

Advisory Council On Historic Preservation

1522 K Street NW.
Washington D.C.
20005

PROGRAMMATIC MEMORANDUM OF AGREEMENT
AMONG THE
DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT,
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, AND
UNITED STATES GEOLOGICAL SURVEY,
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE FEDERAL COAL MANAGEMENT PROGRAM

WHEREAS, the United States Department of the Interior has a program to manage federally owned coal through leasing or exchange under the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181, et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351, et seq.); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, et seq.), which also charges the Bureau of Land Management with the management and protection of historic and cultural properties, the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, et seq.), which charges the Office of Surface Mining with the obligation to ensure that surface coal mining operations are conducted so as to protect the environment; and the Federal Coal Leasing Amendments Act of 1976, as amended (30 U.S.C., Chapters 3A and 7); and

WHEREAS, the United States Department of the Interior, Bureau of Land Management, administers public lands, including Federal mineral ownership, under concepts of multiple use and sustained yield and, among other responsibilities, the Bureau of Land Management is charged with assessing the suitability of Federal lands for coal leasing, with issuing leases for mining of federally owned coal, and with including terms in each lease to protect nonmineral resources, under the above authorities; and

WHEREAS, the United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement (hereinafter Office of Surface Mining), is charged, among other responsibilities, with reviewing coal mine plans (which include an exploration plan covering exploration activities within a permit area) and recommending to the Secretary approval, disapproval, or conditional approval, with reviewing and approving minor modifications to mining and reclamation plans, with designating lands

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unsuitable for surface coal mining operations or terminating such designations under a petition process, and with ensuring that surface coal mining and reclamation operations comply with certain lease terms and conditions, with approved permits, and with the provisions of the Surface Mining Control and Reclamation Act of 1977, which provides for the protection of historic and cultural properties on Federal lands (see 30 CFR 700.5 for definition of Federal lands); and

WHEREAS, the United States Department of the Interior, Geological Survey, is charged, among other responsibilities, with reviewing and approving coal exploration plans, with supervising exploration activities on Federal lands outside of a permit area, with reviewing the mining and operations portion of proposed mine plans, and with recommending mine plan approval, disapproval, or conditional approval to the Secretary; and

WHEREAS, the United States Department of the Interior, Bureau of Land Management, Geological Survey, and Office of Surface Mining have executed a memorandum of understanding implementing the division of functions and responsibilities regarding the Federal coal management program of the Department of the Interior; and

WHEREAS, Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f), requires that the head of any Federal Agency having direct or indirect jurisdiction over a proposed Federal or federally assisted or licensed undertaking affecting properties included in, or eligible for inclusion in, the National Register of Historic Places shall afford the Advisory Council on Historic Preservation (hereinafter Council) a reasonable opportunity for comment; and

WHEREAS, coal leasing, mining, and exploration activities on Federal lands undertaken or regulated by the Bureau of Land Management, Office of Surface Mining, and Geological Survey may have an effect on properties included in, or eligible for inclusion in, the National Register of Historic Places and will require compliance with Section 106 of the National Historic Preservation Act; Section 2 of Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment"; and the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800); and

WHEREAS, the Council has reviewed the Federal coal management program of the Department of the Interior; and

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WHEREAS, Office of Surface Mining responsibilities for regulation of coal mines on non-Federal lands, including its relationships with State Regulatory Authorities under approved State programs, will be treated in separate agreements with the Council; and

WHEREAS, the Council and the Bureau of Land Management, Office of Surface Mining, and Geological Survey have met and reviewed their respective responsibilities under the Federal coal management program of the Department of the Interior and the relation of this program to compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, including required integration with the National Environmental Policy Act of 1969 (36 CFR 800.9); Executive Order 11593, as implemented by the Council's regulations (36 CFR Part 800); and the responsibilities for historic and cultural resources under the National Environmental Policy Act of 1969 (42 U.S.C. 4321), as implemented by the Council on Environmental Quality in the "National Environmental Policy Act Regulations" (40 CFR Parts 1500-1508); and

WHEREAS, the Council's regulations, 36 CFR 800.8, provide for the development of Programmatic Memoranda of Agreement on a program or class of undertakings which would otherwise require numerous individual requests for comments;

NOW, THEREFORE, all parties mutually agree that the Bureau of Land Management, Office of Surface Mining, and Geological Survey will ensure, through the stipulations outlined in this Programmatic Memorandum of Agreement, that historic and cultural properties will be given adequate consideration in Federal coal management program decisions and implementation, which include, but are not limited to, the preparation of coal leasing environmental impact statements or environmental assessments, issuance of new leases, issuance of permits, inspection and enforcement activities, approval of exploration, and review and recommendations to the Secretary regarding plans for surface coal mining operations on either new or existing leases, thereby meeting the responsibilities of all parties under Section 106 of the National Historic Preservation Act.

STIPULATIONS

I. Preleasing .

A. Land Use Planning

1. Prior to preparation of land use plans for areas of potential Federal coal leasing, the Bureau of Land Management will ensure that a Class I (existing data cultural resource inventory) and an appropriate level of Class II (land use planning sampling field cultural resource inventory) are conducted, as defined in procedures in BLM Manual Section 8111. Inventory results will be evaluated by the Bureau of Land Management, in consultation with the appropriate State Historic Preservation Officer, to identify properties included in, or eligible for inclusion in, the National Register of Historic Places. Documentation for properties which appear to meet National Register criteria will be forwarded to the Keeper of the National Register for a determination of eligibility pursuant to 36 CFR Part 63.

2. The Bureau of Land Management will apply coal leasing unsuitability criterion 7 (43 CFR 3461.1(g)) before completion of a land use plan. Pursuant to criterion 7, all properties included in, or eligible for inclusion in, the National Register of Historic Places (under paragraph 1 above), and an appropriate buffer zone, will not be considered further for coal leasing unless the Surface Management Agency determines, after consulting with the Council and the appropriate State Historic Preservation Officer, that the direct and indirect effects of mining would not result in significant adverse effects on such a property. At the land use planning stage, this consultation with the Council and the State Historic Preservation Officer shall consist of written notification of the area of potential Federal coal leasing and of the inventory results.

B. Activity Planning

1. At an appropriate time between tract delineation and completion of a regional coal leasing final environmental impact statement, the Bureau of Land Management will conduct, or have conducted, a special project Class II (project specific) inventory or Class III (hereinafter referred to as intensive field) inventory, as defined in procedures in BLM Manual Section 8111, as the Bureau of Land Management deems necessary on a case-by-case basis. The scope of the inventories conducted for activity planning will be determined through use

of completed land use planning Class II inventories and in consultation with the appropriate State Historic Preservation Officer. The Bureau of Land Management will evaluate, or have evaluated, the inventory results, in consultation with the appropriate State Historic Preservation Officer, to identify properties included in, or eligible for inclusion in, the National Register of Historic Places. The Bureau of Land Management will ensure that documentation for properties which appear to meet National Register criteria will be forwarded to the Keeper of the National Register with a request for a determination of eligibility pursuant to 36 CFR Part 63.

2. At an appropriate time between tract delineation and completion of a regional coal leasing final environmental impact statement, the Bureau of Land Management will apply coal leasing unsuitability criterion 7 (43 CFR 3461.1(g)) to additional properties which were identified during inventories conducted for activity planning as being included in, or eligible for inclusion in, the National Register of Historic Places. At the activity planning stage, consultation with the Council and the State Historic Preservation Officer under criterion 7 shall consist of written notification of the results of the inventories conducted for activity planning.

C. Lease Terms and Stipulations

Lease terms and special stipulations, at a minimum, will address the following concerns:

1. A lessee or designated representative will be required, as determined by the Bureau of Land Management with the concurrence of the appropriate State Historic Preservation Officer, to complete intensive field inventories of those portions of the lease tract, or portions of the mine plan area and adjacent areas, that may be affected by lease-related activities, and which were not previously inventoried at such a level of intensity. The inventory shall be conducted by a qualified cultural resource specialist approved by the Bureau of Land Management, in accordance with standards set forth in the appendix to this agreement. A report of the cultural resource inventory will be submitted to the Office of Surface Mining and the Bureau of Land Management.

2. A lessee or designated representative will be required to protect all properties included in, or eligible for inclusion in, the National Register of Historic Places from

lease-related activities until cultural resource mitigation measures (see 3 below) can be implemented as part of an approved plan for surface coal mining operations or exploration.

3. A lessee or designated representative will be required to develop cultural resource mitigation measures which will be included as part of a mine plan submittal. The mitigation measures will provide for appropriate levels of protection from adverse effects for specific properties. The mitigation measures will include, as appropriate, provisions for data recovery, curation, detailed recordation, stabilization, and relocation.

4. If any items or features of historic, cultural, or archeological value are discovered during surface coal mining and reclamation operations, the lessee or designated representative shall immediately notify the appropriate official, as set forth in the Cooperative Procedures between the Bureau of Land Management and the Office of Surface Mining (see paragraph IV.A.).

D. Program Start-Up Considerations

Because planning is currently under way for initial lease sales to be conducted in FY 1981 and FY 1982 and because inventories may be under way or already completed, the inventory requirement may be modified by the appropriate Bureau of Land Management State Director, in consultation with the Washington Office of the Bureau of Land Management, on a case-by-case (e.g., planning unit by planning unit or delineated tract by delineated tract) basis, substituting the best information obtainable within FY 1980 and FY 1981 budget constraints and within the time available before lease issuance.

II. Mine Plan Submission, Review, and Approval

A. The Office of Surface Mining will ensure that a lessee/permittee complies with all cultural resource protection lease terms, special stipulations, and conditions of plan approval for surface coal mining operations within those areas of the lease which are included in a mine plan and adjacent areas, should a mine plan be approved. In addition, for all leases issued or readjusted after the effective date of this agreement, the Office of Surface Mining, the Geological Survey, and the Bureau of Land Management, as appropriate, will ensure compliance with cultural resource related lease terms and stipulations. After review of the more specific and complete

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findings submitted in a mine plan, the Office of Surface Mining may require more stringent protection and mitigation measures than required by 30 CFR, Chapter VII.

B. Prior to taking any Federal action on a mine plan, the Office of Surface Mining, in consultation with the Bureau of Land Management and the appropriate State Historic Preservation Officer, will identify areas within a proposed mine plan and adjacent areas which have a potential for receiving direct or indirect impacts on historic and cultural properties (determined pursuant to 36 CFR 800.3). The Office of Surface Mining, with concurrence of the appropriate State Historic Preservation Officer, will ensure that intensive field inventories have been, or will be, completed on the mine plan and adjacent areas before it recommends approval of a mine plan (see paragraph II.H.). A report of the cultural resource inventory will be submitted to the Bureau of Land Management and the Geological Survey. In the event of a failure to reach an agreement with the appropriate State Historic Preservation Officer regarding the appropriate inventory, the Office of Surface Mining will request Council review in accordance with 30 CFR 800.6.

C. If any historic or cultural properties are identified as a result of an inventory conducted pursuant to II.B., the Office of Surface Mining will consult with the Bureau of Land Management or the Surface Management Agency (if different), and then the appropriate State Historic Preservation Officer to determine if such properties are included in, or eligible for inclusion in, the National Register of Historic Places. If appropriate, documentation will be forwarded to the Keeper of the National Register with a request for a determination of eligibility in accordance with 36 CFR Part 63. Steps will be taken to preclude adverse effects on such properties until a determination of eligibility has been made. Copies of such determinations of eligibility will be submitted to the Geological Survey and the Bureau of Land Management or the Surface Management Agency (if different).

D. Before recommending approval of a mine plan, the Office of Surface Mining, in consultation with the Bureau of Land Management or the Surface Management Agency (if different), will review the applicant's proposed measures to minimize or prevent adverse effects (see 36 CFR 800.6 and 30 CFR 780.31) to historic and cultural properties and will ensure that:

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1. Inventory results have been evaluated, in consultation with the appropriate State Historic Preservation Officer, to identify properties included in, or eligible for inclusion in, the National Register of Historic Places. Documentation for properties which appear to meet National Register criteria will be forwarded to the Keeper of the National Register with a request for determination of eligibility pursuant to 36 CFR Part 63.

2. The Criteria of Effect (36 CFR 800.3(a)) have been applied in consultation with the appropriate State Historic Preservation Officer.

3. The Criteria of Adverse Effect (36 CFR 800.3(b)) have been applied, as appropriate, in accordance with the requirements of 36 CFR 800.4(b) and in consultation with the appropriate State Historic Preservation Officer.

4. Alternatives to a proposed course of action that would avoid or mitigate any adverse effect on properties included in, or eligible for inclusion in, the National Register of Historic Places have been analyzed. Documentation, including, as appropriate, photographs, maps, drawings, and specifications, and other information sufficient to constitute a preliminary case report (36 CFR 800.13(b)) enabling the consultation process to begin, shall be submitted to the appropriate State Historic Preservation Officer for review and comment. The State Historic Preservation Officer shall have 15 calendar days after receipt of documentation to inform the Office of Surface Mining and the Bureau of Land Management or the Surface Management Agency (if different) if the information provided is inadequate.

E. Avoidance/mitigation requirements, including concurrence of the appropriate State Historic Preservation Officer, will be included as part of an approved mine plan. The Office of Surface Mining will notify the Council, in writing, of agreed upon avoidance/mitigation requirements. Information shall substantially conform to the requirements of 36 CFR 800.13(b)(4), (5), (6), and (11) relating to the content of preliminary case reports. Where agreement on avoidance/mitigation requirements cannot be reached between the State Historic Preservation Officer and the Office of Surface Mining, or where a National Historic Landmark, National Historic Park, National Historic Monument, or National Historic Site will be affected, the matter will be referred to the Council, requesting the Council's involvement pursuant to 36 CFR 800.6.

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F. Mine plan approvals will contain a condition or requirement providing that, if any previously unidentified historic and cultural properties are discovered during surface coal mining operations, the operator will cease work in the immediate vicinity of the property and notify the Office of Surface Mining and shall not disturb such properties until the Office of Surface Mining issues instructions. Where there is a State/Federal cooperative agreement in effect, pursuant to section 523(c) of the Surface Mining Control and Reclamation Act of 1977, the contact point will be either the State Regulatory Authority or the Office of Surface Mining in accordance with the provisions of such a cooperative agreement.

G. Upon receiving a complete petition to designate an area as unsuitable for surface coal mining operations or to terminate a designation, the Office of Surface Mining will forward a copy of the petition for comment to the Bureau of Land Management or the Surface Management Agency (if different). The Office of Surface Mining will issue a decision on a petition pursuant to sections 522(c) and (d) of the Surface Mining Control and Reclamation Act of 1977 and 30 CFR Part 769. If the Office of Surface Mining determines that an area where a cultural resource is located should be designated as unsuitable for all or certain types of surface coal mining operations, appropriate protection measures will be developed. Decisions not to designate areas unsuitable or to terminate designations will not convey the right to conduct coal mining. Before surface coal mining operations can be conducted, a mine plan must be approved by the Secretary of the Interior, and a permit must be issued which includes compliance with 36 CFR Part 800, as outlined in this agreement.

H. During program start-up, not to exceed 6 months from the effective date of this agreement, the Office of Surface Mining will follow the procedures outlined in II.D. of this agreement, using the best information currently available, prior to recommending approval of a mine plan. The existence of resources that are of unusual significance (e.g., National Historic Landmark, National Natural Landmark) may affect recommendations for mine plan approval. Recommendations will contain the provision that surface disturbance may only occur in those portions of the area of operations which have been adequately inventoried (e.g., intensive field inventory) and any identified cultural and historic properties processed in accordance with the procedures of II.D. of this agreement. Surface disturbance in those portions of the area of operations which

have not been adequately inventoried will not be permitted until after any additional cultural and historic inventories, as determined by the Office of Surface Mining, in consultation with the appropriate State Historic Preservation Officer, have been completed and the Office of Surface Mining has complied with all the provisions of II.D. of this agreement.

III. Exploration

A. The Geological Survey or the Bureau of Land Management, as appropriate, will require that, prior to approval of coal exploration, lessees, permittees, and licensees shall conduct, or have conducted, intensive field inventories in areas of potential environmental impact (e.g., drill holes, access routes, other surface disturbances) in a proposed exploration area, unless the area has been previously inventoried at that level of intensity. Inventory results will be evaluated, in consultation with the appropriate State Historic Preservation Officer, to identify properties included in, or eligible for inclusion in, the National Register of Historic Places. Documentation for properties which appear to meet the National Register criteria will be forwarded through the appropriate Agency to the Keeper of the National Register with a request for determination of eligibility pursuant to 36 CFR Part 63. The responsible Agency will take steps to preclude adverse effects until such a determination has been made.

B. Where there would be an adverse effect (determined pursuant to 36 CFR 800.4) on a property included in, or eligible for inclusion in, the National Register of Historic Places, the Geological Survey will consult with the Bureau of Land Management or the Surface Management Agency (if different), and the appropriate State Historic Preservation Officer and will:

1. Ensure that mutually acceptable measures to avoid or mitigate the impacts of coal exploration are developed; and

2. Notify the Council, in writing, of agreements reached under the provisions of 1 above and provide the Council with a copy of such agreements. The Council need not be afforded further opportunity for review and comment.

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C. When it is determined during B above that an affected property is a National Historic Landmark, National Historic Park, National Historic Monument, or National Historic Site, or when agreement cannot be reached between the Geological Survey or the Bureau of Land Management and the appropriate State Historic Preservation Officer on satisfactory mitigation measures, the comments of the Council will be requested in accordance with 36 CFR 800.6.

D. When approving exploration plans, licenses or permits, the Geological Survey or the Bureau of Land Management, as appropriate, will stipulate that, if any previously unidentified historic or cultural properties are discovered during exploration operations, the lessee, permittee, licensee, or operator will cease work in the immediate vicinity of the property, notify the appropriate Agency, and shall not disturb such properties until so authorized by that Agency.

E. For coal program exploration activities initiated by the Department of the Interior, with the exception of the leasing and development of lands or coal deposits held in trust for Indians by the United States, the same standards for compliance as presented in A through D above will be adhered to.

IV. Administration

A. The Bureau of Land Management will develop separate cooperative procedures with the Geological Survey and the Office of Surface Mining. These procedures, which will integrate cultural resource protection into the Federal coal management program of the Department of the Interior, will be completed no later than October 1, 1980. The Council will be requested to review these procedures to insure continuity and consistency with this Programmatic Memorandum of Agreement.

B. This Programmatic Memorandum of Agreement and the appropriate inventory reports identifying properties included in, or eligible for inclusion in, the National Register of Historic Places will be referenced in each environmental impact statement and environmental assessment involving a Federal coal action covered by this agreement.

C. The Bureau of Land Management, Office of Surface Mining, and/or Geological Survey will provide the appropriate

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State Historic Preservation Officer with copies of the reports of Class I, II, and III inventories for use in the comprehensive Statewide historic preservation inventory conducted pursuant to 36 CFR Part 61.

D. At the request of the President or a Member of Congress, the Council may advise the Bureau of Land Management, Office of Surface Mining, and/or Geological Survey that a particular action, authorized by a mining or exploration permit or lease, will require individual review and comment pursuant to 36 CFR 800.6. In that event, the above Agencies will comply with the provisions of the Council's regulations.

E. This agreement is not binding on any Federal Agency which is not party to this agreement. In cases where the surface is managed by other Federal Agencies or by a private surface owner not party to this agreement, all Bureau of Land Management, Office of Surface Mining, and Geological Survey actions related to the Federal coal management program of the Department of the Interior will be conducted in accordance with 43 CFR 3400.3-1, 3400.3-3, 3461.1 criterion 1, and Subpart 3427, and with any subsequent agreements between an Agency or private surface owner and the Department of the Interior.

F. The cultural resource inventory provisions in sections I.A. and I.B. of this agreement do not apply to areas for which the Bureau of Land Management receives an application to lease coal in accordance with 43 CFR Subpart 3425 (Leasing on Application) or in accordance with 43 CFR Subpart 3430 (Preference Right Lease). For such cases, the Bureau of Land Management, in consultation with the appropriate State Historic Preservation Officer, will determine the level of cultural resource inventory to be conducted. The cultural resource inventory and mitigation requirements related to surface coal mine operation or exploration plans submitted pursuant to 43 CFR Subpart 3425 will be the same as those specified in sections I.C., I.D., II, and III of this agreement.

G. The Bureau of Land Management, Office of Surface Mining, and Geological Survey will notify the Council regarding any changes to their regulations, guidelines, or directives relative to the administration of this agreement or which may affect their authority to implement this agreement.

H. In addition to the consideration of National Register of Historic Places and Register-eligible properties covered by this agreement and 36 CFR Part 800, the Bureau of Land Management, Office of Surface Mining, and Geological Survey

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will continue to consider the full range of cultural resources as provided for in other authorities.

I. This agreement does not apply to the leasing and development of lands or coal deposits held in trust for Indians by the United States.

J. The Advisory Council on Historic Preservation, Bureau of Land Management, Office of Surface Mining, and Geological Survey will review the provisions of this agreement in 1982 and on a biennial basis thereafter to determine whether modification or termination is appropriate. Should the Federal coal management program of the Department of the Interior be revised or superseded or the regulations of the Council revised, the ratifying parties will mutually determine whether the provisions of the agreement will continue to apply.

K. This agreement is effective on the date of the last signature. The agreement may be revised or amended by mutual agreement of the signers. This agreement may be terminated by any of the undersigned parties, provided that the party initiating such termination provides a 90-day notice and reasons therefore to the other parties.

Robert Danvers Feb. 6, 1980
Executive Director, (Date)
Advisory Council on
Historic Preservation

HW Menard 27 March 80
Director, Geological (Date)
Survey

Frank Gray 3/27/80
Director, Bureau of (Date)
Land Management

Robert W. Smith 5/20/80
Chairman, Advisory (Date)
Council on
Historic Preservation

Milton A. Heine
Director, Office of (Date)
Surface Mining 4/1/80
Reclamation and Enforcement

Concurrence:
James M. 5/1/80
President, National (Date)
Conference of State
Historic Preservation
Officers

APPENDIX
PROFESSIONAL QUALIFICATIONS

A variety of specialists may be appropriate for work in particular kinds of cultural resource studies. Geologists, geographers, ethnographers, ethnohistorians, and folklorists are among the specialists occasionally employed in such studies. In general, however, the core disciplines represented are archeology, history, or architecture. The following recommended minimum professional qualifications apply to the professionals with supervisory or direct responsibility for specific studies related to a cultural resource program. The recommended professional qualifications do not apply to the various cultural resource technicians working under the supervision of qualified professionals who have the responsibility for the quality of the work performed.

1. Archeology

The recommended minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or a closely related field, from an accredited college or university, plus:

- a. At least 1 year of full-time professional experience or equivalent specialized training in archeological research, administration, or management;
- b. At least 4 months of supervised field and analytic experience in general North American archeology; and
- c. Demonstrated ability to carry research to completion.

In addition to these recommended minimum qualifications, a professional in prehistoric archeology shall have at least 1 year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least 1 year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

2. History

The recommended minimum professional qualifications in history are a graduate degree in American history, or a closely

related field, from an accredited college or university; or a bachelor's degree, or its equivalent, in history, or a closely related field, from an accredited college or university, plus one of the following:

- a. At least 2 years of full-time experience in research, writing, teaching interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or
- b. Substantial contribution to the body of scholarly knowledge through research and publication in the field of history.

3. Historical Architecture

The recommended minimum professional qualifications for individuals practicing historical architecture are a professional degree in architecture from an accredited college or university or a State license to practice architecture, plus one of the following:

- a. At least 1 year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field, and at least 1 year of full-time professional experience on preservation and restoration projects; or
- b. At least 2 years of full-time professional experience on preservation and restoration projects. Experience on preservation and restoration projects shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

Advisory Council On Historic Preservation

1522 K Street, NW
Washington, DC 20005

PROGRAMMATIC MEMORANDUM OF AGREEMENT
BETWEEN
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS,
AND THE
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT,
DEPARTMENT OF THE INTERIOR

I. Background

A. Section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1272, and the permanent program regulations for compliance with SMCRA, 30 CFR Chapter VII, provide protection to publicly owned properties listed on the National Register of Historic Places from the adverse effects of surface coal mining operations and of coal exploration activities of 250 tons or more. SMCRA and the regulatory program specifically prohibit, subject to valid existing rights, new surface coal mining operations and coal exploration activities of 250 tons or more that would have an adverse effect on any publicly owned park or publicly owned place included in the National Register of Historic Places, unless jointly approved by the regulatory authority and the Federal, State, or local agency with jurisdiction over the properties.

Also, Section 503 of SMCRA provides for States to obtain the approval of the Secretary of the Interior to regulate surface coal mining operations and coal exploration operations on non-Federal and non-Indian lands. Under 30 CFR Chapter VII the States will assume the responsibility for assuring that those properties protected under the National Historic Preservation Act of 1966, as amended (NHPA), 16 U.S.C. 470f, are considered by State regulatory authorities (SRA) before making decisions to approve surface coal mining or exploration operations.

B. Section 106 of NHPA requires that the head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted or licensed undertaking affecting properties included in or eligible for the National Register of Historic Places shall afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity for comment pursuant to its regulations at 36 CFR Part 800.

II. Purpose

A. This Programmatic Memorandum of Agreement (PMOA) sets forth the process for consultation with ACHP in connection with the Secretary of the Interior's approval of State permanent regulatory program submissions

received by OSM before or after the date of the execution of this agreement.

B. This PMOA contains OSM's agreement to propose amendments to certain of its permanent program regulations related to historic resources.

III. Effect of Programmatic Memorandum of Agreement

Implementation of this agreement shall constitute fulfillment of ACHP's and OSM's responsibilities under Section 106 of the National Historic Preservation Act and 36 CFR Part 800 with respect to the Secretary's approval or disapproval of the permanent regulatory programs of the following States which submitted programs prior to March 3, 1980, and any states which submit programs hereafter, including: Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kentucky, Kansas, Louisiana, Maryland, Mississippi, Missouri, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming.

Pursuant to 36 CFR 800.8, implementation of this agreement shall constitute fulfillment of the Secretary's responsibilities under Section 106 of the NHPA for the proposed undertaking that would otherwise require numerous individual requests for comments under 36 CFR Part 800.

IV. OSM's Proposed Modification of Permanent Regulatory Procedure Regulations

A. Within 120 days after the effective date of this agreement, OSM will propose a modification to the permanent regulatory program as proposed rules in the Federal Register to require the following procedures under State programs:

The applicant for State approval to conduct coal exploration of 250 tons or more or surface coal mining operations shall be required to identify and describe any properties, whether publicly or privately owned, that are listed in the National Register of Historic Places and all properties determined eligible by the Secretary of the Interior for the National Register which may be adversely affected by the proposed activity. An applicant shall also identify and describe properties based on lists which the SRA maintains. These lists shall be based in turn on information provided to the SRA by the State Historic Preservation Officer (SHPO). Such lists shall include lists of National Register properties and those properties determined to be eligible for the National Register by the Secretary of the Interior, locations of public records listing historic properties and locations of lists maintained by organizations or officials that have expertise about cultural and historic properties in the area.

If the SHPO advises that information on historic properties in the permit area is incomplete and a field inspection is necessary to identify any such properties, the applicant shall consult with the SRA, which shall make the final determination of whether a field inspection must be conducted based upon all the information before it, including the SHPO's recommendation, as to the likelihood of harm or risk of destruction to historic properties. OSM will encourage SRAs to require field inspections in areas not previously

adequately inspected and require archeological/historical data recovery or avoidance.

The provisions of the following regulations shall not be proposed to be substantively changed at this time:

1. 30 CFR 770.12(c), which requires that the review and issuance of permits be coordinated with the applicable provisions of NHPA, thus protecting all properties listed in, determined to be eligible for, or potentially eligible for the National Register of Historic Places.
2. 30 CFR 786.11(c)(1), which requires that written notification of permit applications be sent to Federal, State, and local government agencies including historic preservation agencies with jurisdiction over or an interest in the area of the proposed operations. This includes the SHPOs.
3. 30 CFR 780.31 and 30 CFR 784.17, which require that a permit applicant describe the measures to be used to prevent or minimize adverse effects on historic places. This will provide information of concern to SHPOs during review of the permit application.
4. 30 CFR 786.23, which requires that the regulatory authority consider public comments, including those of the SHPOs, in deciding to approve, require modification of, or deny applications for permits.

B. Pursuant to 30 CFR 732.17(c)(1), States with approved programs will be required to amend their programs to meet the requirements of the final permanent program regulations as outlined in this PMOA.

C. OSM shall consult with ACHP in the preparation of the proposed regulations to ensure that the intent of this PMOA is carried out.

V. Review of State Programs by ACHP

ACHP will review proposed State programs or amendments to State programs that are submitted to OSM after the effective date of the PMOA. OSM will provide ACHP with the opportunity to comment on the proposed State programs pursuant to Section 503(b) of SMCRA prior to OSM's recommendations to the Secretary of the Interior on the approval or disapproval of the proposed programs.

VI. Effective Date, Revision and Termination

This agreement is effective on the date of the last signature. It may be revised or amended by mutual agreement of the signers. The agreement may be terminated by any of the signers, provided that the party initiating such termination provides 90 days notice and reasons therefore to the other party.

Robert Sawyer Aug 1, 1980 (date)
Executive Director, Advisory Council on
Historic Preservation

Joan M. Davenport (date) 8/18/80
Joan Davenport, Assistant Secretary,
Energy and Minerals

Larry C. Kim (date) 9/10/80
President, National Conference of State
Historic Preservation Officers

Robert H. Jentles (date) 11-6-80
Chairman
Advisory Council on Historic Preservation