

**PROGRAMMATIC AGREEMENT  
AMONG THE  
U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND THE  
NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING RANGELAND MANAGEMENT ACTIVITIES  
ON NATIONAL FOREST SYSTEM LANDS**

**WHEREAS**, the U.S. Department of Agriculture, Forest Service (Forest Service), in administering multiple-use management of National Forest System lands, manage rangeland resources in conformance with federal regulations directing Forest Service range management titled Range Management Subpart A—Grazing and Livestock Use on the National Forest System (36 CFR 222, Subpart A); and

**WHEREAS**, the Forest Service is committed to preserving and fostering appreciation of heritage resources on and related to National Forest System land management through appropriate programs of protection, research, treatment, and interpretation in keeping with historic preservation and environmental protection statutes and regulations; and

**WHEREAS**, the issuance of term grazing permits and the administration and management of rangeland activities associated with term grazing permits for National Forest System lands (rangeland management activities) may affect properties either listed in or eligible for listing in the National Register of Historic Places (historic properties), the Forest Service has consulted with the Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation Officers (NCSHPO) regarding the process by which historic properties shall be considered in conducting rangeland management activities, in accordance with the intent of Section 106 and Section 110(a) of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f and 470h-2), and the Council's implementing regulations entitled "Protection of Historic and Cultural Properties" (36 CFR Part 800); and

**WHEREAS**, the Council encourages the coordination and integration of implementing procedures for Section 106 of the National Historic Preservation Act (NHPA) described at 36 CFR Part 800 with environmental review carried out pursuant to National Environmental Policy Act (NEPA) and other environmental and historic preservation authorities through the development of agreements, pursuant to 36 CFR Part 800.13; and

**WHEREAS**, a nation-wide, coordinated program among National Forests would facilitate compliance with Section 106 of the NHPA and related authorities, and improve consistency and accountability in the development and application of appropriate measures to inventory, evaluate, protect, interpret, enhance and manage historic properties; and

**WHEREAS**, unless otherwise defined in Attachment 1 of this Agreement, all terms are used in accordance with current regulations at 36 CFR Part 800; and

**WHEREAS**, the Forest Service has consulted with the Council and the NCSHPO regarding the process by which historic properties shall be considered by the Forest Service in conducting rangeland management activities, in accordance with Section 106 and Section 110(a) of the NHPA (16 USC 470), and its implementing regulations, Protection of Historic and Cultural Properties (36 CFR Part 800);

**NOW, THEREFORE**, the Forest Service, the Council, and the NCSHPO mutually agree that the Forest Service shall carry out its Section 106 responsibilities in accordance with the stipulations of this Agreement in order to take into account the effects of rangeland management activities on historic properties.

## STIPULATIONS

The Forest Service agrees that the issuance of term grazing permits and administration of rangeland management activities shall be conducted in accordance with the following stipulations.

### I. STANDARDS

#### A. PROFESSIONAL QUALIFICATION STANDARDS

All actions taken with regard to the identification, evaluation, and management of heritage resources on National Forest System lands shall comply with the provisions of Section 112(a)(1) of the NHPA (16 U.S.C. 470h-4(a)). Until such time that professional qualifications standards are developed by the Office of Personnel Management, heritage resource program activities related to the implementation of this Agreement shall be carried out under the direction of qualified Forest Service personnel or contractors that meet the "Secretary of Interior's Guidelines for Historic Preservation Projects, Professional Qualifications Standards (48 FR 44738, September 29, 1983), the minimum qualification standards listed in 36 CFR Part 296.8, or Office of Personnel Management's X-118 standards and are working at a journeyman level (GS-11). For the purposes of this Agreement, such qualified professionals shall be referred to as Heritage Resource Specialists (HRSS).

#### B. REPORTING AND DOCUMENTATION STANDARDS

Documentation produced in accordance with the terms of this Agreement may include heritage resource inventory reports, evaluation reports, treatment plans, management plans, data recovery plans and reports, overviews, and SHPO and Council documentation. Documentation shall meet the standards set forth in Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines (48 FR 44716, September 29, 1983) in appropriate disciplines, as determined by the types of studies performed, and types of heritage resources identified within Areas of Potential Effects (APEs) for term grazing permits. Supplemental documentation requirements may be provided in State Historic Preservation Plans, SHPO guidance, Regional and Forest standards, and historic preservation plans developed for Forests or Regions. Such supplemental documentation requirements shall be cited in Memoranda of Understanding (MOUs) developed pursuant to this Agreement.

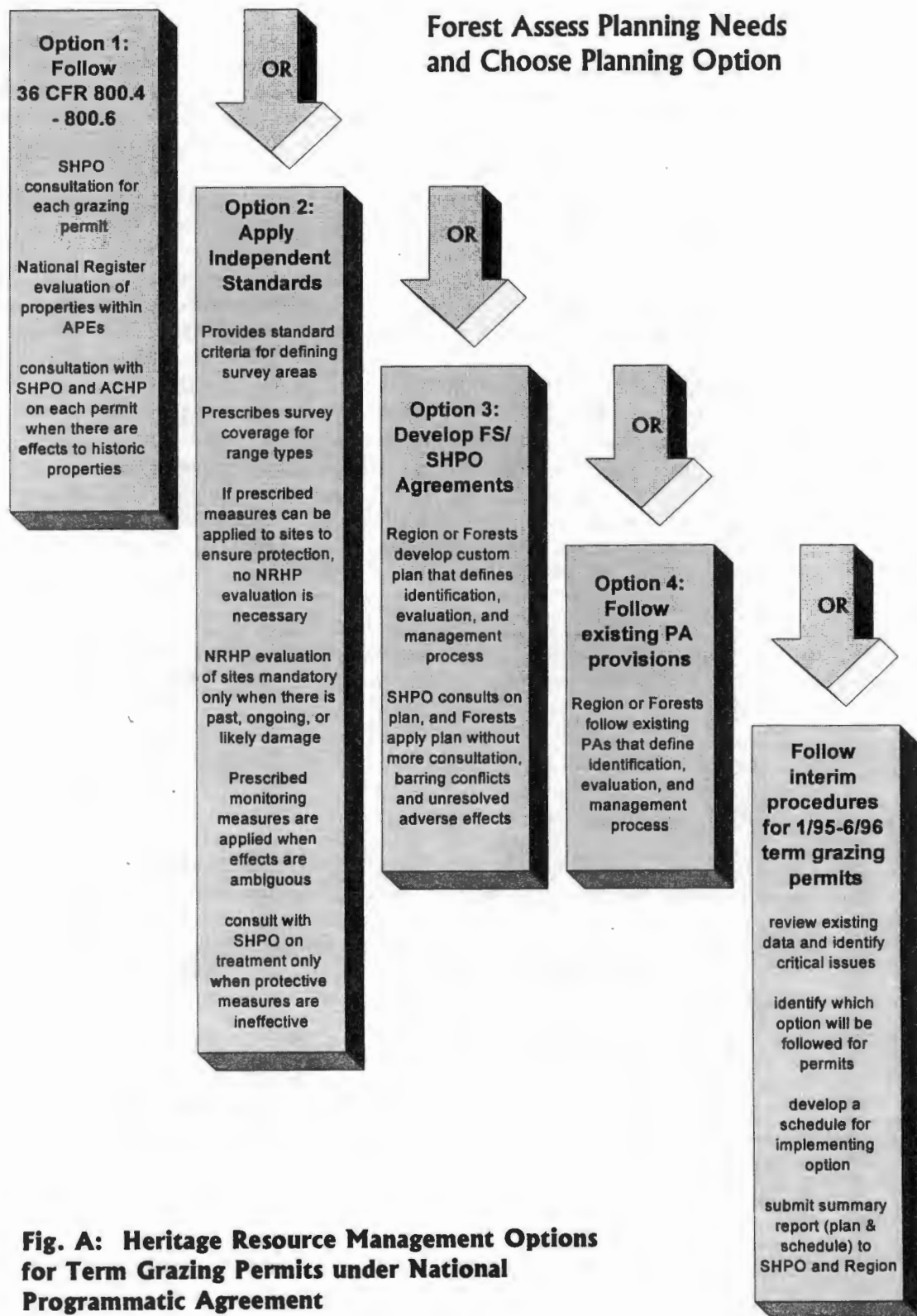
### II. PLANNING OPTIONS AND OBJECTIVES

This Agreement accommodates the diverse planning needs of Forest Service Regions (Regions) and their member Forests by offering four options for heritage resource management related to rangeland management activities. Each Forest, in consultation with the Region, shall assess their planning needs to determine the planning options best suited to their needs and circumstances. Regions or Forests may choose from these options on a region-wide or permit-specific basis, according to regional or individual Forest needs and circumstances. The options and salient characteristics of each are summarized in Figure A.

This Agreement should be implemented in ways that ensure the timely provision of information for compliance with NEPA and coordination between heritage resources and other Forest staff responsible for the preparation of NEPA documents and other planning efforts (e.g., Forest Land and Resource Management Plans).

#### A. OPTION 1 -- COMPLIANCE WITH 36 CFR Part 800.4-800.6

Regions or individual Forests may elect to satisfy their Section 106 requirements by following the procedures described at 36 CFR Part 800.4 – 800.6, rather than alternative options described in this Agreement. Option 1 involves consideration of each term grazing permit and individual consultation



**Fig. A: Heritage Resource Management Options for Term Grazing Permits under National Programmatic Agreement**

with SHPOs of states with review authority and responsibilities within those Forest Service administrative areas, and the Council as appropriate, under the terms of 36 CFR Part 800.4-800.6.

**B. OPTION 2 -- CRITERIA AND STANDARDS FOR INDEPENDENT MANAGEMENT**

Option 2 is offered to eliminate or reduce the need for permit-specific consultation with the SHPO under certain circumstances. It does so by providing criteria and standards for determining inventory areas and methods, the circumstances that prompt heritage resource evaluation, and standard protective management measures. This prescriptive approach is termed the "independent management option" because criteria and standards are explicitly defined, have been designed to ensure general agreement by review agencies, and can be applied in a formulaic manner. Application of Option 2 eliminates the need for permit-specific consultation with the SHPO or Council and allows independent heritage resource management by Forests, as long as the criteria and standards are met. Option 2 also eliminates Council review when Forest and SHPOs agree on the treatment of adverse effects. The criteria and standards that guide this independent management are described in Attachment 2.

**C. OPTION 3 -- DEVELOPING FOREST SERVICE/SHPO AGREEMENTS**

Regions or Forests may elect to develop Memoranda of Understanding (MOUs) with SHPOs of states with review authority and responsibilities within those Forest Service administrative areas. MOU development provides opportunities to tailor inventory, evaluation, management, monitoring, and review processes to the circumstances of Regions or Forests, and to integrate those procedures with NEPA and NFMA requirements. Option 3 MOUs have the potential to grant Forests considerable independent heritage resource management authority (reducing or eliminating SHPO and Council review), depending on the terms of the MOUs.

MOUs and their related plans must describe inventory, evaluation, monitoring, and management processes that are tailored to the nature of rangeland management activities within a defined APEs, and should integrate heritage resource management with the consideration of natural resources within the context of other authorities (e.g., NEPA, NFMA, Ecosystem Management directions, Section 110 of the NHPA).

MOU objectives and requirements are described in Attachment 3. Review of MOUs by the SHPO is described in Stipulation IV.A.2 of this Agreement.

**D. OPTION 4: COMPLIANCE WITH EXISTING PROGRAMMATIC AGREEMENTS**

Regions or Forests may elect to satisfy their Section 106 requirements by following the procedures in existing Programmatic Agreements (PAs) executed pursuant to 36 CFR Part 800.13, where such PAs do not exclude the consideration of term grazing as undertakings, and where such PAs provide for a process of inventory, evaluation, and management applicable to issuance of term grazing permits and consistent with the intent of this agreement.

**E. INTERIM PROCEDURES FOR TERM GRAZING PERMITS**

Forests that elect to issue term grazing permits between January 1995 - June 1996 may defer completion of planning options described in Stipulations II.A.B. C, and D. However, if term grazing permits include previously ungrazed lands or authorize new ground-disturbing facilities, then Forests must choose from planning Options 1-4 to satisfy their responsibilities under Section 106 and the terms of this Agreement, and may not defer heritage resources planning activities under this Stipulation II.E.

If Forests elect to defer planning options that qualify under these conditions, the Forests shall develop a plan to complete one of the planning options and submit a report to the appropriate SHPOs and Regional Office that identifies for each permit:

1. the proposed term grazing permit(s), including allotment acreage(s) and scheduled date(s) of permit issuance;
2. efforts to date to identify known heritage resources within the allotment(s);
3. public participation efforts, including Native American consultation;
4. known or anticipated conflicts between heritage resources and rangeland management activities, if any;
5. the selected option, as described in Stipulations II.A.B.C, and D; and
6. a schedule for implementing the selected option.

Deferral of inventory, evaluation, and management of heritage resources until after the issuance of term grazing permits does not relieve the Forest Service of responsibilities under other legal authorities (e.g., NEPA, NFMA).

#### F. REGIONAL COORDINATION

Each Forest Service Regional Office shall serve as an information coordinator under this Agreement. The Region shall notify their Forests of the execution and terms of this Agreement, including any specific guidance that the Regions may wish to convey with regard to implementing the terms of the Agreement.

### III. PUBLIC PARTICIPATION

The Forest Service shall seek and consider the views of the public in selecting an option and carrying out actions under the terms of this Agreement. Forests shall establish mechanisms for seeking and taking into account the views and information of interested persons, including local governments, permittees, Indian Tribes, and interested Native American groups.

Forests should also coordinate the public participation requirements of Section 106 with NEPA by including within Environmental Assessments (EAs) and Environmental Impact Statements (EISs) sufficient information on heritage resource identification, evaluation, consideration of effects, and proposed management measures to adequately inform the public of the effects/impacts of proposed rangeland management activities on heritage resources. Such documents shall, however, not include specific information on the location and character of heritage resources where such information is protected under Section 304 of the NHPA (16 U.S.C. 470w-3) or Section 9 of the Archaeological Resources Protection Act (16 U.S.C. 470hh).

### IV. REVIEW, REPORTING, AND CONSULTATION

#### A. SHPO REVIEW

1. General Time Limits and Authority
  - a) Unless otherwise specified in this Agreement or established by mutual agreement in MOUs, SHPOs shall be afforded 30 calendar days from receipt of appropriate documents to respond to any Forest communications. Should the SHPO not respond within 30 calendar days, the Forests may assume SHPO concurrence with the Forest's documentation and proposed course(s) of action, and shall document nonresponse by the SHPO in the project file.
  - b) If a Forest chooses Option 2 (independent management standards) or Option 3 (MOU development and application), the Forests shall implement the procedures described under each planning option and need not consult with the SHPO with the following exceptions:
    - i) at its discretion, the SHPO may elect to participate with a Forest in consultation on specific undertakings;

- ii) Forests shall respond to a SHPO request to review heritage resource management for individual term grazing permits by providing documentation to the SHPO within 15 calendar days of the request;
- iii) the SHPO shall respond to Forests' submittals within 15 calendar days of receipt of Forest documentation, if that documentation is submitted in a timely manner.
- c) If management measures resulting from the application of any planning option described in Stipulation II fail to protect historic properties or heritage resources from continued degrading damage (effects) to their values as intended, the Forests shall notify the Council and consult with the SHPO on ways to avoid or reduce the adverse effects in accordance with 36 CFR Part 800.5-800.6.

## 2. SHPO Review Under Option 3, MOU Development

- a) SHPOs shall be afforded 30 calendar days from receipt to review draft MOUs developed by Regions or Forests. The comments of the SHPO shall be addressed in revising the MOU, which shall be submitted to the SHPO for a 15 day review.
- b) If the SHPO does not respond within 30 calendar days after receipt of the draft MOU, or within 15 calendar days of receipt of the draft final MOU, the Regions or Forests may assume that the SHPO does not object to the submittal and: submit a copy of the unratified MOUs to the Council and then follow the procedures described in the unratified MOUs. SHPO review periods may be extended, at the discretion of the Regions or Forests submitting the MOUs, upon request by the SHPO.
- c) If the Region or Forest submitting the MOU cannot reach agreement with the SHPO on the terms of the MOU, the Forests shall follow either the procedures described at 36 CFR Part 800.4 – 800.6 (Option 1) or the independent management standards (Option 2) to complete the Section 106 process for individual term grazing permits.
- d) If Forests must proceed with range management activities before MOUs are executed with the SHPO, then Forests may follow the procedures described at 36 CFR Part 800.4 – 800.6, apply independent management standards (Option 2) described in Stipulation II.B and Attachment 2 for individual permits, or defer heritage resource management activities in accordance with Stipulation II.E, until such time as MOU(s) are executed.

## B. PROGRAM REPORTING AND REVIEW

Reporting and review of the implementation and effectiveness of this Agreement shall occur on an annual basis, allowing the Forest Service, SHPOs, and Council, opportunities to monitor and recommend improvements to the Agreement, as appropriate.

### 1. Forest Reports

In lieu of heritage reports for each grazing permit, each National Forest shall prepare an annual report of Rangeland Heritage Resource Activities (Forest Report) for all heritage resources activities conducted under the terms of this Agreement and associated MOUs during the previous fiscal year. If a Forest exclusively follows Option 1, however, a Forest Report is unnecessary. Forest Reports may be scheduled and coordinated with other annual Regional or Forest reports of Section 106 activities to the SHPO provided under other agreements. Forests which choose to follow Option 4 (existing PAs) shall abide by the reporting requirements included in those PAs. In the absence of an alternative reporting schedule, Forest Reports regarding heritage resource management for rangeland management shall be submitted concurrently to SHPOs, Regions, and the FPO no later than March 1, 1996, and annually no later than March 1 of subsequent years.

while this Agreement is in effect. The Regions or Forests, in consultation with SHPOs, may develop standard formats for the report. This Forest Report shall summarize activities carried out under the Agreement, and at a minimum shall include:

- a. a list of term grazing permits, and the planning option selected for each permit or the entire permitting program if a single planning option is selected;
- b. acreage subject to intensive survey;
- c. the number and types of heritage resources inventoried; the number of resources for which protection measures were proposed or implemented, by type of measure; monitoring requirements and efforts; the number of resources evaluated according to NRHP criteria, and the results of those evaluations; the number of resources for which effects are subject to additional study, according to the type of study;
- d. a summary of important information collected during the year's investigations which may serve to update, modify, or refine existing forest overviews, predictive models, historic contexts, or research considerations;
- e. an identification of problems in implementing the provisions of the Agreement and associated MOUs, as well as recommendations which may serve to improve the Agreement; and
- f. any other reportable activities, beyond compliance activities, including public outreach and participation, related to rangeland management and heritage resources.

Unless an extension has been granted by the SHPO, failure to submit a Forest Report may result in termination of a Forest's participation in the terms of this Agreement in accordance with Stipulation VI.C.1.

Each Forest Service Regional Office may coordinate the assembly of Forest Reports of heritage resources activities conducted under the terms of this Agreement and associated MOUs during the previous fiscal year in order to expedite SHPO review.

Forest Reports shall be submitted to the FPO and the appropriate SHPOs related to each Region. The FPO shall consult with the Council to develop standards for the content of the reports.

## **2. National Report**

The FPO or his/her designee shall prepare annually a National Report of Rangeland Heritage Resource Activities (National Report) for heritage resources activities conducted under the terms of this Agreement beginning no later than a year following the date of execution of this Agreement. The National Report will be submitted to the Council and the NCSHPO. The National Report shall summarize information provided by the Forests (Forest Reports) along with the FPO's assessment of the effectiveness of the Agreement, and identification of general problems with its implementation and recommendations for improvement, continuation, or termination.

## **3. Council Request for Information**

The Council may request the FPO or his/her designee to prepare a report on heritage resources activities conducted under the terms of this Agreement. The request may relate to a specific term grazing permit or Forest(s') implementation of the terms of this Agreement. The report shall be submitted to the Council no later than 60 calendar days after receipt of a request by the Council. Upon receipt of a request, the FPO shall consult with the Council to determine specific information needs for the assessment, if not explicit in the Council's request. The FPO may

request information and assistance from the Regions or individual Forests in assembling the requested information.

#### **4. Review of Reports**

The SHPOs, Regions, FPO, and Council, (reviewing parties) may monitor activities carried out pursuant to this Agreement and associated MOUs to determine whether continuation, amendment, or termination is appropriate. Review and effectiveness appraisals may be conducted through meetings, telephone conferences, or other means for this purpose.

Written comments by reviewing parties, should they choose to comment, on a Forest Report, National Report, or specific actions carried out under the terms of this Agreement shall be provided to the appropriate reporting entity within 60 calendar days of receipt. If reviewing parties accept reports without comment, or fail to provide comments, the reports will be considered acceptable for purposes of determining whether to continue to implement, amend, or terminate this Agreement.

### **V. DISPUTE RESOLUTION**

Should the Forest Service, SHPOs, or Council make a timely objection to any actions proposed under this Agreement, the Forest Service authority appropriate to the nature of the objection shall consult with the objecting party to attempt to resolve the objection. If the Forest Service determines that the objection cannot be resolved, it shall forward all documentation relevant to the dispute to the Council, and notify the appropriate SHPOs, Region, and FPO if the objection relates to the general terms of this Agreement rather than an individual rangeland management activity. Within 30 calendar days after receipt of all pertinent documentation, the Council will either:

1. Provide the Forest Service with recommendations, which the responsible Forest Service authority shall take into account in reaching a final decision regarding the dispute; or
2. Notify the Forest Service that it will comment pursuant to 36 CFR Part 800.6(b), and proceed to comment. Any Council comment provided in response to such a request shall be taken into account by the Forest Service in accordance with 36 CFR Part 800.6(c)(2) with reference to the subject of the dispute.

Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute. Forest Service responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

At any time during implementation of the measures stipulated in this agreement, should an objection be raised by a member of the public, the Forest Service shall take the objection into account and consult as needed with the objecting party, the SHPO, other, and the Council, if necessary.

### **VI. AMENDMENT, TERMINATION, AND FAILURE TO PERFORM**

#### **A. AMENDMENT**

Signatories to this Agreement shall consult pursuant to Stipulation IV, B5 to determine the success of their mutual working relationship and effectiveness of this Agreement and associated MOUs, and if necessary shall make appropriate changes that are consistent with the provisions of this Agreement.

If any signatory to this Agreement determines that the terms of this Agreement cannot be met, or believes changes are necessary, that signatory shall request the consulting parties to consider an amendment to this Agreement. Such an amendment shall be executed in the same manner as the original Agreement.



**B. TERMINATION**

Any signatory to this Agreement may terminate it by providing 30 calendar days notice to the other parties, provided that the parties consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

**C. FAILURE TO CARRY OUT THE TERMS OF THE AGREEMENT**

1. If a Region or an individual Forest is unable to carry out the terms of this Agreement or associated MOU, the Region or Forest shall be withdrawn from the Agreement and must comply with 36 CFR 800.4-800.6 with regard to individual undertakings that would otherwise be covered by this Agreement. Inability to carry out the terms of this Agreement or associated MOUs shall be determined through review of annual reports or following an objection to the Council and review of the Regional or Forest implementation of this Agreement, made in consultation with the Regional Forester and the appropriate SHPOs pursuant to Stipulation V.
2. In the event a SHPO is unable to fulfill its responsibilities pursuant to this Agreement, the affected Region or Forests shall consult with the Council on an appropriate course of action for implementing the terms of the Agreement.
3. A Forest may withdraw from participation in this Agreement and associated MOUs by providing 30 calendar days notice to the appropriate SHPOs and Region. The Forest shall comply with 36 CFR 800.4-800.6 with regard to individual undertakings that would otherwise be covered by this Agreement.

**VII. RELATIONSHIP TO OTHER AGREEMENTS**

**A. SCOPE**

This Agreement is limited in scope to Forest Service rangeland management activities and is entered into solely for that purpose and does not affect in any way the positions taken by the Forest Service, Council, and NCSHPO regarding the proper implementation of the Forest Service's responsibilities for other undertakings under Section 106 or related historic preservation or other environmental review statutes or regulations.

**B. CONFLICTS WITH OTHER AGREEMENTS**

Execution of this Agreement and implementation of its terms evidences that the Forest Service Regions has afforded the NCSHPO and the Council a reasonable opportunity to examine and share their views on how it manages historic properties. Execution of this Agreement and implementation of its terms also evidences that the Forest Service has satisfied its Section 106 responsibilities for individual term grazing permits and rangeland management activities covered by this Agreement.

**USDA FOREST SERVICE**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS**

By: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT 1 DEFINITIONS

Unless otherwise defined below, all terms used in this Agreement are used in accordance with 36 CFR Part 800.2.

**"Heritage Resources"** are objects and places used or modified by humans, and for which there is physical evidence of that use, or contemporary cultural value ascribed to those objects and places. Heritage resources are generally greater than 50 years old, and include sites, structures, buildings, districts, and objects associated with, or representative of, people, cultures, and human activities and events. For the purposes of this PA, the term heritage resource means any property as defined above, whether previously evaluated or not yet evaluated for listing or eligibility for listing in the National Register of Historic Places (NRHP). Heritage resources include, but are not limited to, historic properties, as defined in 36 CFR 800.2(e).

**"Accessible range - Livestock"** Land within an allotment that is readily accessible to livestock grazing.

**"Inaccessible range - Livestock"** Land within an allotment that is not accessible to livestock grazing.

**"Management Measures"** are specific activities or procedures, or series of procedures, designed to protect, manage, or treat heritage resources or historic properties.

**"Waived lands"** are lands administered under Term Private Land Grazing Permits, described at FSH 2209.13 (11.13 and 15.3). These privately held lands are used in conjunction with national forest lands for grazing, included in term grazing permits. Rangeland management activities on waived lands are administered by a National Forest responsible for issuing a term grazing permit. Administrative authority for rangeland management activities on waived lands is accepted by the federal government through a waiver by the permittee, who owns or controls the private land.

## **ATTACHMENT 2**

### **CRITERIA AND STANDARDS FOR INDEPENDENT HERITAGE RESOURCE MANAGEMENT ON GRAZING ALLOTMENTS**

The following pages describe criteria and standards for heritage resource survey and inventory, evaluation criteria, and protective measures. When these criteria and standards are applied on grazing allotment areas by qualified Forest Service HRSs, review of the methods or results of heritage resources studies by SHPOs or Council is unnecessary, as long as the conditions for independent management established in this attachment are met.

#### **I. CONSULTATION WITH INTERESTED PARTIES**

Consultation with interested parties, including appropriate Indian Tribes or Native American groups, to identify heritage resource concerns and potential traditional cultural properties must be conducted as an aspect of the inventory. Such parties should be identified during the assessment of program needs and planning approaches. Consultation may occur on a forest-wide level, but sufficient information must be provided interested persons regarding the geographic areas and nature of individual grazing allotments that interested persons can identify specific locations of concern that may be affected by range management.

#### **II. INVENTORY CRITERIA AND STANDARDS**

##### **A. AREA OF POTENTIAL EFFECTS**

The Area of Potential Effects (APE) for rangeland management activities, including issuance of term grazing permits, shall be allotment boundaries. The following stipulations describe standards for focusing heritage resource management activities on specific areas within those APEs.

##### **B. REVIEW OF EXISTING INFORMATION**

Forest heritage resource records and documentation should be examined in determining the inventory needs and methods appropriate for grazing allotments. Allotment-specific reviews of existing Forest information must be accomplished prior to field survey, following the Secretary of Interior's Guidelines for Identification, Forest Service Manual 2361, and guidelines promulgated by appropriate SHPOs. Existing information should be used to determine the types of heritage resources that may be expected. These expectations will be used to develop inventory strategies for areas of low grazing use.

##### **C. SUITABLE RANGE AND INVENTORY REQUIREMENTS**

The HRS shall contact Forest and District Range staff to define suitable range and areas of concentrated and low grazing use.

###### **1. Survey Requirements for Areas of Concentrated Grazing Use.**

Areas of concentrated grazing use shall be surveyed and inventoried under the direct supervision of professionals in closely spaced survey intervals of 30 meters or less. If areas within accessible range have been excluded from cattle use by improvements (e.g., fencing), inventory will not be necessary within those areas of exclusion, although field survey of such areas is encouraged to advance the Forests' compliance with Section 110(a).

###### **2. Survey Requirements for Areas of Low Grazing Use**

Areas of low grazing use may receive less intensive survey in general, although specific locations should be subject to intensive field examination, such as frequently used stock trails and driveways.

Potential forage areas of low grazing use may be subject to reconnaissance survey using methods appropriate to the type of expected resources. Reconnaissance may include overlooks and windshield surveys to search for standing structures, examination of outcrops in regions known to contain rock art, and sample survey of pockets of lands judged by the HRS from regional experience to be likely to contain heritage resources.

Inventory strategies must include the inspection of recorded heritage resources for which inventory records indicate grazing damage, or for which grazing damage is judged to be likely.

**D. INACCESSIBLE RANGE AND INVENTORY STANDARDS**

Inaccessible rangeland should be excluded from inventory early in the prescribed inventory area delineation process. However, there may be small pockets of unsuitable land within areas of concentrated and low grazing use that are not mapped or identifiable during planning activities, but which are encountered during a field survey. Field survey may be appropriate in selected unsuitable range areas if information (e.g., records and literature examination, personal knowledge) reveals heritage resource concerns.

**E. HERITAGE RESOURCE RECORDING STANDARDS**

All heritage resources encountered during field surveys must be recorded to contemporary professional standards using Forest Service guidelines and SHPO requirements, if any. Heritage resource records for sites revisited for the purpose of inspection for grazing damage should be assessed for adequacy by contemporary standards, and revisions or supplements prepared to upgrade those records, as appropriate. Heritage resource records should provide detailed observations regarding the nature and extent of any observable grazing impacts, and compare current evidence of damage with former observations, if any.

**III. PROTECTION AND EVALUATION STANDARDS**

NRHP evaluation of heritage resources is mandated under the terms of this planning option, when damage or potential for damage is noted and cannot be eliminated through standard protection measures. Therefore, the identification of impacts and assessment of the potential for protection are planning activities that precede mandatory NRHP evaluation.

**A. IDENTIFYING IMPACTS**

Heritage resources for which impacts and the potential for impacts were observed during field survey, or at resources which were revisited on the basis of records examination and field checks, must be identified and described as precisely as possible for the purposes of determining appropriate management directions. Evidence of grazing damage must be such that physical alteration of the land surface is observed. Evidence that livestock have visited the area, by itself, is insufficient to prompt resource evaluation. Some Regions have developed measures for livestock use, and the HRS should consult with Forest range staff to determine whether evidence of use indicates a high potential for damage.

**B. PROTECTION OF HERITAGE RESOURCES**

**1. Assessing the Potential for Applying Standard Protective Measures**

The potential for applying standard prescribed protective measures to eliminate or protect heritage resources from grazing damage or potential grazing damage shall be considered. When damage or the potential for damage is identified, HRSs, in consultation with appropriate Forest staff, shall determine if standard protective measures are economically feasible, practical, and likely to be effective in resource protection. If HRSs determine that the nature and scope of the impact or potential impact is such that standard protective measures can be applied to ensure that the values (or potential values) of heritage resources are not further affected in any way, then those heritage resources may be managed and maintained in a manner which ensures that their values are preserved, and NRHP evaluation is not required, as described in Section III.C of this Attachment 2.

**2. Standard Protective Measures**

Standard protective measures include:

- a. fencing or enclosure of livestock from the heritage resource sufficient to ensure long-term protection, according to the following specifications;
  - i. the area within the enclosure must be inventoried to locate and record heritage resources;
  - ii. the enclosure (i.e., fence) must not divide a heritage resource so that a portion is outside of the fence;
  - iii. a 10 meter buffer zone must be provided between the heritage resource and its enclosing fence; and
- b. relocation of livestock management facilities at a distance from heritage resources sufficient to ensure their protection from concentrated grazing use; and
- c. removal of the area(s) containing heritage resources from the allotment.

Monitoring the effectiveness of these standard measures may be necessary to ensure long-term resource protection. Monitoring efforts must be reported in Forest Reports (Stipulation IV.B.1 of this Agreement).

**C. HERITAGE RESOURCE EVALUATION**

**1. Mandatory Evaluation**

- a. Mandatory NRHP evaluation shall be limited to heritage resources that evidence physical damage from rangeland activities, and cannot or will not be protected from ongoing and future rangeland impacts through the application of standard protection measures.
- b. If HRSs, in consultation with the Forest range staff, determine that protective measures are not economically feasible or impractical, or are unlikely to be effective, the Forest shall collect information sufficient to apply the NRHP criteria of evaluation to heritage resources subject to grazing damage. Evaluation shall be conducted in a manner consistent with the "Secretary of Interior's Standards and Guidelines for Evaluation" (48 Federal Register 190:44729-44738), 36 CFR Part 63, and "How to Apply the National Register Criteria for Evaluation" (National Register Bulletin 15).
- c. Forests shall consult with SHPOs in applying the NRHP criteria, pursuant to 36 CFR Part 800.4(c) under the SHPO review time limits specified in Stipulation IV.A.1 of this Agreement. Heritage resources determined to be NRHP eligible (historic properties) will be subject to further management consideration and consultation, as described below.

## **2. Deferred Evaluation**

For the purposes of this planning option, NRHP evaluation of heritage resources can be deferred to a later date for heritage resources:

- a. that do not evidence physical damage or a reasonable potential for physical damage from grazing or range management activities;
- b. when standard protection measures can be applied to ensure that the values or potential values of the heritage resource can be preserve; or
- c. when effects are ambiguous and monitoring standards are prescribed. Effects, or the nature of effects, may often be unknown or ambiguous given the history of past land use and nature of heritage resources. If effects are ambiguous, then limited-term monitoring may be employed, using monitoring standards outlined in Section III.D of this Attachment 2, to determine the nature of effects and need for evaluation and further management consideration.

Deferral of NRHP evaluation for the purposes of term grazing permit issuance does not relieve the Forest of its responsibilities for evaluation under Section 110(a)(2), or Section 106 for other undertakings.

## **D. MONITORING STANDARDS**

The following standards shall guide monitoring of heritage resources to determine if suspected physical damage to a heritage resource is ongoing, or to determine the nature of damage when physical impacts are noted but their source or extent is ambiguous.

### **1. Monitoring**

Monitoring should be incorporated into existing monitoring for forest plans and project level activities.

### **2. Regularity and Timing**

Monitoring must occur on a regular schedule, in intervals of sufficient frequency to ensure that the source of damage can be accurately identified, but also long enough to provide realistic opportunities for agents of damage to occur. The timing of monitoring activities should also be established to afford HRSs or their agents opportunities to observe the source and extent of damage as close to the likely period of damage as possible.

### **3. Consistency**

Observations regarding damage or potential damage must be consistent to be interpretable. Consistency can be provided through the use of the same personnel, if there is sufficient stability in staff, or through visual media, or both. The use of consultants for monitoring is acceptable if the contracted scope of work specifies that heritage resources will be monitored for the duration of the observation period for the purposes of this Agreement. Visual media (photographs, videotape) can be effective monitoring tools, but consistency is important to ensure comparability. Photographic formats and procedures should be standard (media type, lens type, recording positions or photo stations), and general environmental conditions should be considered (ground surface conditions such as vegetation cover, illumination).

### **4. Relevance**

Observations made during monitoring should be specific to the types and locations of noted damage. In other words, observations on general surface conditions may not be sufficient to monitor damage. Specific damage or suspected damage locations should be noted and repeatedly observed for changes.

**5. Reporting**

The methods and results of monitoring should be recorded in monitoring reports or forms. Regions and Forests may have standard monitoring forms, and such forms or form entries should be completed for each monitoring episode. The final monitoring report should include a conclusion regarding the nature of damage and recommendation for additional management consideration, consistent with the terms of this Agreement.

**6. Duration**

The duration of monitoring under prescribed standards should be established on the basis of need and circumstance (e.g., livestock rotation, sensitive seasons) but shall not exceed three years under the terms of this Agreement. Extended monitoring may be established as the condition of a treatment plan, permit condition, or result from consultation under other Options selected under this Agreement.

**IV. CONSIDERING EFFECTS**

If heritage resources cannot be protected by the application of prescribed protective measures described in Section III.B.2 of this Attachment 2, and are determined to be historic properties pursuant to Section III.C.1, the Forests shall apply the criteria of adverse effect found at 36 CFR Part 800.9 and consult with the SHPO, interested parties, to develop treatment plans that avoid or reduce adverse effects.

**A. TREATMENTS**

**1. Development of Treatments**

Forests shall consult with the SHPO to develop treatments to avoid or reduce the adverse effects of rangeland management activities on historic properties. Review of Treatments by the SHPO shall follow Stipulation IV.A.1(b)(iii) of this Agreement.

**2. Treatment Measures**

Treatments may involve a variety of protective and treatment measures that include:

- a. rest/rotation
- b. reduced or scheduled grazing season
- c. protective barriers or repelling devices
- d. data recovery at archaeological sites
- e. experimentation or (continued) monitoring to evaluate nature of ongoing effects

**3. Unknown Effects**

If there appear to be ongoing effects to historic properties resulting from rangeland use, but the nature of those effects cannot be ascertained from information gathered during evaluation, then treatments may propose the study of such effects over a period of time specified in the treatments.

**4. Monitoring**



Monitoring the effectiveness of treatment measures may be necessary to ensure long-term resource protection. Monitoring efforts must be incorporated into treatments where appropriate, and be consistent with the standards described in Section III.D of this Attachment 2 , and reported in Forest Reports (Stipulation IV.B.1 of this Agreement).

**5. Forest Planning**

Where Treatments are developed to study and address the long-term effects of rangeland use on historic properties, those Treatments should integrate with, and take into account, other Forest planning efforts. Such integration should include, as appropriate:

- a. amendment or revision of Forest Land and Resource Management Plans (FLRMPs) and their Standards and Guidelines (S&Gs) pursuant to the provisions of the NFMA and its implementing regulations found at 36 CFR 219;
- b. procedures to integrate heritage resource planning and treatment with the requirements and scheduling of NEPA described at 40 CFR 1500-1508.
- c. the production of heritage resource plans that examine the contexts, relationships, and significance of heritage resources on a landscape or ecosystem basis, consistent with the Secretary of the Interior's Standards for Preservation Planning;
- d. incorporation for heritage resources data into Geographic Information System or other land management databases to facilitate efficient future management.

## **ATTACHMENT 3**

### **GUIDANCE FOR THE DEVELOPMENT OF MEMORANDA OF UNDERSTANDING (MOUs)**

#### **I. OBJECTIVES**

MOUs should provide a process for heritage resource management that is tailored to the needs and conditions of each Region and associated states, within the parameters established in this Agreement. MOUs should offer significant administrative and procedural advantages over the process described at 36 CFR Part 800.4–800.6. MOUs should: (1) provide a process of inventory, evaluation, monitoring, and management that is tailored to the nature of rangeland management activities; (2) expedite SHPO review; and (3) integrate heritage resource management with the consideration of natural resources within the context of other authorities (NEPA, NFMA, Ecosystem Management directions, Section 110).

#### **II. MOU DEVELOPMENT PROCEDURES**

Regions and Forests that determine that their interests will be served by MOU(s) shall prepare MOU(s) within a time frame that is responsive to scheduling needs of rangeland management activities.

The development of a single MOU is encouraged for each Region and all of the appropriate states within its administrative jurisdiction. If a single MOU and associated procedures does not meet the needs of all SHPOs associated with a Region or Forest, more than one MOU may be developed to address the divergent needs of specific states. The process of MOU review is described in Stipulation IV,A2 of this Agreement.

#### **III. MOU CONTENTS AND REQUIREMENTS**

##### **A. STRUCTURAL FLEXIBILITY**

MOUs are intended to accommodate variability in Regional and Forest programs, and the varying procedures, standards, and requirements promoted by SHPOs. Therefore, MOUs may provide general procedural guidance regarding review processes and documentation standards or they can describe specific procedures that shall apply to all Forests participating in the MOU.

1. MOUs developed by Regions and Forests must, at a minimum, conform to the requirements and address the topics specified below. In developing MOUs, the Forest Service shall take into account the applicable requirements of the American Indian Religious Freedom Act, 42 U.S.C. 1996 (AIRFA), the Archeological Resources Protection Act, 16 U.S.C. 470aa (ARPA), and the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001-13 (NAGPRA).
2. The Forest Service shall seek and consider the views of the public in developing MOUs and carrying out actions in accordance with Stipulation III of this Agreement. MOUs shall further describe the methods or process of public participation in the identification and management of affected heritage resources.

##### **B. FOREST PLANNING AND ECOSYSTEM ANALYSIS**

###### **1. Ecosystem Analysis**

Many Regions and Forests are conducting ecosystem analyses to provide information on, and enhance understanding of, the physical, biological, social, or economic aspects and interactions of an ecosystem. Regions and Forests may incorporate the concept and findings of ecosystem analysis in MOUs.

Landscape-level analyses consistent with the Secretary of Interior's Standards for Preservation Planning should, when appropriate, consider heritage resources within historic contexts that define the importance of different property types, and may allow Forest to establish priorities and criteria for inventory and evaluation that result in more efficient heritage resource management activities.

**2. Forest Planning and NEPA Integration**

Forest Service guidance emphasizes the assessment of Allotment Management Plans (AMPs) for conformance with Forest Land and Resource Management Plans (FLRMPs). MOUs must be consistent with FLRMPs and should include procedures that ensure the timely provision of information on heritage resources for the preparation of NEPA documents. Heritage resource management activities may be timed to meet the scheduling needs of AMP preparation, rather than the date of term grazing permit issuance, as long as one of the planning options described in this Agreement are selected and completed prior to permit issuance.

**C. IDENTIFYING HERITAGE RESOURCES**

**1. Standards**

The National Forests shall make a reasonable and good faith effort to identify historic properties on National Forest System and waived lands subject to rangeland management activities. Identification efforts shall be consistent with the Section 110 Guidelines (ACHP and NPS, November 1989), the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716, September 29, 1983), and applicable USFS standards.

**2. Required Elements**

MOU standards must contain elements that discuss planning, define criteria for the delineation of APEs and inventory areas, archival research, field survey, reporting, and integration of identification results. MOU standards may be established and applied on a region-wide basis, for subregions, or defined for and by specific National Forests, as individual needs and circumstances warrant. MOUs and related planning documents may incorporate and further refine standards for defining inventory areas described in Attachment 3.

MOU standards for identification must address the examination of existing heritage resource inventory data. This may result in the disclosure not only of known resources, but also accurate predictions regarding resource types that are likely to occur within grazing allotments. MOU standards may include a process by which identification efforts are focused on a limited range of heritage resource types. Ecosystem or landscape analyses of heritage resource data and patterning may result in the development of special procedures for inventory, and substantially affect the scope and methods of inventory, in some cases supporting little or no additional field survey when there is little or no potential for important heritage resources to occur within grazing allotments. Special procedures must be based on a thoughtful, professional consideration of heritage resources and rangeland management information. The types and patterning of heritage resources, environmental or ecosystem characteristics, and the potential for physical damage to different types of heritage resources, are key considerations in developing special procedures. These planning activities should result in the development of research designs and work strategies

for identification. Field survey standards may include prescriptions regarding the types of range or landforms that will be examined, and the manner in which they will be examined.

MOUs may also specify state standards based on State Historic Preservation Plans or historic preservation planning elements developed or accepted by the SHPO.

#### **D. EVALUATION**

##### **1. Standards**

MOUs must address the evaluation of heritage resources, and may use the criteria established for the prescribed standards (Attachment 3), refine or modify those standards, or develop entirely new standards in consultation with the SHPO. If Regions or Forests elect to develop special criteria or procedures for evaluation, such criteria must include the heritage resource values encompassed by the NRHP criteria found at 36 CFR 60.4 and afford the same level of consideration of heritage resource values. Alternative evaluation criteria and procedures may be more sensitive to the full range of values and administrative needs of the Forest Service than those provided at 36 CFR 60.4.

#### **E. MANAGEMENT**

##### **1. Standards**

MOUs must describe the manner in which effects to heritage resources will be identified and considered, consistent with the criteria of adverse effect found at 36 CFR Part 800.9(b). Management of heritage resources and historic properties should be consistent with Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines, with particular reference to the Secretary of Interior's Standards for Historic Preservation Projects.

##### **2. Ambiguous Effects**

MOUs may address the management of heritage resources for which the nature of effects from continued grazing are ambiguous or unknown, and which require extended study. The MOUs may describe processes or procedures for the determination of such effects. Such procedures may include deferred management activities for certain resource classes for which effects are ambiguous, and examination (e.g., monitoring, experimentation) of a sample of such resources to determine the nature of the effects of continued grazing.

##### **3. Documentation**

MOUs must include a description of the types of documents appropriate for meeting the terms of this Agreement and planning needs and standards of the Regions, Forests, and SHPOs. Documentation shall meet the Secretary of Interior's Standards for Historical Documentation in appropriate disciplines, as determined by the types of studies performed, and types of heritage resources identified within APEs for term grazing permits.

Supplemental documentation requirements may be provided in State Historic Preservation Plans, SHPO guidance, Regional and Forest standards, and historic preservation plans developed for Forests, sub-regions, or Regions. Such supplemental documentation requirements should be cited in MOUs.

MOUs may propose combining report types and information for the purposes of expeditious documentation and review, as long as the requirements of this Agreement, and MOU procedures developed pursuant to this Agreement, are met.

**F. CONSULTATION**

Unless specific review time frames between SHPOs and Regions or Forests are negotiated under the terms of MOUs, consultation shall be guided by Stipulation IV of this Agreement.

**G. FOREST PLANNING AND FOREST/SHPO COORDINATION**

**1. Forest Planning under the NEPA**

Procedures established in MOUs should ensure the timely provision of information for compliance with NEPA and coordination between heritage resources and other Forest staff responsible for the preparation of NEPA documents.

**2. Forest Planning under the NFMA**

MOUs may include a description of the process by which the Forests will integrate the procedures and standards developed in the MOU into Forest Land and Resource Management Plans (FLRMPs), and make any necessary additions to existing S&Gs, Management Prescriptions, or other Forest-wide planning tools based on implementation of this Agreement during the revision or amendment of the FLRMP.