

FIRST AMENDED PROGRAMMATIC AGREEMENT
REGARDING HISTORIC PROPERTY PROTECTION AND RESPONSIBILITIES
AMONG
NEW MEXICO HISTORIC PRESERVATION OFFICER
AND
ARIZONA STATE HISTORIC PRESERVATION OFFICER
AND
TEXAS STATE HISTORIC PRESERVATION OFFICER
AND
OKLAHOMA STATE HISTORIC PRESERVATION OFFICER
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND
UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE REGION 3

WHEREAS, United States Department of Agriculture, Forest Service, Region 3, (FS) manages the resources of eleven National Forests in Arizona, New Mexico, Oklahoma, and Texas; and

WHEREAS, the FS has determined that many of its management activities are federal undertakings, pursuant to the National Historic Preservation Act (NHPA) of 1966, that may affect properties included in or eligible for inclusion in the National Register of Historic Places; and

WHEREAS, the FS has consulted with the Advisory Council on Historic Preservation (Council) and the State Historic Preservation Officers (SHPO) of the States of Arizona, New Mexico, Oklahoma, and Texas pursuant to section 800.14(b) of 36 CFR 800, the regulations implementing Section 106 of NHPA as amended (16 USC 470f), and Section 110f of the same statute; and

WHEREAS, in the development of this Agreement, the FS has consulted Federally-recognized Indian tribes with cultural affinity to historic properties in Region 3, pursuant to 36 CFR 800.2(c)(3) and 36 CFR 800.14(f), and has consulted other interested parties; and

WHEREAS, this Agreement fully supersedes all provisions of the 1990 *Programmatic Agreement Regarding Cultural Property Protection and Responsibilities Among New Mexico Historic Preservation Division and Arizona State Historic Preservation Office, Oklahoma State Historic Preservation Office, Texas State Historic Preservation Office, and The Advisory Council on Historic Preservation and United States Department of Agriculture Forest Service Region 3* whose parties agree to this amendment; and

WHEREAS, this Agreement does not affect other national Programmatic Agreements between the Forest Service, Council, and National Conference of State Historic

Preservation Officers and does not affect Region 3's 2001 *Programmatic Agreement Among USDA Forest Service, Southwestern Region and Arizona State Historic Preservation Officer and New Mexico State Historic Preservation Officer and Advisory Council on Historic Preservation Regarding Wildland Urban Interface Hazardous Fuels Reduction Projects*,

WHEREAS, the consulting parties share a common desire to develop a flexible, programmatic approach for implementing Section 106 of NHPA that will satisfactorily take into account the effects of FS undertakings on historic properties, provide for appropriate tribal consultation and public participation, minimize redundant documentation, and reduce the need for case-by-case review of routine land management activities when historic properties will not be affected or when standard protocols and treatments can be applied.

NOW THEREFORE, the FS, the Council and the SHPOs agree that the FS shall administer its activities subject to Section 106 of the National Historic Preservation Act in accordance with the following stipulations:

Stipulations

I. Management of Historic Properties

A. The FS shall continue to preserve and foster appreciation for the historic properties it manages through implementation of the Forest Service's National heritage strategy (*Heritage: It's About Time, A National Strategy, 1999*) and its objectives: to protect and preserve significant historic properties; to share their values with the American people; and to contribute relevant information and historical perspectives to natural resource management.

B. The FS shall utilize the greater flexibility and efficiencies provided by this Agreement, with respect to Section 106 of NHPA, to further the implementation of Section 110, including non-project inventory, National Register evaluations and nominations, site inspections and monitoring, site stabilization and maintenance, public interpretation and outreach, and analysis and synthesis of what is being learned about the prehistory and history forest lands, including development and update of heritage and ethnographic overviews.

C. Individual National Forests in Region 3 are encouraged to develop or update Forest heritage resource management plans in response to E.O. 13287 (Preserve America) and the Forest Plan revision process. Such plans should describe each Forest's proposed approach, priorities, and schedule for achieving measurable progress in meeting the FS Heritage Strategy, E.O. 13287, and Section 110 goals identified pursuant to Stipulation I.B. Recommended topics include: heritage resource identification, evaluation, nomination, condition, protection, maintenance, use, research interpretation, consultation, public outreach, and community partnerships/heritage tourism opportunities. Forests should consult with the SHPO of the affected state and Indian tribes that may ascribe traditional cultural and religious significance to affected properties in developing and finalizing heritage resource management plans.

D. The FS shall continue to manage historic properties in accordance with the direction in Forest Land Management Plans and in conformance with the standards in the Region 3 Manual Supplement (FSM 2361) and Handbook (FSH 2309.2). Copies of any proposed amendments to the manual and handbook will be forwarded to the SHPOs of the affected states, the Council, and to interested tribes if the amendment has the potential to affect properties of interest to them. These parties will be provided a minimum of 30 calendar days to comment on proposed changes. Any objections provided to the FS within the review period will be addressed in accordance with Stipulation XII.

II. Public Participation

A. The FS shall seek and consider the views of the public in a manner that reflects the nature and complexity of each undertaking and its potential effects on historic properties and the likely interest of the public in the effects on historic properties. The FS shall use its procedures for public involvement under the National Environmental Policy Act (NEPA) to solicit information and concerns about historic properties from members of the public. The FS will ensure that an appropriate level of public involvement is provided, in accordance with 36 CFR 800.2(d)(3). The FS will ensure that environmental documents include information on historic properties that will be affected by the proposed action and alternatives, consistent with Section 304 of NHPA and Section 9 of the Archaeological Resources Protection Act (ARPA).

B. The FS shall ensure public access to findings made pursuant to this Agreement, consistent with Section 304 of NHPA and Section 9 of ARPA, and will consider comments or objections by members of the public in a timely manner.

III. Tribal Consultation

A. In accordance with Section 101(d)(6)(B) and Section 110 of NHPA, the FS shall consult with Indian tribes that attach traditional religious and cultural significance to historic properties that may be affected by FS undertakings. The FS shall use the principles in the USDA Forest Service policy, *Consultation with American Indian and Alaska Native Tribes* (FSM 1563.06) to guide its tribal consultation procedures and relationships. This policy underscores the unique legal and political relationship the United States Government has with federally-recognized Indian tribes, including trust responsibilities, government-to-government relationships, consultation responsibilities (E.O. 13175, "Consultation and Coordination with Indian Tribal Governments") and protection of sacred sites (E.O. 13007, "Indian Sacred Sites").

B. As early as possible in the planning process, but no later than the identification stage, the FS shall consult with Indian tribes to determine if any historic properties of traditional cultural or religious significance are present within an undertaking's area of potential effect. The FS shall ensure that Indian tribes receive quarterly NEPA lists of proposed actions and that Indian tribes are maintained on NEPA mailing lists. In addition, the FS shall utilize periodic meetings, supplemental project lists, and project-specific consultation requests as needed to assure that Indian tribes have the opportunity to identify historic property concerns and to participate as consulting parties in all aspects of consultation for projects that are of interest to them.

C. When it is determined that an undertaking may affect a property identified by a Tribe as having traditional cultural or religious significance, the FS shall consult further with the Tribe regarding the identification, evaluation, assessment of effects, and the resolution of adverse effects, if applicable, with respect to the property.

D. Indian tribes contacted and tribal concerns and recommendations derived from the consultation process shall be documented and addressed in the inventory report and NEPA project file, consistent with the confidentiality considerations in III.G.

E. In accordance with 36 CFR 800.2(c)(ii)(E), Forests are encouraged to develop consultation Memoranda of Understanding (MOU) with Indian tribes. Such MOUs will recognize government-to-government relationships and will specify how individual Indian tribes wish to be consulted in the Section 106 process. Copies of signed MOUs will be provided to the SHPOs in the affected states and the Council.

F. The FS will coordinate tribal consultation under this Agreement with its consultation responsibilities under other statutes, including the Native American Graves Protection and Repatriation Act (NAGPRA) and ARPA.

G. The FS shall be sensitive to tribal concerns and rights regarding confidentiality and privacy and shall protect sensitive information to the fullest extent permitted by law, using applicable provisions and exemptions of Section 304 of NHPA, Section 9 of ARPA, and Section (b) of the Freedom of Information Act.

H. The FS does not conduct undertakings on tribal lands; however if the FS determines that one of its undertakings may affect historic properties on tribal lands, and the tribe has assumed the responsibilities of the SHPO under Section 101(d)(2) of NHPA, the FS shall consult with the Tribal Historic Preservation Officer in accordance with 36 CFR 800.2(c)(2)(A) regarding effects on those properties and shall follow the consultation procedures in 36 CFR 800 rather than the procedures in this Agreement.

IV. Programmatic Consultation

A. Undertakings Subject to Consultation

1. Standard Consultation. The FS shall carry out the review requirements of this Agreement on all classes of undertakings that have the potential to affect historic properties and are not specifically exempted from standard review pursuant to Stipulations IV.A.2, 3, 4 and 5. Appendix A, Section I, includes examples of undertakings that require case-by-case review. This list is not exhaustive and may be revised or updated as needed by mutual written agreement of the FS and the SHPOs.

2. Exemptions. Those categories of undertakings listed in Appendix A, Section II, are exempt from further review or consultation. These include categories of undertakings for which the potential effects on historic properties are foreseeable and likely to be minimal. Appendix A

Section II may be revised or updated as needed by mutual written agreement of the FS and the SHPOs. This will include consultation with Indian tribes if the proposed exemptions have the potential to affect properties of traditional cultural and religious significance. A Forest may elect to consult on an otherwise exempt undertaking.

3. Screened Exemptions. Undertakings listed in Appendix A, Section III, will be reviewed by the Forest Archaeologist to determine if they have the potential to affect historic properties. If not, they shall be exempt from further review. If the Forest Archaeologist determines that a particular undertaking, because of its nature or location, has the potential to affect historic properties, that undertaking shall not be considered exempt but shall be subject to the review requirements of Stipulation V. Appendix A (III) may be revised or updated as needed by mutual written agreement of the FS and all signatory SHPOs.

4. Standard Consultation Protocols. The FS, in consultation with SHPOs and the Council, may develop standard consultation protocols for certain classes of undertakings where effects on historic properties and resulting protection and treatment measures are similar and repetitive. In such consultation protocols, the FS shall consult with Indian tribes if the proposed protocol has the potential to affect properties of interest to them, and with other parties that have a demonstrated interest in the class of undertakings or historic properties. Such protocols will specify procedures for the identification, evaluation, and treatment of historic properties with respect to Section 106. Upon mutual written agreement by the FS, the SHPOs of the affected state(s), and Council, such protocols shall be appended to this Agreement and may be followed in lieu of standard case-by-case consultation for the specified class of undertakings. Appendix D contains a Standard Consultation Protocol for Bark Beetle Infestation Projects on Arizona National Forests.

Within 90 days of execution of the Agreement by the Council, the FS shall initiate and diligently pursue development of a standard consultation protocol for fence construction and road maintenance projects on National Forests in New Mexico. The FS will consult with the New Mexico SHPO, the Council, interested Indian tribes, and other interested parties and will make every effort to reach agreement on the protocol and append it to this Agreement by October 1, 2004.

5. Standard Treatments. The FS, in consultation with SHPOs and the Council, may develop standard treatment or mitigation measures for certain classes of undertakings where effects on historic properties are similar and repetitive. In such treatment protocols, the FS shall consult with Indian tribes if the proposed treatment has the potential to affect properties of interest to them, and with other parties that have a demonstrated interest in the class of historic properties. Upon mutual written agreement by the FS, the SHPO(s) of the affected state(s), and Council, such standard treatments shall be appended to this Agreement and may be followed in lieu of standard case-by-case consultation for the specified class of undertakings or properties.

6. Emergency Situations. The FS will follow the procedures in 36 CFR 800.12 in responding to emergency situations unless a standard consultation protocol has been developed pursuant to Stipulation IV.A.4.

B. Land Management Planning

The FS will continue to afford the SHPO, Council, Indian tribes, and interested organizations and individuals, as appropriate, an opportunity to provide input during development of land management planning documents developed under the National Environmental Policy Act (NEPA) pursuant to 40 USC 1500. The FS shall consult under this Agreement regarding any plans that authorize on-the-ground activities that have the potential to affect historic properties.

V. Consultation Procedures

For undertakings not exempt from standard review pursuant to Stipulations IV.A. 2, 3, 4 or 5, above, the FS shall complete the following steps. Where appropriate these steps will be carried out in consultation with Indian tribes and other consulting parties identified in consultation with the SHPO with jurisdiction.

A. Project Planning and Decisions. The FS will ensure that Section 106 consultation is completed prior to making a final decision to approve a proposed action. To the maximum extent possible, this process will be completed at the earliest stage of planning or decision-making.

B. Determination of Area of Potential Effect

The FS shall determine an undertaking's area of potential effect taking into consideration any information provided by Indian tribes, the SHPO(s), other consulting parties, and the public. If any question exists as to an undertaking's area of potential effect, the FS shall consult the SHPO in making this determination. The FS will consider the direct, indirect, and cumulative impacts that an undertaking may have on historic properties in the area of potential effect. The FS will consider the potential effects an undertaking may have on historic properties located on federal and non-federal land, taking into consideration the scale and nature of the undertaking, the extent of federal involvement, and the nature and extent of potential effects on historic properties.

C. Determination of Appropriate Level of Identification Efforts.

1. When the FS proposes to perform a 100% (Complete) inventory of an undertaking's area of potential effect, no consultation with the SHPO regarding the level of inventory or extent of survey will be required.
2. Based upon existing inventory information, the FS may determine that further inventory will not be necessary for the area of potential effect if a 100% inventory has previously been performed and if the fieldwork and report are consistent with current professional standards. Inventories more than ten years old will be evaluated and considered for re-examination if they do not reflect current standards and knowledge levels. The FS will provide references to prior reports and will document a decision not to conduct further inventory.
3. When the FS proposes to perform a less than 100% inventory of the area of potential effect, the SHPO will be given an opportunity to comment on the proposed level, extent, and design

of inventory. The SHPO will respond within 15 calendar days of receipt of the FS's sample inventory design. The FS will address SHPO comments in making a final determination of the design of the inventory. Alternatively, a Forest may opt to develop a Forest-wide inventory strategy or an inventory strategy for certain classes of undertakings in consultation with the SHPO. Once an inventory strategy has been approved by the SHPO(s) of the affected state(s), the FS may apply that strategy to applicable undertakings without prior consultation with the SHPO.

4. The Forest Archaeologist or FS professional cultural resource specialist with delegated report review responsibilities shall ensure that all identification activities and inventory reports reasonably conform to the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44720-44723) and meet FS guidelines and any guidelines mutually agreed to with the SHPO(s).

D. Determination of Eligibility

1. Cultural materials that do not meet the site definition contained in the Region 3 Handbook (FSH 2309.24) will be recorded as isolated occurrences. Isolated occurrences will not be evaluated as historic properties under these procedures and will not constrain management of the location where they were found. Isolated occurrences will be recorded in a manner consistent with Forest procedures.

2. The FS and the SHPOs agree that certain classes of properties (Appendix B) may be determined eligible for the National Register of Historic Places for Section 106 purposes based on survey information without further case-by-case SHPO consultation and concurrence. Appendix B may be revised or updated as needed by mutual written agreement among the FS and the SHPOs.

3. The FS shall ensure that properties that will be affected by an undertaking are evaluated conclusively for eligibility for inclusion in the National Register by applying the National Register criteria (36 CFR 63) in consultation with the SHPO and any Indian tribe that attaches religious and cultural significance to the properties. Forests are encouraged to make eligibility determinations for other properties in consultation with the SHPO when possible; however, the eligibility of a property may remain unresolved, provided it is treated as eligible and the property will not be affected by the undertaking.

4. If the FS and SHPO with jurisdiction cannot agree on the eligibility of a property, or if the Council so requests, the FS will obtain a formal determination of eligibility from the Keeper of the National Register, whose decision shall be final.

E. Determination of Effect

1. No properties. When the agreed-upon level of inventory is completed and no properties are present in the area of potential effect, the FS shall document a finding of "no historic properties affected". Except as specified in Stipulations V.E.6 and E.7, the undertaking may proceed following approval of the inventory report by the Forest Archaeologist or other

authorized FS professional cultural resource specialist and approval of the undertaking by the Forest Supervisor. Inventory documentation will be provided to the SHPO as follows: Arizona, annual listing; New Mexico, transmittal of inventory reports and associated documentation within 30 calendar days; Oklahoma, annual listing; and Texas, annual listing. This submittal schedule may be amended by written agreement between the FS and individual SHPOs. Such agreements once signed shall be appended to and made part of this Agreement and shall supercede the schedule detailed in this paragraph. Copies of the inventory reports will also be available for inspection by Indian tribes and by the public, consistent with the provisions of Section 304 of NHPA and Section 9 of ARPA

2. Properties present, but not affected. When the agreed upon level of inventory is completed and eligible or unevaluated properties are present in the area of potential effect, and the FS determines that the undertaking will not have an effect on any such properties, the FS shall document a finding of "no historic properties affected". Except as specified in Stipulations V.E.6 and E.7, the undertaking may proceed following approval of the inventory report by the Forest Archaeologist or other authorized FS professional cultural resource specialist and approval of the undertaking by the Forest Supervisor. Inventory documentation will be provided to the SHPO as follows: Arizona, annual listing; New Mexico, transmittal of inventory reports and associated documentation within 30 calendar days; Oklahoma, transmittal within 30 calendar days; Texas, transmittal within 30 calendar days. This submittal schedule may be amended by written agreement between the FS and individual SHPOs. Such agreements once signed shall be appended to and made part of this Agreement and shall supercede the schedule detailed in this paragraph. Copies of the inventory reports will also be available for inspection by Indian tribes and by the public, consistent with the provisions of Section 304 of NHPA and Section 9 of ARPA

3. The SHPOs may review a sample of undertakings covered by Stipulations V.E.1 and E.2 and may report the results of such monitoring at the annual meeting or in an annual report to the FS. If problems are found, the SHPO will present recommendations which the FS will consider implementing the following year.

4. No adverse effect. When the FS determines that one or more historic properties may be affected by an undertaking it will apply the criteria of adverse effect from the Council's regulations (36 CFR 800.5[a]) to determine if the effect will be adverse. If the effect will not be adverse, the FS shall provide the inventory documentation and proposed "no adverse effect" finding to the SHPO and other consulting parties. The SHPO shall have 30 days from receipt to review the finding. If the SHPO agrees with the finding the FS may proceed with the undertaking in accordance with the proposed conditions or treatment measures. If the SHPO fails to respond within the 30-day review period, the FS may proceed with the undertaking in accordance with the proposed conditions or treatment measures provided there are no unresolved objections from other consulting parties. If the SHPO objects and the objection cannot be resolved, or if the SHPO fails to respond and unresolved objections from other consulting parties exist, the FS shall seek the views of the Council to resolve the objection.

5. Adverse effect. If the FS finds, in consultation with the SHPO that the undertaking will have an "adverse effect" on historic properties, the FS shall notify the Council as specified in

Section VII and shall resolve adverse effects following the procedures in 36 CFR 800.6 or any applicable standard treatment or standard consultation protocol developed pursuant to Stipulations IV.A.4 or IV.A.5 of this Agreement.

6. Notwithstanding the provisions in Stipulations V.E.1 and E.2, the FS shall submit for case-by-case SHPO review, prior to approval of the undertaking, inventory reports for any undertaking where:

- a. the FS chooses to consult case-by-case,
- b. a substantial public concern exists about effects of the project on historic properties such that the expedited review procedures in this Agreement cannot ensure that those concerns will be adequately considered,
- c. a disagreement exists with an Indian tribe concerning effects on a property of traditional cultural or religious significance to the tribe,
- d. a SHPO or the Council requests that the FS consult case-by-case based on a substantial concern that historic properties may be adversely affected, or
- e. a National Historic Landmark may be affected.

7. Reports for any inventory comprising more than 50 acres performed by an unsupervised paraprofessional will be reviewed and approved by the Forest Archaeologist and submitted to the SHPO for review prior to approval to implement the undertaking. Paraprofessionals will only perform surveys over 100 acres if directly supervised by a professional cultural resource specialist.

8. The FS will suspend any undertaking that does not conform to the conditions of this agreement and will consult as needed with the SHPO, the Council, and others if applicable, to bring the undertaking into conformance.

VI. Post-review Discoveries

The FS shall follow the procedures in 36 CFR 800.13 for post-review discoveries if historic properties are discovered or if unanticipated effects on historic properties are found after the FS has completed Section 106 consultation for the undertaking.

VII. Council Participation

A. The FS and SHPOs may seek advice, guidance and assistance from the Council concerning the application of this Agreement to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking.

B. The FS shall notify and afford the Council an opportunity to participate in consultation to resolve adverse effects pursuant to the procedures in the Council's regulations (36 CFR 800.6(a)(1)), and when it proposes to develop a Programmatic Agreement for one or more undertakings.

C. In deciding whether to enter the consultation process, the Council will be guided by the criteria found in 36 CFR 800, Appendix A. For adverse effect findings that the Council declines to participate in, the FS and the SHPO may execute a Memorandum of Agreement (MOA) without Council participation and file the executed MOA with the Council prior to proceeding with the undertaking to document completion of the consultation process.

D. When the FS and the SHPO cannot reach agreement on the resolution of adverse effects for an undertaking, the FS shall request that the Council enter the Section 106 process.

E. When the SHPO and FS do not agree on a proposed “no historic properties affected” or “no adverse effect” finding, the FS shall request that the Council review the proposed finding and notify the FS and SHPO of its opinion regarding the finding. Additionally, participants in the Section 106 process may seek advice, guidance and assistance from the Council pursuant to 36 CFR 800.2(b)(2) on the application of this Agreement to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. The FS shall take into account any views provided by the Council, to the extent it can, in reaching a final decision on the undertaking.

VIII. SHPO Participation

A. The State Historic Preservation Officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with Section 101(b)(3) of the NHPA, the State Historic Preservation Officer (SHPO) shall advise and assist the FS, local governments and organizations and individuals in carrying out its Section 106 responsibilities and shall cooperate with the FS to ensure that historic properties are taken into consideration at all levels of planning and development.

B. Except as provided elsewhere in this Agreement, SHPO will provide comments within 30 calendar days of receipt of a request to consult on FS undertakings. If the SHPO fails to respond within 30 calendar days of receipt of a request for review of a finding or determination under the terms of this Agreement, the FS may assume concurrence with the finding or determination and proceed accordingly. If the SHPO reenters the Section 106 process, the FS will not be required to reconsider previous findings and determinations.

IX. Data Sharing

A. The FS will maintain spatial and tabular site and survey data in its corporate database and GIS systems and will provide information in a compatible format to the SHPO, State agency or institution that maintains the statewide database. The FS will also ensure that inventory reports prepared in accordance with Stipulation V.E.1 and E.2 are transmitted to the State archaeological records repository if applicable. The FS and SHPO or state agency may enter into a data-sharing agreement to ensure timely and efficient data exchange and update. It is anticipated and understood that electronic databases and electronic data-sharing capabilities may take several years to fully develop.

B. The FS and the SHPOs will ensure that site locations and other confidential information are protected and made available only to qualified persons in accordance with state and federal guidelines, including Section 304 of NHPA and Section 9 of ARPA.

X. Personnel

A. To participate in this Agreement, each Region 3 National Forest shall employ a Forest Archaeologist with delegated Forest-wide responsibility in the Forest Supervisor's Office or in a field office. The Forest Archaeologist shall meet the professional standards established for archaeologist, 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) and the OPM X-118 Standards for fully professional level/journeyman level (GS-0193 series). The Forest Archaeologist shall be responsible for the quality of work and the professional judgments required in the implementation of this Agreement and for overall coordination of the Forest heritage program. If recommended by the Forest Archaeologist and requested by the Forest Supervisor, the Regional Forester may delegate certain report review responsibilities to other FS archaeologists who meet the above qualifications. The responsible Line Officer will consider the professional judgments and recommendations of the Forest Archaeologist or other delegated professional in his/her decision-making.

B. Archaeological inventories will be conducted by:

1. A professional cultural resource specialist who meets the standards established for archaeologist in the OPM X-118 professional (GS-0193) or technician (GS-0102) series.

2. A qualified paraprofessional cultural resource specialist trained, certified, and working in accordance with the standards specified in the FS Region 3 Manual Supplement (FSM 2361) and Handbook (FSH 2309.24). Such individuals must have completed the specialized training defined in FSM 2361.42, and must work under the guidance of professional cultural resources specialist, who will evaluate cultural properties, supervise all activities that might adversely affect historic properties (e.g., surface collecting, testing, data recovery, and stabilization), assess effects, and sign formal documents related to Section 106 compliance.

3. A professional consultant who meets 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).

XI. Training

A. The FS, with the SHPOs' assistance, shall design and administer training to facilitate implementation of this Agreement. The training will include detailed explanation of the procedures in the Agreement and the roles of the consulting parties. Training will be for FS line and staff and will be initiated within 12 months from the effective date of the

Agreement. Indian tribes will be invited to participate in the training to facilitate future coordination and consultation.

B. New Region 3 employees who will consult with SHPO (Forest Archaeologists and any other archaeologist with delegated report review responsibilities) will undergo a minimum six-month period of orientation to this Agreement. This will include a mechanism for internal FS guidance and oversight during this period.

C. The FS may from time to time invite the SHPO to cooperate and participate in training opportunities for forest and district personnel on historic preservation topics.

XII. Dispute Resolution

Should any signatory to this Agreement object within the time frames allowed under the Agreement to any finding, proposed action or determination made pursuant to this Agreement, the FS will consult with the objecting party to resolve the objection. If the FS or the objecting party determines that the objection cannot be resolved, the FS will forward all relevant documentation to the Council in accordance with 36 CFR Section 800.2(b)(2).

A. Upon receipt of adequate documentation, the Council shall review and advise the FS on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the Agreement, will be taken into account by the FS in reaching a final decision regarding the dispute.

B. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, the FS may render a decision regarding the dispute. In reaching its decision, the FS will take into account all comments regarding the dispute from the parties to the Agreement.

C. The FS's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged. The FS will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. The FS's decision will be final.

XIII. Monitoring

A. The Council, SHPO or the FS, or one or more of the parties in cooperation, may monitor activities carried out pursuant to this Agreement and will cooperate in recommending improvements in implementation.

B. The FS shall use its administrative review system to monitor the performance of individual forests under this Agreement and the overall effectiveness of the Agreement. Review findings shall be summarized in the Annual Report.

C. Annual Report. By March 1st of each year, the FS shall prepare an annual monitoring report for the SHPOs and the Council that covers the previous Fiscal Year. The report shall summarize the results of consultation under this Agreement, including:

1. A tabular listing, by Forest, of the number of undertakings within each of the categories in Stipulation V.E.
2. A list of individual undertakings determined to have an adverse effect on historic properties, including a summary of the resolution of adverse effects and reference to associated MOAs.
3. A listing by Forest of inventory reports handled under the provisions of Stipulations V.E.1 and V.E.2, if inventory documentation is to be provided in the annual report rather than through submission of individual reports.
4. A general summary of tribal consultation and cooperation, including a list of tribal MOUs executed during the Fiscal Year.
5. A summary by Forest of acres surveyed, sites inventoried, and sites evaluated under the terms of the Agreement.
6. A list of properties nominated to the National Register.
7. An assessment of the overall effectiveness of the Agreement including the resolution of any issues that arose regarding implementation of the Agreement and recommendations for improvement.
8. A discussion of any savings or efficiencies resulting from implementation of the Agreement and a description of NHPA Section 110 efforts and accomplishments.

D. Annual Review

The FS, SHPOs, and the Council if it chooses to attend, shall meet on an annual basis prior to May 1st of each year to review the effectiveness of the Agreement, its terms, the need for any amendments, and the need for revision or addition to the Appendices.

XIV. Amendments

Any signatory to this Agreement may request that it be amended, whereupon the parties will consult to consider the amendment.

XV. Suspension for Cause

The Regional Forester shall monitor compliance with the terms of this Agreement by individual Forests and may upon his or her own initiative or upon written notification from the SHPO or the Council, suspend a Region 3 National Forest from participation in

this Agreement. Suspension from the Agreement requires the affected National Forest to comply with 36 CFR 800.3 through 36 CFR 800.6 with regard to all undertakings. Suspension of a National Forest may be lifted by the Regional Forester after that National Forest has demonstrably corrected the problem or deficiency that led to the suspension. The Regional Forester shall notify, and consult with, as needed the SHPO and the Council prior to either suspending a National Forest or lifting a suspension.

XVI. Termination

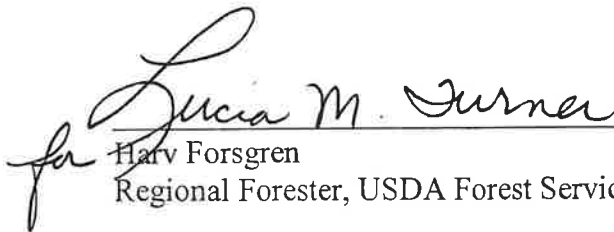
Any signatory to this Agreement may terminate it by providing sixty (60) days written notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Termination of this Agreement, or failure to abide by its terms shall require the Forest Service to comply with 36 CFR 800 with respect to undertakings that otherwise would be reviewed under this Agreement.

XVII. Execution

Execution and implementation of this Agreement satisfies the FS's Section 106 responsibilities for all individual undertakings in Region 3 that are treated in conformance with the stipulations herein.

XVIII. Implementation

This Agreement becomes effective on the date of the last signature below and will be implemented immediately.



Harv Forsgren
Regional Forester, USDA Forest Service, Region 3

11/10/2003
Date



James W. Garrison
Arizona State Historic Preservation Officer

11/17/03
Date



Katherine A. Slick
New Mexico State Historic Preservation Officer

11/13/03
Date



Bob L. Blackburn
Oklahoma State Historic Preservation Officer

11-26-03
Date



F. Lawrence Oaks
Texas State Historic Preservation Officer

12-05-03
Date



John M. Fowler, Executive Director
Advisory Council on Historic Preservation

12/24/03
Date

APPENDIX A
CONSULTATION REQUIREMENTS

I. Undertakings Subject to Standard Consultation

The FS and the SHPOs agree that the following activities have the potential to affect historic properties and will normally require consultation. This list is not exhaustive and there may be other undertakings not listed here that require case-by-case review and consultation. This list may be revised or updated as needed by written agreement of the FS and SHPOs. If Consultation Protocols are developed for any of these activities, in accordance with Section IV.A.4, the protocols may be followed in lieu of standard consultation.

- A. Timber sales and associated activities
- B. Land exchanges, transfers, leases, or sales.
- C. Permits, easements and right-of-way grants that authorize surface disturbance or have the potential to affect historic structures or traditional cultural properties.
- D. Prescribed burns and prescribed natural fire, and burn area emergency rehabilitation.
- E. Demolition or construction of facilities including recreation sites, buildings, etc.
- F. Chaining and other ground disturbing range management activities
- G. OHV designations of intensive use areas
- H. Mine operating plans
- I. Oil and gas applications to drill
- J. Geothermal applications to drill
- K. Coal and similar solid mineral lease applications
- L. Site and historic building stabilization, rehabilitation, and restoration
- M. Archaeological data recovery, excavation
- N. Water distribution facilities
- O. Range and wildlife improvement projects

P. Trail construction

Q. Seismic operations other than those listed in II.

R. Wilding sales other than those listed in II.

S. Fuelwood permits other than those listed in II.

T. Alteration of or additions to structures more than 40 years old

U. Mechanized site preparation and fuels reduction treatments

V. Restoration and repair of damaged archaeological resources (ARPA)

W. Allotment Management Plans

II. Exemptions

The following FS activities are exempt from further review and consultation. The FS and SHPOs agree that these classes of undertakings have predictable effects and a very low likelihood of affecting historic properties.

A. Permits, easements, rights-of-way, and leases that do not authorize surface disturbance or have the potential to affect historic structures or traditional cultural properties.

B. Activities where previous natural or human disturbance has modified the landscape so extensively that the likelihood of finding historic properties is negligible (for example, vertical expansion of existing pits).

C. Easement acquisitions

D. Land acquisitions

E. Maintenance of existing structural improvements (e.g., cattleguards, gates, fences, signs, stock tanks) that do not involve additional ground disturbance.

F. Tenant-type maintenance of historic buildings, i.e. routine maintenance and repair of historic buildings entailing no structural change, or any change of color, form, function or materials.

G. Seismic activities on surfaced or regularly maintained roads (e.g., within existing road prism) that do not affect known sites

H. Pesticide spray projects that will not affect known properties of traditional cultural and religious value.

- I. Special legislation that specifically excludes compliance with NHPA
- J. Withdrawal revocations
- K. Activities limited within stream channels, not including terraces, cutbanks, etc.
- L. Activities that involve less than 1 square meter of cumulative ground disturbance, unless within known sites
- M. Installation of sign posts and monuments unless within known sites
- N. Routine foot trail maintenance that does not involve new ground disturbance or known sites
- O. Personal use, hand wilding permits that cover large areas, for example, District-wide
- P. Personal use fuelwood permits that cover large areas, for example, District-wide or land management planning area wide
- Q. Activities not involving ground or surface disturbance (e.g., timber stand improvement and precommercial thinning by hand)
- R. Alteration of structures less than 40 years old
- S. Mining and mill site patent applications

III. Screened Exemptions

The Forest Archaeologist shall review the following actions to determine whether they have the potential to affect historic properties. Screened exemptions for fence construction and road maintenance will expire on October 1, 2004 in New Mexico.

- A. Fence Construction. Hand construction of fences where there is little likelihood of affecting historic properties. In reviewing fence construction projects, Forest Archaeologists will consider:
 - 1. the nature and location of the fence
 - 2. the construction method (no blading or use of mechanized equipment)
 - 3. the presence or absence of known sites
 - 4. the potential for disturbance due to cattle congregation or trailing
 - 5. site density, cultural landscape considerations, or other local factors that might raise historic property concerns about a specific project.

B. Road maintenance. Routine road maintenance in the existing road prism where work is within previously maintained surfaces, ditches, culverts, and cut and fill slopes and where there are no known historic properties or historic properties would not be affected because proposed work is clearly within disturbed contexts. In reviewing road maintenance projects, Forest Archaeologists will consider:

1. the nature and location of the road
2. the specific maintenance activities proposed
3. the presence or absence of known sites within or immediately adjacent to the road right-of-way
4. site density or other local factors that might raise historic property concerns about a specific project

C. Hand planting may or may not require consultation, based on location.

D. Heliportable seismic operations may or may not require consultation, based on location.

APPENDIX B

LIST OF PROPERTIES THAT MAY BE CONSIDERED ELIGIBLE
FOR PURPOSES OF THIS AGREEMENT

For eligibility determinations under this Agreement, the following types of heritage resources, provided they are 50 years old or older and clearly retain integrity, may be considered eligible for the National Register of Historic Places under criterion (d) without further SHPO consultation or concurrence:

- Properties with clear evidence for the presence of structures (historic structures, pueblos, pithouses, teepee rings, etc.)

- Properties with hundreds of surface artifacts

- Properties with clearly visible evidence of buried cultural deposits

- Properties with rock art

- Properties that clearly meet the National Register listing requirements in State historic contexts, existing multiple-property contexts, or SHPO-approved Forest-level historic contexts

Other properties will be treated as if eligible, unless the FS chooses to make a determination of eligibility in consultation with the SHPO. The SHPO will monitor eligibility determinations and discuss any problems at the annual meeting.

APPENDIX C

DEFINITIONS

All of the definitions included in 36 CFR 800 apply to this Agreement, some of which are included here for easy reference.

A. “Undertaking” means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of the agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval.

B. “Emergency Undertaking” is a Region 3 undertaking proposed by the Regional Forester, Forest Supervisor, or District Ranger as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property (36 CFR 800.12).

C. “Exemptions” includes those undertakings, which because of their nature and scope, have predictable effects and a very low likelihood of affecting historic properties. These classes of undertakings shall be exempt from further Section 106 review and consultation under this Agreement (Appendix A, Section II).

D. “Screened Exemptions.” Some types of undertakings, by their nature, usually have little potential to affect historic properties, but may have such potential under certain circumstances and contexts. This agreement includes a process of internal FS review to identify whether specific undertakings may be exempt from further review and consultation (Appendix A, Section III).

E. “Standard Consultation Protocols” are new consultation protocols, which may be developed in consultation with the SHPOs, for specific classes of FS undertakings that will streamline consultation procedures outlined in this Agreement or under 36 CFR 800.

F. “Standard Treatments” are standard treatment or mitigation measures for specific types of historic properties, which may be developed in consultation with the SHPOs;

G. “Area of Potential Effects” (APE) means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.

H. “100 % or Complete Inventory” is a comprehensive, systematic, intensive examination of an area designed to gather information about the number, location, condition, and distribution of historic properties within an undertaking’s APE.

K. “Sample Survey” is designed to estimate characteristics, density and/or distribution of the population of sites or historic properties in an area based on a sample. Only professional

archaeologists, or consultants meeting professional standards, pursuant to 36 CFR 296.8, may design a sample survey or less than 100% (complete) survey;

L. "Historic Property" means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

APPENDIX D

STANDARD CONSULTATION PROTOCOL
FOR BARK BEETLE INFESTATION PROJECTS
ON ARIZONA NATIONAL FORESTS

Developed pursuant to Stipulation IV.A.4 of the Region 3
First Amended Programmatic Agreement
Regarding Historic Property Protection and Responsibilities

The Bark Beetle Infestation of 2002-2003 currently involves several hundred thousand acres on the Apache-Sitgreaves, Coconino, Coronado, Kaibab, Prescott, and Tonto National Forests of Arizona, part of the USDA Forest Service, Region 3 (Forest Service), and has killed millions of pinyon and ponderosa pine trees. Continued stress to ponderosa pine and other trees from several years of drought conditions could result in a continuation of infestation in upcoming years. The large numbers of dead standing and dead and down trees may result in a health and safety hazard to the public. In addition, the situation may result in blow downs and create heavy accumulations of fuel that constitute a threat to historic properties, infrastructure, and private property, and contribute to very high and extreme fire intensity, extreme fire behavior, and fire persistence in the future. High intensity fires have a detrimental effect on the soil, associated microorganisms, and certain classes of heritage resources, creating a threat of increased erosion and flooding.

To address this problem, the Forest Service is proposing mechanical treatments of dead and down materials in combination with prescribed fire to reduce fuel loading, and land treatments to reduce the threat of erosion and flooding. Hundreds of documented and as yet un-inventoried heritage resources are presumed to be located within those areas which have already been attacked by bark beetles. Although beneficial to historic properties over the long term by reducing the potential for more harmful effects, various mechanical and land treatments are undertakings that have the potential to affect historic properties, including fire-sensitive sites (Appendix B), and steps should be taken to avoid or minimize those effects while accomplishing the objectives of the projects; and

Stipulation IV.A.4 of the Region 3 *First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities* (Programmatic Agreement) provides for the development of "Standard Consultation Protocols" for certain classes of undertakings where effects on historic properties and resulting protection and treatment are similar and repetitive. Such protocols specify standard procedures for the identification, evaluation, and treatment of historic properties. In accordance with the Programmatic Agreement, in developing this protocol the Forest Service consulted with the Arizona State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (Council), and the Arizona Indian tribes for whom properties within proposed treatment areas might have traditional cultural or religious significance.

Once approved by the Forest Service, the Council, and the Arizona SHPO and once formally incorporated into the Programmatic Agreement as Appendix D, the National Forests in Arizona may implement the procedures in this protocol, in lieu of standard consultation in the Programmatic Agreement or the Council's regulations, to take into account the potential effects of the bark beetle infestation treatment program on historic properties.

PROCEDURES

Forests shall ensure that the following stipulations are carried out:

1. **SCOPE.** This protocol covers all bark beetle infestation treatment projects (Projects) including: removal of dead and standing trees infested with bark beetles which pose a health and safety threat along roads, trails, recreation sites, administrative sites, property boundaries; stand reduction; salvage; and fuels reduction. On-the-ground activities may include hand thinning; mechanical thinning; use of equipment such as Hydro-ax, Agra-ax, and brush crushers; timber sales embedded in thinning contracts; commercial timber sales; slash disposal, including lopping and scattering, chipping, pile burning, and windrow or jackpot burning; broadcast burning; and fuelwood use, including free use, fuelwood permits, commercial fuelwood sales.
2. **INTERNAL COORDINATION AND TRACKING.** The Forests shall ensure that heritage specialists are brought into the planning for Projects as early as possible in the planning process, but no later than the identification stage, and that a system is in place to track implementation of heritage resource protection and monitoring requirements, and that necessary communication and coordination between Project specialists and heritage specialists will continue throughout the implementation of Projects carried out under this protocol.
3. **TRIBAL CONSULTATION.** The Forests shall use the principles and procedures in Section III of the Programmatic Agreement to assure that tribes are consulted as early as possible in the planning process and that properties of traditional cultural and religious importance are identified and addressed. If traditional cultural properties are identified, the Forests shall consult with the affected tribes regarding inventory, evaluation, effect, and protection or treatment measures.
4. **PUBLIC INVOLVEMENT.** The Forests shall use the procedures in Section II of the Programmatic Agreement to seek and consider the views of the public.
5. **IDENTIFICATION.** The Forest Archeologists of each Forest shall determine or approve the level of field survey for each project, using the general guidelines in Attachment 1. The SHPO will be given the opportunity to comment on the survey strategy if less than a 100% survey is proposed, in accordance with of the Programmatic Agreement (Stipulation V.C.). The finalized survey strategy will be provided to the SHPO upon request. If no comments are received within 15 days, the Forests may assume that the SHPO does not object to the submittal and may proceed with the identification strategy.
6. **EVALUATION.** Evaluation will follow the guidelines in Section V.D. and Appendix B of the Programmatic Agreement.
7. **EFFECT.** Following completion of the survey strategy approved by the Forest Archeologist and the associated evaluations, the Forests shall determine the effects of the Project on historic properties:
 - a) **No Historic Properties Affected.** If no properties are identified within the area of potential effect or if through application of the site protection measures in Attachment 3 potential effects have been excluded from all eligible and unevaluated properties, and provided that none of the conditions requiring case-by-case consultation specified in the Programmatic Agreement (Stipulation V.E.6) apply, a determination of “no historic properties affected” will be made for the Project. For prescribed fires, this will include only those Projects in which a 100% survey is conducted and all eligible and unevaluated properties will be protected. For other types of activities, if less than a 100% survey is conducted, the discussion of effects will include a rationale addressing the sufficiency of the level of effort.

b) No Adverse Effect. If properties are present but through application of the protection measures in Attachment 2 potential adverse effects on eligible and unevaluated properties have been minimized to the extent that they do not meet the criteria of adverse effect, and provided that none of the conditions requiring case-by-case consultation specified in the Programmatic Agreement (Stipulation V.E.6) apply, a finding of “no adverse effect” will be made for the Project. This shall include prescribed burns in which fire-sensitive properties (Attachment 2) will be protected and the removal of dead and standing trees from within established site boundaries following the guidelines in Attachment 3. The Forest Supervisors shall forward a copy of each “no adverse effect” report, including Forest Service IS&A form and associated site forms to the SHPO, tribes and any other consulting parties within 30 days.

c) Adverse Effect. If the Forest Archeologist determines that one or more properties may be adversely affected, or in the case of a prescribed fire, a fire-sensitive property cannot be adequately protected, the Forests shall consult case by case on the project as specified in the Programmatic Agreement (Stipulation V.E.5).

8. PROTECTION. The Forest Archeologists shall draw from the protection measures in Attachment 3 to ensure that effects to historic properties (or fire-sensitive properties for prescribed fire undertakings) are avoided or minimized. Site protection requirements shall be documented in the inventory report and on the Forest Inventory Standards and Accounting (IS&A) form.

9. ADHERENCE TO WILDLAND URBAN INTERFACE PROGRAMMATIC AGREEMENT. Each phase of any large area fuels reduction treatment projects that meets the definition of a Wildland Urban Interface (WUI) project will be considered to be a WUI project and shall be implemented in accordance with all of the provisions set forth in the *Region 3 Programmatic Agreement Regarding Wildland Urban Interface Hazardous Fuels Reduction Projects*, signed 7/19/2001, including all provisions relating to the protection of historic properties.

10. INVENTORY REPORT. Inventory reports shall conform to the Programmatic Agreement (Stipulation V.C.4). The Forests shall also ensure that reports include: a description of all planned activities, equipment to be used, and expected impacts; a discussion of fuel loading and expected fire behavior if prescribed burns are planned; a detailed discussion and rationale for the survey strategy if less than 100%; a summary of the inspection of fire-sensitive sites and any other sites to be monitored, including site-specific fuel loading; site-specific protection measures, and site-specific monitoring requirements.

11. APPROVAL. In cases of “no historic properties affected” and “no adverse effect”, when all of the above stipulations are complied with and the inventory report has been approved by the Forest Archeologists, and provided that none of the conditions requiring case-by-case consultation specified in the Programmatic Agreement (Stipulation V.E.6) apply, the Forest Supervisors may approve the report and proceed with the undertaking, provided all site-specific protection measures are implemented.

12. PHASING. In recognition of the difficulties inherent in implementation of an accelerated bark beetle infestation treatment program and in recognition that large-scale Projects will require several years to plan and implement, a phased approach may be used when 1) a large-scale Project is to be implemented in phases spanning more than one fiscal year and 2) it is not reasonably possible to complete Section 106 compliance for all aspects of the undertaking prior to reaching a NEPA decision. Where deemed necessary by the Forest Supervisor, consultation for such a Project may be carried out in two or more phases corresponding to the implementation phases of the Project. In this phased approach, a final NEPA decision on the Project may be made prior to completion of the identification and evaluation of properties in the entire Project area provided that all of the following requirements are met:

- a. none of the conditions requiring case-by-case consultation specified in the Programmatic Agreement (Stipulation V.E.6) apply

- b. the inventory, evaluation, and consultation requirements in this protocol have been completed for the first phase of the project
- c. the expected nature and distribution of properties in the entire project area, anticipated effects, and the proposed phased approach are discussed and considered in the NEPA analysis and in a Project-wide inventory report submitted to the SHPO prior to the decision;
- d. there is no reason to believe that the protection measures in Attachment 2 will not be sufficient to protect properties in the entire project area.
- e. a condition of the forest satisfying Section 106 responsibilities for the Project, clearly stated in the Project-wide inventory report and IS&A Form, is that the identification and protection requirements of this protocol, including the written approval of the Forest Archaeologist and Forest Supervisor, shall be completed prior to the award of any contract, permit, or other authorization for on-the-ground work in each phase of the project.
- f. the NEPA decision document clearly states that initiation of work in any phase of the project will be contingent upon completion of the identification and protection of historic properties and compliance with applicable provisions of NHPA in accordance with this protocol.

13. SHPO AND COUNCIL REVIEW. The SHPO will programmatically review results of work conducted under this protocol for discussion at the annual meeting in accordance with the Programmatic Agreement (Stipulations V.E.3 and a XII.C). If, at any point, the SHPO identifies a concern about how this protocol is being applied, the SHPO may submit comments to the Forest for consideration in future Projects. If the SHPO or the Council has a substantial concern that historic properties may be adversely affected in a specific Project, the SHPO or Council may contact the Forest Archeologists or Forest Supervisors to resolve those concerns. If the concerns are raised prior to the NEPA decision, and are not resolved, the SHPO or the Council may request that the Forests consult case-by-case as provided for in Programmatic Agreement (Stipulation V.E.6). If the NEPA decision for the Project has already been made, the Forests shall take into account the SHPO/Council comments for those actions not yet completed.

14. DISCOVERY SITUATIONS. There is some potential for encountering previously unrecorded properties or for affecting properties in an unanticipated manner during the course of project implementation. Previously unrecorded properties that are encountered during the course of a Project shall be protected in the same manner as other properties, using the protection measures in Attachment 3. If the Forest determines that a property has been damaged, the Forests shall halt all activities that could result in further damage to the property and shall notify SHPO concerning proposed actions to resolve adverse effects. The SHPO shall respond within 48 hours of notification. The Forests shall carry out the agreed-upon actions.

15. DATA MANAGEMENT. The provisions in the Programmatic Agreement for Data Sharing will apply (Section IX).

16. SECRETARY'S STANDARDS. The requirements in the Programmatic Agreement regarding personnel qualifications and the Secretary of the Interior's Standards will be followed (Stipulation V.C.4 and Section X).

17. ANNUAL SUMMARY REPORT. Each Forest shall summarize the results of work conducted under this protocol, and this summary will be included in the Region's Annual Report submitted to the SHPO and the Council pursuant to the Programmatic Agreement (Section XIII.C). The documentation shall include summaries of the results of monitoring, the effectiveness of the identification strategies and protection measures, and any changes proposed to make these more effective.


18. ANNUAL REVIEW. As part of the Annual Meeting carried out pursuant to the Programmatic Agreement (Section XIII.D), the Forests, the SHPO, and the Council, if it chooses to participate, shall

discuss the activities carried out pursuant to this protocol, reevaluate its procedures, and determine whether continuation, modification, or cancellation is appropriate.

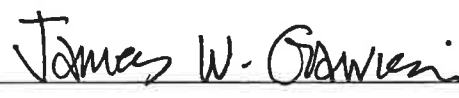
19. MODIFICATION. The Forest Service, Council, or the SHPO may request modifications to this protocol whereupon the parties will consult to consider such change. Changes may be made by written consent of the Regional Forester, SHPO, and Council after appropriate consultation.

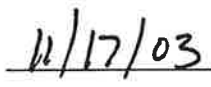
20. CANCELLATION. The Forest Service, Council or the SHPO may cancel this protocol by providing thirty (30) days notice. The parties will consult during the period prior to cancellation to seek agreement on modification or other actions that would avoid cancellation. In the event the protocol is canceled, the Forests shall comply with the Programmatic Agreement or 36 CFR 800 with regard to individual undertakings that otherwise would be covered by this protocol.


21. IMPLEMENTATION. This protocol becomes effective on the date of the last signature below and may be implemented immediately.

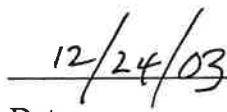

Regional Forester
USDA Forest Service – Southwestern Region


Date


State Historic Preservation Officer
State of Arizona


Date


Advisory Council on Historic Preservation


Date

APPENDIX D
ATTACHMENT 1
HERITAGE RESOURCE SURVEY STRATEGIES

The following guidelines will be used to determine survey strategies under this protocol.

Pre-field Research

The Forests will utilize relevant information to assess the fuel reduction project's potential to affect heritage properties and the expected nature and distribution of heritage properties that may be affected.

Expected nature and severity of project impacts (this should include consideration of all planned activities and entries) based on:

- type and intensity of mechanical treatment
- type and intensity of prescribed burn, including fuel loading and fire prescription
- type and intensity of fuelwood use
- associated activities

Expected nature and distribution of heritage resources based on:

- heritage GIS survey and site layers or hard copy survey and site atlases
- previous heritage reports and site forms
- cultural resource overviews and planning assessments
- information obtained through tribal consultation and public input
- information provided by other resource specialists familiar with the project area
- topographic maps, aerial photographs, ortho-photo quads
- other available GIS layers and maps including soils, vegetation type, slope
- determination of known/expected fire-sensitive sites

Field Survey

The following general guidelines will guide the identification of areas selected for survey and the level of survey coverage for each treatment method:

1. Any areas of intensive ground disturbance will receive 100% survey, including but not limited to:
 - intensive mechanical treatments- machine piling, windrowing, mechanical crushing, skid trails where identified (cutting units where skid trails are not defined will be surveyed 100%).
 - hand and mechanical fire line construction
 - staging areas, constructed safety zones
 - water bars and other constructed erosion control features

2. Prescribed burns. As a minimum, surveys for prescribed burn areas will include survey of locations likely to contain additional fire-sensitive sites, based on prefield research, expected fire behavior, and other relevant data. Additional survey may be conducted at the Forest Archeologist's discretion. The survey strategy shall identify the types of sites that are considered fire-sensitive for each fuels reduction project, using the guidelines in Appendix A. This should include both known fire-sensitive sites and other sites considered fire-sensitive for the specific burn, based on fuel loading, site characteristics, and expected fire behavior.

3. Hand thinning units. Areas where machine piling or any other activity using mechanized equipment is planned will be surveyed 100%. Units where only hand thinning is planned may or may not be surveyed at the discretion of a Forest Archeologist.

4. Commercial sale units. These are units where harvesting of pulpwood or merchantable wood products will be carried out using mechanical equipment, i.e. timber sales and their equivalent. Projects that affect 500 acres or less will be surveyed 100%. Projects that exceed 500 acres in size will be surveyed using a two-stage process. The initial survey stage will consist of surveying linear transects at ¼ mile intervals and all roadways that will be improved. Based upon a review of the data gathered in the initial survey stage, the Forest Archeologist may require a second stage of survey consisting of block survey of areas with a high probability of sites.

Additionally, any areas of ground disturbing activity will receive 100% survey, including all roads, landings, skid trails, and any other areas deemed necessary based on the sample survey. If the locations of skid trails within any cutting unit are not identified on the ground, then the entire unit will be surveyed 100%.

5. Fuelwood sales. Surveys of fuelwood sale units, regardless of whether they are commercial or personal fuelwood sales, will be determined following a similar two-stage procedure to that previously described for commercial sale units. However, the threshold size requiring 100% survey will be increased to 640 acres rather than 500 acres.

6. Other activities. Any other proposed activities, e.g., construction of fuel breaks not otherwise described herein, will be surveyed 100%.

APPENDIX D ATTACHMENT 2

LIST OF FIRE-SENSITIVE SITES

A review of available literature on the effects on fire on cultural resources and on the experience of Forest Service heritage resource specialists and the SHPO indicates that there are two categories of fire-sensitive sites. The first consists of sites long-known to be vulnerable to the effects of even low-temperature fires and/or light fuel loads, such as sites that contain organic materials, exposed wooden architecture, etc. The second group includes sites that have generally been considered to have less risk for fire effects in most situations, including prehistoric and historic sites with deeply buried cultural deposits; prehistoric and historic artifact scatters; and prehistoric and historic sites with non-flammable surface features. However, depending on field conditions -- especially fuel loading -- as well as specific site characteristics and expected fire behavior, these other site types may be fire-sensitive in certain fuels reduction projects.

Known Fire-Sensitive Site Types in the Southwestern Region:

- Historic sites with standing, or down wooden structures or other flammable features or artifacts
- Rock art sites (depending on rock type, exposure, fuel type, and fuel loading)
- Cliff dwellings
- Prehistoric sites with flammable architectural elements and other flammable features or artifacts
- Prehistoric sites with exposed building stone of soft or porous material such as volcanic tuff
- Culturally modified trees, including aspen art and peeled/scarred trees
- Certain traditional cultural properties (based on consultation with tribes)

Other Project-Specific Fire-Sensitive Sites:

- Other sites, based on local field conditions and Forest-specific concerns
- Other sites, based on consultation with SHPO staff
- Other sites, based on consultation with fire management staff, fire behavior specialists or fire effects researchers

Forest Archaeologists will use site assessment and monitoring data, and will consult with fire management staff, to identify known and other project-specific fire-sensitive sites for individual Forests or project areas. Fire-sensitive sites officially determined ineligible for the National Register of Historic Places do not require protection under Section 106.

APPENDIX D
ATTACHMENT 3

AGREED-UPON STANDARD SITE PROTECTION MEASURES

Various combinations of the following protection measures may be approved by the Forest Archaeologists to protect sites within fuels reduction projects without additional SHPO consultation.

Prescribed Burning

Protect fire-sensitive sites:

- Exclude from project area

- Hand line

- Black line

- Wet line

- Foam retardant

- Structural fire shelter

- Remove heavy fuels from site by hand

- Prevent in-situ heavy fuels that cannot be removed from ignition (e.g., flush-cut & bury stumps)

- Implement same protective measures for future maintenance burns

Protect selected other sites (option)

Allow burning over sites without fire sensitive features or materials:

- No slash piles within site boundaries

- No ignition points within site boundaries

- No staging of equipment within site boundaries

Allow construction of safety zones and additional lines in 100% surveyed areas, with archaeological monitoring to assure recorded sites are avoided

Thinning

No thinning within site boundaries -or-

Allow thinning within site boundaries, provided:

- Cutting is accomplished using hand tools only

- Large diameter trees are felled away from all features

- Thinned material is hand carried outside site boundary

No use of mechanized equipment within site boundaries

No staging of equipment within site boundaries

Fuelwood Sales

No fuelwood cutting or vehicles within site boundaries -or-

Allow fuelwood cutting within sites, but do not allow vehicles within site boundaries

Allow fuelwood cutting in areas of continuous, low-density scatters, with post-project monitoring

The Forest Archaeologists may approve additional measures to further protect sites; however, if a lesser level of protection is recommended, or if it is likely that adverse effects cannot be avoided, the Forests shall consult with the SHPO on a case-by-case basis as specified in Stipulation 13.

APPENDIX F
STANDARD CONSULTATION PROTOCOL
FOR
NOXIOUS WEED CONTROL

Noxious weeds (non-native and noxious plant species, commonly referred to as "weeds") pose a threat to existing plant populations and ecosystem health in many areas of the Southwest, including National Forests. Forests in Region 3 are in the process of preparing Forest-wide plans for noxious weed control¹. Treatments include manual methods with hand tools or hand-operated power tools, mechanical methods such as mowing and disking with heavy machinery, biological methods using live insect or plant pathogens, controlled grazing using goats and sheep, chemical methods using herbicides, plant cultural methods using native species to control weeds, and prescribed burning using fire to reduce weed populations. Several of these methods have the potential to affect historic properties eligible for nomination to the National Register.

The Forest Service has determined that it is not feasible to complete the identification, evaluation, and effects consultation for future noxious weed control projects that may be conducted under the Forest-wide noxious weed plans prior to signing the NEPA decisions for those plans. Because individual projects will be planned and implemented on an annual basis over the course of several years, a phased approach is needed for the identification and evaluation of historic properties.

Stipulation IV.A.4 of the Region 3 *First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities* (Programmatic Agreement) provides for the development of "Standard Consultation Protocols" for certain classes of undertakings where effects on historic properties and resulting protection and treatment are similar and repetitive. Such protocols specify standard procedures for the identification, evaluation, and treatment of historic properties. In accordance with the Programmatic Agreement, in developing this protocol the Forest Service consulted with the Arizona, New Mexico, Oklahoma, and Texas State Historic Preservation Officers (SHPOs), the Advisory Council on Historic Preservation (Council), and 50 Indian tribes for whom properties within National Forests might have traditional cultural or religious significance.

Once approved by the Forest Service, the Council, and the SHPOs and once formally incorporated into the Programmatic Agreement as Appendix F, the Forests may implement the procedures in this protocol, in lieu of standard consultation in the Programmatic Agreement or the Council's regulations, to take into account the potential effects of the noxious weed control projects on historic properties.

PROCEDURES

The Forests shall ensure that the following procedures are carried out:

¹ Each State has established a list of weed species considered to "noxious" or "invasive", pursuant to the Noxious Weed Management Act of 1998. The Federal Noxious Weed Act of 1974 defines weeds as "any living stage (including but not limited to seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation or navigation, or the fish or wildlife resources of the United State, or the public health."

1. **SCOPE.** This protocol covers all projects authorized by Forest-wide noxious weed control plans. Activities covered by the protocol include: removal and eradication of noxious weed populations that pose a threat along roads, trails, recreation sites, administrative sites, range improvements and other plant locations. Treatments may include hand pulling, grubbing with hand tools or hand operated power tools, mowing and disking with tractor-mounted mower or plow, biological control using insects or plant pathogens introduced into weed habitat, controlled grazing using goats and sheep to intensively and repeatedly graze weeds, chemical or herbicidal application to weed populations using hand or vehicle mounted sprayer applications, cultural plant methods using native or appropriate plant species to supplant weed species, and prescribed burning using limited pile or broadcast burning to eliminate seed heads and resident populations of weeds.

2. **PHASED IMPLEMENTATION OF NOXIOUS WEED CONTROL PROJECTS.** The consulting parties agree that Forests may use a phased approach to the identification and evaluation of historic properties that may be affected by future projects planned and carried out under Forest-wide plans for noxious weed control.

a. **Forest-wide Plans.** A final NEPA decision on a Forest-wide plan for noxious weed control may be made prior to completion of project-specific identification, evaluation, and effect determinations provided that all of the following requirements are met:

- 1) the expected nature and distribution of properties that may be present in weed control project areas and anticipated effects are discussed and considered in the initial Section 106 report and in the NEPA analysis;
- 2) there is no reason to believe that the protection measures in Item 6 below will not be sufficient to protect potentially affected historic properties;
- 3) a condition of the Forest satisfying responsibilities under Section 106, clearly stated in the initial Section 106 report and on the IS&A Form, is that the identification and protection requirements of this protocol, including the written approval of the Forest Archaeologist and Forest Supervisor, shall be completed prior to the award of any contract, issuance of any permit, or other action authorizing on-the-ground activities associated with a noxious weed control project. Written approval will be based on the project inventory report and will be documented on the Inventory, Standards and Accounting (IS&A) Form.
- 4) the NEPA decision document clearly states that initiation of noxious weed control projects will be contingent upon completion of the identification and protection of historic properties, and compliance with applicable provisions of NHPA in accordance with this protocol.

b. **Individual Projects.** The identification and evaluation of historic properties and the assessment of effects for individual noxious weed control projects shall be completed on a case-by-case basis prior to Forest authorizations to proceed with those projects.

- 1) Each Forest shall develop an annual schedule of noxious weed control projects to be submitted to the Forest Archaeologist to evaluate identification and evaluation needs. The annual schedule of noxious weed control projects requiring consultation, including proposed herbicide projects, will be included in the annual list of projects submitted to the tribes or will be consulted on in accordance with Forest tribal consultation Memoranda of Understanding. The annual schedule of noxious weed control projects will be provided to the SHPOs and the public upon request and may be made available to the public on Forest websites. If new areas and treatments are identified and planned during the year, the Forest Archaeologist will be contacted to evaluate identification and evaluation needs, including tribal consultation for proposed herbicide projects.

- 2) Each Forest shall ensure that heritage specialists are brought into the planning for noxious weed control activities as early as possible in the planning process, that a system is in place to track Section 106 compliance and the implementation of heritage resource protection and monitoring requirements, and that necessary communication and coordination between project specialists and heritage specialists will continue throughout the implementation of noxious weed control activities carried out under this protocol.

3. PUBLIC INVOLVEMENT. Each Forest shall use the NEPA scoping process and the procedures in Section II of the Programmatic Agreement to seek and consider the views of the public regarding Forest-wide noxious weed control plans. In addition, an annual list of proposed noxious weed control projects will be made available to the public upon request and information on proposed herbicide treatments will be posted at treatment sites. Any concerns expressed about a project's possible effects on historic properties will be addressed in the inventory report and considered with respect to Stipulation 13.b of the Programmatic Agreement.

4. TRIBAL CONSULTATION. The Forest shall use the principles and procedures in Section III of the Programmatic Agreement to assure that tribes are consulted as early as possible in the planning process and that properties of traditional cultural and religious significance are identified and addressed. If traditional cultural properties are identified, the Forest shall consult with the affected tribes regarding inventory, evaluation, effect, and protection or treatment measures.

5. PROJECT-SPECIFIC CONSULTATION PROCEDURES. The Forest shall use the procedures in Section V of the Programmatic Agreement to complete the identification, evaluation, and determination of effects for specific noxious weed control projects, including State-specific requirements for submitting inventory reports to the SHPOs. It is agreed that, in accordance with the Programmatic Agreement, Appendix A.II, Exemptions, the following projects do not require further consultation:

- biological methods using live insect or plant pathogens that do not involve ground or surface disturbance
- cultural methods using native species to control weeds that do not involve ground or surface disturbance
- herbicide spray projects that will not affect properties of traditional cultural and religious value identified by tribes
- hand treatments that involve little or no ground or surface disturbance, e.g. flower and seed head removal from annual plants, hand pulling young plants without the use of tools

6. PROTECTION. For other projects, if sites are present, the Forest Archeologist shall draw from the following measures to ensure that effects to historic properties are avoided or minimized:

a. Protection measures and situations appropriate for No Historic Properties Affected:

- 1) prohibit mechanical treatments within site boundaries
- 2) prohibit use or staging of heavy mechanized equipment within site boundaries
- 3) prohibit pile burning within site boundaries
- 4) allow broadcast burning of weeds on sites, provided fire-sensitive sites are protected
- 5) allow low-impact or low-intensity hand tool treatments within site boundaries, e.g. using hand tools to pull a few scattered, herbaceous plants, torch burning individual plants, subject to approval by the Forest Archaeologist

b. Protection measures and situations appropriate for No Adverse Effect:

- 1) allow other hand tool treatments within site boundaries, e.g. grubbing out larger, established woody plants with a Pulaski or hoe, provided the treatment is designed to minimize surface disturbance, based on the nature of the site and the nature of the treatment, subject to approval by the Forest Archaeologist
- 2) allow goat or sheep grazing on sites with periodic monitoring to assure that surface disturbance, if present, is minimal
- 3) other treatments within the boundaries of eligible or unevaluated sites if the Forest and the SHPO agree that the activities will have no adverse effect on historic properties.

Site protection requirements shall be documented in the inventory report and on the IS&A form. Sites identified for protection will be monitored in accordance with Forest Service policy.

7. DISCOVERY SITUATIONS. There is some potential for encountering previously unrecorded properties or for affecting properties in an unanticipated manner during the course of noxious weed control activity implementation. Previously unrecorded properties that are encountered during the course of a noxious weed control activity shall be protected in the same manner as other eligible or unevaluated properties, using the protection measures in Item 6 above. If a Forest determines that an eligible or unevaluated property has been damaged, the Forest shall halt all activities that could result in further damage to the property and shall notify SHPO and any affected tribes concerning proposed actions to resolve adverse effects. The SHPO shall respond within 48 hours of notification. The Forest shall carry out the agreed-upon actions.

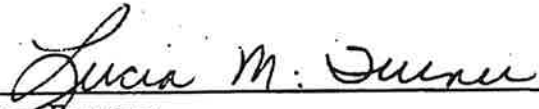
8. ANNUAL REVIEW. As part of the Annual Meeting carried out pursuant to the Programmatic Agreement (Stipulation XIII.D), the Forests, the SHPOs, and the Council, if it chooses to participate, shall discuss the activities carried out pursuant to this protocol, reevaluate its procedures, and determine whether continuation, modification, or cancellation is appropriate. Since individual projects will be submitted to SHPOs for review in accordance with the normal procedures in the Programmatic Agreement, a separate annual report summarizing these activities will not be prepared.

9. MODIFICATION. The Forest Service, Council, or the SHPOs may request modifications to this protocol whereupon the parties will consult to consider such change. Changes may be made by written consent of the Regional Forester, SHPOs, and Council after appropriate consultation.

10. CANCELLATION. The Forest Service, Council or the SHPOs may cancel this protocol by providing thirty (30) days notice. The parties will consult during the period prior to cancellation to seek agreement on modification or other actions that would avoid cancellation. In the event the protocol is canceled, the Forests shall comply with the Programmatic Agreement or 36 CFR 800 with regard to individual undertakings that otherwise would be covered by this protocol.

11. IMPLEMENTATION. This protocol becomes effective on the date of the last signature below and may be implemented immediately.

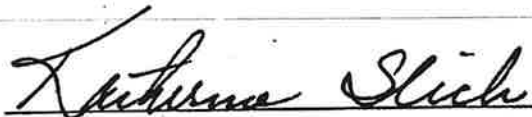
SIGNATURES:


Harv Forsgren
Regional Forester, USDA Forest Service – SW Region


01/05/05
Date


James W. Garrison
Arizona State Historic Preservation Officer

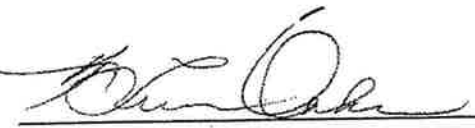
1/24/05
Date


Katherine A. Slick
New Mexico State Historic Preservation Officer

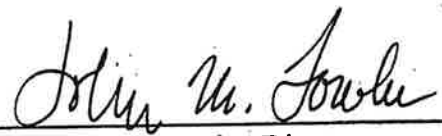
01/12/05
Date


Bob L. Blackburn
Oklahoma State Historic Preservation Officer

2-1-05
Date


F. Lawrence Oaks
Texas State Historic Preservation Officer

2-10-05
Date


John M. Fowler, Executive Director
Advisory Council on Historic Preservation

4/4/05
Date

APPENDIX J
STANDARD CONSULTATION PROTOCOL
FOR LARGE-SCALE FUELS REDUCTION, VEGETATION TREATMENT,
AND HABITAT IMPROVEMENT PROJECTS

The USDA Forest Service (FS) and other federal land managing agencies are directed by Congress to implement an accelerated, multi-year program of large-scale hazardous fuels reduction, vegetation treatment, and habitat improvement projects under a variety of legislation including the Healthy Forests Restoration Act of 2003 and the American Recovery and Reinvestment Act of 2009 (ARRA).

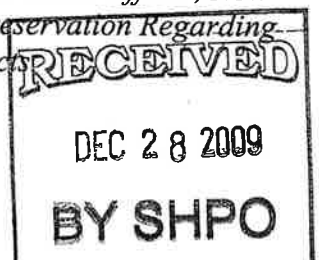
Improving forest health, reducing the threat of catastrophic wildfire to communities and forests across the landscape, and moving the nation closer to energy independence through the use of woody biomass will provide jobs, a primary emphasis of ARRA.

The Federal Fire Policy emphasizes that wildland fire is a critical natural process that must be reintroduced into the ecosystem. Currently, unmanaged fuel loads in many areas support large, hot, uncontrolled, and devastating wildfires that destroy life and property, including historic properties. Mechanical treatments, such as thinning and timber sales, in combination with prescribed fire will reduce fuel loading and stand density in areas adjacent to the Wildland Urban Interface, for example, so that wildfires approaching these areas will “go to the ground” where they can be effectively and safely suppressed.

Fuels reduction projects and other vegetation treatment and habitat improvement projects will also help protect historic properties from the devastating effects of catastrophic wildfires and the associated suppression activities and subsequent erosion. Although beneficial to historic properties over the long-term, these projects are undertakings that have the potential to affect historic properties, particularly fire-sensitive sites, and steps should be taken to avoid or minimize those effects.

Stipulation IV.A.4 of the Region 3 *First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities* (Programmatic Agreement) provides for the development of “Standard Consultation Protocols” for certain classes of undertakings where effects on historic properties and resulting protection and treatment are similar and repetitive. Such protocols specify standard procedures for the identification, evaluation, and treatment of historic properties. In accordance with the Programmatic Agreement, in developing this protocol the Forest Service consulted with the Arizona, New Mexico, Oklahoma, and Texas State Historic Preservation Officers (SHPOs), the Advisory Council on Historic Preservation (Council), and 50 Indian tribes for whom properties within National Forests might have traditional cultural or religious significance.

Once approved by the Forest Service, the Council, and the SHPOs and once formally incorporated into the Programmatic Agreement as Appendix J, the Forests may implement the procedures identified in this protocol in lieu of standard consultation procedures in the Programmatic Agreement or the Council’s regulations, when taking into account the potential effects of these types of projects on historic properties. This protocol will fully supersede all provisions of the 2004 *First Amended Programmatic Agreement Among the USDA Forest Service, Southwestern Region, Arizona State Historic Preservation Officer, New Mexico State Historic Preservation Officer and The Advisory Council on Historic Preservation Regarding Wildland Urban Interface And Other Large-Scale Hazardous Fuels Reduction Projects*.



STIPULATIONS

The FS shall ensure that the following stipulations are carried out:

- 1. SCOPE.** This protocol covers ARRA projects, WUI projects, and other large-scale (larger than 1,000 acres) fuels reduction, vegetation treatment, and habitat improvement projects. Activities covered by the protocol include: hand thinning; mechanical thinning; use of equipment such as Hydro-ax, Agra-ax, brush crushers and brushhogs; timber sales; slash disposal, including lopping and scattering, chipping, pile burning, and windrow or jackpot burning; broadcast burning; and fuelwood use, including free use, fuelwood permits, and commercial fuelwood sales.
- 2. INTERNAL COORDINATION AND TRACKING.** The FS shall ensure that heritage specialists are brought into the planning process for projects as early as possible so that the potential effects to cultural resources can be evaluated. The FS shall also ensure that a system is in place to track implementation of heritage resource protection and monitoring requirements, and that necessary communication and coordination between heritage and fuels treatment and/or other appropriate specialists will continue throughout the implementation of projects carried out under this protocol.
- 3. TRIBAL CONSULTATION.** The FS shall follow the procedures for tribal consultation contained in Stipulation III of the Programmatic Agreement. As early as possible in the planning process, the FS shall consult with American Indian tribes to determine if any properties of traditional cultural or religious importance are present within the project's area of potential effect. If specific properties are identified, the FS shall consult with the appropriate tribes concerning evaluation, determination of effects, and protection measures. If agreement cannot be reached or if adverse effects cannot be avoided, the FS shall consult case-by-case with interested tribe(s) and the SHPO as provided for in the Programmatic Agreement.
- 4. PUBLIC INVOLVEMENT.** The FS shall use the procedures in Stipulation II of the Programmatic Agreement to seek and consider the views of the public.
- 5. IDENTIFICATION.** The Forest Archaeologist shall determine or approve the level of field survey for each project using the guidelines in Section I of this protocol. Alternatively, a Forest or Forests may opt to develop a Forest-wide survey strategy for WUI and other large-scale fuels reduction, vegetation treatment, or habitat improvement projects in consultation with the SHPO and thereby further eliminate the need for individual project notifications for sample surveys.
- 6. EVALUATION.** The FS and the SHPOs agree that certain classes of properties (Appendix B of the Programmatic Agreement) may be determined eligible for the National Register of Historic Places for Section 106 purposes based on survey information without further case-by-case SHPO consultation. The FS shall ensure that properties that will be affected by an undertaking are evaluated conclusively for eligibility for inclusion in the National Register by applying the National Register criteria (36 CFR 63) in consultation with the SHPO and any Indian tribe that attaches religious and cultural significance to the properties. Forests are encouraged to make eligibility determinations for other properties in consultation with the SHPO whenever possible; however, the eligibility of a property may remain unresolved, provided it is treated as eligible and the property will not be affected by the undertaking.
- 7. EFFECT.** Following completion of the survey approved by the Forest Archaeologist in accordance with Section I, the FS shall determine the effects of the project on historic properties:

a) **No Historic Properties Affected.** If no properties are identified within the area of potential effect or if properties are present and all eligible and unevaluated properties are avoided through application of the site protection measures in Section II, and provided that none of the conditions requiring case-by-case consultation specified in the Programmatic Agreement (Stipulation V.E.6) apply, a determination of "No Historic Properties Affected" will be made for the project in accordance with 36 CFR 800.4(d)(1). This will include only those projects in which a 100% survey is conducted and all eligible and unevaluated properties will be protected.

b) **No Adverse Effect.** If portions of the area of potential effect have not been surveyed because an approved sample survey strategy was implemented, or if eligible and/or unevaluated properties are present and will be affected, but through application of the protection measures in Section II potential adverse effects on eligible and unevaluated properties have been minimized to the extent that they do not meet the criteria of Adverse Effect contained in 36 CFR 800.5(a)(1), and provided that none of the conditions requiring case-by-case consultation specified in the Programmatic Agreement (Stipulation V.E.6) apply, a finding of "No Adverse Effect" will be made for the project in accordance with 36 CFR 800.5(b).

c) **Adverse Effect.** If the Forest Archaeologist determines that one or more properties may be adversely affected, the FS shall consult case by case on the project in accordance with the Programmatic Agreement (Stipulation V.E.5 and 6).

8. PROTECTION. The Forest Archaeologist shall draw from the protection measures in Section II to ensure that effects to historic properties are avoided. Site protection requirements shall be documented in the inventory report and on the FS Inventory Standards and Accounting (IS&A) form.

9. MONITORING. Terms and conditions of Section 106 compliance shall include appropriate post-project monitoring requirements as determined necessary by the Forest Archaeologist, to assess the effectiveness of protection measures. One purpose of post-treatment monitoring is to gather data that will be used to improve planning for protection of heritage resources in future projects. For prescribed fires, Forests are encouraged to assess the effects of prescribed fire on both fire-sensitive and non fire-sensitive sites to expand available information on the effects of prescribed fire on historic properties. All site monitoring shall be documented on a site update form and/or monitoring report as appropriate. Each Forest shall maintain an updated list of sites/projects to be monitored which will include the date monitoring is completed and the monitoring results.

10. INVENTORY REPORT. Inventory reports shall conform to the Programmatic Agreement (Stipulation V.C.4). The FS shall also ensure that reports include a description of all planned activities, equipment to be used, expected impacts, and a detailed discussion and rationale for the survey strategy if less than 100%.

11. APPROVAL. When all of the above stipulations are complied with and the inventory report has been approved by the Forest Archaeologist, and provided that the undertaking will not have an adverse effect on historic properties and none of the conditions requiring case-by-case consultation specified in the Programmatic Agreement (Stipulation V.E.6) apply, the Forest Supervisor may approve the report and proceed with the undertaking, provided all site-specific protection measures are implemented. The Forest Supervisor shall forward a copy of the report, IS&A form, and associated site forms to the SHPO within 30 days, unless otherwise agreed to with the SHPO.

12. CASE-BY-CASE CONSULTATION. The FS shall follow the Programmatic Agreement (Stipulation V.E.6) for direction on when case-by-case consultation is necessary.

13. DISCOVERY SITUATIONS. There is the potential for encountering previously unrecorded properties or for affecting properties in an unanticipated manner during the course of these projects. Previously unrecorded properties that are encountered during the course of a project shall be documented and protected in the same manner as other properties, using the protection measures in Section II. If the FS determines that a property has been damaged, the FS shall halt all activities that could result in further damage to the property and shall notify the appropriate SHPO concerning proposed actions to resolve adverse effects. The SHPO shall respond within 48 hours of notification. The FS shall carry out the agreed-upon actions. If human remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered, the provisions of NAGPRA (25 USC 3002(d)) and NAGPRA regulations (43 CFR 10) shall be followed. All work in the immediate vicinity of the discovery shall stop, and the FS shall take all reasonable steps necessary for the protection of the remains and objects.

14. PHASING. A phased approach should be used only when a large-scale project is to be implemented in phases spanning more than one fiscal year and it is not reasonably possible to complete Section 106 compliance for all aspects of the undertaking prior to reaching a NEPA decision. Where deemed necessary by the Forest Supervisor, consultation for such a project may be carried out in two or more phases corresponding to the implementation phases of the project. In this phased approach, a final NEPA decision on the project may be made prior to completion of the identification and evaluation of properties in the entire project area provided that all of the following requirements are met:

- a. none of the conditions in the Programmatic Agreement Stipulation V.E.6 apply to the project;
- b. the requirements in Stipulations 2-8 in this protocol have been completed for the first phase of the project or a justification has been provided to the SHPO as to why completion of the first phase is not feasible;
- c. an initial Section 106 compliance report and signed IS&A form are completed prior to the NEPA Decision and clearly state that the identification and protection requirements of this protocol shall be completed prior to the authorization of on-the-ground work in each phase of the project
- d. the expected nature and distribution of properties in the entire project area and anticipated effects are discussed and considered in the initial project-wide Section 106 compliance report and in the NEPA analysis;
- e. the protection measures in Section II will be sufficient to protect properties in the entire project area, and;
- f. the NEPA decision document clearly states that initiation of work in any phase of the project will be contingent upon completion of the identification and protection of historic properties and compliance with applicable provisions of NHPA in accordance with this protocol.

If the FS subsequently determines that adverse effects on historic properties in any phase of the project cannot be avoided, the FS shall consult with the SHPO and other consulting parties in accordance with the Programmatic Agreement (Stipulation V.E.5 and 6) and will amend its decision if necessary to disclose the effects.

15. ANNUAL REVIEW. As part of the Annual Meeting carried out pursuant to the Programmatic Agreement (Stipulation XIII.D), the Forests, the SHPO, and the Council, if it chooses to participate, shall discuss the activities carried out pursuant to this protocol, re-evaluate its procedures, and determine whether continuation, modification, or cancellation is appropriate.

16. REVISIONS AND AMENDMENTS. Any signatory to this protocol may request that it be revised or amended, whereupon the parties shall consult to consider the change. Changes may be made by written consent of the Regional Forester, SHPOs, and Council after appropriate consultation.

17. TERMINATION. Any signatory to this protocol may terminate it by providing thirty (30) days notice to the other parties. The signatories will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FS shall comply with the Region's Programmatic Agreement, or 36 CFR 800, with regard to individual undertakings that otherwise would be covered by this protocol. Termination by an individual SHPO shall only terminate the application of the protocol within the jurisdiction of that SHPO.

18. EXECUTION. Execution and implementation of this protocol satisfies the Forest Service's Section 106 responsibilities for all WUI and ARRA projects and other large-scale fuels reduction, vegetation treatment and habitat improvement projects in the Region that are treated in conformance with the stipulations herein.

19. IMPLEMENTATION. This protocol becomes effective on the date of the last signature below and will be implemented immediately.

C. L. Newman

Corbin Newman, Regional Forester
USDA Forest Service – Southwestern Region

12.23.09

Date

James W. Garrison, State Historic Preservation Officer
State of Arizona

Date

Jan Biella, Interim State Historic Preservation Officer
State of New Mexico

Date

A handwritten signature in cursive script, reading "Bob L. Blackburn", written in black ink.

Bob L. Blackburn, State Historic Preservation Officer
State of Oklahoma

A handwritten date "Feb 12, 2010" in cursive script, written in black ink.

Date

F. Lawrence Oaks, State Historic Preservation Officer
State of Texas

Date

John M. Fowler, Executive Director
Advisory Council on Historic Preservation

Date

APPENDIX J
SECTION I

HERITAGE RESOURCE SURVEY STRATEGIES
FOR LARGE-SCALE FUELS REDUCTION, VEGETATION TREATMENT,
AND HABITAT IMPROVEMENT PROJECTS

The following guidelines will be used to determine survey strategies under this protocol.

Pre-field Research

The Forests will utilize relevant information to assess the project's potential to affect heritage properties and the expected nature and distribution of historic properties that may be affected.

Expected nature and severity of project impacts (this should include consideration of all planned activities and entries) based on:

- type and intensity of mechanical treatment
- type and intensity of prescribed burn, including fuel loading and fire prescription
- type and intensity of fuelwood use
- other associated ground disturbing activities

Expected nature and distribution of heritage resources based on:

- heritage GIS survey and site layers or hard-copy survey and site atlases
- previous heritage reports and site forms
- cultural resource overviews and planning assessments
- information obtained through tribal consultation and public input
- information provided by other resource specialists familiar with the project area
- topographic maps, aerial photographs, ortho-photo quads
- other available GIS layers and maps including soils, vegetation type, slope
- determination of known/expected fire-sensitive sites

Field Survey

Not all situations will require 100% survey. In most cases, the Forest Archaeologist will be able to determine the level of survey needed based on the following guidance. Where not specifically required below, forest archaeologists are encouraged to discuss sampling survey designs with SHPO. The following will guide the identification of areas selected for survey and the level of survey coverage.

1. Areas previously surveyed to current standards, as defined in paragraph V.C.2 of the Programmatic Agreement, do not have to be resurveyed.

2. Activities conducted on slopes greater than 40% may or may not be surveyed at the discretion of the Forest Archeologist without prior SHPO consultation.
3. For activities conducted within areas that were previously disturbed by chaining, discing, plowing, windrowing, crushing, or other extensive ground disturbing treatments, a sample survey strategy may be approved by the Forest Archaeologist without prior consultation with the SHPO. The nature, degree and extent of previous ground disturbing activities and the likelihood of finding cultural resources or locations within the treated areas that remain undisturbed shall be considered when making the decision to survey at less than 100%. This information will be documented and discussed in the survey report.
4. Hand thinning. Activities involving hand cutting and /or thinning, with no use of mechanized equipment and no follow-up prescribed burning, are low impact activities, and may or may not be surveyed at the discretion of the Forest Archeologist without prior SHPO consultation.
5. Prescribed burns. Surveys for prescribed burn areas will include all locations likely to contain fire-sensitive sites based on pre-field research, expected fire behavior, and other relevant data. Additional survey may be conducted at the Forest Archeologist's discretion. The survey strategy shall identify the types of sites that are considered fire-sensitive for each prescribed burn area, using the guidelines in Section III of this protocol. This should include both known fire-sensitive sites and other sites considered fire-sensitive for the specific burn based on fuel loading, site characteristics, and expected fire behavior. If existing inventories indicate the presence or likelihood of fire-sensitive properties throughout the area of potential effect, the area will be surveyed 100% or a proposed sample survey strategy will be submitted to the SHPO for review in accordance with the Programmatic Agreement (Stipulation V.C.3).
6. Other Fuels Reduction, Vegetation Treatment, and Habitat Improvement Projects. Except for the provisions in 1 through 3 above, all high impact treatments resulting in intensive ground disturbance that would likely adversely affect any historic properties that may be located in the area of potential effect will receive 100% survey. These treatments include but are not limited to:
 - construction of roads, landings and skid trails
 - intensive mechanical treatments: machine piling, windrowing, chaining, plowing, mechanical crushing
 - clearcuts
 - timber sale cutting units
 - hand and mechanical fire line construction
 - staging areas
 - constructed safety zones
 - installation of water bars and other constructed erosion control features

For other mechanical fuels reduction, vegetation treatment, and habitat improvement projects with potential impacts that are not considered to be high impact treatments, including but not limited to pre-commercial thinning of small diameter trees and fuelwood areas dispersed over a large area (e.g. District-wide), a sample survey strategy may be approved by the Forest Archaeologist without prior consultation with the SHPO if existing inventories indicate the site density in the area of potential effect is lower than the average site density for the forest and the level of impact is such that the Forest Archaeologist determines that it is unlikely that any historic properties that may be present outside the surveyed areas will be adversely affected by the activity. Information concerning the nature of the undertaking, site density, and evaluation of potential effects that led to this determination will be discussed in the survey report. If existing inventories do not indicate the site density is lower than the forest average, or if the Forest Archaeologist

determines that the undertaking will result in intensive ground disturbance, the areas will be surveyed at 100%, except for the provisions in 1 through 3 above, or a proposed sample survey strategy will be submitted to the SHPO for review in accordance with the Programmatic Agreement (Stipulation V.C.3).

7. Any deviation from the above survey procedures that involves less than 100% survey will require prior SHPO consultation in accordance with the Programmatic Agreement (Stipulation V.C.3).

APPENDIX J
SECTION II

AGREED-UPON STANDARD SITE PROTECTION MEASURES

Various combinations of the following protection measures may be approved by the Forest Archaeologist to protect sites for projects listed in this protocol without additional SHPO consultation.

Prescribed Burning

Protect fire-sensitive sites:

- Exclude from project area
- Hand line
- Black line
- Wet line
- Foam retardant
- Structural fire shelter
- Remove heavy fuels from site by hand
- Prevent in-situ heavy fuels that cannot be removed from ignition (e.g., flush-cut & bury stumps)
- Implement same protective measures for future maintenance burns.

Protect selected other sites from burning (optional).

Allow burning over non fire-sensitive sites provided:

- No ignition points within site boundaries
- No staging of equipment within site boundaries
- No slash piles within site boundaries.

Allow construction of safety zones and additional lines in 100% surveyed areas, with archaeological monitoring as appropriate to assure historic properties are avoided.

Thinning, Hand and Mechanical Treatments

No treatments or ground disturbance within site boundaries -or-

Allow treatments within site boundaries, provided:

- Cutting is accomplished using hand tools only
- Large diameter trees are felled away from all features
- materials removed from the site are removed by hand
- No dragging of logs, trees, or thinned material across or within site boundaries.

No use of vehicles or other mechanized equipment within site boundaries.

No staging of equipment within site boundaries.

No slash piles within site boundaries.

Fuelwood Sales

No fuelwood cutting or vehicles within site boundaries -or-

Allow fuelwood cutting within sites provided that:

- no vehicles allowed within site boundaries
- No dragging of logs, trees, or cut material across or within site boundaries
- materials removed from the site are removed by hand.

Allow fuelwood cutting in areas of large, continuous, low-density artifact scatters that cover large portions of a landscape provided that:

- all features and artifact concentrations are recorded and avoided
- use of vehicles is prohibited during wet ground conditions
- periodic monitoring is used to assess impacts and if impacts are noted, fuelwood cutting will be prohibited in the area.

The Forest Archaeologists may approve additional measures to further protect sites.

APPENDIX J

SECTION III

FIRE-SENSITIVE SITES

A review of available literature on the effects of fire on cultural resources and on the experience of Forest Service heritage resource specialists and the SHPO indicates that there are two categories of fire-sensitive sites. The first consists of sites long-known to be vulnerable to the effects of even low-temperature fires and/or light fuel loads, such as sites that contain organic materials, exposed wooden architecture, etc. The second group includes sites that have generally been considered to have less risk for fire effects in most situations, including prehistoric and historic sites with deeply buried cultural deposits; prehistoric and historic artifact scatters; and prehistoric and historic sites with non-flammable surface features. However, depending on field conditions -- especially fuel loading -- as well as specific site characteristics and expected fire behavior, these other site types may be fire-sensitive in certain fuels reduction projects.

Known Fire-Sensitive Site Types in the Southwestern Region:

- Historic sites with standing, or down wooden structures or other flammable features or artifacts
- Rock art sites (depending on rock type, exposure, fuel type, and fuel loading)
- Cliff dwellings
- Prehistoric sites with flammable architectural elements and other flammable features or artifacts
- Prehistoric sites with exposed building stone of soft or porous material such as volcanic tuff
- Culturally modified trees, including aspen art and peeled/scarred trees
- Certain traditional cultural properties (based on consultation with tribes)

Other Project-Specific Fire-Sensitive Sites:

- Other sites, based on local field conditions and Forest-specific concerns
- Other sites, based on consultation with SHPO staff
- Other sites, based on consultation with fire management staff, fire behavior specialists or fire effects researchers

Forest Archaeologists will use site assessment and monitoring data, and will consult with fire management staff, to identify known and other project-specific fire-sensitive sites for individual Forests or project areas. Fire-sensitive sites officially determined ineligible for the National Register of Historic Places do not require protection under Section 106.

APPENDIX J
SECTION IV

DEFINITIONS

1. **Black Line.** A fireline created by burning the organic matter and then extinguishing the fire.
2. **Broadcast Burn.** Broadcast burning uses fire over a designated area to consume natural or activity slash that has not been piled or windrowed. Broadcast burning may be used separately or in conjunction with mechanical methods such as thinning. Broadcast burns may be ignited by hand, by “terra-torches”, torches mounted on 4-wheelers or on a flat-bed truck, or with aerial ignition. Preparation for the burn may include line building, both by hand and machine.
3. **Burn Plan.** A detailed plan for conducting a prescribed burn that identifies the burn units, fire control methods, and weather condition criteria.
4. **Chipping** - In the chipping process, slash is forced through a chipping machine, reducing the larger pieces of slash to small chips that are spread over the site to be burned at a later date, or left on site to naturally decompose
5. **Crushing** - Crushing involves dragging a large drum with protruding spokes or spikes over the vegetation, effectively breaking the fuel into smaller pieces. Another form of crushing uses a “brush crusher” in which a piece of equipment similar to a “weed-whacker” is attached to a tractor. The “brush crusher” is able to reduce the height of vegetation from 4’ to 6’ down to 6” in height. Both of these pieces of equipment are pulled or transported by either rubber tire tractors, or rubber or metal track dozers. The “brush crusher” may operate on up to a 60% slope.
6. **Federal Fire Policy.** The *Federal Wildland Fire Management Policy* signed by the Secretaries of Agriculture and Interior following the 1994 wildfire season. The Federal Fire Policy guides and provides for the coordination of fire management activities of the of the Forest Service, National Park Service, Bureau of Indian Affairs, Bureau of Land Management, U.S. Fish and Wildlife Service and the National Biological Service.
7. **Fire Prescription.** Measurable criteria that define conditions under which a prescribed fire may be ignited, set prescriptive parameters (rate of spread, intensity, flame length, etc.), guide selection of appropriate management response, and indicate other required actions.
8. **Fireline.** A narrow, linear strip, cleared of vegetation to dirt that inhibits and/or contains the spread of fire. Firelines vary in width from one foot to over 10 feet, with most being two feet wide or less.
9. **Fuel loading.** The nature and amount of accumulated fuels which contribute to the intensity and duration of a fire.
10. **Fuelbreak.** An area adjacent to or surrounding a Wildland Urban Interface area or other protected area, where thinning and other treatments are used to substantially reduce hazardous fuels. Fuelbreaks will vary in width according to the fuel profile and topography.

11. **Hazardous Fuels Reduction.** Activities to decrease fuel loading and stand density to a manageable degree to reduce crown fires. Treatments include creation of fuelbreaks, thinning, and disposal of fuelbed materials using mechanical or non-mechanical means.
12. **Hydro-Ax And Agra-Ax** - The Hydro-ax and Agra-ax are large cutting tools attached to a “Bobcat” type tractor. They are used in the pinyon/juniper type, cutting trees off at the ground level. The trees are usually left to lay where they fall, assisting in soil retention.
13. **Inventory Standards and Accounting (IS&A) Form.** FS form (R3-FS-2300-4) which serves as the cover sheet for inventory reports and includes conditions of Section 106 compliance, such as site specific protection measures and monitoring requirements.
14. **Lopping And Scattering** - Thinned areas not piled may be “lopped” to reduce fuel slash heights and then broadcast burned. Lopping consists of cutting smaller branches off the main stem so the height of the slash layer is reduced, which in turn allows for a less intense fire if the area is broadcast burned.
15. **National Fire Plan.** The report, *Managing the Impacts of Wildfires on Communities and the Environment, A report to the President in Response to the Wildfires of 2000*, prepared by the Secretaries of Agriculture and Interior. The report calls for action and funding in five key areas: Firefighting; Restoration and Rehabilitation of Burned Areas; Hazardous Fuels Reduction; Community Assistance; and Coordination and Monitoring.
16. **Pile Burning** - Pile burning disposes of hand or machine-piled slash. Piling the slash and burning during cooler, wetter, or winter conditions reduces the chance of escape and lessens the potential for damage to the remaining vegetation on site. Piles are normally ignited by hand using fuses or drip torches.
17. **Prescribed Burn.** A prescribed fire ignited by management to meet specific objectives. A prescribed burn may involve broadcast burning over an entire area or burning of thinning slash that has been piled or windrowed.
18. **Thinning.** Thinning reduces stand density by removing stems in the understory, midstory, and overstory. Thinning actions will vary between fuelbreaks and areas surrounding fuelbreaks.
 - **PRECOMMERCIAL THINNING** – Pre-commercial thinning involves hand thinning of smaller diameter materials. Small material will be piled, while larger material will be utilized for personal fuelwood or sold for commercial fuelwood. Piles will be burned in the fall and winter season and potentially during the summer if conditions become suitable. The actual piling of the material may be accomplished by hand or machine, where equipment such as dozers and small tractors will haul the material to piles. Slash is also pushed or dragged into windrows. Some slash may be “rough-piled” or “jackpot piled” where heavier concentrations of fuel are left where they fall and are burned on site.
 - **COMMERCIAL THINNING** – Commercial thinning, accomplished through timber sales, involves larger materials. Material that is large enough for commercial thinning (merchantable timber), may be removed to a landing using a rubber-tire skidder, or tracked vehicle. Where slopes exceed 30%, tracked skidders are used more frequently because of their maneuverability. Whole tree skidding methods move the entire tree to the landing, and

then remove the branches, concentrating the slash where it can be utilized as fuelwood or burned.

19. **Wetline.** A fire line constructed using water or foam, intended to prevent the advance of fire.
20. **Wildfire.** An unwanted wildland fire.
21. **Wildland fire.** Any non-structure fire, other than prescribed fire, that occurs on undeveloped land.
22. **Wildland Urban Interface.** Those areas of resident populations of imminent risk from wildfire, and human developments having special significance. These latter areas may include critical communications sites, municipal watersheds, high voltage transmission lines, observatories, church camps, scout camps, research facilities, and other structures that, if destroyed by fire, would result in hardship to communities. These areas encompass not only the sites themselves, but also the continuous slopes and fuels that lead directly to the sites, regardless of the distance involved.