan. The involved BLM office will continue to operate under terms of the Protocol until deficiencies are corrected within the terms and time limits set under the Action Plan. While on provisional status, a district or field office will have the opportunity to correct deficiencies under the Action Plan at any time. If all parties agree that the problems have been corrected, the State Director will issue a memorandum to the affected district or field office manager and SHPO that the district or field office is once again in compliance and restored to certified status.

1. If not corrected beforehand, upon expiration of the provisional status term, the parties to this Protocol shall convene to determine whether identified deficiencies have been satisfactorily corrected. Their findings shall be conveyed to the State Director. Should the State Director determine that such deficiencies remain uncorrected, or should new deficiencies that the parties deem significant be identified, the decertification process shall be initiated.

C. Decertification for Cause

If the State Director determines that a BLM office remains out of compliance, he or she may decertify a Field Office from operating under the terms of this Protocol. A BLM office that is decertified from operating under this Protocol will comply with the regulations at 36 CFR Part 800 until it is reinstated.

The State Director, in consultation with the SHPO, shall develop an action plan to bring any decertified office into compliance with this Protocol. After the subject BLM office believes that it has completed the actions specified in the plan, it will notify the State Director through the BLM DPO.

The District or Field Office Manager, the DPO or the SHPO may request that the Preservation Board review a district or field office's certification status. The Preservation Board will respond under the terms of the NPA at Component Eight. If the Preservation Board finds that a BLM office does not maintain the basis for its certification (e.g., the professional capability needed to carry out these policies and procedures is no longer available, or the office is not in conformance with this Protocol), and the BLM Manager has not voluntarily suspended participation under this Protocol, the Preservation Board will recommend that the State Director decertify the district or office, per the NPA.

1. A district or field office manager may ask the State Director to review the Preservation Board's decertification recommendation, in which case the State Director may ask the Director to review the Preservation Board's decertification, in which case the Director will request the Advisory Council's participation in the review, per the NPA.

2. The Preservation Board will notify the Nevada SHPO and the Advisory Council if the status of a certified office changes. In consultation with the SHPO, and at the direction of the State Director, the DPO will prepare a Plan of Action to address the identified deficiencies. The DPO may consult with the Preservation Board in preparing a Plan of Action.

3. When a district or field office is suspended or decertified, the responsible manager shall follow the procedures of the most current version of 36 CFR 800 to comply with Section 106.

4. 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 office.

XIV. BLM-SHPO DISPUTE RESOLUTION

The NPA requires this Protocol to contain provisions for resolving disagreements. This section addresses that requirement in relation to BLM-SHPO disagreements and also establishes measures for dispute resolution involving members of the public and Indian tribes, for use when this Protocol is applied, referenced or included as part of another agreement.

A. Disputes Involving BLM and SHPO

1. The BLM or the SHPO may object to an action proposed or taken by the other pursuant to this Protocol. When informal resolution is not effective or satisfactory, the objecting party shall notify the other party in writing of the objection. Within seven (7) calendar days following receipt of notification, the parties 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.

2. If the objection is not resolved within this time frame, and the parties have not agreed to extend the consultation period, the DPO shall refer the objection to the Preservation Board, which will provide the State Director with its recommendations, per Component 2 of the NPA. If the State Director accepts the Board's recommendations, the State Director shall promptly notify the SHPO of such acceptance, provide a copy of the Board's recommendations, and afford the SHPO 30 calendar days following receipt of the notification to comment on the recommendations. If the SHPO concurs in the Board's recommendations within this time frame, the State Director and the SHPO shall proceed in accordance with the Board's recommendations to resolve the objection.

3. If either the State Director or the SHPO rejects the Board's recommendations after a period of consideration not to exceed 30 days, the State Director shall promptly notify the Board in writing of the rejection, and immediately thereafter submit the objection, including copies of all pertinent documentation, to the Advisory Council on Historic Preservation for comment in accordance with Component 4 of the NPA. Within 30 calendar days following receipt of any Council comments, the State Director shall make a final decision regarding resolution of the objection and in writing notify the Board, the SHPO and the Council of that decision. The objection shall thereupon be resolved. In reaching a final decision regarding the objection, the State Director shall take into account any comments received from the Board, the SHPO, and the Council pursuant to this stipulation.

B. Disputes by a Member of the Public or a Federally-recognized Indian tribe or individual

1. If a Member of the Public or a Federally-recognized Indian tribe objects at any time in writing to the manner in which this Protocol is being implemented, the BLM shall consult with the objecting party for a period not to exceed 30 days and, if the objecting party requests, with the SHPO, to resolve the objection. 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. The BLM should inform SHPO of any objections and the outcome of attempts at resolution within 10 days after period of resolution has expired.

2. If the objection cannot be resolved, and if the objecting party has not requested review by the Council under IL.D.3 of this Agreement, 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 Council in accordance with Component 4 of the NPA. The State Director shall make a final decision regarding the resolution of the objection and shall in writing notify the Board, the objecting party, the SHPO and the Council 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.

XV. AMENDMENTS AND TERMINATION OF THE PROTOCOL

A. The BLM or the SHPO may propose amendment of this Protocol at any time, whereupon the parties shall consult to consider such amendment. "Amendment" refers to the process of adding supplemental procedures or modifying current procedures for specific BLM programs when parties to the Protocol wish those procedures to be made explicit. The amendment process culminates in the issuance of Protocol Amendments, which are administratively appended to the Protocol on their effective date. Amendments to the Protocol will only become effective upon signature of both parties. Protocol Amendments shall be housed in an appropriate and designated part of this Protocol.

B. The BLM or SHPO may terminate this Protocol or any Protocol Amendment. The party proposing termination shall in writing notify the other party of intent to terminate and explain the reasons for proposing termination. Within seven calendar days following receipt of such notification, the parties shall initiate a 90 day consultation period to seek alternatives to termination. Should such consultation result in agreement on an alternative to termination, the parties shall proceed in accordance with the terms of that agreement. Should such consultation fail, the party proposing termination may terminate this Protocol or any Protocol Amendment by providing the other party with written notice of such termination. Termination shall render this Protocol or any affected Protocol Amendment to have no further force or effect, as appropriate.

C. In the event of termination of this Protocol, the BLM shall comply with the provisions of the latest version of 36 CFR 800 for undertakings covered by this Protocol. In the event a Protocol Amendment is terminated, BLM shall comply with the latest version of 36 CFR 800 for the program or practices subsumed under the Protocol Amendment except insofar as SHPO and the BLM in writing agree to subsume such program or practices under this Protocol.

D. This Protocol shall terminate automatically on the fifth anniversary of its execution and have no further force or effect, unless it is extended by written agreement of the parties. Should the Protocol not be extended and should no successor agreement document be in place at the time of automatic termination, BLM shall comply with the latest version of 36 CFR 800, except with regard to those activities addressed in Protocol Amendments which the parties in writing agree shall remain in full force and effect.

XVI. APPENDICES

- A. Report Contents and Scheduling
- B. Special Situations

- C. Categorical Exemptions
- D. Recordation and Evaluation of Historic Linear Resources and Districts
- E. Resource Types Categorically Not Eligible
- F. Categorical No Adverse Effect Situations
- G. Documentation Standards for Historical Resources of Local and State Significance
- H. Avoiding Properties
- I. Architectural Resources
- J. National Programmatic Agreement

XVII. APPROVALS

BUREAU OF LAND MANAGEMENT

[s] Ron Wenker October 5, 2009
State Director, Nevada Date

STATE HISTORIC PRESERVATION OFFICE

[s] Ronald M. James October 26, 2009
Nevada State Historic Preservation Officer Date

APPENDIX A: REPORT CONTENTS AND SCHEDULING

A. Annual Report Contents

1. Inventory Needs Assessment documentation compiled by the State Office from needs assessment forms submitted to the SO as provided in Section I.B.1.b.
2. A list of eligible properties including property type and the criteria under which each is eligible,
 - a. Criteria are defined using the relevant Secretary of the Interior's significance criteria a, b, c and d, per 36 CFR 60.4;
 - b. Acceptable property types include archaeological, architectural, and those of cultural and religious importance.
 - (1) Eligible archaeological resources shall be categorized by prehistoric and historic site types;
 - (2) Eligible architectural resources shall be listed separately;
 - (3) Properties of cultural and religious importance will be listed separately.
3. A list of properties determined ineligible, categorized by historic and prehistoric sites;
 - a. Site types include archaeological, architectural, and properties of cultural and religious importance.
 - (1) Non-eligible archaeological resources shall be categorized by prehistoric and historic site types;
 - (2) Non-eligible architectural resources shall be listed separately;
 - (3) Properties of cultural and religious importance will be listed separately.
4. A list by Field Office of reports not submitted and a schedule for their completion and submission;
5. A list of proactive cultural resources projects and activities (i.e., Section 110 responsibilities), their nature, purpose and general location, and
6. The BLM federal fiscal year Annual Report on Cultural Resources.

B. Annual Report Schedule

The Annual Report for a federal fiscal year shall be due to SHPO on December 31 following the end of that fiscal year.

C. Field Office Visits

1. Each year the BLM and SHPO may conduct joint on-site visits to Field Offices to determine if:

- (a) the Office has access to qualified professional staff;
- (b) undertakings are receiving appropriate cultural resource consideration;
- (c) project documentation is completed and sent to SHPO in a timely manner;
- (d) cultural resources staff are making appropriate accurate professional judgments;
- (e) cultural resource identification, evaluation and treatment has occurred before undertakings proceed; and
- (f) follow-up monitoring, where required by avoidance stipulations, MOA or treatment plan specifications, is being completed.

2. The BLM/SHPO team will prepare a joint report for each field visit, within 60 days of the visit, and submit the report to the State Director.

APPENDIX B: SPECIAL SITUATIONS

A. Emergency Situations

1. Emergency situations are undertakings implemented within 30 days after a disaster or emergency has been formally declared by the appropriate authority, unless that time frame has been modified based on BLM's request to the Council to extend the period.

2. Unless BLM has:

(a) approved procedures in place at the time the emergency situation is declared for taking historic properties into account, based on consultation with SHPO/THPO, affected tribes and the Council, or has

(b) developed a PA to resolve adverse affects from undertakings relating to the emergency situation, then

(c) the BLM shall afford SHPO and/or affected THPO, and any Indian tribes that may attach religious and cultural significance to historic properties likely to be affected, seven days prior notification of the pending undertaking.

3. If BLM determines that circumstances do not permit seven days for comment, the BLM shall notify the Council, the SHPO and/or affected THPO, and any affected Indian tribes and invite comments within the time available.

B. Lands Actions

1. Transfers

a. Transfers to Federal Agencies: Where BLM proposes to transfer or withdraw land to another federal agency that must comply with Section 106 of the NHPA, BLM need not conduct a field inventory of the lands to be transferred. Upon transfer the BLM will provide a copy of pertinent cultural resource data to the agency receiving such land.

Data identified as proprietary by Native Americans will not be transferred to the recipient agency without the written permission of the Native American group identifying the data as proprietary. BLM will notify the agency receiving the lands that there are specific Native American concerns regarding the lands and identify a point of contact for dealing with the concerns.

b. Transfers to Other Entities: Where lands are considered for conveyance to other entities, the BLM will:

(1) review its cultural resource data base to determine if conveyance may affect known cultural resources or areas where undiscovered cultural resources are likely to occur;

(2) discourage selection of lands where such effects are likely, unless BLM determines after compliance with Stipulation V.A., that the conveyance is in the public

interest; and

- (3) comply with this protocol if it decides to proceed with the conveyance.

2. Restrictive Covenants

Restrictive covenants should be used only when bonding for the necessary data recovery or treatment is not appropriate and BLM assumes responsibility for funding and completing the treatment or data recovery. Covenants should not contain an automatic sunset clause, and should remain in effect no longer than is necessary to complete the field portion of the data recovery or treatment.

3. Retention of Significant Resources

The BLM may elect to retain lands identified for disposal when the cost of treatment or data recovery outweighs public benefits which might be gained by the exchange. The BLM may also elect to retain lands when it is not feasible to adequately treat the expected effects on scientific, public, traditional or conservation values.

C. BLM Responsibilities on Non-Federal Lands

1. The intent of the National Historic Preservation Act is to consider the effects of federal decision making on historic properties regardless of the land status involved. Therefore, the BLM will assure that its actions and authorization are considered in terms of their effects on cultural resources located on non-federal as well as federal lands.

2. The determination of the extent of BLM's responsibility for identifying and treating adverse effects to non-federal historic properties is based on the independent evaluation of the following factors:

- a. Would the project remain viable if the federal authorization were not provided?
- b. How likely are historic properties in the area of potential impact?
- c. The degree to which BLM authorizations affect the location of surface disturbing activities on non-Federal lands.

3. The BLM will conduct, or cause to be conducted, an inventory and evaluation of cultural resources on non-federal lands within the area potentially impacted by proposed land uses, whether the undertaking was initiated by BLM, or in response to a land use application.

4. The BLM will consider the effects of its decision-making upon historic properties. It will either treat, or cause to be treated, adverse effects to non-federal historic properties that would result from land uses carried out by or authorized by BLM, or will consult with the SHPO and the Council on the basis of an adverse effect determination.

5. When treatment involves data recovery, adequate time will be allocated for the analysis of the artifacts, samples, and collections recovered from non-federal lands and for report preparation. The

artifacts, samples, and collections recovered from non-federal lands remain the property of the non-federal landowner unless donated to the federal government, a state facility, or are otherwise subject to state law. The BLM must receive complete and true copies of field notes, maps, records of analyses, photographs, other data, and reports for treatment work conducted on behalf of the federal government. Reports resulting from work on non-federal land will be made available to the land owner.

6. Identification and/or treatment of adverse effects may be required as a condition of a lease, permit, or license issued by BLM, whether federal or non-federal lands are involved.

D. Travel Management

1. Introduction: As part of its land use planning process, BLM is required to designate off-highway vehicle (OHV) routes and areas on public lands as open, limited or closed (see 43 CFR 8342 and 43 CFR 8340.0-5). These designations must be included in the Records of Decision for Resource Management Plans (RMPs), Travel Management Plans (TMPs); and any other plans that designate OHV routes or areas.

In some cases, route designations, such as continued use with no change in use, will allow the continuation of a longstanding use of the public lands and will create minimum new impacts to cultural resources. Other designations will benefit cultural resource protection by reducing the proliferation of OHV routes and providing clearer enforcement authority to reduce impacts to public lands. Still others will increase impacts to cultural resources by opening new areas or concentrating previously dispersed use.

Given the nature and anticipated effects of BLM decisions made to designate OHV routes or areas in land use plans and travel management plans, the parties agree that these decisions are undertakings subject to compliance with Section 106 of the NHPA. Section 106 compliance for these undertakings will be handled as follows:

2. Planning: Evaluations of routes or areas to be designated as closed to protect cultural resources should be based on existing inventory information and not postponed until additional information is acquired.

Available cultural resource information must be used to take into account potential impacts on cultural resources when making route or area designations. This includes areas where use is introduced, expanded or intensified through OHV designation. It also includes any changes that result in expansion or deepening of an existing route, or creating a new route.

Each land use plan or travel management plan should include a process for prioritizing route or area inventory and monitoring efforts, and the implementation of treatment measures.

SHPO will be given the opportunity to be a cooperating agency in travel management planning efforts being analyzed by means of an EIS.

3. Area of Potential Effect (APE): The APE should include both the areas in which direct and indirect impacts are likely. If route designation is expected to affect only the area previously impacted along the route, the APE can be limited to the area previously impacted. If route designation would increase the APE by authorizing, or allowing, use outside of the area previously impacted, then the new APE should be inventoried and impacts treated prior to implementing the travel plan. Designated use areas adjacent to existing and future designated routes where various activities, including parking vehicles and camping, are authorized or allowed, should be included in the APE.

4. Inventory: The decision to inventory should be based on the nature of the use authorized by the designations and the likelihood that cultural resources will be affected by the designations. Inventory efforts should focus on proposed route designations that change OHV use or travel patterns in ways that could adversely affect cultural resources. The decision relating to inventory must be documented using the Needs Assessment process.

Route or area closures need not be inventoried to Class III standard unless there is a reasonable expectation that the closure will shift OHV in ways that result in adverse effects on cultural resources. Areas expected to receive additional use that could adversely affect cultural resources should be inventoried to Class III standards.

Class III inventories are not required when designations would allow OHV use to continue on routes that have been effectively open or limited in use. Class III is necessary when the route or right-of-way is expanded in ways that could impact cultural resources

Class III inventories are required prior to designating new routes or new areas not previously open for OHV use.

Class III inventories are not required for routes in areas (1) where there is a low probability of finding cultural resources, or (2) where cultural resources are not likely to be affected by OHV use.

5. SHPO Consultation: If the SHPO elects to become a cooperating agency in the plan, then SHPO consultation will occur during plan developments. If not then SHPO should be consulted prior to initiating a land use or travel management planning effort to ensure that appropriate identification, monitoring, and treatment options are developed and implemented during or after the effort.

6. Coordination with Tribal Governments: The planning team should coordinate with tribal governments prior to initiating a land use or travel management planning effort to ensure that appropriate identification and treatment options are developed and implemented during or after the effort. SHPO will be informed to the tribal heritage resource identification effort and consulted on evaluations and effect determinations as specified in this protocol.

7. Treatment/Monitoring: A cultural resource specialist shall be included in the team for monitoring the effects of OHV use and route or area designation actions. Specific projects undertaken to improve, or rehabilitate, routes or areas are subject to Section 106 review and may require Class III inventory and SHPO consultation.

When monitoring is proposed as mitigation for potential effects from route or area designation, the decision record should make it clear: (1) when the results of monitoring will automatically initiate treatment actions; (2) what actions should be taken; and (3) the conditions under which travel can be resumed. This should obviate the need for further environmental analysis or a plan amendment prior to the emergency closure.

Route or areas in which monitoring reveals adverse effects to cultural resources will be protected through an emergency closure action and remain closed until the effects can be appropriately treated.

8. Plan Modification: A cultural resource specialist should be included on any team working on periodic plan maintenance or on a plan amendment.

Cultural resource monitoring and inventory information, gathered after a plan is approved, maintained, or

amended, shall be used to review and update the route network as necessary in any plan maintenance or plan amendment process.

9. Emergencies: Each travel management plan shall follow the process described in 43 CFR 8342 for closing routes or areas to avoid emergent impacts to cultural resources.

APPENDIX C: CATEGORICAL EXEMPTIONS

1. Reintroducing endemic or native species into their historical habitats in ways that do not involve surface disturbance.
2. Maintaining, replacing or modifying existing projects, facilities, routes, or programs that do not disturb additional surface area, or historic properties; or where the ground has been previously disturbed to the extent that historic properties could not exist; or where the facility itself is not a historic property.
3. Conducting, or approving permits for, non-archaeological data collection and monitoring activities, not associated with proposed undertakings, which involve new surface disturbance less than 1 square meter. Such activities could include forage trend monitoring, stream gauges, weather gauges, research geophysical sensors, photoplots, traffic counters, animal traps, or other similar devices.
4. Classifying lands as to their cultural resource use, mineral character, vehicle use, waterpower and water storage values where the classification itself does not directly entail surface disturbance.
5. Issuing withdrawal continuations, modifications, extensions, terminations, or revocations where there would be no change in use or surface disturbance.
6. Issuing withdrawal terminations, modifications or revocations and classification cancellations and opening orders where the land would be opened to discretionary land laws and where each discretionary action would be subject to the NHPA Section 106 process.
7. Renewing existing rights-of-ways characterized by complete surface disturbance (roads, pipelines, power lines, communication sites, etc.) when no new surface disturbance is authorized.
8. Continuing Recreation and Public Purpose Act lands, small tract lands, or other land disposal classifications where the continuation conveys no additional rights.
9. Assigning land use authorization where the assignment conveys no additional rights and the assignee agrees to abide by any cultural resource stipulations in the original authorization.
10. Issuing permits and rights-of-way where no additional surface disturbance is authorized.
11. Issuing rights-of-way for overhead lines with no pole, tower, or other surface disturbance.
12. BLM easement acquisitions.
13. Installing facilities, such as, recreational, special designation, regulatory, or information signs, visitor registers, kiosks, cattle guards, gates, temporary corrals, or portable sanitation devices in previously disturbed areas outside of known historic properties.
14. Issuing or modifying regulations, orders, standards, notices, and field rules where no new surface disturbance is authorized or is not subject to NHPA review.
15. Decisions and enforcement actions (that do not involve cultural resources) to ensure compliance with laws, regulations, orders, lease stipulations, and all other requirements imposed as conditions of

approval, when the original approval was subject to the NHPA Section 106 process.

16. Approving non-surface disturbing operations pursuant to 43 CFR 3000 to 43 CFR 3299 (Oil & Geothermal).

17. Conducting minerals exploration that conforms to casual use (43 CFR 3802.1-2 and 43 CFR 3809.5(1)).

18. 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 cultural resources.

19. Dispersed non-permitted recreation activities, such as rock hounding, that do not involve new surface disturbance.

20. Issuing recreation permits authorizing:

a. use on rivers and trails or in other specified areas where use is similar to previous permits for which environmental documents addressing cultural resource concerns have been prepared and which will not affect cultural properties;

b. Off Highway Vehicle (OHV) events over courses where Section 106 consultation has already been completed and no changes in the course, spectator areas, pit areas, or other surface disturbing activities is allowed; and

c. long-term visitor use that does not involve surface disturbance and does not increase the probability of vandalism of cultural resources.

21. Authorizing OHV events that are limited to previously disturbed or non-historic routes and routes with no historic properties that are highly 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, roads less than 50 years old, and active washes (washes with recent loose sandy/gravelly/silty in the non-vegetated bottoms of drainage) that are subject to annual water action.

22. Continued use of high explosives, designated target areas within the Training Ranges that have been used historically for this purpose and are highly disturbed, as shown in Appendix K, Figure 1.

APPENDIX D: RECORDING AND EVALUATING HISTORIC LINEAR FEATURES OR DISTRICTS

Many of the most important and prominent cultural resources in Nevada are linear features from the historic period. These include trails, roads, highways, railroads, canals, telegraph lines, fences, and other similar features. Some historic linear features have an excellent documentary record showing when they were created, who was involved in their creation, where they are located, and what has happened to them during their existence. However, problems arise in determining how much to record, how to evaluate, and thresholds of integrity. As a result, a consistent method of providing the information required to record, evaluate, and manage linear features is provided in this appendix.

The evaluation of a linear resource is more challenging than that of a non-linear resource with manageable boundaries. The linear resource may possess varying states of preservation and integrity, and may pass through federal, state, county, and private lands, causing recordation and evaluation to be complex tasks. Surveys of linear resources should attempt to ascertain or reconstruct the nature, extent, and chronology of the resource, and the historical context to which it belongs. Recording linear features is problematical because the full extent of the resource usually extends beyond the APE. It should be agreed upon in advance whether the project should involve the recordation and evaluation of the entire resource or a portion of it. The investigator should prepare a historical context to evaluate the entire linear feature unless BLM and SHPO agree otherwise.

A. Conducting Research for Historic Linear Features or Districts

Pre-field research may indicate the presence of historic linear features. They may be present on GLO plat maps and USGS topographical maps. Secondary sources of history may also provide information about their presence.

When linear features are encountered, the investigator needs to assess whether a linear resource is historic in origin. The following three criteria should be applied to make such a determination:

1. Is the general alignment present on historic maps, such as GLO plats or USGS maps?
2. Does the resource possess artifacts of the period?
3. Does the resource possess physical characteristics similar to other identified linear resources?

Fieldwork must be supplemented by historical research to locate historic photographs, maps, and plans, or engineering drawings of the resource.

To evaluate the feature, the BLM will prepare a historic context using information found in records such as GLO records, State Board of Control/Engineers records, Highway Department records, Army Topographical Corps reports, USGS topographical maps, aerial photographs, and county records. General histories of Nevada and the region should be consulted to determine if the project or the individuals involved are historically significant. Newspapers may be checked to see if the construction event was widely reported at the time or if the feature was considered important in engineering or design, and local histories should be consulted to determine if the event or individuals were considered important by the local population. The investigator should also consult the transportation chapter of the *Nevada Comprehensive Preservation Plan* (1991) and any Certified Local Governments within the APE. References should be cited in the

documentation, whether they yielded pertinent information or not. The results of the records search should be incorporated into the report and onto the *Nevada Cultural Properties Form* to evaluate the linear resource.

B. Documenting Historic Linear Resources

Some specific considerations for documenting linear resources are:

1. Location and Boundaries--on a map (or maps) of appropriate scale indicate the location of the known extent of the resource and identify the portion(s) being documented, as well as any feature associated with the linear resource.

a. Linear resources may intersect and exceed limits of an APE. Unless otherwise specified by the BLM's cultural resource specialist handling the project, recording of linear features exceeding the APE will extend 100 meters beyond the APE boundaries.

2. Description--provide information on the construction techniques, configuration of, and materials used to construct the linear feature. Describe any features and/or artifacts that may be associated with it. Describe in detail each cultural feature associated with the linear resource. Features of a linear resource generally consist of components integral to the functioning of the resource. Feature descriptions should include information about its construction details, dimensions, and any brand names or patent information recorded on machinery. Plans, cross-sections, and elevations of associated features should be included in the engineering documentation section of the report. Examples of features associated with linear resources include:

a. Roads: retaining walls, culverts, borrow pits, road beds and grades, fences, bridges, and tunnels;

b. Ditches/Water Systems: siphons, flumes, spill gates, gate valves, dams, headgates, sluices, canals, pipes, ditch/flume tenders' cabins, and reservoirs;

c. Trails: blazes, cairns, retaining walls, and paving;

d. Railroad Grades: through cuts, sidings, retaining walls, culverts, spurs, signals, switch stations, depot remains, fences, bridges, tunnels, and trestles;

e. Telegraph/Power Lines: poles, access roads.

3. Setting--Describe in detail the natural or physical environment through which the linear resource passes. Such information would include descriptions of natural features, landscape characteristics, slope, vegetation, etc. Provide an estimate of the proportion of the resource that has been destroyed or modified, where possible.

4. Dimensions--describe the dimensions of the entire linear feature or the portion being documented in the following manner:

a. Top Width--measure the linear feature at its highest point. For water systems such as ditches and canals, the top width should be measured at the crest of the berm(s) or wall(s). Record more than one width or range of widths, if appropriate. For example, a single water

delivery system may be composed of a flume, earthen ditch, and concrete canal with different top widths. Clearly identify the elements being measured and the locations where measurements were taken.

b. Bottom Width--provide a width for the base of the feature, or provide a range of widths, as appropriate.

c. Height or Depth--provide the maximum depth or height of the resource, as applicable, or indicate the variation in that dimension along the length of the linear feature, or the segment being documented. Note any changes to this measurement, such as siltation in a ditch.

d. Length--provide the overall length of the linear feature and the segment being documented, if applicable.

C. Evaluating Historic Linear Resources: National Register Criteria and Integrity Issues

Evaluating the significance and National Register eligibility of a linear resource is as problematical as documenting it, because it may be significant under one or more of the four National Register eligibility criteria, and it most likely will display varying states of preservation and integrity. An investigator must identify the criteria under which the linear resource may be eligible for inclusion in the National Register before considering integrity issues. However, integrity, and thereby eligibility may be determined on a segment-by-segment basis.

The National Register defines integrity as the ability of a resource to convey its significance. The evaluation of integrity must always be grounded in an understanding of a resource's physical features and how they relate to its significance. To retain historic integrity a resource will possess at least several of the seven aspects of integrity. These aspects of integrity are: location, design, setting, materials, workmanship, feeling, and association.

Setting is an important factor in demonstrating integrity of a linear resource. The setting must reflect the character of the historic period with minimal intrusive elements. The National Register has been liberal in the evaluation of numerous linear resources in Nevada by determining eligibility on the basis that there has been little change in the landscape since the historic period. For example, a railroad grade may lack ties and tracks, but if little of its historical appearance has changed, it may still be eligible for the National Register under Criterion A. Because of the importance of setting to a linear resource, viewsheds may become a major consideration in determining project effects. However, setting may be less important in evaluating a water conveyance feature because the feature may be most significant for its engineering, and its design and workmanship become most important in determining integrity.

Some linear resources possess structural and/or engineering features (e.g., the Marlette Lake Water System), and some possess none (e.g., the Old Spanish Trail). Therefore, assessing integrity of design and workmanship may have limited applicability, or it may be highly significant. Some considerations regarding design and workmanship might be to determine if the linear feature has distinctive engineering features such as rock retaining walls, trestles, or culvert. If so, determine whether these elements exhibit structural integrity. If the resource retains some degree of its original fabric and workmanship, ascertain if it is sufficient to demonstrate the feature's significance. Significance might then be viewed in terms of distinction as a representative of a type or style. It

would also be important to determine if there are any other associated resources present and in sufficient numbers to convey an understanding of the linear resource.

On-going maintenance and continued use of a linear resource may or may not affect the resource's integrity. Maintenance and use that has been conducted consistent with methods employed when the resource was developed do not compromise the historic integrity of the resource. These resource activities include canals, the use of roads along the canal, and cleaning silt from the canal; for railroads, the in-kind replacement of ties, rails and switching facilities; and for roads, in-kind repairing, grading, and cleaning of roads. Maintenance and use that is not consistent with historic use compromise the integrity of a historic resource. Such actions would include changing headgate or siphon design for canals, lining earthen ditches with concrete, changing the ballast type, rail type, or other structures for railroads, and changing the surface material and grade of roads. Modification of the route of any linear feature may also compromise its integrity.

Feeling and association may be important facets of integrity for trails (Oregon-California Emigrant Trail), but their retention alone is never sufficient to support eligibility of a property for the National Register.

APPENDIX E: RESOURCE TYPES CATEGORICALLY NOT ELIGIBLE

A. Isolate artifact

A single artifact or pieces from a single artifact, i.e., 10 pieces of glass from a single bottle. An isolate artifact is considered single and unassociated when separated by 30 meters or more from any other artifact. For example, two flakes of the same or different raw material separated by 29 meters would be documented as a site. Ten pieces of glass from a single bottle spread across 31 meters would be an isolate. Isolates are not recorded on a site form, but are listed in a table designated by number, description, and location.

B. Isolated or Unassociated feature

A single feature unassociated with other features or artifact scatters that are undateable; e.g. a prospect pit, a claim marker, an audit, or a shaft. An isolated or unassociated feature is considered single and unassociated when separated by 30 meters or more from any other feature or artifact. If these features are elements to a historic district, they are not isolated or unassociated. In addition, if an isolated feature is unique because of its construction (elaborate stonework claim marker) or distinctive qualities, the feature has to be evaluated for eligibility. Isolated features that have potential data (fire hearth) need to be evaluated for eligibility. Isolated or unassociated features need not be recorded on a site form, but are listed in a table designated by number, description, and location.

C. Post-1950 Cultural Resources

Cultural resource sites that post-date 1960 (or contain a majority of artifacts that post-date 1960) are not considered eligible for the purposes of Section 106 compliance unless the site is of exceptional significance as defined in National Register B Bulletin 22, entitled *How to Evaluate and Nominate Potential National Register Properties That Have Achieved Significance Within the Last 50 Years*.

D. Unassociated Historic Artifact Scatters

This site type is categorically not eligible when it cannot be definitively associated with a specific historic theme as defined in the *Nevada Comprehensive Preservation Plan* (1991). One example of this site type is a single episode roadside refuse deposit.

Unassociated artifact scatters will be considered categorically ineligible with the submission of the following information:

1. A minimal level of archival research does not reveal a possible association. The feature or site in question may not be depicted on the following documents:
 - a. General Land Office map (provide date);
 - b. Land Status map;
 - c. Mineral Survey records;
 - d. Nevada State Museum records;
 - e. State Water Engineer's records;

f. 15 minute Quadrangle (provide date); or

g. Local city and county records.

2. A brief justification for this determination will be included in the eligibility section of the report and will address the following topics:

a. location and type of nearest recorded site; and

b. location of the nearest known town, community, or historical development.

E. Linear Resources

Linear resources in isolation from other linear resources, archeological deposits, and buildings/structures are discussed below in this framework for categorical exemptions. Artifacts directly associated with that linear resource, such as an insulator for a telecommunication line is considered inclusive to that linear resource. If only a segment of the linear resource is present within the project area, and is determined ineligible (non-contributing), the remaining portions of the linear resource are considered unevaluated for the purposes of Section 106 compliance.

1. Roads/Trails: If a road or trail is undateable, cannot be historically associated with a historic theme, lacks engineered features associated with the road or trail, and has been bladed, then that segment is considered not eligible under all criteria.

2. Water Conveyance: If a water conveyance system is undateable, cannot be historically associated with a historic theme, and lacks engineered features associated with the water conveyance feature, then that segment considered as not eligible under all criteria.

3. Fences: If a fence is undateable, lacks unique construction features, is constructed of metal T-posts and barbed wire, then that segment of the fence is considered not eligible under all criteria.

4. Telecommunication lines (telegraph, telephone, power transmission): If a telecommunication line is undateable, lacks unique engineered features associated with that segment of the telecommunication line, then that segment is considered not eligible under all criteria.

APPENDIX F: CATEGORICAL NO ADVERSE EFFECT SITUATIONS

A. Single Pass Geophysical Exploration

Single pass geophysical exploration can be a categorically determined to have no adverse effect where:

1. All traffic associated with exploration must follow routes that avoid cultural resources. Company flagging crews will identify and flag anticipated detours on the route, so that potential detours can be inventoried along with the main route.
2. The following may be excluded from cultural inventory requirements:
 - a. vibroseis and conventional truck-mounted shothole drill routes and operations located on constructed roads or well-defined existing roads and trails;
 - b. pedestrian routes and placement sites for hand-carried geophone, cables, or similar equipment;
 - c. cross-country operations of seismic trucks and support vehicles on bare frozen ground or over sufficient snow depth (vehicle traffic does not reveal the ground) so as to prevent surface disturbance;
 - d. one time (single pass) routes of wheeled vehicles under 10,000 lbs GVW;
 - e. above ground seismic blasting (Poulter method);
 - f. helicopter-supported activities, including shothole drilling and above ground seismic blasting (Poulter method) in most areas, that do not require helicopter staging area preparation and vehicle use off of roads and trails; and
 - g. exploration activities defined as casual use in 43 CFR 3150.
3. Other geophysical exploration activities that require blade work or other surface disturbing activities. These activities also involve additional direct and indirect effects for vehicle traffic. Consequently, the following situations will usually necessitate cultural inventory as determined by the Field Manager on a case-by-case basis:
 - a. cross-country vibroseis and conventional truck or OHV mounted shothole drilling operations;
 - b. surface disturbing activities associated with any geophysical technique such as blading access routes or helicopter staging areas, or disc-and-drill seeding for rehabilitation;
 - c. portions of jug truck and OHV routes, "backpack" shothole drilling, helicopter-supported activities including shothole drilling, and above ground seismic blasting (Poulter method) in areas with potential for significant fragile surface or subsurface cultural resources (dune fields, antelope traps, standing structures, etc.).

4. This exemption does not apply to 3D seismic exploration projects or to any other types of multiple pass projects.

B. Hazards Abatement

1. Hazards abatement where cultural resources are not involved.

2. Authorizing or installing devices to protect human or animal life that do not involve new surface disturbance.

3. Abandoned Mine Hazard Abatement. Nevada Department of Minerals (NDOM), in cooperation with the BLM, identifies and abates mine hazards on Public Lands in Nevada. Some of these mine hazards are over 50 years in age. When the BLM and NDOM find it necessary to close or barricade mine workings that present immediate health and safety concerns, the BLM will ensure that the following measures are implemented:

a. Temporary Closures: When a temporary fence is installed to limit public access to the hazard, the BLM will:

(1) prior to installing a temporary fence, ensure inspection of the fence location by cultural resources staff or a DAT, and the fence moved, if necessary, to avoid effects on cultural resources.

(2) inform the SHPO of all temporary closures. This will include for each closure the nature of the hazard, UTM coordinates established using an appropriate global positioning system unit, a map showing the location of the fence in relation to cultural resources, and a brief description of the cultural resources involved.

b. Permanent closure of abandoned mines over 50 years old, identified on a BLM list of proposed closures for a given fiscal year, can be done without prior BLM/SHPO consultation if:

(1) Prior to any ground-disturbing activity, a qualified historical archaeologist:

(a) prepares a resource assessment of the individual mine site(s) targeted for permanent closure. The assessment must record the shafts/adits to be closed and define the historical attributes of these shafts/adits.

(b) records and conducts Class III inventory in areas from which fill will be taken and define and document the cultural attributes of this areas; and

(c) Takes 5 x 7 inch black and white photographs of the shafts/adits before and after closure. The pictures must sufficiently illustrate the construction/engineering features of each shaft/adit, artifact concentrations, as well as an overview depicting its setting within the landscape. Each photograph will be accompanied by a photo point number, a corresponding UTM location, and photo direction; and

(d) by means of a 7.5' USGS topographic map as well as global positioning system to determine and record UTM coordinates, locates and maps each

shaft/adit as well as corners of all inventory areas from which fill removal is proposed; and

(e) produces an archival copy of the resource assessment, photographs, and maps within 60 days of finishing the permanent closure. Each BLM office will provide a report to the Nevada SHPO on the basis of the federal fiscal year.

(f) A “qualified historical archaeologist” is defined as someone who meets qualifications for inclusion on a Nevada BLM cultural resources use permit in the capacity of Principal Investigator or Crew Chief as a historic period archaeologist.

(2) During closure, either a qualified historical archaeologist or an appropriately trained DAT will:

(a) monitor placement of fill into each shaft/adit to ensure that significant historical archaeological features are not damaged by the activities;

(b) take 5 x 7 inch black and white photographs of the shafts/adits after closure and of any fill/borrow areas after removal or use, including overviews depicting setting within the landscape;

(c) file a final monitoring report with the BLM and SHPO that outlines field procedures employed to ensure compliance with this item;

(d) ensure that fill is taken only from areas previously inventoried by a qualified archaeologist and is not part of another archaeological/ historic site;

(e) ensure that the landscape is restored to the no adverse effect standard defined in Section IV.B. 3. within the historic landscape; and

(f) files a final monitoring report with BLM and SHPO that outlines field procedures employed to ensure compliance with this item.

(g) Appropriately trained DATs are those persons who have successfully completed a regimen of instruction provided by Nevada BLM in the identification of archaeological remains (particularly those of the historic period), map reading, site record interpretation, photography, and use of GPS locating devices.

C. Trespass Abatement

Removing non-significant structures, machines, or materials that are less than 45 years old, such as, abandoned vehicles, trash dumps, trespass buildings, ranches, and mines, and other similar items.

The site from which these materials are removed may be reclaimed, without additional SHPO consultation, as long as the reclamation does not expand previous surface disturbance.

D. Fences

1. Exclosure Fences

a. Exclosure fences can be categorically determined to have no adverse effect where cultural resources within the proposed exclosure have been sufficiently inventoried and evaluated so that the fence will not divide an historic property and place a portion of it outside of the fence and there will be no historic properties within 10 meters of the fence. An exception is possible where the fence can run through a historic property by following the edge of an existing road that is on the outside of the exclosure, and the fence is kept on the edge of the road disturbance;

b. the fence is placed so that it does not call attention to historic properties;

c. the fence is constructed with methods that minimize surface disturbance; and

d. there will be no livestock grazing within the exclosure.

2. Other Fences

Other fences can be categorically determined to have no adverse effect where:

a. it is possible to run the fence through a historic property by following an existing road, or similar surface disturbance, and the fence, and associated trailing is kept within the road disturbance;

b. the fence and associated trailing can be placed so that it avoids all cultural resources in the manner specified in Appendix H.

E. Spring Development Pipelines

Spring development pipelines can be placed across historic properties within previously disturbed areas and categorically determined to have no adverse effect if:

1. the pipeline is either installed on or above the surface or placed below the surface by excavating a trench with hand tools or a mechanical trenching device (e.g., Ditchwitch™) that is no more than 8" wide and 18" deep;

2. the spring itself is not a cultural resource and therefore the spring development, separate from the pipeline, will not affect an historic property;

3. the pipeline impacts no more than 5% of the surface exposure of the site and is located by an archaeologist in an area of low artifact density with no features;

4. an archaeologist monitors the trenching and sample fill from the trench to detect subsurface cultural deposits and the project will be halted if the archaeologist determines that the installation is having unexpected effects; and

5. the trench will be backfilled using hand tools.

F. Sale of Subsurface Mineral Estate

The BLM can convey the subsurface mineral estate to the surface owner, without field inventory and SHPO consultation, if it finds that the parcel has no potential for containing mineral deposits. The SHPO will be notified of the transfer and sent an informational map showing the lands affected and a list of any known cultural resources within the transfer area.

G. Rejuvenating Existing Seedings

Undertakings to rejuvenate existing seedings can be considered as categorically having no adverse effect if:

1. the original seeding was plowed;
 2. the proposed rejuvenation does not extend beyond the boundaries of the original seeding;
- and
3. rejuvenation activities will not impact more than the top 10 cm of the plowed surface.

H. Roads and Trails

1. New undertakings that involve road construction, reconstruction, and improvement projects that may affect cultural resources will be considered using the procedures in this Protocol.

2. If an historic property is traversed by facilities or improvements created within the last 50 years, these existing facilities or improvements may be used for a project so long as their use is consistent with the function for which they were created and that use does not further affect cultural resources (e.g., the use of existing access roads that use or traverse linear sites such as railroad grades). Such continued use shall be considered to have no effect on historic properties.

3. Continued use or reuse of a road or trail will not affect a property and no case-by case consultation with the SHPO is necessary under the following circumstances:

- a. when a physical barrier along the traveled way (fences, boulder barriers, existing pavement) prevents further damage to cultural resources;
- b. where the roadway or railway was cut through or is situated below a property (e.g., archaeological deposit) through which it passes. The absence of a property (e.g., cultural deposit) may be documented by field work in the form of surface observations and/or subsurface test excavation. These excavations may include shovel test, excavation units, or auger bores.

I. Fire Management

1. Wildland Fire Management. As defined by the National Wildland Coordinating Group, a wildland fire is any non-structure fire that occurs in the wildland. Wildland fires are categorized as either (1) wildfires or (2) prescribed fires.

a. Wildfires are unplanned ignitions or prescribed fires that are declared wildfires. A wildland fire may be concurrently managed for one or more objectives (or uses) and 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.

(1) Wildland fire will be used to protect, maintain, and enhance resources and, as nearly as possible, be allowed to function in its natural ecological role. Use of 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.

b. Prescribed Fire is any fire ignited by management actions to meet specific objectives. A written, approved prescribed fire plan must exist, and NEPA requirements (where applicable) must be met, prior to ignition.

2. Wildland Fires: Wildfires will be suppressed in accordance with Guidance for Implementation of Federal Wildland Fire Management Policy February 2009 replacing the Federal Wildland Fire Management Policy (June 2003). In these emergency situations there is no need to consult with the SHPO prior to suppressing the fire. Fire rehabilitation will be done in accordance with Appendix F, Section J.

Response to wildland fires will be based on ecological, social and legal consequences of the fire. The circumstances in which a fire occurs, and the likely consequences on firefighter and public safety and welfare, natural and cultural resources, and values to be protected, dictate the appropriate response to the fire.

a. Use of Fire. Use of fire refers to the management of wildland fire for one or more objectives (or –uses”), including to allow fire to function in its natural ecological role. The decision support process for protection of cultural resources during use of wildland fire may be accomplished without prior SHPO consultation when a manager implements a decision support process to guide and document wildfire management decisions which meets the following conditions. The process will also provide situational assessment, analyze hazards and risk, define implementation actions, and document decisions and rationale for those decisions.

(1) A Cultural Resource Specialist with concurrence by the appropriate BLM Manager determines that there is a low probability of discovering vulnerable archaeological sites within the proposed fire area; and

(2) There is written documentation that the area has burned within the last 50 years at a sufficient intensity so that there is a low probability that vulnerable resources in the use area could have survived the fire; or

(3) The use area has been previously inventoried and no historic properties were identified; or

(4) The use area will be managed within prescription limits outlined in a fire management plan (FMP) that has been reviewed by SHPO.

b. If archaeological sites or historic properties are found within the fire areas, these resources or areas will be protected to ensure that fire temperatures do not exceed 600 degrees (F) in the vicinity of the historic property by means such as hand-constructed fire lines, foam wetting agents, or fire shelter fabric outlined in the approved FMP.

3. Prescribed Fires (Rx): The BLM agrees that prescribed burns have the potential to affect historic properties. Properties at high risk from prescribed burns include, but are not limited to historic buildings, structures and artifacts, prehistoric and ethnohistoric wooden structures (houses, wing traps, ramadas), ethnohistoric pinion processing equipment, rock art, and sites, such as rock shelters and habitation areas, with flammable organic deposits. Prescribed Fire Plans will be developed in accordance with the Interagency Prescribed Fire Planning and Implementation Procedures Reference Guide and BLM Supplement in order to allow for SHPO consultation as defined in this Protocol. Prescribed Fire Areas may be ignited by BLM without SHPO consultation if:

- a. A Cultural Resource Specialist with concurrence by the appropriate Field Manager determines that there is a low probability of discovering vulnerable archaeological sites within the proposed fire area; and
- b. There is written documentation that the proposed fire area has burned within the last 50 years at a sufficient intensity so that there is a low probability that vulnerable resources could have survived the fire; or
- c. The proposed prescribed fire area has been previously inventoried and no historic properties were identified; or
- d. The proposed prescribed fire area will be managed within the prescription limits (that protect historic properties from fire areas by hand-constructed fire lines, foam wetting agents, or fire shelter fabric) outlined in the approved prescribed fire plan that has been reviewed by the SHPO.

4. Avoidance Measures: Identified cultural resources that may incur damage from fire shall be excluded from Rx fire areas and protected by appropriate means to ensure that fire temperatures do not exceed 600 degrees (F) in the vicinity of the historic property. Avoidance measures may include, but may not be limited to hand-constructed fire lines, foam wetting agents, or fire shelter fabric. New fire line construction routes (e.g., dozer lines) shall be surveyed and fire lines reconfigured to avoid historic properties.

5. Tribal Consultation: Native American consultation, as appropriate, should be completed at the Resource Management Plan level as well as at the Fire Management Plan level to identify concerns regarding the burning of resources or resource areas of religious or cultural importance.

J. Fire Stabilization/Rehabilitation

1. Any fire stabilization/rehabilitation activities (such as aerial seeding, most hand planting, temporary fences on steep slopes, and etc.) that do not involve mechanized surface disturbance, will not be inventoried or treated for Section 106 purposes. Rehabilitation activities involving more than 10 cm depth of mechanized surface disturbance will be handled to Class III standard. When determined appropriate in the Inventory Needs assessment process giving consideration to factors such as the number and types of expected cultural resources properties and their sensitivity, proposed

rehabilitation methods and anticipated impacts, rehabilitation activities such as rangeland drilling involving no more than 10 cm depth of mechanical surface disturbance will be handled with the procedures specified here.

2. Prior to initiating survey, the BLM will complete a records and literature search, as specified in the BLM General Guidelines, to identify known resources and areas with a high probability of containing resources in primary context.

3. When determined appropriate in the Inventory Needs assessment process, fire stabilization/rehabilitation activities that involve mechanized surface disturbance less than 10 cm depth will have the Area of Potential Effect surveyed based on the records search to identify areas that are likely to contain archaeological resources in primary context. In general, 100 meter transect surveys, with deviations to inspect high probability areas will be used. The BLM and the SHPO can agree, through informal discussions, to other survey approaches appropriate to individual rehabilitation undertakings.

4. All archaeological resources discovered or relocated, will be plotted on maps and recorded on the BLM Nevada IMACS short form. Resources, except those previously determined not eligible, by BLM and the SHPO, or that have been previously treated, will be flagged for avoidance and avoided during rehabilitation activities.

5. Flagging will be placed to minimize the potential for looting and vandalism and removed as soon as possible after re-seeding is completed. Sites will be hand seeded for camouflage as appropriate.

6. All areas inventoried in this manner will not be considered to have been inventoried for any other purposes and any subsequent undertakings in these areas will be inventoried to Class III standards.

7. The BLM will not consult with the SHPO prior to authorizing fire stabilization/rehabilitation activities conducted under these provisions. The BLM will provide the SHPO with an informational copy of a map showing the APE, area surveyed, and an informational copy of the short form(s) for any archaeological resources within it.

K. Grazing Management: The BLM recognizes the potential for grazing to affect historic properties through: (1) the concentration of livestock on cultural resources; (2) construction and maintenance of grazing facilities; and (3) other grazing operations in the immediate vicinity of historic properties. Therefore, grazing shall be administered as follows:

1. Issuing Grazing Permits:

a. as a permit comes up for renewal, the range staff and the cultural staff will discuss the potential impacts to cultural resources from grazing. Using archaeological site maps and use pattern maps, areas of high grazing use and known concentrations of cultural resources, or areas of high potential for significant resources, will be identified;

b. when there are known grazing conflicts with cultural resources, these will be mitigated or eliminated by amending grazing practices authorized in the permit;

c. when there is a high probability of grazing conflicts, the range and cultural staff should visit the area to see if there are, in fact, ongoing impacts from the grazing practices authorized in the permit. If there are, the permit will be amended to eliminate or mitigate these impacts;

d. the permittee and BLM staff will be made aware that the standard stipulations in the permit give BLM the ability to expeditiously mitigate or eliminate impacts to cultural resources discovered after the permit is approved;

e. prior to the start of each fiscal year, each Field Office will prepare a general letter to Tribes informing them of plans and schedules for 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. There is no need to consult with tribes on each renewal, but only on renewals in areas where they express an interest or that you know that they have an interest;

f. if the permit application is being considered as an Administrative Determination (AD) under NEPA, and the process above is followed, there is no need to consult with the SHPO before renewing each permit. The SHPO will be provided with an information copy of the memorandum to the permit file documenting the analysis used in authorizing the permit; a map showing known resource conflict areas; and a description of the measures used to mitigate impacts;

g. if the permit application is being considered in an EA or EIS, it will be analyzed through the standard Section 106 and Native American consultation processes outlined in this Protocol.

2. Range Improvements and Projects: After a permit has been issued or renewed, range improvements, surface disturbing projects, and changes in grazing practices (that will concentrate grazing and could create impacts) will be approved through the standard Section 106 and Native American consultation processes outlined in this Protocol.

L. Mechanical, Chemical and Manual Vegetation Fuels Management Activities

1. Project Planning

a. Fuels management projects include methods for mechanical, chemical, or manual vegetation manipulation that have the potential to adversely affect historic properties. Fire management activities involving wildland fire use or prescribed fires are addressed in the SPA, Appendix F.I and are not considered further here.

b. Mechanical, chemical, and manual vegetation fuels management proposals shall conform to approve Fire Management Plans which are subject to concurrence with the SHPO, per section X of the SPA.

c. A qualified Cultural Resources Specialist (CRS) will assist the Field Manager to establish the Area of Potential Effects (APE) for a fuels management project. The APE will include all areas where a proposed treatment may be purposefully or inadvertently applied and any buffer zones included in the project plan. The CRS is responsible for completing a cultural resources

Needs Assessment form as part of project planning and having it approved prior to project implementation.

2. Definitions

a. High sensitivity cultural resources are those for which the proposed fuels management project, if implemented, could result in loss of, or damage to, those qualities that may qualify the site for listing on the National Register of Historic Places (NRHP). Cultural resource specialists will determine this sensitivity.

(1) Resources listed on or eligible for the NRHP (also known as "historic properties") as well as known but unevaluated resources will be treated as if they are high sensitivity properties.

(2) Properties with high sensitivity to mechanical or manual treatments have surface or near-surface features or areas with patterns of distribution or relationships that may contain information important to understanding history or prehistory. Examples include, but are not necessarily limited to hearths; rock rings; a complex of ground stone implements; areas of discrete, single episode flaked stone reduction; remnants of historic structures or structural complexes; historic debris concentrations, rare or unusual features such as game drive traps.

(3) Examples of properties with high sensitivity to chemical treatments include, but are not necessarily limited to, those where chemical applications may:

(a) Alter the integrity or appearance of artifact assemblages, buildings or features in such a manner as to diminish or eliminate the potential for interpretation or alter those qualities that may qualify the site for listing on the NRHP; or

(b) Affect the utility of samples or artifacts for analysis, such as the contamination or alteration of radiocarbon samples through use of chemical treatments.

3. Inventory Requirements

a. Inventory requirements for mechanical, chemical and manual vegetation or fuels management activities will be determined in the Inventory Needs assessment process found at Section V.A.

b. Areas known or expected to contain high sensitivity resources should be subject to Class III inventory.

c. When deemed appropriate in the needs assessment process, areas of a fuels management APE involving no mechanized surface disturbance (such as through aerial seeding, hand clearing up to 10 cm in depth, installing temporary fences on steep slopes, non-organic chemical treatments, etc.) and that are expected to have no effect on high sensitivity resources need not be inventoried. High sensitivity sites will be avoided or effects treated prior to initiating the proposed action. As determined during the needs assessment analysis, staging areas, access routes, and other support facilities will be inventoried to Class III standards and

redesigned to avoid impacts, unless alternative strategies are developed per section 6a.

(1) When deemed appropriate in the needs assessment process, the area of a non-mechanized "lop and scatter" hand-thinning project will be considered a non-ground disturbing activity provided no activity results in disturbance over 10 cm below surface.

(2) If removed or displaced fuels are to be burned, staging and burn areas will be inventoried to Class III standards for a distance of 30 meters beyond the exterior margins of the proposed burn area, unless established otherwise through the needs assessment analysis or unless alternative strategies are developed per Appendix F.L.6.

d. Those portions of a fuels management APE involving more than 10 cm depth of surface disturbance will be inventoried to Class III standards and effects appropriately treated, unless alternative strategies are developed.

e. When deemed appropriate in the needs assessment process, fuels management activities involving less than 10 cm depth of mechanized surface disturbance, and for which the surface will not be removed, will be handled with the procedures specified here.

(1) The APE will be examined to re-locate known historic properties and unevaluated sites and to examine areas likely to contain high sensitivity cultural resources. In general, field examinations could be accomplished using 100 meter transect separation, with deviations accomplished through reconnaissance inventory to re-locate known resources or to inspect high probability areas. An APE with ground cover restricting visibility may require closer intervals as determined by the CRS.

(2) All archaeological resources discovered or re-located by means other than Class III inventory will be plotted on 7.5-minute US Geological Survey topographic maps and recorded on the BLM Nevada IMACS short form, unless alternative strategies are developed per section 6a of this amendment. Class III inventory site documentation and reporting will be as per the SPA.

(3) Site boundaries will be determined in all cases. In instances where surface fuel density precludes adequate surface visibility, a minimum buffer of 50-meters will be established beyond the known site perimeter where avoidance is proposed during project implementation.

(4) Class III inventory along margins of historic roads or trails (i.e., those known or likely to be more than 50 years old) generally will be done for 100 meters on each side of the physical traces of the road or trail identified in the field and within the project area.

4. Treatment

a. Appropriate steps for avoidance or treatment of effects to historic properties shall be implemented prior to initiating the undertaking.

b. Resources for which eligibility determinations are deferred shall be treated as if

they are historic properties.

c. High sensitivity resources will be flagged and avoided during management activities, except for those previously determined not eligible, by BLM and the SHPO, or that have been previously treated in relation to those qualities that would be affected by the proposed fuels management project.

(1) Standard avoidance measures found in Appendix F.L.6 will apply.

(2) Where vegetation removal or reduction may pose a threat to site integrity through post-treatment effects such as erosion or vandalism, sites will be hand-seeded or otherwise treated (e.g., camouflage, mitigation) as appropriate.

5. Special Considerations

a. Rejuvenation of Existing Seeded Areas. When deemed appropriate in the needs assessment process, the APE for a project to rejuvenate an existing seeding need not be inventoried if:

(1) The project is done with the same methods as the original seeding; and

(2) The project APE does not extend beyond the boundaries of the original seeding; and

(3) Rejuvenation activities will not impact more than the top 10 cm of the plowed surface; and

(4) Known historic properties and unevaluated sites will be avoided; and staging areas, access routes, and other support facilities will be inventoried to Class III standards and redesigned to avoid impacts, based on determinations in the needs assessment analysis. The use of vegetation mosaics to camouflage cultural resources should be considered.

Or,

(5) Past seeding projects may have resulted in disturbance to depths exceeding 10 cm below surface. If the needs assessment analysis indicates that this prior disturbance precludes affecting known or potential historic properties using methods proposed for a mechanical, chemical or manual fuels management project, no cultural resources inventory is required, per the SPA, Appendix C.

6. Avoidance Measures

a. Avoidance measures may include retention of existing vegetation as buffer zones to ensure adequate avoidance or to obscure the exact location of a sensitive cultural resource.

b. The design of vegetation mosaics may incorporate cultural resource areas but should not be limited to them, in order to avoid creation of inadvertent signals for the presence of sites that could lead to vandalism. Vegetation mosaics should include buffer zones extending

beyond actual site boundaries.

c. Temporary markers used to identify outer boundaries of avoidance areas shall be distinctive from other project markers to minimize the potential for confusion and inadvertent damage to sites. Markers around cultural resources or their buffer zones must be removed after completion of the project or project phase. The use of monitors (e.g., Project Inspector) to ensure successful resource avoidance is recommended.

7. Compliance

a. The BLM and the SHPO can agree, through informal discussions or formal consultations, to other inventory and treatments appropriate to individual fuels management projects.

b. The BLM need not consult with the SHPO prior to authorizing fuels management activities conducted under these provisions, except as noted. Nothing alters the BLM's agreement to request SHPO review for undertakings meeting threshold criteria expressed in the SPA, IIA-B.

c. For field reconnaissance conducted at less than Class III intensity, the BLM will provide the SHPO with project documentation consisting of (a) a copy of the approved Needs Assessment form, (b) a map showing the APE, area surveyed and survey method (e.g., reconnaissance, Class II), and (c) an informational copy of the short form(s) for any archaeological resources within it. Reporting requirements for all Class III inventory efforts remain as per the SPA.

(1) The site record for any NRHP-eligible (historic property) or unevaluated site that is not avoided by the proposed action shall include a specific statement of sensitivity and rationale for why no adverse effect will occur, unless this information appears in the Needs Assessment form.

d. Inventory accomplished at less than Class III intensity will not suffice for purposes of Section 106 compliance under other non-fuels management circumstances unless the inventory strategy was implemented based on project-specific consultation with the SHPO.

M. Fire Suppression Activity Damage

BLM policy requires that fire suppression activity damage repair actions be planned and performed primarily by the suppression incident organization as soon as possible prior to demobilization and that Fire Damage Assessment Reports be prepared. Fire suppression activity damage repair actions are documented by the fire suppression incident management team when possible, including both accomplished actions and those still needed to ensure that all planned actions are completed. In some cases, actions may be conducted by other units following containment of the wildland fire and demobilization of the incident management team.

Fire suppression activity damage repair must consider the extent and nature of ground-disturbing suppression-related activities including (but not limited to) dozer lines, temporary fire camps, and actions such as dozer line rehabilitation. Providing accurate locations to the cultural resource specialist, including GIS shape files derived from GPS mapping, may enhance the efficiency and

accuracy of determinations of the need for inventory. Where possible, cultural resources inventory should precede rehabilitation efforts in order to avoid the possibility of increased damage to sites. Accomplishment of any necessary cultural resources inventory should not delay implementation of rehabilitation actions by incident equipment where such equipment must be removed for emergency actions.

For cultural resources, determinations of the need for and extent of inventory are made by a qualified cultural resource specialist and are documented using the needs assessment process in Section II.A of this agreement, based on known or expected site densities, modeling, sensitive areas, historical documentation, reconnaissance or observation during or after the fire, etc. To be implemented, this needs assessment form must be approved by the appropriate official of the incident management team, field office or agency.

Charges for cultural resources inventory and related activities are funded by the appropriate fire suppression account (fire number) but may not be charged to the Emergency Stabilization or Rehabilitation subactivity accounts.

Reporting requirements for such inventories will follow the Statewide Protocol Agreement with the Nevada State Historic Preservation Office. Results of inventory will be summarized for inclusion in a separate confidential appendix to the Fire Damage Assessment Report.

Measures necessary to evaluate sites affected by suppression-related activities for eligibility to the National Register of Historic Places, or to treat effects from suppression-related activities will be discussed in consultation with SHPO, per terms of this Protocol.

Measures necessary to evaluate sites affected by suppression-related activities for eligibility to the National Register of Historic Places, or to treat effects from suppression-related activities, are charged to the appropriate fire suppression account. These procedures and accounting practices for suppression-related effects to cultural resources apply equally to Federal and non-Federal property.

In instances where qualified persons accompanied mechanized equipment during fire suppression for the purpose of avoiding cultural resource damage, the reporting information includes identification of personnel and any results (such as descriptions and locations of sites avoided). Location maps of disturbance and avoidance areas should be provided as part of the report.

**APPENDIX G:
DOCUMENTATION STANDARDS FOR HISTORICAL RESOURCES OF
LOCAL AND STATE SIGNIFICANCE**

This appendix deals with treatment of historic, not prehistoric, resources and provides standards for historic resources eligible for inclusion in the National Register at a state or local level of significance, not at a national level of significance. Should the BLM propose to affect historic resources significant at the state or local level, the agency may propose treatment to mitigate the effect. In the past, BLM not only consulted with the SHPO but sought advice from the National Park Service (NPS) on the kinds of treatment that would be required. NPS no longer requires HABS/HAER documentation on properties of local or state significance, instead, requesting that SHPOs create their own state standards. Seeking advice from NPS is now unnecessary unless the resource is of national significance.

To assist in preparing a treatment plan and in estimating costs, this appendix provides standards for treatment of historic resources as agreed upon by the BLM and the SHPO.

A. Levels of Significance

Within the framework of the National Register, the level of significance is defined as the geographic magnitude or scope of a property's historical significance and can be national, state, or local. Local significance is defined as the importance of a property to the history of its community, such as a town, city, or county. Likewise, state significance refers to the importance of a resource to the history of the state in which it is located. The following documentation standards are specific to historic resources eligible to the National Register at the local or state level of significance.

B. Resource Categories

For the purposes of this document, a historic resource is defined as a historic district, building, site, structure, or object; specifically, any such resource that is listed or eligible for listing in the National Register of Historic Places. The following is a partial listing of historic resource types that might be subjected to the level of documentation described herein:

1. District--a geographically-definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development; may also comprise individual elements separated geographically but linked by association or history. Examples of historic districts are mining sites with multiple resources, including buildings and equipment; farms and ranches; and various linear resources, such as water systems and railroads.
2. Building--a structure enclosing a space and providing protection from the elements and that shelters some form of human activity; typically includes walls, a roof, and other components. Commercial buildings may include banks, breweries, casinos, factories, foundries, garages, hangers, laundries, mortuaries, office buildings, railroad stations, blacksmith's shops, stores, theaters, and warehouses; residential types may be single family dwellings, duplexes, apartment buildings, barracks, dormitories, hotels, bunkhouses, quarters, shacks, and shanties; institutional buildings may be academies, amphitheaters, armories, arsenals, asylums, aviaries, Capitols and other governmental buildings, churches, courthouses, fortifications, hospitals, jails, libraries, museums, post offices, and schools; agricultural and rural buildings may be barns, blinds, cellars, kennels, pole structures, Quonset huts, sheds, stables, smokehouses, and storehouses.

K.2.4.7 New Mexico Protocol

PROTOCOL AGREEMENT
Between
NEW MEXICO BUREAU OF LAND MANAGEMENT
And
NEW MEXICO STATE HISTORIC PRESERVATION OFFICER

I. PURPOSE

The Bureau of Land Management's (BLM) National Programmatic Agreement (PA) and pertinent BLM manuals and handbooks take the place of the Advisory Council on Historic Preservation's regulations at 36 CFR 800 and associated Advisory Council guidance. This Protocol implements the PA in New Mexico by describing how the New Mexico State Historic Preservation Officer (SHPO) and the New Mexico Bureau of Land Management (NM BLM) will operationalize the PA in New Mexico.

Objectives of this Protocol are to acknowledge the maturation of the NM BLM's cultural resources management program and encourage a shift toward more programmatic consultation with an emphasis on more proactive program accomplishments as a result. This second version of the Protocol reflects finalization of the BLM's national manuals governing the cultural resources program and the results of a complete cycle of Field Office program reviews within New Mexico.

II. APPLICATION OF PROTOCOL

A. RELATION OF PROTOCOL TO PMOA 168 AND 36 CFR 800

1. The New Mexico statewide cultural resources Programmatic Memorandum of Agreement No. 168 (PMOA) became effective October 19, 1982. This PMOA was suspended when the NM BLM became certified to operate under the PA. The PMOA will remain in a state of suspension for as long as the PA and this Protocol remain in effect. Should the PA be terminated, all NM BLM Field Offices will resume meeting their Section 106 obligations through procedures outlined in the PMOA until such time as it can be replaced with a new statewide programmatic agreement. Such a new statewide programmatic agreement would be prepared with full tribal government and general public input and consultation.

2. Should any Field Office become decertified for failure to live up to obligations specified in either the Protocol or its Field Office Certification Plan, that individual Field Office will meet its Section 106 obligations through the processes outlined in 36 CFR 800.

3. This Protocol does not apply to undertakings involving multiple SHPOs or areas within the jurisdiction of Tribal

Preservation Offices. The NM BLM will consult with both the SHPO and Tribal Preservation Officer as provided for in NHPA Section 101(d)(2)(D)(iii) when proposed undertakings could affect historic properties located on lands owned by the NM BLM which have been determined by the courts to constitute Dependent Indian Communities.

4. If any BLM office in NM feels it cannot comply with the procedures set forth in this Protocol for a particular undertaking, it shall notify the NM BLM Deputy Preservation Officer (DPO) and the SHPO prior to any decisions being made that could affect any historic properties within the area of potential effect. Following consultations with the SHPO and DPO, the Deputy State Director for Resources (NM 930) may allow Field Offices to meet their Section 106 responsibilities for that particular undertaking by complying with the procedures at 36 CFR 800, including all requirements for consultation with the SHPO, Advisory Council on Historic Preservation, Indian tribes, and interested parties.

B. RELATIONSHIP OF PROTOCOL TO EXISTING AND FUTURE BLM-SHPO AGREEMENTS

1. Existing. Project-specific PAs will remain in effect until the undertakings have been completed and all reports submitted and approved according to the terms of the Agreements. In addition, the most current versions of the following agreements will remain in effect indefinitely and are incorporated into this Protocol. Until they are modified to conform to this Protocol, compliance steps elaborated in these programmatic agreements will be followed even though they may vary somewhat from the procedures outlined in this Protocol. These Agreements include:

a. Memorandum of Agreement (MOA) Governing Transfers of Public Lands to Private Ownership via Land Exchanges or Sales (Appendix 1).

b. MOU Regarding Cultural Resource Protection Responsibilities among USDI Bureau of Land Management, New Mexico and New Mexico State Land Office and New Mexico Historic Preservation Division (governs NM BLM-State land exchanges) (Appendix 2).

c. Assistance Agreement between United States Department of the Interior, Bureau of Land Management, and the State of New Mexico (governs support for the New Mexico Cultural Resources Information System--NMCRIS) (Appendix 3).

2. Future. The NM BLM and the SHPO may agree to amend the Protocol specifically to address particular geographic locations or classes of similar undertakings as new needs are recognized.

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Such amendments will take these procedures into account and will be prepared only when compliance issues are complex and must vary to a considerable degree from this Protocol. Any future amendments negotiated under the terms of this Protocol will be executed solely by the NM BLM and the SHPO.

C. APPLICATION OF PROTOCOL TO MULTI-AGENCY UNDERTAKINGS WITHIN NEW MEXICO OR TO UNDERTAKINGS OCCURRING ACROSS SEVERAL STATES

1. If an undertaking will affect lands administered by several different agencies or Indian tribes within New Mexico and the NM BLM is the lead agency, the NM BLM will follow this Protocol for the entire undertaking if this is acceptable to the other agencies and Indian tribes. Each land managing agency, however, is responsible for making determinations of National Register eligibility for resources it manages. If any other agency or tribal government objects to the application of this Protocol to lands they administer, then the NM BLM along with all the other consulting parties will negotiate and adhere to provisions in a project-specific PA or other agreement or will follow the procedures contained within 36 CFR 800.

2. Where undertakings will affect lands administered by several different agencies within New Mexico and another federal agency is the lead, consultation procedures used by the lead agency will be followed. Each land managing agency, however, will be responsible for determinations of National Register eligibility for the resources it manages.

3. Where undertakings will affect lands administered by several different agencies within New Mexico without NM BLM or another federal agency taking the lead, NM BLM will follow the Protocol for lands under its jurisdiction. The NM BLM will indicate on its transmittal to SHPO that this is a multi-agency project submitted without a federal lead.

4. For large or multi-state undertakings, an attempt will be made to develop a single PA which will have to be negotiated and accepted by all the SHPOs and agencies involved. If this occurs, a federal lead, if possible, will be identified for multi-state undertakings.

III. SHPO INVOLVEMENT IN BLM MANAGEMENT PROCESSES

A. SHPO will be invited to act as a preparer/reviewer when NM BLM writes or prepares EISs, large-scale management plans, wild and scenic river plans, or wilderness management plans. SHPO will assist in the preparation or will provide review comments only for those planning efforts that could result in foreseeable effects to cultural resources.

B. When NM BLM programs other than cultural resources management formulate policies that could have a major impact upon historic properties, the BLM will afford the SHPO an opportunity to comment upon draft manuals, handbooks, and Instruction Memoranda.

IV. MONITORING

A. Each NM BLM Field Office will commit to in-field monitoring 10 percent of surveys undertaken by permittees in a given year. Carlsbad Field Office will monitor 5 percent of permittee surveys in a given year.

B. In addition, 10 percent of those undertakings where avoidance of historic properties was recommended will be monitored during or after construction to check the direct and indirect effects on nearby cultural resources for undertakings approved in a given year. Carlsbad Field Office will monitor 5 percent of those undertakings in a given year where avoidance of historic properties was recommended.

C. The NM BLM will monitor site conditions as agreed to in the following land exchange agreements:

Stanley (Taos Field Office)
Shooting Range (Albuquerque Field Office)
Navajo-Hopi (Las Cruces Field Office)
Delaware I, II, and III (Carlsbad Field Office)
Rio Bonito (Roswell Field Office)

D. Where it is difficult to complete monitoring with in-house personnel, the NM BLM will consider contracting for such inspections, including the use of any On-Call contracts that may be available or require the project proponent to contract for comparable services.

V. SUPPORT FOR COOPERATIVE PROGRAMS

A. DATA MANAGEMENT

1. COST. Subject to the availability of funding, the NM BLM will support NMCRIS at the rate of \$40,000 annually. These funds will be provided by the State Office from the benefiting activity program(s).

2. DATA SHARING. Services provided by ARMS, data submission requirements, and specifications for deliverables and reports are provided in the most current version of the Assistance Agreement between the NM BLM and the SHPO governing cooperation to support NMCRIS (Appendix 3).

3. SCHEDULES FOR DATA SUBMISSION.

a. Negative Results, Only Ineligible sites found, and No Effect Situations. Inventory reports in which only Isolated Manifestations or nothing was found; reports that document only sites found ineligible for nomination to the National Register; and reports in which all eligible historic properties are avoided to achieve a situation of no effect will be submitted monthly to the SHPO.

b. No Adverse Effect, and Adverse Effect. Inventory reports will be submitted to SHPO as they are completed.

4. COMPLETION OF INVENTORY REPORTS

a. The NM BLM will not allow projects to be completed without adequate provisions for the timely completion of all reports and site records generated under the terms of this Protocol.

b. All NM BLM-prepared inventory reports will be submitted to the SHPO within 6 months of completion of fieldwork.

c. The NM BLM may utilize provisions for office support contained within its On-Call contract to complete the preparation of all backlogged reports that BLM staff cannot submit in a timely manner.

d. Documentation of backlogged reports shall include reports with project activity forms and site records along with a xerox of the United States Geological Survey quadrangle map depicting the inventory area and site location(s), if applicable. Submissions will also include a project Activity Form completed to the degree possible according to the information known about the past project that generated the inventory.

5. STANDARDS

a. Definitions of Isolated Manifestations and Sites. Until modified by mutual agreement, the NM BLM and the SHPO will continue to utilize the definitions for Isolated Manifestations, Category 1, and Category 2 sites contained within Addendum No. 1 to PMOA No. 168, dated 11/2/87 (see Appendix 4).

b. Site Records. The NM BLM will ensure that all site records are prepared according to the latest NMCRIS guidance (Appendix 5). ARMS shall accommodate and support BLM standards for recording cultural resource locations using Global Positioning System (GPS) technology, through modification of current data forms and the NMCRIS database structure.

c. Survey Reports. The NM BLM will ensure that inventory reports are prepared according to the latest guidance provided in

H-8100-1 *Procedures for Performing Cultural Resource Fieldwork on Public Lands in the Area of New Mexico BLM Responsibilities*.⁶ Current requirements for Small-Scale inventory project reports (Appendix 6) and Large-Scale inventory reports (Appendix 7) are attached.

d. Major Testing/Excavation Reports. The NM BLM will ensure that major testing and excavation reports are prepared according to the latest version of NM BLM reporting standards for data recovery projects (Appendix 8).

e. While, as stated in the BLM's National Programmatic Agreement, the BLM's National Manuals "help guide" decision making, more precise standards and procedures applicable to New Mexico will continue to be found in the most current version of H-8100-1 Procedures for Performing Cultural Resource Fieldwork on Public Lands in the Area of New Mexico BLM Responsibilities.

f. Copies of the applicable standards are attached as appendices to this Protocol.

g. SHPO will provide Field Offices with immediate feedback concerning the submission of any reports or sites that, in the opinion of SHPO staff, fail to meet New Mexico Cultural Resource Information System standards.

h. Resource Management Plans (RMP). The level of cultural resource information and the kinds of long-term management decisions needed in land use plans are specified in BLM Information Bulletin No. 2002-101 (Appendix 12). This guidance provides direction for how Field Offices will identify and describe the cultural resources covered by the plan, establish goals for the cultural heritage program, assign use allocations to all cultural properties in the RMP area, and articulate management actions required to meet stated goals. Such planning will utilize ARMS' Geographical Information System capabilities to display projected cultural resource distributions or sensitivity maps for the planning area.

i. Electronic Records Submission. Whenever possible, the NM BLM will ensure that all cultural resource information submitted is in an electronic format compatible with NMCRIS standards. ARMS shall be responsible for developing exchange formats and computer applications to support such transfers and NM BLM will require its staff and permittees to follow these standards and use these applications. NM BLM and SHPO will collaborate to develop the workflow procedures and infrastructure required to track cultural resource projects electronically.

j. Seismic Project Documentation. The NM BLM will ensure that all cultural resource inventories conducted for the purpose of permitting seismic exploration undertakings submit geospatial

data to SHPO in current NMCRIS shapefile format. Polygon GIS layers must include archeological site locations as well as survey area boundaries and be documented as to projection, datum, and accuracy level. Data must be submitted directly to ARMS and be identified by NMCRIS and LA numbers assigned during registration. 7

B. JOINT BLM-SHPO OUTREACH, EDUCATION, AND DATA SYNTHESIS EFFORTS

1. Subject to the availability of funding, the NM BLM will commit \$20,000 annually towards support for such joint outreach, education, and data synthesis projects as the statewide Site Watch program, Project Archeology, and regional research designs. An attached Assistance Agreement (Appendix 9) describes the projects to be jointly undertaken, the products to be produced, and the obligations of each party.
2. The NM BLM and the SHPO may cooperatively publish research results, popular interpretations of the prehistory and history of New Mexico, as well as brochures or other media that can inform and inspire the public concerning New Mexico's wealth of cultural resources.
3. Each Field Office Certification Plan will describe those heritage education and public outreach activities it plans to engage in within its Proactive Elements Section.
4. The NM BLM will continue to support Heritage Preservation Month activities.

C. STEWARDSHIP AND SITE PROTECTION

The NM BLM supports SHPO efforts to develop and expand a statewide Site Watch program of citizen involvement in the monitoring and protection of endangered sites. The NM BLM agrees to serve on the Advisory Committee that coordinates and develops policies for the statewide Site Watch program.

D. HERITAGE TOURISM

The BLM is committed to fully implementing Executive Order 13287 entitled "Preserve America." The NM BLM will join with the SHPO and other State agencies such as the Department of Tourism to explore how NM BLM-managed heritage resources can best contribute to community economic development through heritage tourism. The NM BLM will seek to establish partnerships with State and local governments, Indian tribes, and the private sector to promote the preservation of heritage resources and to explore ways to realize the economic benefits these properties can provide.

E. CERTIFICATION AND TRAINING

1. The NM BLM will implement the provisions of this Protocol only with the professional cultural heritage specialists listed in the Statewide Certification Plan. However, other NM BLM staff may assist the professional cultural heritage staff in much the same manner as crewmembers. Such assistance may take the form of assisting NM BLM professional staff in field survey and site recordation, report preparation or the maintenance of maps and records, or site protective measures.

2. The SHPO will be provided the opportunity to acknowledge and concur with the most current version of the State Certification Plan (Appendix 10), which will be a compilation of all Field Office Certification Plans, by signing the document.

3. Within each Field Office's Certification Plan, adequate levels of professional staffing needed to carry out the plan over the next five years shall be specified. Opportunities to supplement the current professional cultural heritage staff with additional permanent hires, seasonal or temporary archeologists, or industry-funded archeological positions shall be identified.

4. It is recognized that participation of NM BLM cultural heritage staff in professional societies and annual meetings (e.g. Society for American Archaeology, Society for Historical Archaeology, Southwest Symposium, Pecos Conference, Jornada Mogollon Conference, etc.) is integral to staying abreast of developments and advances in the discipline and for enhancing professional knowledge and skills.

5. SHPO will assist in development and implementation of all training connected with the Protocol. This may include updated training for NM BLM managers, NM BLM cultural heritage specialists, and SHPO staff concerning new consultation procedures, or any other NM BLM or SHPO training involving programs of mutual interest.

6. SHPO will participate in the annual review of a set of Field Offices to determine adherence to provisions of Field Office Certification Plans and compliance with the provisions of the Protocol. Within 30 days of the Field Office review, the SHPO shall submit to the BLM Deputy Preservation Officer and the Field Office Manager a written assessment of the office's adherence to the provisions of this Protocol and progress made in meeting the commitments expressed in Field Office Certification Plans.

7. If the SHPO determines that a Field Office has displayed a pattern of noncompliance with the Protocol or Field Office Certification Plan, the SHPO may request a review of a specific Field Office outside of the review schedule contained in the State Certification Plan.

F. REPORTING AND REVIEW

1. The NM BLM will provide an annual report to the SHPO containing summary information on activities conducted under this Protocol. The report will include a duplicate of the Cultural Resource Program Annual Report submitted to BLM's Washington Office.
2. In addition to data contained in the above report, the NM BLM will also annually provide succinct information on the following:
 - a) Descriptions of circumstances when areas of effect were not surveyed to 100%, including projects covered by Categorical Exclusions (CX) and Determinations of National Environmental Policy Act Adequacy (DNA), and a justification for why less than Class III survey was carried out
 - b) Areas considered so disturbed that no archeological inventory was called for
 - c) Post-review discoveries
 - d) Circumstances where NM BLM disagreed with SHPO opinion that an action constituted an undertaking
 - e) Results of monitoring site conditions on those land exchanges listed in Section IV.C
 - f) Schedule for completion of cultural resource inventory reports for those projects where the fieldwork has been completed but the write-up has not been finalized
 - g) Any changes to or updates of individual Field Office Certification Plans
 - h) The circumstances under which undertakings were approved in contradiction to the procedures contained in this Protocol.
 - i) Any additions to Appendix 11, Actions Not Considered to be Undertakings.
 - j) Discussion of training and professional development accomplished during the previous year for the NM BLM cultural heritage specialists
 - k) Actions taken to deal with emergency situations
3. The Annual Report will be submitted to SHPO by October 31 of each year and will provide statistics for the preceding BLM fiscal year.
4. The SHPO will provide an annual report to the NM BLM on November 30 of each year. At a minimum, it will specifically address the following:
 - a) Section One will provide a status report of accomplishments, budget expenditures and any concerns associated with such joint projects as the ARMS Data Share Agreement (as a separate deliverable specified in the current Assistance Agreement), Data Synthesis efforts, such as regional overviews or regional research designs, heritage education projects, and the Site Watch program.

b) Section Two will offer any suggestions for improving the 106 process as defined by the Protocol. It is here that any feedback on eligibility determinations and the monitoring of no effect projects shall be provided.

c) Section Three will describe broad patterns of permittee performance in relation to standards for completing site forms and inventory reports. Identified areas of weakness may become the subject of joint NM BLM-SHPO sponsored training courses.

d) Section Four will provide a detailed comparative analysis of the performance and productivity of individual permittees.

e) Section Five will include any suggestions concerning additional training of NM BLM cultural heritage staff needed to fulfill their responsibilities under this Protocol.

5. Meetings may be called by either party involving the NM BLM management team, NM BLM cultural heritage specialists, and SHPO staff at any time to review how well this Protocol is being operationalized.

VI. CASE-BY-CASE REVIEW PARAMETERS

A. BLM PARTICIPANTS IN SECTION 106 PROCESS

1. This Protocol is founded upon two fundamental principles. These are that 1) NM BLM management recognizes and accepts its affirmative responsibilities for compliance with the NHPA and other cultural resource management legislation, and 2) streamlined consultation procedures are the direct result of the empowerment of NM BLM cultural heritage specialists and management's commitment to maintaining a high level of training and expertise of this staff.

2. Agency officials who take legal and financial responsibility for Section 106 compliance include Field Office Managers and the State Director. Only these individuals have approval authority for undertakings.

3. As acknowledged in the BLM National PA, the NHPA, 36 CFR 800, and the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation and Federal Agency Historic Preservation Programs* regarding identification, determinations of eligibility, and treatment, these activities must be conducted by professionally qualified individuals. Those individuals within the BLM are the cultural heritage specialists.

4. If NM BLM agency officials disagree with the advice provided to them by their cultural heritage specialists, they may consult with the SHPO concerning these disagreements under the case-by-case consultation procedures established within 36 CFR 800.

B. DETERMINATION OF UNDERTAKING

1. "Undertakings" are defined by the 1992 amendments to the National Historic Preservation Act to be "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of the agency; those carried out with Federal financial assistance; those requiring a Federal permit, license, or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency." This is the definition that will be used in this Protocol.

2. NM BLM cultural heritage specialists will consult with Appendix 11 and determine whether a proposed action constitutes an undertaking, regardless of whether the environmental consequences of the proposed action will be analyzed in a CX, DNA, or Environmental Assessment. The NM BLM acknowledges its separate legal obligations under NEPA and NHPA and the fact that actions processed under NEPA as CXs or DNAs may still be undertakings subject to the provisions of this Protocol. If there is a question whether a proposed action constitutes an undertaking that might affect historic properties, the SHPO's opinion will be sought. The SHPO will provide such an opinion within 10 calendar days of receipt of the request for the opinion. The SHPO's opinion and the NM BLM's agreement or disagreement with that opinion will be made part of the records for the proposed action. The NM BLM's annual report to the SHPO will list each case where the SHPO's opinion was sought and whether the NM BLM accepted or disputed the SHPO opinion.

3. Appendix 11 lists those actions NOT considered undertakings. This list may be modified by the NM BLM if the NM BLM determines that any other actions do not constitute undertakings. The NM BLM will notify the SHPO when it is adding another action to the list in Appendix 11.

C. DISTURBANCE

NM BLM cultural heritage specialists will determine if land disturbance or other recent geomorphological conditions within the area of potential effects have reduced or eliminated the need for cultural resource inventories. If this is the case, the NM BLM will document this for inclusion in the annual report and will approve the action with a reduced level of inventory or no inventory with no SHPO consultation.

D. INVENTORY

1. NM BLM cultural heritage specialists will determine the area of potential effects that will be subject to inventory. This determination will define the geographic area within which the

undertaking might directly or indirectly cause changes to the character or use of any historic properties should they exist.

2. If the area of potential effects has been previously inventoried, the NM BLM cultural heritage specialist will determine the adequacy of previous inventory efforts, regardless of the date of the inventory. A NM BLM decision to accept the results of past inventory efforts will be based on the geomorphological stability of the area of potential effects, the field methods used, and confidence derived from field monitoring of the results of other surveys by the investigators involved.

3. Normally, the NM BLM will require that Class III inventories (100% coverage) will be conducted within the area of potential effects for all undertakings it authorizes, licenses, or approves that have the potential to affect historic properties.

4. The NM BLM and the SHPO agree that for certain classes of undertakings, less than Class III coverage may be appropriate and sufficient to document historic properties within the area of potential effects. Less than Class III coverage is appropriate where alternative identification strategies, such as oral history interviews, background research, or Class II sample surveys are sufficient to identify historic properties within the area of potential effects; the conduct of archeological surveys would pose a health risk to the crew; the effects to any historic properties are expected to be slight or non-existent; or the effects of the undertaking can be more properly assessed later in the decision-making process. Such undertakings include:

- * Low-impact fire or fuels treatments
- * Low and moderate value mineral exchanges
- * Hazardous material cleanup

5. It is agreed between the SHPO and NM BLM that knowledge of direct effects of fires and fuel treatments upon cultural resources is evolving and that consideration of data from current and upcoming studies will inform discussions about these effects and appropriate inventory and treatment during the life of this Protocol.

6. The NM 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. Documented low site probability areas may be described and listed as an appendix to this agreement.

7. With the exception of the situations described in VI.C., VI.D.4., and VI.D.6., whenever the NM BLM proposes to approve an undertaking with Class I and/or Class II coverage, the SHPO will be provided a full justification in writing before the undertaking is approved.

E. DETERMINATION OF ELIGIBILITY

1. Normally, determinations of eligibility will be made by the NM BLM's professional cultural heritage specialists without consultation with the SHPO. However, any NM BLM cultural heritage specialist may contact the SHPO office concerning determinations of eligibility when he or she feels that assistance or additional perspectives relating to this decision would be helpful.
2. More detailed procedures for determining the eligibility of specific site types or regionally-specific eligibility criteria may be developed by the NM BLM in cooperation with the SHPO and attached later to this Protocol. If developed, such procedures will define how eligibility determinations will be made for particular sites, culture areas, geographic regions, or Field Offices.
3. When a new cultural heritage specialist is hired by a NM BLM Field Office, that individual will conduct determinations of eligibility in one of two ways for six months after beginning his or her employment. The cultural heritage specialist may either conduct consensus determinations of eligibility in consultation with the SHPO or, for those offices with more than one cultural heritage specialist, the individual can make preliminary determinations of eligibility that are reviewed and co-signed by another of the Field Office's cultural heritage specialists listed in the office's Certification Plan.
4. The NM BLM will consult with the SHPO regarding determinations of eligibility when a) its professional cultural heritage specialist lacks the experience, formal education, or training to evaluate the properties in question or b) during controversial undertakings its determinations are likely to be questioned by project proponents, Indian tribes, or outside parties.
5. The SHPO will monitor a sample of determinations of eligibility decisions throughout the year and report on the results during periodic Field Office Protocol reviews and within the annual report prepared for the NM BLM. Indications of substantial or systematic disagreement will be reported to the NM BLM for its consideration.
6. Any determination of eligibility that indicates that the property in question is of national significance will be guided by National Register Bulletin 15, Section IX.
7. Only exceptional properties will be considered eligible for nomination to the National Register of Historic Places based on

multiple criteria. General associations with events or persons significant in the past will not be considered sufficient for determinations under Criteria A or B. As specified in National Register Bulletin 15, "A property is **not** eligible if its associations are speculative... Mere association with historic events or trends is not enough, in and of itself, to qualify under Criterion A: the property's specific association must be considered important as well... Criterion B applies to properties associated with individuals whose specific contributions to history can be identified and documented." For example, sites considered eligible under Criterion D will also be considered eligible under Criterion A only when the site is specifically mentioned in oral and written traditions; under Criterion B only when depicted rock art figures represent specific, known personages, ceremonies, or historic events and are illustrative not commemorative of the person's important achievements; and under Criterion C when the property is truly significant for its physical design or construction.

8. If the NM BLM makes a determination of eligibility without consultation with the SHPO, that determination shall be considered final for Section 106 purposes. If SHPO disagrees with a NM BLM determination of eligibility, the SHPO will provide written comments and the NM BLM will take these comments into consideration on future determinations of like properties.

9. If the NM BLM elects to make a determination of eligibility decision as a consensus determination in consultation with the SHPO and a disagreement arises between the NM BLM and the SHPO regarding the eligibility for a particular property or group of properties and if consensus cannot be achieved through further discussions, a final determination of eligibility will be sought from the Keeper of the National Register.

F. RESULTS OF IDENTIFICATION AND EVALUATION

1. If archeological surveys find only isolated manifestations or no cultural resources at all, the report will be sent in monthly to the SHPO. The undertaking will be approved by NM BLM with no SHPO consultation.

2. Undertakings that have the potential to only damage or destroy sites determined not to be eligible will be approved with no SHPO consultation. Such reports will be sent to the SHPO on a monthly basis.

3. If the inventory documents sites determined to be eligible and they cannot be avoided to achieve a situation of no effect, then the NM BLM will follow the procedures described below under DETERMINATIONS OF EFFECT/TREATMENT.

G. DETERMINATIONS OF EFFECT/TREATMENT

1. When a new cultural heritage specialist is hired by a NM BLM Field Office, that individual will conduct determinations of effect in one of two ways for six months after beginning his or her employment. The cultural heritage specialist may either conduct consensus determinations of effect in consultation with the SHPO or, for those offices with more than one cultural heritage specialist, the individual can make preliminary determinations of effect that are reviewed and co-signed by another of the Field Office's cultural heritage specialists listed in the office's Certification Plan.

2. **No Effect.** No effect is understood to mean that implementation of the undertaking will not alter the characteristics of the historic properties that would qualify them for inclusion in the National Register. If all sites documented by the inventory that are determined to be eligible for nomination to the National Register of Historic Places are avoided so that a situation of no effect results, then the report will be sent in monthly to the SHPO. The undertaking will be approved by NM BLM with no SHPO consultation. The SHPO will review a sample of such undertakings periodically throughout the year and will report the results of such monitoring in the annual report to the BLM. Any recommendations regarding no effect determinations will be given due consideration by the NM BLM.

3. **No Adverse Effect.** No adverse effects can be found when the undertaking's effects do not meet the criteria of adverse effect or the undertaking is modified or conditions imposed to avoid adverse effects.

a. **NO ADVERSE EFFECT BASED ON DATA RECOVERY.** (i) No Adverse Effect Based on Data Recovery can include treatment of historic or prehistoric archeological properties known or suspected to contain human remains. The NM BLM will determine appropriate treatment requirements for applicants or project sponsors. Copies of proposed treatment measures will be forwarded to SHPO, who shall be afforded 30 days to review and comment. Where the NM BLM cultural heritage specialist is a senior staff person with experience preparing and directing data recovery on similar sites in similar environments, no SHPO comments are expected.

(ii) The SHPO will inform the NM BLM within 10 working days if they will comment. If the SHPO does comment, they will do so within the 30-day time limit. If the SHPO objects to the adequacy of the treatment measures, the NM BLM and the SHPO must reach an agreement or the disagreement will be forwarded to the Advisory Council for their input in accordance with Section 4 of the PA. Following Advisory Council comment, the NM BLM will make a final decision.

(iii) "Agreed-Upon-Treatment-Measures" may be defined for certain classes of historic properties. They may be attached to this protocol and periodically updated through amendments to the protocol. Undertakings that employ the Agreed-Upon-Treatment-Measures for affected historic properties in specified regions can be authorized by the NM BLM without waiting for SHPO comment and concurrence. (Previous examples of such agreed upon treatments include the Fruitland Coal Gas Gathering System Data Comparability Guidelines and Overview and Research Design for the Fruitland Coal Gas Development Area). The NM BLM will notify the SHPO when proposing to use these measures in a new geographic region prior to implementation.

b. NO ADVERSE EFFECT WHERE EFFECT IS POSITIVE. For those undertakings that will affect historic properties positively, such as stabilization/restoration projects, the same procedures presented in paragraphs VI.G.3.a (i-iii) above will be followed.

4. **Adverse Effect.** Adverse effects occur when an undertaking will alter the characteristics of historic properties that qualify them 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. Adverse effects include reasonably foreseeable effects caused by the undertaking that are later in time or further removed in distance.

a. For those undertakings where the adverse effects to historic properties cannot be fully mitigated through some form of study or treatment, the NM BLM will consult with the SHPO to devise treatments that will minimize the adverse effects. A Memorandum of Agreement (MOA) shall be executed between the SHPO and the NM BLM to document their agreement regarding how adverse effects will or will not be treated. If the NM BLM and the SHPO cannot reach agreement regarding an acceptable response to a situation of adverse effect, the issue will be raised with the Advisory Council. Following input from the Advisory Council, the NM BLM will make a final decision.

b. When an undertaking will directly and adversely affect a National Historic Landmark (NHL), the NM BLM shall, to the maximum extent possible, undertake such planning and actions to minimize harm to the NHL. The NM BLM will consult with the SHPO and the Secretary of the Interior, usually represented by the National Park Service, regarding effects or treatments to NHLs. The NM BLM will also consult with the Advisory Council pursuant to Section 4.b.2 of the PA. Following receipt of input and advice from the Advisory Council, the NM BLM will make a final decision.

VII. POST-REVIEW DISCOVERIES**A. PLANNING FOR DISCOVERIES**

The NM BLM will encourage applicants to develop discovery plans for large and complex undertakings and those involving land disturbance in areas known to contain buried sites. Copies of such discovery plans will be forwarded to the SHPO along with any proposed treatment plans according to the provisions of VI.G.3.a.

B. UNPLANNED DISCOVERIES

If sites are discovered in the absence of a discovery plan, the NM BLM will make reasonable efforts to avoid, minimize, or mitigate adverse effects to those historic properties discovered. The NM BLM will halt any further actions that could cause additional damage to the discovered sites. The NM BLM will determine the National Register eligibility of the sites within 72 hours of discovery. For eligible properties that will be adversely affected, the NM BLM will insure that a treatment plan is prepared. The treatment plan will specify actions that will be taken to mitigate or minimize adverse effects to the historic properties. Any such unplanned discoveries and selected treatments will be reported fully in the annual report that the NM BLM will provide to the SHPO.

VIII. EMERGENCY SITUATIONS

In the face of emergency unplanned undertakings, such as wildland fire suppression, the NM BLM will meet its Section 106 obligations in the following manner. The NM BLM will make reasonable efforts to avoid, minimize, or mitigate adverse effects to those historic properties discovered. To the extent that such actions do not threaten life or property, the NM BLM will halt further actions until the discovered sites can be evaluated. Such evaluations of significance are expected to occur within 48 hours of discovery. For eligible properties, the preferred course of action will be to redesign the project so that adverse effects are avoided. To the extent that such actions will not threaten life or property for eligible properties that will be adversely affected, the NM BLM will insure that a treatment plan is prepared and executed. A complete report on any emergency situations, any affected historic properties, and any data recovery carried out will be included in the annual report provided by the NM BLM to the SHPO.

IX. NATIVE AMERICAN TRIBAL GOVERNMENT PARTICIPATION

A. Native American tribal governments will be encouraged to raise issues, express concerns, provide information, and identify

resources and places they would like the NM BLM to consider in its decision making.

B. The NM BLM recognizes that some cultural properties of traditional importance can only be identified through information supplied by the tribes and that the NM BLM has a responsibility to consult with tribes regarding the identification and determinations of effects to such properties.

C. In reaching a decision on how to treat affected historic properties, the NM BLM will fully consult with tribes as required by NHPA, the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, and other applicable legal mandates. Such consultation will occur regardless of the streamlined procedures governing NM BLM-SHPO consultation on treatment and will occur whether or not Agreed-Upon-Treatment-Measures have been negotiated and agreed to by the NM BLM and SHPO for certain classes of historic properties. After considering tribal input, the NM BLM will make the decision on how to proceed with appropriate treatment.

D. While consultations regarding specific undertakings may occasionally occur, the NM BLM will usually consult with Indian tribes programmatically through the public participation opportunities afforded by the land use planning and environmental review processes associated with the development of EISs and other large-scale regional plans.

E. In addition, the NM BLM will comply with the following guidance:

* BLM Manual 8120, Tribal Consultation under Cultural Resource Authorities.

* BLM Handbook H-8120-1, Guidelines for Conducting Tribal Consultation.

X. NM BLM RESPONSIBILITIES ON NON-FEDERAL LANDS

A. The intent of the National Historic Preservation Act is to consider the effects of Federal decision-making on historic properties **regardless of the land status involved**. Therefore, the NM BLM will assure that its actions and authorization are considered in terms of their effects on cultural resources located on non-Federal lands as well as Federal lands.

B. The NM BLM will determine the extent of its responsibility for identifying and mitigating adverse effect to non-Federal historic properties even if the undertaking is processed as a CX or DNA based on the independent evaluation of the following factors:

- 1) Would the project remain viable if the Federal authorization were not provided?
- 2) How likely are historic properties in the area of potential impact?
- 3) The amount of NM BLM lands involved.
- 4) The degree to which NM BLM authorizations affect the location of surface disturbing activities on non-Federal lands.

C. The NM BLM will conduct, or cause to be conducted, an inventory and evaluation of cultural resources on non-Federal lands within the area potentially impacted by proposed land uses, whether the undertaking was initiated by NM BLM or in response to a land use application.

D. The NM BLM will consider the effects of its decision-making upon historic properties. It will either mitigate, or cause to be mitigated, adverse effects to non-Federal historic properties that would result from land uses carried out by or authorized by NM BLM or will consult with the SHPO and Advisory Council on the basis of an adverse effect determination.

E. When mitigation involves data recovery, adequate time will be allocated for the analysis of the artifacts, samples, and collections recovered from non-Federal lands and for report preparation. The artifacts, samples, and collections recovered from non-Federal lands remain the property of the non-Federal landowner unless donated to the Federal Government, a State facility, or are otherwise subject to State law. The NM BLM must receive complete and true copies of field notes, maps, records of analyses, photographs, other data, and reports when mitigation work is conducted on behalf of the Federal Government. Reports resulting from work on non-Federal land will be made available to the landowner.

F. Identification and/or mitigation of adverse effects may be required as a condition of a lease, permit, or license issued by NM BLM, whether Federal or non-Federal lands are involved.

G. Because local regulations or state law (such as the New Mexico Cultural Properties Act, as amended 18-6-1 through 17) may still apply to the non-federal portions of an undertaking, the NM BLM will clarify for project sponsors the circumstances under which state, federal, or other laws and regulations apply.

XI. LEGAL ENFORCEABILITY

The BLM's National PA requires that each BLM state develop a Protocol agreement with their SHPO that specifies how they will interact under the PA. This Protocol between the NM SHPO and the NM BLM fulfills a key prerequisite for the NM BLM to operate under the terms of the PA. As such, this Protocol is a legally enforceable document in a court of law for those parties,

including the SHPO, with legal standing under 36 CFR 800 or as otherwise allowed under NHPA.

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XII. AMENDING THE PROTOCOL

A. Should changes occur to the National Historic Preservation Act, 36 CFR 800, or the National Programmatic Agreement, the SHPO and the NM BLM will meet and discuss the need to amend this document to reflect changes in the authorities under which the Protocol functions.

B. If the NM BLM or the SHPO wish to amend this Protocol at any time, they will consult to consider requested changes. Amendments will become effective when signed by both parties.

C. Five years from the last signature date of this agreement, the parties will formally review its terms and propose any needed revisions.

XIII. DISPUTE RESOLUTION

A. If, at any time, the NM BLM or the SHPO questions case-specific actions taken or recommendations made under this Protocol, they will consult to resolve the issue. If the issue involves actions proposed or taken by a Field Office, the SHPO will consult with the Field Office Manager to resolve it. If the issue cannot be resolved, the questioning party will request the assistance of the Deputy Preservation Officer to resolve the issue. If the issue still cannot be resolved, the Deputy Preservation Officer will refer it to the BLM Preservation Board. The BLM Preservation Board will provide recommendations to the State Director, who will make the final decision.

B. During the course of a case-specific dispute, the undertaking may continue, provided that no actions are taken which would adversely affect the properties involved in the dispute.

C. If any Native American tribal government or any member of the public objects at any time to the process by which this Protocol is being implemented, the NM BLM and the SHPO will together consult with the objecting party to resolve the issue. If the NM BLM, SHPO, and objecting party are unable to resolve the issue, the NM BLM will refer the matter to the BLM Preservation Board. The BLM Preservation Board will provide recommendations to the State Director, who will make the final decision. Such a final decision is subject to the appeal process described in 43 CFR Part 4.

XIV. TERMINATION OF PROTOCOL

The NM BLM or the SHPO may terminate this Protocol by providing sixty days notice to the other party, provided that they consult during this period to seek agreement on amendments to the Protocol, Field Office Certification Plans, or other actions that would avoid termination. The Deputy Preservation Officer or the SHPO may request the assistance of the BLM Preservation Board, National Council of State Historic Preservation Officers, or the Advisory Council on Historic Preservation in the consultation. If the Protocol is terminated for the entire state, the NM BLM will resume operating under the provisions of PMOA No. 168. (If an individual Field Office is decertified, that Field Office will operate under 36 CFR 800).

XV. APPENDICES

The following appendices are attached and incorporated into this Protocol:

1. NM BLM-SHPO Private Land Exchanges or Sales MOA
2. NM BLM-SLO-SHPO MOU on Land Exchanges
3. NM BLM-SHPO ARMS Assistance Agreement
4. Definition of Isolated Manifestations and Sites
5. NMCRIIS Site Form Standards
6. NM BLM Small-scale Inventory Report Standards
7. NM BLM Large-scale Inventory Report Standards
8. NM BLM Data Recovery Report Standards
9. NM BLM-SHPO Data Synthesis, Heritage Education, and Site Stewardship Program Assistance Agreement and Modification One
10. NM BLM Statewide Certification Plan
11. List of Actions Not Considered to be Undertakings
12. Information Bulletin No. 2002-101, "Cultural Resource Considerations in Resource Management Plans"

APPROVED BY:

[Signature] *2/24/04*
New Mexico State Director Date
Bureau of Land Management

Kathleen Stieb *17 June 2007*
State Historic Preservation Officer Date
New Mexico

K.2.4.8 Utah Protocol

**STATE PROTOCOL AGREEMENT BETWEEN
THE UTAH STATE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT
AND THE UTAH STATE HISTORIC PRESERVATION OFFICER (SHPO)
REGARDING THE MANNER IN WHICH THE BUREAU OF LAND MANAGEMENT
(BLM) WILL MEET ITS RESPONSIBILITIES UNDER THE NATIONAL HISTORIC
PRESERVATION ACT (NHPA) AND THE NATIONAL PROGRAMMATIC
AGREEMENT (PA) AMONG THE BLM, THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION (COUNCIL), AND THE NATIONAL CONFERENCE OF STATE
HISTORIC PRESERVATION OFFICERS (NC SHPO)**

This Protocol Agreement (Protocol) supplements the above-referenced national PA, and pertains to Sections 106, 110, 111 (a) and 112 (a) of the NHPA. It describes specific procedures regarding how the Utah SHPO and the BLM will interact and cooperate under the national PA. The goals of this Protocol and the national PA are to enhance planning for and management of historic properties under the BLM's jurisdiction or control and to ensure appropriate consideration of historic properties outside BLM's jurisdiction, but which may be affected by its actions. Undertakings involving non-federal lands for which BLM is considered the lead agent shall be considered federal actions and will be subject to requirements outlined in this Protocol. This agreement does not apply to tribal lands as defined in NHPA. The following are the agreed-upon procedures of the Protocol.

I. RELATIONSHIP OF THIS PROTOCOL AGREEMENT TO OTHER AGREEMENTS

All general compliance agreements not including on-going project specific programmatic agreements or MOAs, are terminated. Any BLM manager in Utah who elects not to follow the process set forth in this Protocol will comply with 36 CFR 800 procedures regarding individual undertakings until his or her difficulties with applying the Protocol are resolved following procedures detailed in Section IX (A), after which use of this Protocol will resume.

SHPO and BLM agree that (1) BLM conducts continuing programs and carries out specific undertakings that involve land disturbance and modification of the built and natural environments, and; (2) BLM bears legal responsibility for carrying out such undertakings consistent with the National Historic Preservation Act (NHPA), and that; (3) BLM's undertakings, including actions assisted, licensed, permitted, approved, funded, or authorized by BLM, being "undertakings" as defined in the Code of Federal Regulations [36 CFR 800.16(y)], are numerous, complex and far-reaching in their effects on lands and properties in Utah.

The following procedures will be implemented by the BLM under this Protocol to fulfill its responsibilities under the above-mentioned authorities.

II. ADMINISTRATIVE INTERACTION AND REPORTING PROCEDURES

BLM will send project logs (Attachment A) to the SHPO at the time BLM prepares its annual report to the Secretary of the Interior, usually in November or December. BLM will also prepare a summary report (Attachment B) that describes the implemented actions taken in the previous fiscal year and actions that are anticipated in the coming fiscal year. This report will be due to the SHPO by October 30th of each year, and will include information as outlined in Attachment B. By November 30th of each year, the SHPO will prepare a report that assesses the overall

effectiveness of BLM's implementation of this Protocol and makes recommendations for actions to be taken by BLM. The BLM will consider SHPO's assessments and recommendations for future actions and will apply them to the plan for the following fiscal year, as appropriate. If SHPO is not satisfied with BLM's response, procedures Section IX (A), below may be followed.

The SHPO, a BLM line manager, BLM's Deputy Preservation Officer for Utah, and the BLM Utah Cultural Resources Specialists will meet annually in November, or more often as needed, to discuss pertinent issues. The Council will be invited to participate. At the Annual meeting, the SHPO and BLM will exchange information relevant to the goals and objectives set forth in this Protocol. Other meetings to address emerging issues and their effects on historic properties may be arranged as necessary.

III. BLM AND SHPO INVOLVEMENT IN THE BLM STATE MANAGEMENT PROCESSES

BLM shall provide the SHPO the opportunity to participate at the development stage and all subsequent phases of land use planning in accordance with 43 CFR 1610.3 (Coordination with Other Federal Agencies, State and Local Governments, and Indian Tribes). BLM will provide the SHPO with all land management plans (e.g., Resource Management Plans, Cultural Resource Management Plans), special use plans (e.g., Fire Management Plans) and appropriate NEPA documents. Such plans will document methods to gain public input.

IV. COOPERATIVE PROGRAM DEVELOPMENT AND ACTIVITIES

A. Data Sharing and Information Management

1. Reporting. BLM will document all Undertakings. BLM will submit to the SHPO copies of all fieldwork reports for historic property inventories and Intermountain Antiquities Computer Site Forms (IMACS) as soon as possible after completion of the work, but not later than three months following completion of the fieldwork. If a final report will not arrive at the SHPO's office within the three month deadline, the BLM will notify the SHPO in writing, and will include in the correspondence a plan for completion and the expected date of submission.

BLM will review the work of permitted contractors and will ensure that Utah State Report Guidelines and the Secretary of the Interior's Standards and Guidelines (Secretary's Standards) are met in all documentation prepared by contractors and by all BLM staff.

All "backlog" documentation that exists in BLM files and which predates the signing of this Protocol will be submitted to the SHPO within twelve months of the implementation of this Protocol. Elimination of the backlog documentation is a condition of continuing field office certification. If the documentation will not arrive at the SHPO's office before the deadline, BLM will notify SHPO in writing, and will include in the correspondence a plan for completion and the expected date of submission.

2. Data exchange. The SHPO and BLM shall exchange information on a constant basis regarding the location and evaluation of cultural resources. Each agency will assure that such locational information is protected from unauthorized use. As appropriate, information exchange will be through the development of an automated database, managed by the SHPO. BLM will assist the SHPO in developing the system by providing financial, personnel, hardware and software resources, as funding becomes available (Memorandum of Understanding, February of 1996).

The SHPO will provide the BLM with automated cultural resources information and with reasonable amounts of hard copy information not yet available in the database, as requested by the BLM. Charges may be assessed and are subject to negotiation at the annual November meeting.

3. Maintenance of files. BLM and SHPO will support and maintain a fully compatible and up-to-date database. The BLM and SHPO will incorporate the results of project-specific surveys into the database as the results are produced. The review and analysis will be performed by BLM and SHPO annually, in time for the yearly meeting.

B. State-Level Historic Preservation Training

The SHPO will be offered the opportunity to assist the BLM in on-going training of field managers and supervisors, as well as of cultural resources staff, for certification purposes. Training resources might include, but are not limited to: Section 106 and Section 110 Training, planning documents, NAGPRA, and other training as necessary.

C. Public Outreach and Participation

BLM will develop and implement plans in support of public education and community outreach, along with cooperative stewardship and site protection, in consultation with SHPO. BLM will continue with its Project Archaeology Program and other Heritage Education efforts.

BLM will seek and consider the views of the public and Indian Tribes when carrying out the actions under the terms of this Protocol. BLM may coordinate this public participation requirement with those of the NEPA and the Federal Land Policy and Management Act of 1976 (FLPMA), along with other pertinent statutes. Interested parties shall be invited to consult in the review process [Section VII (B) below] if they have interests in a BLM undertaking or action on historic properties. Such interested parties may include, but are not limited to, local governments, especially those with historic preservation ordinances or resolutions (Attachment D); grantees, permittees, or owners of affected lands or land surfaces; and other interested parties, as determined by the BLM and SHPO.

V. NATIVE AMERICAN PARTICIPATION

BLM will comply with the NHPA, and the Native American Graves Protection Act (NAGPRA) and other applicable statutes if a property is subject to those laws. BLM will seek and consider the views of Indian tribes in accordance with the requirements of these and other statutes, regulations and policy directives including Executive Orders, Manuals, and memoranda.

VI. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

A. Identification

BLM will make reasonable efforts to identify all historic properties and sacred sites on BLM-administered lands and private lands where a BLM undertaking will occur within Utah. BLM will ensure that project-specific surveys and other efforts to identify historic properties are conducted in accordance with appropriate professional standards, as defined in the Secretary's Standards, and the BLM's 8100 Manual.

B. Evaluation

During all inventories, BLM will ensure that historic properties identified are evaluated in a manner consistent with the Secretary's Standards, 36 CFR Part 60.4 and BLM's 8100 Manuals.

VII. SHPO Review Parameters

BLM shall complete inventory, evaluation and assessment of effects and the written documentation of these findings before proceeding with project implementation. Most of BLM's undertakings are routine in nature, and will normally be permitted to proceed and will not await submission of formal documentation to SHPO. For other undertakings, as described in Section V11 (A), below, BLM will consult with SHPO prior to implementation of the action. BLM will discuss the issue with SHPO in cases where there is any uncertainty.

A. Review Thresholds

A. At a minimum, the BLM will request the review of the SHPO along with the Council (as determined by the national PA) in the following situations:

- (1) non-routine interstate and/or interagency projects or programs;
- (2) undertakings that directly and adversely affect National Historic Landmarks or National Register eligible properties of national significance.
- (3) highly controversial undertakings, when Council review is requested by the BLM, SHPO, an Indian Tribe, a local government, or an applicant for a BLM authorization.

B. The BLM will request the review of SHPO in the following situations:

- (1) undertakings affecting National Register eligible or listed properties.
- (2) land exchanges, land sales, Recreation and Public Purpose leases, and transfers.
- (3) when BLM professional staff lack the appropriate regional experience or professional expertise, and until performance is mutually acceptable to the BLM Deputy Preservation Officer and SHPO.
- (4) when BLM's professional cultural resources staff wishes to bring a particular project to the attention of SHPO.

C. At a minimum, the BLM will not request the review of the SHPO in the following situations (except for the four circumstances at (B)above):

- (1) No Potential to Effect determinations by qualified BLM staff.
- (2) No Historic Properties Affected; no sites present, determined by qualified BLM staff.
- (3) No Historic Properties Affected; no eligible sites present, determined by qualified BLM staff.

(4) No Historic Properties Affected; eligible sites present, but not affected as defined by 36CFR800.4.

When the above review thresholds are met, the following process will be undertaken.

B. Review Process

BLM will make determinations of eligibility according to 36 CFR Part 60.4 and effects according to criteria set forth in 36 CFR 800.5. BLM will confer with SHPO whenever questions about eligibility and/or effect arise. As appropriate, BLM shall invite interested parties to consult.

BLM will provide documentation in the form of complete and accurate IMACS site forms and inventory reports, as appropriate, to the SHPO, on all projects and undertakings. An informational letter (Attachment D, informational) will accompany this documentation. The SHPO may comment, in writing, on BLM's findings. The BLM will respond, in writing, to any SHPO comments. Both parties will include such comments and responses in the annual report that assesses effectiveness of the Protocol under Section 11.

Inventory will be documented following the Secretary's Standards, BLM procedures and 8100 Manual. Prompt transmission of this documentation will assure an updated database and will occur no later than three months after completion of fieldwork as described in Part IV (A) (1) above.

If a historic property will be affected, BLM will determine whether an MOA or a Treatment Plan is appropriate, in consultation with SHPO, and will document this in the concurrence letter (Attachment D, concurrence). When an adverse effect cannot be avoided through project redesign, BLM will prepare and implement an MOA or Treatment Plan for each property, group of properties, or class of properties that have been determined eligible for inclusion in the NRHP. The Treatment Plan or MOA will take into account the national policies set forth in Section 2 of the NHPA, as amended, and current professional standards. BLM and SHPO will jointly prepare MOAs. BLM will afford the SHPO 15 working days in which to comment upon Treatment Plans. If the SHPO and the BLM cannot reach agreement, dispute resolution procedures will be followed [Part IX (A)].

C. BLM Review

Within six months after signing of this Protocol, BLM and SHPO will meet to review the implementation of this Protocol.

BLM's Deputy Preservation Officer will conduct reviews of each field office (Attachment E), at least annually, in sufficient detail, to determine:

- (1) whether a qualified professional cultural resources staff is present;
- (2) whether undertakings are receiving appropriate cultural resource consideration;
- (3) whether project documentation is being completed and sent to SHPO in a timely manner;
- (4) whether cultural resource identification, evaluation and treatment has occurred before undertakings proceed;
- (5) whether final reports of treatment are being completed and sent to the SHPO; (7) whether follow-up monitoring, where required by avoidance stipulations, MOA or treatment plan specifications, is being completed.

D. Monitoring

The SHPO may monitor projects through field visits and inspection of records. The BLM will cooperate with the SHPO's monitoring activities.

E. Discoveries

In the event that potentially eligible historic properties are discovered during the course of ground disturbance and cannot be avoided, work in the immediate vicinity of the discovery will cease. BLM will evaluate the site and, in consultation with the SHPO, select the appropriate mitigation option. The BLM will implement the mitigation in a timely manner. The process will be fully documented (in reports, site forms and photographs), and the documentation will be forwarded to the SHPO. Large-scale projects will include a discovery process in the treatment plan. If any discovery involves NAGPRA materials, BLM will follow specific requirements of NAGPRA (43 CFR 10).

VIII. STAFFING

A. BLM will strive to hire professional staff that meet manual requirements. Field offices will employ at least one full-time, permanent professional, or will make arrangements to have their workload covered by a qualified professional from another office, or will work with Utah State Office and the SHPO to agree on temporary measures to cover the professional staffing needs of that office.

B. State Certification

BLM-Utah will ensure that expertise in prehistoric archaeology, historic archaeology, industrial archaeology, history, architectural history, historic architecture, Native American coordination, public outreach/heritage education and Traditional Cultural Properties (identification, evaluation and treatment) is available to all BLM-Utah staff (Attachment F). If BLM determines that it does not employ a staff member with a particular skill, it will obtain that expertise for the purpose of determining National Register eligibility, effects, and treatment for the cultural resources in question. The BLM may request the assistance of SHPO staff in such cases or may obtain the necessary expertise through contracts, BLM personnel from other states, or cooperative arrangements with other agencies.

When personnel changes occur, e.g., staff specialists or managers leave, field office certification will be reviewed. Until positions are filled and training is completed, BLM will ensure that qualified personnel are available to conduct the tasks outlined in this Protocol. If decertification is a possibility, the procedures in Section 8 of the national PA will be followed. Certification training topics will include, at a minimum, the national PA, the Protocol, and a review of the Handbook.

IX. DISPUTE RESOLUTION PROCEDURES, AMENDMENTS, AND TERMINATION

A. Dispute Resolution Procedures

Should the BLM or the SHPO object, in writing, within 30 days, to an action taken by the other party to this Protocol, they will consult to resolve the objection. If the dispute cannot be resolved, BLM and SHPO will mutually determine a course of action. Options might include consultation with the National Preservation Board, the Council or alternative dispute resolution procedures. If alternative arrangements are not mutually agreeable, the dispute will be referred to the Council.

B. Amendments to the Protocol

The BLM or the SHPO may request amendment of this Protocol at any time, whereupon the parties will consult to consider such amendment. Amendments will become effective upon signature of both parties and will be attached hereto.

C. Termination of the Protocol

The BLM or the SHPO may terminate this Protocol by providing thirty (30) days written notice to the other party, providing that the parties consult during this period to seek agreement on amendments or other actions that would avoid termination. Either may request the assistance of State Director, the Preservation Board, and/or the Council. In the event of termination, the BLM will operate under the provisions of 36 CFR Part 800 as described in Section 1.

X. OTHER STATE-SPECIFIC PROCEDURES

BLM will follow procedures and adhere to policies detailed in BLM Utah Manual Guidance: the Procedures (Attachment C) and other supplemental manual guidance, along with IMACS site forms. BLM and SHPO will jointly develop and revise handbooks and other guidance as necessary.

XI. ATTACHMENTS

Attachments may be added to this Protocol with the mutual approval of the SHPO and the BLM. Referenced attachments are:

- A. Example Project Log Page
- B. Outline of Topics Covered in Colorado BLM/SHPO Annual Report
- C. Procedures for Professionals
- D. Cover Letters
- E. BLM Review Form
- F. Professional Certification Information

BUREAU OF LAND MANAGEMENT


3/2/01
 By _____ Date _____

UTAH STATE HISTORIC PRESERVATION OFFICER


March 7, 2001
 By _____ Date _____