

APPENDIX E

Programmatic Agreement

FIRST AMENDED REGIONAL
PROGRAMMATIC AGREEMENT

AMONG THE

U.S.D.A. FOREST SERVICE, PACIFIC SOUTHWEST REGION
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, AND
ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING

THE PROCESS FOR COMPLIANCE WITH SECTION 106 OF
THE NATIONAL HISTORIC PRESERVATION ACT
FOR UNDERTAKINGS ON THE NATIONAL FORESTS OF
THE PACIFIC SOUTHWEST REGION

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FOREWORD

WHEREAS, this First Amended Regional Programmatic Agreement fully supersedes all provisions of the Programmatic Agreement among the USDA Forest Service, Pacific Southwest Region, California State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Process for Compliance with Section 106 of the National Historic Preservation Act for Undertakings on the National Forests of the Pacific Southwest Region, executed on September 9, 1996; and

WHEREAS, the U.S.D.A. Forest Service, Pacific Southwest Region (**Region 5**) has a multiple-use mission to manage its public lands for a variety of resources, values, products, and uses which may involve historic properties; and

WHEREAS, Region 5 as public land steward is mandated to comply with the National Historic Preservation Act of 1966, as amended (**NHPA**) (16 U.S.C. 470), and its implementing regulations, entitled "Protection of Historic and Cultural Properties" (36 CFR 800); and

WHEREAS, Region 5, the Advisory Council on Historic Preservation (**ACHP**), and the California State Historic Preservation Officer (**SHPO**) (**consulting parties**) agree that the National Forests of Region 5 (**Forest**) have an extensive history of compliance with the provisions of 36 CFR 800 that demonstrates many undertakings can be implemented using procedures which have proven effective in managing and preserving historic values in a more cost-effective manner than the undertaking-specific process outlined in 36 CFR 800; and

WHEREAS, these Forests' procedures for identifying and protecting historic properties, professional staffing, and past record of compliance with 36 CFR 800 and other procedural agreements indicate that the implementation of a more flexible and less burdensome approach for compliance with Section 106 of the NHPA, as set forth in this Programmatic Agreement (**PA**), will accomplish the objectives of the NHPA in a more expeditious manner; and

WHEREAS, Region 5 proposes to identify, evaluate, treat, protect, preserve, and consult about historic properties, as authorized by the: Antiquities Act of 1906 (34 Stat. 225; 16 U.S.C. 431-433), Historic Sites Act of 1935 (49 Stat. 666; 16 U.S.C. 461-467), National Historic Preservation Act of 1966, as amended (80 Stat. 915 et seq.; 16 U.S.C. 470 et seq.), National Environmental Policy Act of 1969 (**NEPA**), as amended (83 Stat. 852 et seq.; 42 U.S.C. 4321-4347), Archaeological and Historical Data Preservation Act of 1974 (88 Stat. 174; 16 U.S.C. 469), American Indian Religious Freedom Act of 1978 (92 Stat. 469; 42 U.S.C. 1996), the Archaeological Resources Protection Act of 1979, as amended (**ARPA**) (93 Stat. 721 et seq.; 16 U.S.C. 470 et seq.); and the Native American Graves Protection and Repatriation Act of 1990 (104 Stat. 3048-3058; 25 U.S.C. 3001-3013); and as mandated under Executive Order 13007, entitled Indian Sacred Sites, and Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments; and

WHEREAS, Region 5 has determined that its programs, policies, actions, and administration of lands (**undertaking**; see Stipulation II.A) under its jurisdiction involve historic properties either included in or eligible for inclusion in the National Register of Historic Places (**NRHP**), and are subject to consideration under Sections 106 and 110 of NHPA; and

WHEREAS, Region 5 and the SHPO have reviewed these Forests' undertakings to consider prudent and feasible management measures that not only take into account the effect of these undertakings on historic properties which are included in, or eligible for inclusion in, the NRHP, but also protect their values and those of unevaluated properties which might be eligible for the NRHP under criteria at 36 CFR 60.4; and

WHEREAS, the consulting parties share a common desire and purpose to: develop alternative procedures that would satisfactorily take into account the effects of these undertakings where proper precautions are followed; reduce redundant documentation associated with recurring types of undertakings within areas having adequate prior identification, review, and consultation; and facilitate each Forest's progress towards meeting Section 110 responsibilities; and

WHEREAS, execution of this PA by the Regional Forester of Region 5 obligates that each participating Forest comply with the stipulations contained herein, and the Forest Supervisors of these participating Forests have concurred with this requirement;

NOW, THEREFORE, Region 5, the SHPO, and the ACHP agree that all undertakings by the Forests shall be implemented in accordance with the following stipulations in order to take into account the effect of their undertakings on historic properties; and when so administered, the processes specified in this PA for identification, documentation, evaluation, review, consultation, and public notification and participation may be followed, in lieu of the requirements of 36 CFR 800, and these processes will satisfy the Forests' Section 106 responsibilities for all individual aspects of their undertakings.

I. SCOPE AND OBJECTIVES

- A. Some Region 5 undertakings, because of their nature or scope, have no effect on historic properties. The prospective effects of some other types of undertakings can be managed in such a way that historic property values within an Area of Potential Effects (**APE**; see Stipulation II.D) are protected. An undertaking's effects, including those which could affect historic properties, must be considered and documented as part of the agency's compliance with the NEPA. Information obtained as part of a Forest's compliance with the provisions of 36 CFR 800 is considered as part of the NEPA process. During the planning process under NEPA, many of these undertakings can be designed so that specific areas, such as historic properties, are excluded from specific areas of effect.
- B. The purpose of this PA is to expedite compliance with that portion of the ACHP's regulations (36 CFR 800) implementing Section 106 of the NHPA for undertakings whenever: (1) there are no identified historic properties within an APE (Stipulation III.D(1)); (2) historic properties which are listed in or eligible for the NRHP are present within an APE but will not be affected because they are clearly outside specific areas where effects will occur (Stipulation III.D(2)); (3) historic properties, and/or unevaluated properties which will be treated as if they were eligible for the NRHP, are within the APE but they will be managed and maintained in such a way that their values are protected (Stipulation III.D(3)); or (4) the nature of the activity is such that it is unlikely to affect historic properties and is therefore exempt from further review and consultation, as specified in this PA (Stipulations II.C and III.E, and Attachment A), and from the provisions of 36 CFR 800. If historic properties are present within an undertaking's APE and would be affected by an undertaking, and the Standard Resource Protection Measures (pursuant to Stipulation III.D(3)) contained in Attachment B cannot or will not be implemented, then the procedures outlined in 36 CFR 800 will be followed regarding evaluation, determination of effects, review, and consultation. The public involvement and participation processes will be integrated with those undertaken in compliance with NEPA.

II. DEFINITIONS

The following definitions, and others included in 36 CFR 800, apply to this PA.

- A. Undertaking is any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including: (1) those carried out by or on behalf of the agency; (2) those carried out with Federal financial assistance; (3) those requiring a Federal permit, license, or approval; and (4) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency (Section 301(7) of NHPA).
- B. Emergency Undertaking is any Region 5 undertaking that the Regional Forester determines must be initiated within 30 days of a natural disaster (including human-caused fire) or national security emergency, in order to avoid an imminent threat to human life or of major property damage, as defined in 36 CFR Part 78;
- C. Exempt Undertaking is an undertaking that is exempt from review or consultation under terms of this PA and 36 CFR 800, pursuant to Stipulation III.E, and specifically listed in Attachment A;
- D. Area of Potential Effects (**APE**) is the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.
- E. Intensive Survey is a systematic, detailed examination of an area designed to gather information about the number, location, condition, and distribution of historic properties within an undertaking's APE.

F. Historic Property is:

- (1) any prehistoric or historic district, site, building, structure, or object, and its associated artifacts, remains, features, settings, and records, that is either listed in or has been determined eligible for inclusion in the NRHP; or
- (2) any property not yet evaluated to determine whether it is eligible for the NRHP.

G. Heritage Resources Manager (**HRM**) is the position on each Forest that is responsible for: directing, planning, and administering the Forest's complex and multifaceted Heritage Resources management program; providing professional and technical advice to the Forest Leadership Team; directing the Heritage Resources program internally, and with external agencies, organizations, and the public; and planning and developing the Forest's heritage resource inventory, evaluation, and enhancement program. The HRM, and any person delegated the responsibilities of the HRM, shall meet the professional standards established for either archaeologist or historian, as outlined in 36 CFR 296.8 or in the Secretary of the Interior's Standards and Guidelines for Professional Qualifications (48 FR 44738-44739).

III. PROCEDURES

A. Coordination and Information Exchange

- (1) All efforts to identify and evaluate historic properties in connection with the planning of undertakings shall be carried out in accordance with the standards and guidelines specified in this PA, or as otherwise agreed to by SHPO.
 - (a) All reports which document identification or evaluation efforts shall be provided to the SHPO as specified below, and/or to the respective Regional Information Center of the California Archaeological Survey for integration in the statewide database, as specified in Stipulation VI.C.
 - (b) Where Native American tribes, traditional leaders, or individuals specifically request that information about traditional cultural properties remain confidential, such records shall be maintained in confidential files at each Forest's Supervisor's Office.
- (2) Consultation and coordination among the Forests, the SHPO, the ACHP, and other interested parties, pursuant to this PA, shall be the responsibility of the Forest Supervisor unless specified otherwise.

B. Identification of Historic Properties

- (1) Each undertaking's APE shall be inventoried in accordance with the stipulations for identification enumerated below.
- (2) The Forests shall ensure that all identification activities reasonably conform to the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation, Standards for Identification (48 FR 44720-44723). The scope of identification efforts will depend on: existing knowledge about historic properties; goals for survey activities developed in the planning process; and current management needs. Critical steps in the identification process are: a literature review; Native American Indian consultation (as appropriate); field survey (as necessary); documentation of results; and record keeping.
 - (a) Where the Forests propose to carry out, or cause to be carried out, an intensive survey of the APE, regardless of land

ownership, they need not consult with the SHPO prior to such inventory, but shall document the results of such inventory and provide this documentation to the SHPO for review and comment in accordance with Stipulation VI. Intensive survey may be conducted by:

- (i) professional archaeologists or historians who meet the professional standards of 36 CFR 296.8, or the Secretary of the Interior's Standards and Guidelines for Professional Qualifications (48 FR 44738-44739).
 - (ii) archaeological technicians who meet Office of Personnel Management standards for personnel who may perform such surveys;
 - (iii) certified archaeological surveyors who meet the standards specified in Forest Service Manual 2361.42 and those detailed in Attachment C, or other standards set by the Forests and agreed to by SHPO;
 - (iv) professional consultants who meet the professional standards of 36 CFR 296.8, or the Secretary of the Interior's Standards and Guidelines for Professional Qualifications (48 FR 44738-44739).
- (b) Where a Forest proposes to carry out, or causes to be carried out, a sample survey, reconnaissance, or less than intensive survey (e.g., sample inventory for scattered timber salvage or range allotments), the Forest shall consult with the SHPO on the appropriate type, intensity, and level of inventory to be conducted pursuant to this PA. Such identification strategies can be developed in consultation with SHPO for certain classes of undertakings or conditions rather than for individual undertakings. Where approved by SHPO, nonintensive survey methods will be considered adequate for satisfying identification requirements under this PA.
- (i) The Forest or SHPO may request the ACHP to participate in such consultation.
 - (ii) Only professional archaeologists, or consultants meeting professional standards, pursuant to 36 CFR 296.8, may design a sample survey, reconnaissance, or less than intensive survey.
- (3) All identified historic properties shall be recorded on appropriate Heritage Resource Forms (e.g., FS electronic corporate database), or other forms approved by the SHPO and Forests.
- (a) Heritage Resource Forms shall be designed to include, at a minimum, the same information categories and standards contained in State of California Department of Parks and Recreation Archeological Site Record (DPR 422) and Historic Resources Inventory (DPR 523) forms, or successor forms as appropriate, or as otherwise agreed to by the SHPO and Forests.
 - (b) Heritage Resource Forms shall either be completed as described in the electronic corporate database manual, or at a minimum shall be designed to include the categories and standards outlined in the California Archeological Inventory Handbook for Completing an Archeological Site Record (1989) and the Instructions for Completing California Historic Resources Inventory Forms (1984), or successor manuals or instructions as appropriate and agreed to by the SHPO and Forests.
 - (c) Where historic structures are a component of a larger historic property, they shall be treated as features of those properties and must be recorded on Heritage Resource Forms, as appropriate.

- (d) Heritage Resource Forms shall be submitted to appropriate Regional Information Centers of the California Archaeological Survey for trinomial assignments.
 - (i) Trinomial designations shall be incorporated into documentation submitted to SHPO for review.
 - (ii) If trinomials have been requested, but not received by the time the Forest needs to submit documentation to the SHPO, then Forests will provide copies of Regional Information Center of the California Archaeological Survey transmittal letters with their documentation.
 - (e) Heritage Resource Forms shall be housed at Forest Supervisor and/or District Ranger Offices in controlled access facilities.
 - (f) Each Forest may develop a definition of an archaeological site property that may be used if approved by SHPO;
- (4) A Survey Report (**SR**) (e.g., Heritage Resource Report (HRR); Archaeological Survey Report (ASR); Cultural Resources Inventory Report (CRIR); Archaeological Reconnaissance Report (ARR)) shall be prepared for each undertaking or group of small related undertakings prior to implementing action or related undertaking activities.
- (a) Previous inventory and report efforts:
 - (i) shall be reviewed for adequacy by the Forest's HRM (e.g., Forest Archaeologist), or person designated by the HRM, to determine if resurvey is appropriate, given changing standards, research designs, conditions, or an undertaking's effects;
 - (ii) which have not been reviewed by the SHPO, pursuant to 36 CFR 800 or under this or other agreements with SHPO, shall be incorporated into SRs for current review.
 - (b) The HRM shall ensure that SRs conform to guidelines in the:
 - (i) Pacific Southwest Region's electronic corporate database manual or successor manual (when implemented on individual Forests);
 - (ii) State of California Department of Parks and Recreation guidelines "Archaeological Resource Management Reports (ARMR): Recommended Contents and Format (1989)";
 - (iii) Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation, Reporting Identification Results (48 FR 44723); and/or
 - (iv) other standards mutually agreed to by the Forests and the SHPO.
 - (c) SRs shall list all historic properties identified within an undertaking's APE. Copies of Heritage Resource Forms within or adjacent to areas of effect shall be included in SRs.
 - (d) SRs shall include references to previous reports and property records if portions of undertakings have been subject to earlier survey and these reports have been previously submitted to the SHPO for review. Previously recorded historic properties within an APE shall be updated to meet the documentation standards specified in this PA (Stipulation III.B(3), above).
 - (e) SRs shall be completed prior to implementing undertakings.

- (5) No additional identification efforts are required prior to the implementation of an undertaking if its APE is entirely within an area that has been previously inventoried; and the HRM, or person(s) delegated by the HRM, determines that no additional inventory or consultation with the SHPO is required prior to implementation, provided the following conditions are met:
 - (a) the HRM, or a person delegated by the HRM, confirms that previous identification efforts meet current standards; and
 - (b) the undertaking is documented in a manner agreed upon by the SHPO and Forests, and this documentation is included in the Annual Report (Stipulation VI.B).

C. Evaluation of Historic Properties

- (1) If an undertaking may diminish an historic property's NRHP values, then the Forest will follow the provisions of 36 CFR 800 regarding evaluation and determination of effects, except as provided in Stipulation III.C(2) below.
- (2) If the HRM, or a person delegated by the HRM, determines that the nature and scope of a proposed undertaking is such that its effects can be reasonably predicted, but appropriate measures can be undertaken to ensure that the values of historic properties are not affected in any way, then these historic properties will be managed and maintained in a manner which ensures that their values are preserved by using the Standard Resource Protection Measures listed in Attachment B. Under these circumstances and coupled with the implementation of protection measures in Attachment B, no NRHP evaluation is required prior to implementing an undertaking.
- (3) It is expected that the use of a simplified process will result in freeing agency resources to be used towards achieving greater compliance with Section 110 of NHPA than has previously been possible. When unevaluated historic properties are managed using Standard Resource Protection Measures, the applicable forest will initiate a program that results in progress in achieving greater compliance with Section 110 (cf. Stipulation X). Such progress will be essential in demonstrating whether complimentary benefits are derived in exchange for a process that is more simplified and expeditious than the one found in 36 CFR 800. Since the process embodied in this PA provides the greatest latitude with respect to evaluations, Section 110 activities undertaken under the provisions of this PA shall focus on evaluations. The primary benefit will be in allowing Forests to choose which properties to evaluate based on reasons other than their presence within an undertaking's APE, such as research needs, resource protection needs, interpretive potential, and other public benefits.
- (4) Within one year of the effective date of this PA, each Forest in consultation with the SHPO and ACHP, and after considering the views of interested parties, shall have completed an agreed upon Section 110 Plan (cf. Stipulation X) that outlines the scope, focus, priorities, and schedule of those Section 110 activities that will be implemented (cf. Stipulation III.C(3), above). The Forests will report on their progress in meeting the objectives and schedule outlined in the plan. Failure to complete a Section 110 plan within the stipulated time frame, or lack of reasonable progress in implementing the plan, may be cause for the termination of a Forest's participation in this agreement. At a minimum, the Section 110 Plan (cf. Stipulation X) shall:
 - (a) include a discussion of the legal and managerial context within which the Forest HRM program operates;

- (b) identify the principal components of the Forest's HRM program (e.g., inventory, evaluation, monitoring, interpretation, protection, etc.);
 - (c) identify short-term and long-term Forest HRM goals and objectives;
 - (d) establish program priorities and strategies for accomplishment of goals and objectives;
 - (e) establish a schedule for achieving progress toward goals, particularly for NRHP nominations, evaluations of historic properties, and monitoring; and
 - (f) provide a mechanism for monitoring program accomplishment.
- (5) Some types of properties can be managed using the California Archaeological Resource Identification and Data Acquisition Programs (CARIDAPs). These programs employ specific criteria to classify an archaeological property which contains limited but easily retrieved information, and whose eligibility under 36 CFR 60.4(d) as an individual property or class of properties is often problematic. Any property managed according to a California Archaeological Resource Identification and Data Acquisition Program will be considered ineligible for the NRHP, and needs no further consideration under the terms of this PA.

D. Implementation

(1) Undertakings When There Are No Historic Properties:

When no historic properties are identified following an intensive inventory, or an approved sample inventory pursuant to Stipulation III.B(2)(b), no consultation with the SHPO or ACHP is required prior to implementing an undertaking. These undertakings will be listed in the Annual Report (Stipulation VI), and copies of SRs will be available for review by the public.

(2) Undertakings Where Management Measures Are Not Necessary for the Protection of Historic Properties:

When an undertaking is planned following an intensive inventory, or an approved sample inventory pursuant to Stipulation III.B(2)(b), whenever historic properties will not be affected and the undertaking can be implemented without the adoption of management measures to protect historic properties, then the undertaking will be implemented without further review or consultation with the SHPO and/or ACHP. These undertakings will be listed in the Annual Report (Stipulation VI) and copies of SRs will be available for review by the SHPO in accordance with Stipulation VI.C. Copies of SRs will also be available for public review, excluding information about the nature and location of archaeological and historic resources which is prohibited under Section 304 of the NHPA (16 U.S.C. 470w-3) and Section 9 of the ARPA (16 U.S.C. 470hh).

(3) Undertakings Where Management Measures Are Necessary for the Protection of Historic Properties:

(a) When historic properties are identified following an intensive inventory, or an approved sample inventory pursuant to Stipulation III.B(2)(b), and effective protection measures will be employed (cf. Attachment B), no review or consultation with the SHPO or ACHP is required prior to implementing an undertaking.

- (i) The Forests may consult with the SHPO, pursuant to 36 CFR 800, on any undertaking covered by this PA where the use of the Standard Resource Protection Measures is proposed.

- (ii) At its discretion and with the cooperation of the Forests, the SHPO may participate with the Forests in review or consultation on a specific undertaking, or class of undertakings, where Standard Resource Protection Measures are being used.
- (b) A list of these undertakings shall be submitted with the Annual Report for review pursuant to Stipulation VI.
- (c) SRs prepared to document newly surveyed or resurveyed APES, where management measures for the protection of historic properties are necessary (cf. Attachment B), need not be reviewed by SHPO or ACHP prior to implementing an undertaking.
 - (i) SRs for these undertakings shall be submitted to the SHPO if requested in accordance with Stipulation VI.C.
 - (ii) Copies of these SRs shall be submitted to appropriate Regional Information Centers of the California Archaeological Survey for inclusion in the statewide inventory.
 - (iii) Copies of SRs will be available for public review, excluding information about the nature and location of archaeological and historic resources which is prohibited by Section 304 of the NHPA and Section 9 of the ARPA.
- (4) Undertakings Requiring Compliance with the ACHP's Regulations (36 CFR 800):

Forests shall comply with the ACHP's regulations 36 CFR 800 for undertakings that do not comply with Stipulation III.D(1) above, Undertakings When There Are No Historic Properties; Stipulation III.D(2) above, Undertakings Where Management Measures Are Not Necessary for the Protection of Historic Properties; Stipulation III.D(3) above, Undertakings Where Management Measures Are Necessary for the Protection of Historic Properties; or Stipulation III.E below, Exempt Undertakings. That is, Forests shall comply with 36 CFR 800 for undertakings that may adversely affect historic properties. For cases of inadvertent effects in projects implemented under the provisions of this agreement, refer to Stipulation V, below.

E. Exempt Undertakings

- (1) Under this PA, those classes of undertakings listed in Section I of Attachment A are exempt from further review or consultation. In addition, HRMs may determine that any specific undertaking subsumed in the classes of undertakings listed in Section II of Attachment A qualifies as an exempt undertaking. However, the following exceptions apply:
 - (a) a Forest may submit an otherwise exempt undertaking for review under this PA or 36 CFR 800;
 - (b) should a dispute or objection by the public arise to an exempt undertaking or to an exempt class of undertakings prior to implementation, the Forest shall consult with the objecting party, the SHPO, and/or the ACHP for not more than 30 calendar days following receipt to resolve the objection. If the objection cannot be resolved within this time frame, the Forest shall submit the disputed exemption for review either under this PA or under 36 CFR 800. The Forest may propose that a disputed class of exempt undertakings be considered for revision pursuant to Stipulation III.E(2), below.

(2) Revisions to list of exempted undertakings:

- (a) Upon written recommendation by any party to this PA, the consulting parties shall consider adding other classes of undertakings to Attachment A. Attachment A may be revised to include such additional classes of undertakings upon the written agreement of all the consulting parties.
- (b) Upon written recommendation by any party to this PA, the consulting parties shall consider removal of any class of undertakings from Attachment A. Attachment A may be revised to exclude the class of undertakings upon the written agreement of all the consulting parties. Disputes about deletions of classes of undertakings shall be resolved pursuant to Stipulation IX.D. Until the dispute is resolved, the class of undertakings involved in the dispute shall be subject to review pursuant to the stipulations of this PA or 36 CFR 800.

IV. MONITORING

A. Monitoring Requirements

Each Forest shall conduct monitoring as necessary to ensure that identified protection measures are effective. The Forest's professional heritage resources staff shall determine the schedule and requirements of any monitoring. A permanent record shall be completed for each monitoring event and kept on file at the applicable Forest Supervisor's Office. Inspection by the SHPO may be performed during or after an undertaking with advance notice and arrangement between the SHPO, the HRM, and the Agency Official.

B. Standards for Undertakings Where Management Measures Are Not Required for the Protection of Historic Properties

Most undertakings that do not require management measures for protection of historic properties will not be monitored. The following circumstances are exceptions where monitoring will be considered or undertaken.

- (1) When undertakings change during implementation because of unforeseen circumstances, and these changes then require the adoption of the Standard Resource Protection Measures for previously identified historic properties, monitoring shall be required if the HRM determines that information is inadequate to determine whether these measures are appropriate. Monitoring might be appropriate if proposed activities are near some types of historic properties or cultural properties of importance to Native Americans, or if the effectiveness of identified protection measures is problematic. Monitoring may be necessary during and/or after these undertakings.
- (2) When historic properties are discovered during the implementation of an undertaking, monitoring shall occur as early as possible to determine whether they may be affected by proposed activities, and whether the use of Standard Resource Protection Measures is appropriate. Monitoring frequency will be determined by the HRM.

C. Standards for Undertakings Where Management Measures Are Required for the Protection of Historic Properties

- (1) When prescribed Standard Resource Protection Measures have not been implemented, and activities have occurred that may have affected any identified historic property, then monitoring is required during and/or after the undertaking.
 - (a) If the undertaking has not been completed when the HRM receives notification that prescribed protection measures have not been

followed, then all activities in the immediate vicinity of the historic property shall be suspended until a heritage resource professional examines the property and the HRM recommends appropriate measures that will protect the historic property. The need for additional consultation will also be determined by the HRM before resumption of any suspended activities. If the property has not been affected, and Standard Resource Protection Measures can be effectively employed for the remaining implementation period, then the HRM may decide that the undertaking may resume without further consultation. If historic properties may have been affected, consultation will be initiated in accordance with Stipulation V.A. The Annual Report shall describe all instances where Standard Resource Protection Measures were prescribed but either not implemented or not fully implemented, and the measures taken to ensure protection of historic properties.

- (b) If the undertaking has been completed when the HRM receives notification that prescribed protection measures have not been followed, then a field inspection of respective historic properties will be initiated as soon as possible, and the provisions of Stipulations V.B and V.C shall be followed. The circumstances surrounding the Forest's failure to use prescribed protection measures will be described in the Annual Report.
- (2) If the HRM determines that use of the Standard Resource Protection Measures might not provide adequate protection to the historic property because of the nature, scope, frequency, and/or duration of certain types of recurrent undertakings, monitoring in a manner prescribed by the HRM will be carried out to verify that the protection measures are adequate.

D. Monitoring for Identification of Historic Properties

Where no known historic properties exist in the APE following an intensive inventory, but uncertainty remains about the possible presence of historic properties because of observation limitations, information from the literature review, or other sources (e.g., oral history), monitoring may be employed during the implementation of an undertaking if recommended by the HRM. The purpose would be to ensure that unidentified historic properties, if present, are not irretrievably lost, damaged, or destroyed. If any properties are identified, the provisions of Stipulation V shall be followed.

V. INADVERTENT EFFECTS

The SHPO and the ACHP shall be notified by a Forest immediately upon discovery that a property has been affected by an undertaking implemented under this PA.

- A. If the undertaking has not been completed at the time the effect is discovered, all activities in the vicinity of the historic property shall cease and reasonable efforts shall be taken to avoid or minimize harm to the property until the following consultations are completed. The Forest shall consult with SHPO for not more than 10 calendar days after discovery to agree on a mutually acceptable course of action regarding the historic property. If agreement cannot be reached within this time frame, the SHPO shall be afforded 10 calendar days thereafter to provide written comments to the Forest. Thereafter, the Forest shall consult with ACHP for not more than 10 calendar days. If agreement cannot be reached within this time frame, then the Forest shall provide ACHP with summary documentation on the issues and feasible steps that might be taken, and request the comments of the ACHP before making a decision on whether or how to proceed with the undertaking. The ACHP shall have 10 calendar days following receipt of the request to provide the Forest with comments, which the Forest shall take into account in reaching its decision. The Forest shall notify

the ACHP, SHPO, and any interested parties of its decision within 10 calendar days.

- B. If the undertaking has already been concluded when an effect to a property has been discovered, the Forest shall consult with the SHPO and with the ACHP, if it chooses to participate, to agree on a mutually acceptable course of action which the Forest shall implement within a specified time period. This consultation shall not exceed 30 calendar days. If agreement on a course of action cannot be reached within this time frame, the Forest shall take any comments received into account. The Forest shall notify and submit appropriate documentation of its decision within 10 calendar days to the SHPO, ACHP, and any interested parties.
- C. Within six months, but no later than the initiation of consultations under Stipulations V.A or V.B, the Forest shall provide the SHPO, ACHP if a participant, and other interested parties with a report describing the undertaking and the circumstances surrounding the effects. This report must include information regarding the: type of property affected; property's NRHP status; nature of the effects; date effects identified; location of the property (i.e., name of Ranger District); condition of the property; and other pertinent information.

VI. SUBMISSION OF REPORTS

- A. Each Forest shall submit an Annual Report to the SHPO and Region 5, and to the ACHP, should it so request, each year on or before March 1. The Annual Report shall describe all undertakings implemented pursuant to this PA during the previous federal fiscal year (i.e., October 1 to September 30). If a Forest is unable to submit its Annual Report by this date, it shall notify the SHPO and negotiate an agreed date. Failure to meet the negotiated date can result in termination of that Forest's participation in this Programmatic Agreement. Copies of Annual Reports will be available for public review, excluding information about the location and nature of historic properties which is prohibited by Section 304 of the NHPA, and Section 9 of the ARPA.
- B. At a minimum, the Annual Report shall include:
 - (1) A summary of all studies conducted for undertakings covered by the PA, including information regarding:
 - (a) the types of undertakings for which studies occurred;
 - (b) results of all survey and identification efforts (e.g., acres surveyed, newly recorded and rerecorded historic properties), including those where no historic properties were identified within an undertaking's APE;
 - (c) all undertakings whose APE was adequately covered by previous survey;
 - (d) all exempt undertakings included under category II of Attachment A;
 - (e) management measures employed to protect any identified historic properties;
 - (f) findings from monitoring efforts;
 - (g) consultation with interested persons or any pertinent results obtained from public notification and participation processes described under Stipulation VII; and
 - (h) submission of the SRs to Regional Information Centers of the California Archaeological Survey, or a proposed schedule for submission;

- (2) A description of actions taken that show progress towards compliance with Section 110 of NHPA, particularly with regards to evaluation, but also in the areas of identification, nomination, interpretation, preservation, enhancement, public participation, data management and dissemination, and protection (Stipulation X).
 - (3) An assessment of the effectiveness of the PA, including any reasonably reliable estimate of cost savings and/or increases in management efficiency;
 - (4) Any other available information that Region 5 or the SHPO requests be incorporated into the Annual Report.
- C. SRs prepared for each undertaking implemented under the provisions of this PA, as described in Stipulation III.B(4), shall be made available for review upon request of the SHPO. The SHPO may request a review of any or all subject SRs, and the Forest shall provide the requested SRs to the SHPO within 15 calendar days of receipt of a request.
- D. Region 5 shall submit a report to the SHPO and the ACHP annually, no later than May 1, of each year. At a minimum, the regional report shall:
- (1) assess the effectiveness of the PA, and make recommendations for its improvement, continuation, or termination;
 - (2) summarize information provided in Forest Annual Reports;
 - (3) make recommendations as to the continued participation of Forests in the PA, pursuant to Stipulation IX.B.

VII. PUBLIC PARTICIPATION

- A. Forests shall use the public notification process embodied in the NEPA (42 U.S.C. 4321-4346) to comply with provisions for public notification, identification of interested persons, and public participation found in 36 CFR 800. Interested persons shall be afforded an opportunity to comment on the manner in which the effects of undertakings implemented under the provisions of this PA are taken into account. The Forest Service's policy and procedures for implementing NEPA (Forest Service Manual 1950; Forest Service Handbook 1909.15; at 57 FR 43180-43213) include public notification and involvement of interested persons, beginning at the earliest stages of planning an undertaking, during the environmental analysis period, and after a decision is made.
- (1) The NEPA process allows individuals, organizations, or groups an opportunity to comment on Forest undertakings, including those measures used for the identification, protection, and management of historic properties, and the effects of undertakings on historic values. These comments are taken into account as part of the NEPA decision. Those who have provided comments during the NEPA process also have administrative appeal rights after a decision is made, and the public is notified of those rights and the appeal process (36 CFR 215).
 - (2) The NEPA scoping process shall be used to meet 36 CFR 800 responsibilities to involve Native Americans, tribal governments, and other interested persons, to solicit information about identification of properties important for historic and cultural values, and about effects to those properties from proposed undertakings.
- B. Attachment D and the terms of this stipulation constitute the process that shall be used by Forests to ensure the public is notified of

planned undertakings and also establish the manner in which comments on particular programs and undertakings may be taken into consideration.

- C. If HRMs, or persons delegated by the HRM, determine that certain proposed undertakings would likely have significant, controversial, or unforeseen effects on historic properties or contemporary American Indian values based on known information, those undertakings shall be excluded from implementation under the provisions of this PA. Compliance with Section 106 of NHPA for these undertakings will follow 36 CFR 800. Forests shall ensure that interested persons are provided opportunities to comment on the effects of these undertakings, and on undertakings that meet Stipulation III.D(4), pursuant to 36 CFR 800.

VIII. PROCEDURES UNDER UNUSUAL CIRCUMSTANCES

- A. Where a Forest acts as lead agency on behalf of other Federal agencies, or where an undertaking may have effects beyond the boundaries of the State of California, the Forest shall comply with 36 CFR 800 in lieu of compliance with this PA.
- B. Should a Forest find it necessary to implement an undertaking in the case of:
 - (1) a declared emergency, the Forest may follow the provisions of 36 CFR 800.
 - (2) an undeclared emergency, i.e., where there is an imminent threat of a major natural disaster such that an emergency action is necessary for the preservation of human life or property, the agency official shall notify the SHPO and ACHP of the emergency, and where there is agreement that an emergency situation exists and time permits, the SHPO and ACHP agree to provide comments within 7 working days or less as the situation warrants.

IX. REVIEW, AMENDMENTS, DISPUTES, AND TERMINATION

- A. The consulting parties shall periodically review the PA's terms to determine whether continuation, amendment, or termination is appropriate. In accordance with Stipulation VI.D, Region 5 shall provide recommendations in its annual report on actions undertaken pursuant to this PA. The SHPO and the ACHP shall comment on those recommendations within 30 calendar days of receiving the regional annual report.
- B. Forests may be added or deleted from participation in the PA as follows:
 - (1) Region 5 shall make written recommendations to the SHPO and the ACHP about adding or deleting Forests as participants in the PA; SHPO and ACHP shall comment on those recommendations within 30 calendar days of receiving written requests. Participation of each Forest is independent of that of the others, and any Forest may be added or deleted without affecting participation of the others. The decision to add or delete a Forest's participation in the PA shall ultimately be made by Region 5, following consultation with the SHPO and the ACHP. Any disagreement arising during consultation shall be resolved in accordance with Stipulation IX.D. Forest additions shall become effective as of the date of concurrence with the PA by the added Forest; deletions shall become effective as of the date of final decision by Region 5.
 - (2) Region 5 shall develop specific criteria to evaluate Forest performance in relation to PA stipulations, and shall provide these criteria to ACHP and SHPO for a 30 calendar day review period. Region 5 shall take any comments received into account in finalizing the Forest performance evaluation criteria. Any disagreement

arising during this consultation shall be resolved pursuant to Stipulation IX.D. Region 5 shall prepare a written report for ACHP and SHPO review, pursuant to Stipulations VI.D and IX.B(1) above, outlining Forest performance, and shall make decisions as to individual Forest continued participation, as follows:

- (a) Unqualified continued participation because all performance standards have been met;
 - (b) Provisional participation owing to some performance deficiencies. If deficiencies are not removed within one year, the Forest may be deleted from PA participation;
 - (c) Removal from participation due to a clear pattern of consistent and broad failure to meet stipulations.
- C. If any of the consulting parties determines that changes to the PA are necessary, or that the terms of this PA have not or cannot be met, it may notify the other consulting parties in writing and request their consideration of proposed amendments, or recommend that the PA be terminated. Amendments shall be executed in the same manner as the original PA. If a request for PA termination is received by the consulting parties, and the issues are not resolved to the satisfaction of all consulting parties, then the PA shall be terminated in 30 days from the date the termination notification was received. This time frame may be extended for a specified period of time upon agreement of all consulting parties. In the event of termination, the Forests shall submit all undertakings for review pursuant to 36 CFR 800.
- D. If any of the consulting parties to this PA objects to any aspect of its implementation, Region 5 shall consult with the objecting party to resolve the objection.
- (1) If the objection involves a particular Forest's undertaking and cannot be resolved within 30 calendar days, then the Forest shall comply with Section 106 of the NHPA by following the provisions of 36 CFR 800 for that particular undertaking.
 - (2) If the objection involves an exempt undertaking, see Stipulation III.E.
 - (3) If the objection involves any other portion of this PA, and consultation fails to resolve the objection within 30 calendar days, Region 5 shall forward all documentation, including SHPO comments if any, relevant to the objection to the ACHP. Within 60 calendar days after receipt of all pertinent documentation, the ACHP will either:
 - (a) provide Region 5 with recommendations, which Region 5 will take into account in reaching a final decision regarding the dispute; or
 - (b) notify Region 5 that it will comment pursuant to 36 CFR 800, and proceed to comment.
 - (4) Any ACHP comment provided in response to an objection will be taken into account by Region 5 with reference to the subject of the dispute. Any recommendation or comment provided by ACHP will be understood to pertain only to the subject of the dispute. Region 5's responsibility to carry out all actions under this PA that are not the subject of the dispute will remain unchanged.
- E. The public may comment on proposed undertakings and their implementation, including the manner in which historic properties are considered, under the process described under Stipulation VII. Procedures for appealing agency decisions, including the manner in which historic properties are protected under the provisions of this PA, are found in "Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities" (36 CFR 215).

X. SECTION 110 AND ARPA RESPONSIBILITIES

- A. In lieu of the undertaking-specific procedural requirements of 36 CFR 800, implementation of this PA will enable the Forests to fulfill other heritage resource goals. This greater flexibility should provide measurable results in compliance with responsibilities listed in Section 110 of NHPA. Within one year of the effective date of this PA, each Forest shall have completed an agreed upon Section 110 Plan, developed in consultation with the consulting parties, and considering the views of interested persons, that specifically describes the Forest's proposed scope, priorities, and schedule for achieving measurable progress in compliance with Section 110 of NHPA (cf. Stipulation III.C(3) and (4)).
- B. Forests shall demonstrate progress in their compliance with Section 110 of the NHPA. Forests will emphasize evaluation, but these efforts need not be limited to historic properties identified in undertakings considered under this PA. Progress may be demonstrated in some of the following ways:
- (1) nomination(s) to the NRHP;
 - (2) an established program for evaluating the eligibility of historic properties, including:
 - (a) development of an action plan for evaluations containing objectives, annual goals, procedures, and time frames;
 - (b) with SHPO concurrence, development of specific approaches to evaluation of properties or classes of resources (e.g., thematic studies, multiple property studies);
 - (3) a program of historic property monitoring designed to identify and assess the effects that may be associated with environmental degradation, visitor use, vandalism, permit issuance, administrative use, maintenance, and/or other activities;
 - (4) a program for the preservation and stabilization of historic properties threatened by decay, erosion, and other forms of degradation, documented in stabilization and preservation plans, treatment plans, and accomplishment reports;
 - (5) implementation of an ARPA monitoring program in areas where site vandalism and destruction, and artifact theft, are problems;
 - (6) a program of environmental education and heritage awareness, to educate the public and agency personnel about heritage values, the fragility of historic properties, and the importance of preserving them, documented through public outreach efforts, partnerships, cooperative PAs, internal training sessions, etc.;
 - (7) a program of heritage resource interpretation, documented through an interpretive plan, interpretation signs or exhibits, guided walks, brochures, and/or other programs;
 - (8) a research program focusing on the evaluation, interpretation, treatment, preservation, and/or protection of historic properties, evidenced through cooperative agreements, partnerships, research reports, treatment plans, presentation or publication of professional papers, etc.;
 - (9) contributions to regional and state cultural resource planning efforts, as members of planning teams, committees, etc.;
 - (10) a record of regular training and enhancement of professional skills for Heritage Resource Management specialists, including attendance

at professional meetings, training, educational leaves or other educational arrangements, development of professional skills opportunities, details, etc.

Execution and implementation of this PA evidences that the USDA Forest Service's Pacific Southwest Region and concurring Forests have afforded the Advisory Council on Historic Preservation a reasonable opportunity to comment on their undertakings, and have satisfied their Section 106 responsibilities for all individual undertakings.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

/s/ John M. Fowler DATE: 8/24/01.
John Fowler
Executive Director

STATE OF CALIFORNIA, OFFICE OF HISTORIC PRESERVATION

/s/ Knox Mellon DATE: 8/13/01.
Dr. Knox Mellon
State Historic Preservation Officer

U.S.D.A. FOREST SERVICE, PACIFIC SOUTHWEST REGION

/s/ Bernie Weingardt (for) DATE: 5/1/01.
Bradley E. Powell
Regional Forester

I CONCUR:

/s/ Jody Cook DATE: 3/16/01 .
Jody Cook, Forest Supervisor
Angeles National Forest

/s/ Anne S. Fege DATE: 3/27/01 .
Anne S. Fege, Forest Supervisor
Cleveland National Forest

/s/ John D. Berry DATE: 4/9/01 .
John D. Berry, Forest Supervisor
Eldorado National Forest

/s/ Jeffrey E. Bailey DATE: 3/26/01 .
Jeff Bailey, Forest Supervisor
Inyo National Forest

/s/ Margaret J. Boland DATE: 3/29/01 .
Margaret J. Boland, Forest Supervisor
Klamath National Forest

/s/ Maribeth Gustafson DATE: 04/03/01 .
Maribeth Gustafson, Forest Supervisor
Lake Tahoe Basin Management Unit

/s/ Edward C. Cole DATE: 3/28/01 .
Ed Cole, Forest Supervisor
Lassen National Forest

/s/ Jeanine A. Derby DATE: 4/26/01 .
Jeanine Derby, Forest Supervisor
Los Padres National Forest

/s/ James D. Fenwood DATE: 4/5/01 .
Jim Fenwood, Forest Supervisor
Mendocino National Forest

/s/ Dan Chisholm DATE: March 30, 2001 .
Dan Chisholm, Forest Supervisor
Modoc National Forest

/s/ Mark J. Madrid DATE: 3/30/01 .
Mark Madrid, Forest Supervisor
Plumas National Forest

/s/ Gene Zimmerman DATE: 03/30/01 .
Gene Zimmerman, Forest Supervisor
San Bernardino National Forest

/s/ Aaron Gelobter (for) DATE: 4/9/01 .
Art Gaffrey, Forest Supervisor
Sequoia National Forest

/s/ J. Sharon Heywood DATE: March 9, 2001 .
J. Sharon Heywood, Forest Supervisor
Shasta-Trinity National Forests

/s/ James L. Boynton DATE: April 9, 2001 .
Jim Boynton, Forest Supervisor
Sierra National Forest

/s/ S. E. Woltering DATE: 3/30/01 .
Lou Woltering, Forest Supervisor
Six Rivers National Forest

/s/ Ben Z. del Villar DATE: 3/26/01 .
Ben del Villar, Forest Supervisor
Stanislaus National Forest

/s/ Steven T. Eubanks DATE: March 28, 2001 .
Steve Eubanks, Forest Supervisor
Tahoe National Forest

ATTACHMENT A

EXEMPT UNDERTAKINGS

- I. **Unscreened Exemptions:** The following classes of undertakings are considered exempt from further review or consultation under the terms of this PA, as defined in Stipulation II.C, and pursuant to Stipulation III.E. Forest managers and planners do not have to notify or consult with HRMs about these classes of undertakings unless such managers and planners have reason to believe that a specific exempt undertaking may affect historic properties. Unscreened exemptions are not to be reported in Forest annual reports. Classes of exempt undertakings are:
- A. easement acquisitions, where the historic properties received are not considered in exchange for any historic properties relinquished;
 - B. land acquisitions or transfers of administrative control to the Forest Service, where the historic properties received are not considered in exchange for any relinquished;
 - C. withdrawal revocations;
 - D. transfer of use authorization from one authority to another when an action such as a boundary adjustment necessitates changing a right-of-way or easement from one authority to another (e.g., Forest Service Special Use Permit to a USFA Title V Right-of-Way);
 - E. personal use fuelwood and Christmas tree permits;
 - F. installation of signposts and monuments, when no new ground disturbance is involved;
 - G. nondisturbing broadcast seeding and mulching for establishment of vegetation;
 - H. removal of log jams and debris jams using hand labor or small mechanical devices;
 - I. removal of illicit narcotics equipment from federal land during law enforcement operations, excluding the removal of buildings or structures that will become 50 years of age within five years of the date of execution of this agreement;
 - J. placement of geophysical seismic monitoring equipment on the surfaced portion or within the prism (area clearly associated with road construction, from road surface to top of cut and/or toe of fill) of a regularly maintained road; and
 - K. activities that involve less than one cubic meter of cumulative ground disturbance per acre.
- II. **Screened Exemptions:** HRMs shall determine whether a specific undertaking subsumed in the following classes of undertakings may be treated as exempt under this PA. If the HRM determines that an undertaking may be treated as exempt, then the undertaking shall be considered exempt under this PA. If the HRM determines that an undertaking has an effect, will continue an on-going effect, or may affect historic properties, the undertaking shall not be considered exempt and shall be subject to the provisions of this PA or 36 CFR 800, as appropriate. Screened exemptions are to be reported in Forest annual reports. Screened undertakings may include:
- A. land use planning activities that do not authorize specific undertakings (e.g., Forest Land Management Plans, Wilderness Plans, Wild and Scenic River Plans);

- B. activities whose APE is entirely within obviously disturbed contexts, and the disturbance is such that the presence of historic properties is considered highly unlikely;
- C. activities that do not involve ground or surface disturbance (e.g., timber stand improvement, precommercial thinning, nondisturbing wildlife structures, and fuels treatment), and that do not have the potential to affect access to or use of resources by Native Americans;
- D. issuance or granting of permits, easements, rights-of-way, or leases that do not authorize surface or resource disturbance, and that do not have the potential to affect access to or use of resources by Native Americans;
- E. application of pesticides that do not have the potential to affect access to or use of resources by Native Americans;
- F. work within the perimeter of existing material borrow pits;
- G. activities limited within stream channels, not including terraces, cut banks, etc.;
- H. routine trail maintenance limited to brushing and light maintenance of existing tread with hand tools;
- I. routine road maintenance and resurfacing where work is confined to previously maintained surfaces, ditches, culverts, and cut and fill slopes where there are no known historic properties or historic properties would not be affected because proposed work is clearly within disturbed context;
- J. felling of hazardous trees within recreation areas or other areas for health and safety reasons provided they are left in place or cut up for firewood;
- K. felling and removal of hazard and windthrow trees from road prisms where deemed necessary for health, safety, or administrative reasons, so long as trees are felled into and removed from within existing road prisms (area clearly associated with road construction, from road surface to top of cut and/or toe of fill) where previous disturbance is such that the presence of historic properties is considered unlikely, and so long as ground disturbance is not allowed off previously disturbed areas associated with road prisms;
- L. issuance of road use permits for commercial hauling over existing roads having no historic properties, whenever federal involvement is incidental to activities associated with the permit's purpose and where there are no known effects to traditional cultural properties;
- M. temporary road closures involving no new ground disturbance;
- N. construction of snow fences where no new ground disturbance is involved;
- O. maintenance or replacement in kind of existing nonstructural facilities that does not involve new or additional ground disturbance (e.g., maintenance or replacement of cattle guards, gates, fences, stock tanks, guardrails, barriers, traffic control devices, light fixtures, curbs, sidewalks, etc.);
- P. activities or alterations involving facilities or structures that are less than 50 years of age and that will not become 50 years of age within five years of the date of execution of this agreement;
- Q. maintenance (that does not add to nor change the configuration of the existing facility) to an existing electronic communication site involving no ground disturbance or impacts to known historic properties;

- R. removal of trash that does not qualify as an historic property; and
- S. installation of law enforcement detection devices within historic properties for ARPA investigations to prevent site vandalism.

ATTACHMENT B

STANDARD RESOURCE PROTECTION MEASURES

The following protection measures shall be implemented as appropriate for all subject undertakings managed under this PA. When these protection measures are effectively applied, the Forest will have taken into account the effect of these undertakings on historic properties.

- I. At a minimum, historic properties shall be excluded from areas where activities associated with an undertaking will occur.
 - A. All proposed activities, facilities, improvements, and disturbances shall avoid historic properties. Avoidance means that no activities associated with an undertaking that may affect historic properties, unless specifically identified in this PA, shall occur within an historic property's boundaries, including any defined buffer zones. Portions of undertakings may need to be modified, redesigned, or eliminated to properly avoid historic properties.
 1. For historic properties eligible for the NRHP under 36 CFR 60.4(d), or those that may be important only for the information they contain, the physical demarcation of historic properties, and their exclusion from an undertaking's proposed activity areas is a minimum requirement.
 2. Physical demarcation and avoidance during the implementation of an undertaking is also required for other historic properties eligible for the NRHP under other criteria. But minimum protection requirements shall also include the use of buffer zones to extend the protection area around historic properties where setting is an important attribute, and the proposed activity may have an effect on the setting's quality.
 3. Linear sites may be crossed or bounded in areas where their features or characteristics clearly lack historic integrity, that is, where those portions (taking into account any buffer zones related to setting) do not contribute to site eligibility or values.
 - B. All historic properties within an APE shall be clearly delineated prior to implementing any associated activities that have the potential to affect historic properties.
 1. Historic property boundaries shall be delineated with coded flagging and/or other effective marking. Activities within historic property boundaries will be prohibited with the exception of using developed Forest transportation systems when the HRM recommends that such use is consistent with the terms and purposes of this agreement.
 2. Historic property location and boundary marking information shall be conveyed to appropriate Forest Service administrators or employees responsible for implementation so pertinent information can be incorporated into planning and implementation documents, and contracts (e.g., clauses or stipulations in permits).
 - C. Buffer zones may be established to ensure added protection where the HRM or other professional archaeologist determines that they are necessary. The use of buffer zones in conjunction with other avoidance measures is particularly applicable where setting contributes to the property's eligibility under 36 CFR 60.4, or where it may be an important attribute of some types of historic properties (e.g., historic buildings or structures; historic or cultural properties important to Native Americans). The size of buffer zones needs to be determined by the professional archaeologist on a case-by-case basis. Landscape architects may be consulted to determine appropriate

viewsheds for historic resources. Knowledgeable Native Americans should be consulted when the use or size of protective buffers for Native American traditional or cultural properties needs to be determined.

- D. When any changes in proposed activities are necessary to avoid historic properties (e.g., project modifications, redesign, or elimination; removing old or confusing project markings or engineering stakes within site boundaries; or revising maps or changing specifications), these changes shall be completed prior to initiating any activities.
- E. Monitoring may be used to enhance the effectiveness of protection measures in conjunction with other measures (Stipulation IV). The results of any monitoring inspections shall be included in the annual report (Stipulation VI.B(1)(f)).

II. The Forest HRM may provide written approval for the work specified below within the boundaries of historic properties, under carefully controlled conditions. All activities performed under category II standard resource protection measures must be documented in SRs, pursuant to this PA; none may be performed under exemptions.

A. The following specified activity(ies) may be approved under the conditions detailed below:

- 1. Felling and removal of hazard, windthrow, and salvage trees within historic properties under the following conditions:
 - a. Felled trees may be removed using only the following techniques:
 - (1) hand bucking and carrying,
 - (2) rubber tired loader,
 - (3) crane/self loader,
 - (4) helicopter;
 - b. Equipment operators shall be briefed on the need to reduce ground disturbances (e.g., minimizing turns);
 - c. No skidding nor tracked equipment shall be allowed within historic property boundaries; and
 - d. All such activities must be monitored by qualified heritage specialists at the time of tree removal.
- 2. Placement of foreign, nonarchaeological material (e.g., padding or filter cloth) over an archaeological deposit to prevent surface and subsurface impacts. Such foreign material may be utilized on an archaeological deposit under the following conditions:
 - a. engineering will design the foreign material depth to acceptable professional standards;
 - b. engineering will design the foreign material use to assure that there will be no surface or subsurface impacts to the archaeological deposit;
 - c. the foreign material must be easily distinguished from and cannot mix with the underlying archaeological deposit;
 - d. the foreign material must be removeable should research or other heritage need require access to the archaeological deposit at a later date; and

- e. Native American or other public concerns about the use of the foreign material will be addressed prior to use.
 - B. Any such specified activities within the boundaries of historic properties shall be reviewed during the annual report to assess continuation of or need for changes in the protection measure.
- III. The Forest HRM shall provide written approval (project approval letter required) for the specific activities listed in section III.C, below, involving the routine repair and maintenance of historic structures.
 - A. Forests shall emphasize the repair of existing elements, rather than in-kind replacement, whenever prudent and feasible (i.e., where economical; or where materials and skills are available).
 - 1. When applying these protection measures, the Forest HRM shall verify that the proposed work conforms with recommendations set forth in *The Secretary of the Interior's Standards for Rehabilitation, and Guidelines for Rehabilitating Historic Buildings*.
 - 2. Repair or in-kind replacement treatments shall apply to no more than 20% of the historic fabric, materials, workmanship, or design of a structure's distinctive elements (e.g., foundations or footings, walls, porches, etc. [excepting roofs and windows]).
 - 3. Where proposed repair or in-kind replacement, or other historic preservation activities, may have an effect on a structure's historic character (i.e., affecting original fabric, materials, workmanship, or design, involving more than 20% of a distinctive structural element):
 - a. case-by-case consultation pursuant to 36 CFR 800 is required;
 - b. persons meeting the Secretary of the Interior's Standards and Guidelines for Professional Qualifications, or the Office of Personnel Management X118 standards at the journeyman level, for historian, historic archaeologist, architect, historic architect, landscape architect, or restoration engineer, must review, supervise, or complete the project, as preservation needs dictate.
 - B. All activities approved for the below listed protection measures shall be documented in the Forest's Annual Report.
 - C. Routine Repair and Maintenance Protection Measures
 - 1. Structural Elements
 - a. Repair or replacement of siding, trim, or hardware, when done in-kind to match historic material, design, and color.
 - b. Repair of window frames or shutters by patching, splicing, consolidating, or otherwise reinforcing or replacing in-kind those parts that are either extensively deteriorated or are missing. The same historic configuration of panes shall be retained.
 - c. Replacement of window frames to match historic material and design. The same historic configuration of panes shall be retained.

- d. Replacement of glass, when done in-kind to match historic form and design. Window panes may be double or triple glazed as long as the glazing is clear and replacement does not alter the historic window form. This excludes the use of tinted glass, use of which requires consultation.
- e. Maintenance of features, such as frames, hoodmolds, panelled or decorated jambs and moldings, through appropriate surface treatments such as cleaning, rust removal, limited paint removal, and reapplication of protective coating systems using historic color and texture.
- f. Repair or replacement of doors, when done in-kind to match historic material and form.
- g. Repair or replacement of porches, cornices, and stairs when done in-kind or to match historic material and design, and the style, materials, and character of the structure.
- h. Repair or replacement of foundations when the work does not change the structure's historic appearance.
- i. Repair or replacement of roofs or parts of roofs that are deteriorated, when done in-kind or where matching historic material and design. In areas of high fire danger, fire retardant roofing is allowed. If fire retardant materials are used, the materials must match the original roofing color and be as compatible with the design and character of the building as possible. Adequate anchorage for roofing material to guard against wind damage and moisture penetration shall be provided.

2. Surfaces:

- a. Painting interior or exterior surfaces, when the new paint matches the existing or historic color. If the existing paint color is not desirable and the historic color is not known, the color should be in keeping with historic color schemes for nearby or similar structures. Damaged or deteriorated paint may be removed to the next sound layer by hand-scraping or hand-sanding. Use of abrasive methods, such as sandblasting, is not covered by this treatment.
- b. Replacement or installation of caulking and weather-stripping around windows, doors, walls, and roofs.
- c. Removal of hazardous materials or surfaces such as asbestos and lead paint, and replacing them with nontoxic materials that resemble the historic surfaces as closely as possible.

3. Interior Elements:

- a. Replacement of modern appliances and fixtures (e.g., ranges, refrigerators, and bathroom fixtures). When associated historic cabinetry is intact, and the interior, in general, retains its historic appearance, the cabinetry will be retained.
- b. Repair or replacement of floor coverings, when done in-kind to match historic material and design.

- c. Rendering inoperable, but not removing, gas lighting fixtures, when another inconspicuous light source is used.
 - d. Floor, wall, or ceiling refinishing in-kind.
4. Utility Systems:
- a. Installation of mechanical equipment that does not affect the visual integrity or exterior fabric of the building.
 - b. Replacement, removal, or upgrading of electrical wiring.
 - c. Replacement of floor furnaces and floor registers with surface-mounted wall heating systems or hot water appliances. Repairs to the floors will be done with in-kind materials and design.
 - d. Repair, replacement, removal, or upgrading of water and plumbing systems when historic features, such as hand pumps, are left in place. Historic plumbing fixtures should be retained and used if possible.
 - e. Replacement of metal water tanks with ones of fiberglass, when the color and texture of the existing or historic tank are replicated or when landscaping camouflages the replacement tank. Redwood tanks with plastic inserts are also feasible. Construction of a structure around a tank to control temperature is allowed when landscaping camouflages the change.
 - f. Replacement of and enlarging liquid propane gas systems, if tanks are screened with landscaping materials.
 - g. Replacement of communications equipment, when the same size, shape, and general configuration are retained, excluding large antenna and communications dishes.
 - h. Replacement of lightning rod wiring with new copper wire.
5. Surrounding Features (see Ground Disturbing Activities, section 7, below):
- a. Replacement of signs in-kind.
 - b. Ongoing maintenance of immediately surrounding landscaping, including such modifications as removing hazardous vegetation, adding vegetation that blends with the historic landscape, or adding rocks to define paths, where not otherwise prohibited, so long as historic landscape characteristics are maintained.
 - c. Installation of interpretive signs or exhibit structures which are not attached to historic structures and do not visually intrude on the historic property. Signs should be constructed of materials and painted colors that harmonize with the historic property and its setting.
 - d. Repair or replacement of driveways and walkways done in-kind to match existing or historic materials and design.
 - e. Repair or replacement of fencing done in kind to match existing or historic material and design.

- f. Addition of a completely removable accessibility ramp which blends with the historic materials and style of the structure itself.
 - g. Repair, replacement, or addition of exterior lighting that blends with the landscaping and style of the building.
6. New Materials:
- a. Installation of dry insulation.
 - b. Installation of fire or smoke detectors or burglar alarms.
 - c. Installation of skirting over a structure's crawl space, if constructed or painted a color to match or blend with the structure.
 - d. Installation of security systems or security devices, such as dead bolts, door locks, window latches, and door peep holes.
7. Ground Disturbing Activities (where no known conflicts with other historic properties, e.g., prehistoric archaeological deposits, may exist):
- a. Excavations for repair or replacement of building footings or foundation work within two (2) feet of existing footings and foundations.
 - b. Installation of utilities, such as sewer, water, or storm drains, electrical, gas, or leach lines, and septic tanks, where installation is restricted to specific areas previously disturbed by installation of these utilities.
 - c. Tree planting or removal in areas that have been previously disturbed by these activities, including nursery beds and arboreta, provided historic landscaping is maintained.

ATTACHMENT C

CERTIFIED ARCHAEOLOGICAL SURVEYOR PROGRAM: STANDARDS AND REQUIREMENTS

I. Certified Archaeological Surveyor Program

- A. Certified Archaeological Surveyors are Forest Service employees or volunteers who have satisfactorily completed a regionally approved program designed to provide them with the skills to assist professionals in the management of the heritage resource program.
- B. Region 5 recognizes two classes of Certified Archaeological Surveyors:
 1. Class I Certified Archaeological Surveyor:
 - a. Class I training is designed to acquaint Forest Service employees with the heritage resources management program in sufficient depth to enable them to incorporate heritage resource awareness into their normal functions and program activities;
 - b. The Class I level is particularly useful for specialists who must consider historic properties during planning, and for sale administrators and contract inspectors who monitor undertakings.
 2. Class II Certified Archaeological Surveyor:
 - a. Class II training is designed to train Forest Service employees and volunteers to assist heritage resource professionals with specific program tasks.
 - b. Persons who have successfully completed Class II training may be certified as Certified Archaeological Surveyors.
 - c. Under the direct supervision of a professional heritage resource specialist who meets the qualifications in Stipulation III.B(2)(b), and subject to that heritage professional's approval, Class II Certified Archaeological Surveyors may perform intensive surveys within an undertaking's APE and assist with other program objectives.

II. Program Operations

- A. Class II Certified Archaeological Surveyors shall work under the direction and supervision of HRMs or other heritage resource professionals delegated by HRMs.
 1. HRMs or delegated heritage resource professionals shall determine program participation and permitted activities for Certified Archaeological Surveyors.
 2. HRMs or delegated heritage resource professionals shall determine whether a proposed undertaking may be surveyed by a Class II Certified Archaeological Surveyor.
 3. HRMs or delegated heritage resource professionals shall, for each individual undertaking, determine strategies and intensity requirements for intensive survey, and level of professional supervision required.
 4. HRMs or delegated heritage resource professionals shall review all reports prepared by Certified Archaeological Surveyors.

B. Monitoring

1. HRMs or delegated heritage resource professionals shall field check at least 10% of all Certified Archaeological Surveyor surveys completed during the year.
2. Monitoring results shall be included in the annual report required of Stipulation VI.A.
3. For undertakings where historic properties are found within APEs, HRMs or delegated heritage resource professionals shall field check each located site prior to initiation of an undertaking. Only heritage resource professionals may approve the use of Standard Resource Protection Measures (Attachment B) at specific historic properties within an APE, and the use of this PA for specific undertakings.

III. Certified Archaeological Surveyor Training

- A. Certified Archaeological Surveyor training consists of a minimum of 40 hours of regional classroom training.
 1. This training shall be approved by the Regional Historic Preservation Officer.
 2. The training shall follow the course syllabus outlined in the regional heritage resource Certified Archaeological Surveyor training guide, or another syllabus approved by the Regional Historic Preservation Officer.
 3. The training shall be presented by the Regional Historic Preservation Officer and/or Heritage Resource Managers, supplemented by other heritage resource professionals.
- B. Class II Certified Archaeological Surveyor training includes the above minimum regional classroom training plus a Forest specific field course composed of:
 1. a minimum of forty hours of archaeological survey field work on the trainee's duty Forest, performed under the direct supervision of the HRM or other professional heritage resource staff;
 2. completion of two acceptable heritage resource surveys and reports, and one acceptable site form.

IV. Certification

- A. Certification is achieved through:
 1. satisfactory completion of all requirements;
 2. formal examination and evaluation of the trainee by the HRM to assess the trainee's abilities to meet the skills necessary to the Certified Archaeological Surveyor program;
 3. formal certification by the Forest Supervisor, based on recommendation of the HRM.
- B. Maintenance of certification is attained by:
 1. attendance at periodic Certified Archaeological Surveyor update training sessions, offered on regional or Forest levels, at least every two years;

2. participation in at least one acceptable heritage resource inventory per year, with direct involvement in both field work and report preparation.
- C. Decertification results from either:
1. work related deficiencies:
 - a. moving to a new Forest or location different from that in which the Certified Archaeological Surveyor received field training;
 - b. inability of Certified Archaeological Surveyor to meet required maintenance activities described above;
 - c. identification of serious deficiencies in the Certified Archaeological Surveyor's work (e.g., inability to identify or adequately record historic properties); or
 2. ethical violations:
 - a. violations of ethical behavior related to confidentiality of heritage resource information;
 - b. behavior that compromises resource or program integrity.
 3. The HRM shall report any serious work deficiencies or ethical violations to the Regional Historic Preservation Officer in a timely manner, and shall not accept any survey reports under review until the matter is fully resolved at the Forest and/or Regional levels.
- D. Recertification may be achieved only for work related deficiencies, other than falsification of records, by:
1. completing field training updates to correct locational deficiencies;
 2. completing training updates specially designed to correct any deficiencies resulting from program inactivity;
 3. completing update training specially designed to alleviate identified deficiencies in field or report work.

ATTACHMENT D

PUBLIC PARTICIPATION

Forests will seek information and advice from state, local, and tribal governments, public and private organizations, Native Americans, and other interested persons likely to have knowledge of or concern about historic properties, as recommended in the ACHP's guidelines for 36 CFR 800 public consultation, Public Participation in Section 106 Review: A Guide for Agency Officials (1989), and incorporate such information into identification, evaluation, and treatment of historic properties. Participation of interested persons under 36 CFR 800 shall be coordinated with the public notification process of NEPA, consistent with NEPA regulations, 40 CFR 1508, as implemented through Forest Service Manual 1950 policy and Forest Service Handbook 1909.15 procedures (57 FR 43180-43213).

I. NEPA Public Comment Process

Forests shall use the NEPA public notification and scoping process, as implemented through Forest Service Handbook 1909.12 procedures, to comply with 36 CFR 800 provisions for public notification, identification of interested persons, and public participation in decision-making. The NEPA scoping process affords interested persons the opportunity to comment on Forest undertakings, including those measures taken to identify, evaluate, protect, and manage historic properties. These comments are taken into account as part of the NEPA decision.

- A. Interested persons shall be notified of proposed undertakings through quarterly mailings of schedules of proposed actions. Schedules include all proposed undertakings, even those anticipated to be categorically excluded from documentation in environmental impact statements or environmental assessments (Forest Service Handbook 1909.15(07.1)). Thus, interested persons are notified of and given the opportunity to comment on all proposed undertakings.
- B. Schedules of proposed actions include the following information about each proposed undertaking:
 1. description and location;
 2. estimated dates of public scoping and decision;
 3. agency contact person;
 4. process for receiving information;
 5. status of environmental analysis, and
 6. estimated implementation date.
- C. Interested persons who have commented during the NEPA process receive notification of undertaking decisions and administrative appeal rights.
- D. If interested persons raise timely objections to specific undertakings, Forests receiving the objections shall follow administrative appeal rights pursuant to Stipulation VII.A(1) and 36 CFR 215. Timely objections are those raised within the public notification and review procedures specified under Forest Service NEPA appeal regulations, 36 CFR 215.

II. Identifying Interested Persons

- A. The process for public notification established in Forest Service

Manual 1950 and Forest Service Handbook 1909.15 will be used to identify persons interested in how effects of undertakings on historic properties are being taken into account pursuant to this PA.

- B. Interested persons shall include at a minimum:
1. individuals, groups, or organizations interested in undertakings implemented under this PA;
 2. adjacent local, state, and tribal governments;
 3. adjacent Native American communities;
 4. Native American groups or individuals known to have interests in historic properties; and
 5. others who notify the Forests of their interest in receiving information about particular undertakings or historic properties.

III. Native American and Ethnic Concerns

Forests shall ensure that the concerns of Native Americans and persons from ethnic groups are taken into consideration in the NEPA process when making decisions affecting historic properties identified with those groups.

- A. Native American concerns are given specific recognition in Section 101(d)(6) of the NHPA, and in 36 CFR 800.
- B. Native American tribes, organizations, and individuals, and other interested persons with historic and documented concerns regarding heritage resources within the Forests shall receive schedules of proposed actions from the Forests, unless they object to receipt of the schedules.
- C. Native American tribes, organizations, and individuals, and other interested persons who express concerns regarding historic properties related to specific undertakings covered by this PA shall be consulted regarding identification, evaluation, treatment, and management of historic properties for those undertakings, pursuant to this PA.