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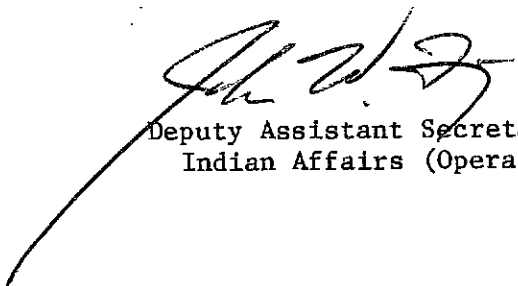
To: Holders of 30 BIAM, Environmental Quality

From: Deputy Assistant Secretary - Indian Affairs (Operations)

Subject: Transmittal of 30 BIAM Supplement 2, Cultural Resources Handbook

This transmits the Bureau's Cultural Resources Handbook, a new supplement to 30 BIAM which provides guidance for compliance with various cultural resources statutes and regulations. The Cultural Resources Handbook does not establish any new requirement for Bureau actions. Rather, it provides guidance for compliance with requirements which presently apply to the Bureau. All Bureau personnel who are involved in programs which may have effects on cultural resources are required to make use of this Handbook.

This Handbook may be revised as necessary. Comments should be directed to the Environmental Services Staff, Central Office Code 204, telephone FTS 343-4541.

  
Deputy Assistant Secretary -  
Indian Affairs (Operations)

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| 30 BIAM Supplement 2, Table of Contents (Dated 11/21/83) | (1 sheet)  |
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## CULTURAL RESOURCES HANDBOOK

## General

## 1. GENERAL

1.1 Purpose. The purpose of this handbook is to provide guidance to Bureau officials on compliance with Federal legislation pertaining to cultural resources until the issuance of 30 BIAM Supplement 2, Cultural Resources Management.

Generally, the requirements of the statutes discussed in Section 1.4 of this handbook apply regardless of the status of the regulations or implementing instructions.

Copies of the legislation and regulations discussed in this handbook may be obtained from the Central Office Environmental Services Staff (Code 204). Questions concerning this guidance should be referred to this staff unit (tel: 202-343-4541).

1.2 Definitions.

A. Cultural Resource - may be broadly defined as the remains of human activity, both historic and prehistoric. Included within the term are: buildings and other structures, ruins, artifacts and other objects made by people, works of art, human remains, and sites and natural features that have been of importance in human events.

(1) Cultural resources which are more than 100 years of age are considered "archeological resources." (This term is defined more specifically below.) Cultural resources may have value for a variety of reasons, such as providing information about ancient cultures or commemorating an important historical event. Because of their value, Congress has enacted a number of statutes to protect these resources.

(2). It is important to note that some of these resources, which are of scientific or historical importance, may also be subjects of present day religious activities of traditional Indians. For this reason, and because the scientific information to be gained from study of these resources is largely concerned with the ancestors of present day Indians, a number of tribes are showing increasing interest in cultural resources management, both on- and off-reservation.

B. Historic Property or Historic Resource - This term is defined in Section 301(5) of the National Historic Preservation Act (NHPA) of 1966, as amended, and means:

"any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register [of Historic Places];

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such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object."

C. Archeological Resource - This term is defined to some extent in Section 3 of the Archeological Resources Protection Act (ARPA) of 1979 and will be clarified in the uniform regulations referred to in Section 1.4B of this handbook. In general the term means:

"any material remains of past human life or activities... including but not limited to pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal remains, or any portion or piece of any of the foregoing items...(provided) such item is at least 100 years of age."

Archeological resources may be eligible for, or may be found within sites or districts which are eligible for, the National Register of Historic Places. Thus, in addition to the provisions of ARPA, the provisions of NHPA may also apply to archeological resources, particularly the inventory requirement and the Section 106 consultation requirement.

D. Person - The term includes "any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any state or political subdivision thereof."

### 1.3 Responsibilities.

A. Chief, Central Office Environmental Services Staff - is designated as "preservation officer" for the Bureau and will provide assistance to line officials in carrying out their responsibilities. (See Section 1.4C(2)(d) of this handbook).

B. Line Officials - As stated in 30 BIAM 1.4, all line officials are responsible for ensuring that actions within their authority are in compliance with the statutes listed in 516 DM 4, Appendix 1 which includes the statutes discussed in Section 1.4 of this handbook. (See also 10 BIAM 1.9.) Specific guidance on implementing certain aspects of these statutes is contained in Section 1.5 of this handbook.

1.4 Summary of Relevant Legislation. The responsibilities of Federal agencies, including the BIA, have been established by the acts of Congress described below.

A. Antiquities Act of 1906 (16 U.S.C. 432). This act established a permit requirement for archeological investigations and excavations on

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federally owned or controlled land. Damaging or removing archeological resources without a permit is a criminal offense. This Act is the authority for the permit procedure for Indian lands established by 25 CFR Part 261, in which the authority of the Secretary to issue permits is delegated to the Departmental Consulting Archeologist (who is an official of the National Park Service). Although this Act has not been repealed, for practical purposes it has been superseded by the Archeological Resources Protection Act of 1979.

B. Archeological Resources Protection Act (ARPA) of 1979 (16 U.S.C. 470aa et seq.) The primary reason that Congress enacted ARPA is that the Antiquities Act had become ineffective in preventing looting and pillage of archeological resources on public lands and Indian lands. Section 10 of ARPA directs the Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority to promulgate uniform regulations for all Federal land managers. (The Secretary of the Interior is considered to be the Federal land manager for Indian lands.) These uniform regulations are to be followed by the issuance of implementing regulations by each agency with responsibilities for managing Federal or Indian lands. Proposed uniform regulations were published on January 19, 1981 (46 FR 5565) and final regulations are now in preparation. They will be designated 36 CFR Part 69. These uniform regulations will be binding on the Bureau. Issues regarding Indian lands which are not resolved by the uniform regulations will be addressed in implementing regulations to be developed by the Bureau.

This section of this Bulletin briefly summarizes some of the important provisions of ARPA. It is important to note that the substantive provisions of this law apply regardless of the status of the regulations.

(1) Definition of "Archeological Resource." See Section 1.2B of this handbook.

(2) Prohibited Acts and Criminal Penalties. Section 6 states:

"(a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under Section 4...

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of -

(1) the prohibition contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any provision of Federal law.

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(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both: Provided, however, That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$5,000, such person shall be fined not more than \$20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground."

See Section 1.5C of this handbook for guidance on compliance with this section.

(3) Permits for Excavation and Removal. Section 4 contains the provisions regarding the issuance of permits for the excavation and removal of archeological resources. If a permit has already been issued under the Antiquities Act of 1906 (See Section 1.4A of this handbook), no new permit is needed. With regard to Indian lands the relevant provisions are found in paragraph (g):

"(g)(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for

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the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe."

(3) Congress recognized the authority of tribes to regulate the excavation or removal of archaeological resources. Congress also authorized the use of the permit process as a mechanism through which the tribes and Indian landowners can control archaeological excavations by requiring consent of the tribe or Indian landowners and by inclusion of terms and conditions. (See 25 CFR 261)

(4) It should also be noted that paragraph (c) of Section 4 contains an important provision regarding tribal religious and cultural sites on the public lands which may be adversely affected by archaeological activities undertaken pursuant to a permit. This paragraph states:

"(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9."

This provision will be implemented by the uniform rules. Field line officials may receive requests from tribes or officials of Federal land managing agencies for assistance in implementing this provision.

C. National Historic Preservation Act (NHPA) of 1966 (16 U.S.C. 470 et seq.) Enacted in 1966 and substantially amended in 1980 (P.L. 96-515), the NHPA is the primary mandate for Federal agencies to provide leadership in preserving significant historic and prehistoric resources. NHPA

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established the Advisory Council on Historic Preservation and authorized the Secretary of the Interior to establish the National Register of Historic Places. Properties listed on the National Register include those of national significance known as National Historic Landmarks. The criteria of eligibility and the nomination process are governed by regulations issued by the National Park Service (36 CFR Parts 60, 63, 65).

(1) NHPA also established a grant program to the states and to the National Trust for Historic Preservation. This grant program is known as the Historic Preservation Fund and is administered by the National Park Service (NPS), as are most aspects of the Historic Preservation Program. In the administration of the grant program, the Secretary (through NPS) created the position of the State Historic Preservation Officer (SHPO), a state official with certain responsibilities prescribed by Federal regulations (36 CFR 61). The position of SHPO was incorporated into the Act by the 1980 amendments, which contain numerous provisions regarding SHPO involvement.

(2) The provisions of NHPA which establish responsibilities for the Bureau are explained below.

(1) Section 106 Consultation. Section 106 of NHPA (16 U.S.C. 470f) states:

"The head of any Federal Agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under sections 470i to 470t of this title a reasonable opportunity to comment with regard to such undertaking."

In January 1979 the Advisory Council issued regulations governing Federal agency compliance with this requirement (44 FR 6067; 36 CFR 800). These regulations rely to a substantial extent upon the State Historic Preservation Officers (SHPOs) to review proposed Federal actions to determine whether properties which are listed on or eligible for the National Register would be affected. In September 1980, the Bureau published proposed "counterpart" regulations pursuant to 36 CFR 800.11 (45 FR 60923). These counterpart regulations are to be designated 25 CFR Part 281, Subpart A. The main purpose for issuing counterpart regulations is to establish a role in the consultation



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process for an official designated by the tribal government similar to the role played by the SHPO. The Bureau's counterpart regulations have not yet been published in final. Thus, the Bureau's compliance with Section 106 of NHPA is governed by the Advisory Council's regulations (36 CFR 800). This is explained in more detail in Section 1.5B of this handbook.

(2) Section 110 Requirements. The 1980 Amendments to NHPA (P.L. 96-515) add a new Section 110 to the Act. This section establishes certain responsibilities for Federal agencies, as described below.

(a) Preservation and Use of Historic Properties. Paragraph (a)(1) of Section 110 establishes that the head of each Federal agency is responsible for the preservation of historic properties which are owned or controlled by such agency. Agencies are required to use, to the maximum extent feasible, historic properties which are available, rather than acquiring, leasing, or constructing buildings for carrying out agency responsibilities.

(b) Locate, Inventory, and Nominate Eligible Properties. Paragraph (a)(2) of Section 110 states:

"With the advice of the Secretary and in cooperation with the State historic preservation officer for the State involved, each Federal agency shall establish a program to locate, inventory, and nominate to the Secretary all properties under the agency's ownership or control by the agency, that appear to qualify for inclusion on the National Register in accordance with the regulations promulgated under section 101(a)(2)(A). Each Federal agency shall exercise caution to assure that any such property that might qualify for inclusion is not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly."

Prior to the enactment of the 1980 amendments, the responsibility to inventory eligible properties was specified by Executive Order 11593. This is now a statutory responsibility. Early fulfillment of this responsibility will enable the Bureau to achieve Section 106 compliance for specific projects in a more expeditious manner, since the first step - determining whether there are eligible properties in the area affected by a proposed action - could then be omitted. (See Section 1.5A of this handbook)

(c) Records of Properties Altered or Demolished. Paragraph (b) of Section 110 specifies that when a Federal agency decides to take an action or provide assistance that will result in substantial alteration or demolition of an historic property, the agency shall first make appropriate records of the property to be deposited in the Library of Congress.

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(d) Designation of "Preservation Officer." Paragraph (c) of Section 110 specifies that each agency shall designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating agency activities under NHPA.

(e) Carry Out Agency Programs in Accordance with NHPA. Paragraph (d) of Section 110 states:

"Consistent with the agency's missions and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act."

(f) Protection of National Historic Landmarks. Paragraph (f) of Section 110 states:

"Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking."

This provision is very similar to Section 106. Since National Historic Landmarks are listed on the National Register, Section 106 does apply to them. However, this provision adds something - the affirmative requirement to minimize harm to National Historic Landmarks.

D. Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469). First enacted as the Reservoir Salvage Act of 1960, this Act directs all Federal agencies to notify the Secretary of Interior whenever the agency finds, or is notified by an appropriate authority, that its actions in connection with any Federal construction project or any federally licensed project may cause irreparable loss or destruction of significant historical or archeological data. If the agency has fulfilled its responsibilities under the National Historic Preservation Act, this requirement only surfaces when resources are discovered during construction. The most significant provision of this Act is the express authorization to undertake salvage archeology with funds appropriated for the project, or to transfer funds to the Secretary to conduct salvage archeology (through Interagency Archeological Services - NPS). Up to one percent of the total amount authorized to be appropriated for a project may be used for this purpose, except that the one percent limitation does not apply to projects involving \$50,000 or less.

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E. American Indian Religious Freedom Act (AIRFA) of 1978. (P.L. 95-341; 42 U.S.C. 1996). This Act was enacted as Senate Joint Resolution 102 by the 95th Congress. It contains ten "whereas" clauses and two "resolved" clauses. Only the first "resolved" clause is codified as 42 U.S.C. 1996. This provision reads as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."

The significance of AIRFA for the Bureau's compliance with cultural resources legislation is that many of the resources and properties which are protected by NHPA and ARPA may also be subjects of present day religious practices of traditional Indians. Congress has recognized this by including a provision in ARPA directing that AIRFA be considered in the development of the uniform rules. Whether or not Indian religious sites or objects are subject to protection under NHPA or ARPA, the religious beliefs of Indian people must be respected. (See Section 1.5D of this handbook)

### 1.5 Implementing Instructions for BIA Officials.

A. Locate and Inventory Historic Properties. Pursuant to Section 110 of NHPA, Area Directors are responsible for locating and inventorying all properties under their jurisdiction which appear to qualify for inclusion on the National Register of Historic Places. This effort is to be undertaken in cooperation with the appropriate State Historic Preservation officers and representatives of tribal governing bodies. Section 110 (a)(2) of NHPA states that eligible properties shall be nominated, but Section 101(a)(6) states that privately owned property shall not be included on the National Register over the objection of the landowner(s). Therefore, since Indian land is normally treated by the Bureau as private land, eligible properties shall not be nominated unless the Indian landowners concur.

(1) It should be noted that properties may be eligible for the National Register because of their importance in tribal history or culture.

(2) It should also be noted that, pursuant to Section 304 of NHPA, information relating to the location or character of such properties shall be withheld from the public if disclosure of such information may create a substantial risk of harm, theft, or destruction.

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B. Section 106 Consultation. Whenever a Bureau action may affect any property which is listed on or eligible for the National Register, compliance with 36 CFR Part 800 must be completed prior to taking the action. The Bureau's proposed counterpart regulations (25 CFR Part 281, Subpart A) will govern compliance with Section 106 of NHPA when they are issued as final rules. If an action for which Section 106 compliance is required is also the subject of an environmental assessment (EA) or environmental impact statement (EIS), Section 106 compliance should be integrated into the EA or EIS.

(1) Cultural Resources Inventory Survey. Compliance with 36 CFR requires cultural resources inventory surveys which are conducted by professional archeologists who have obtained the necessary permits and legal permissions and normally cover 100 percent of the project area, locating all cultural resources within that area. After the survey has been performed, interagency consultations mandated in 36 CFR 800.4 are initiated. Many Federal agencies issue a "cultural resources clearance" to document that cultural resources legislation and regulations have been complied with. Within the Area Offices of the Bureau of Indian Affairs, the final authority for certifying this compliance rests with the Area Director. Bureau actions should be taken and approvals given only after such certification has been given by the Area Director.

(2) Planning Costs. Pursuant to Section 208 of the NHPA Amendments of 1980, the costs of identification, surveys, and evaluation carried out with respect to historic properties within project areas may be treated as (2) planning costs of the project rather than as mitigation costs. In addition, reasonable costs for identification surveys, evaluation, and data recovery with respect to historic properties within project areas may be charged to Federal licensees and permittees as a condition to the issuance of the permit or license.

(3) Responsibilities. For proposed actions on Indian lands in which the U.S. Geological Survey (USGS) or the Minerals Management Service (MMS) has (3) responsibilities (exclusive of coal exploration and evaluation), the respective responsibilities of the Bureau and USGS or MMS are specified in "Cooperative Procedures" which are attached to this handbook as Illustration 1.

C. Archeological Permits. The prohibitions of ARPA are stated in Section 1.4B(2) of this handbook. Area Directors and Superintendents are responsible for ensuring that no action under their authority results in a prohibited act. Thus, before any surface disturbing activity begins, an archeological survey must first be performed. A non-collection survey can be performed without a permit, if prior permission is obtained from the Area Director. However, if it is likely that archeological resources will be found on the surface, it is advisable for the person conducting the survey to obtain a permit. If archeological resources are present, it is generally advisable to revise the proposed action so that the resources are left undisturbed. If this cannot be done, and excavation is necessary, it must be accomplished in accordance with a permit issued pursuant to 25 CFR Part 261 and in accordance with the substantive provisions

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of ARPA, unless exempted from the permit requirement by Section 4(g)(1) of ARPA. (See Section 1.4B(3) of this handbook). It should be noted that if a permit has been issued under the Antiquities Act of 1906, no new permit is needed.

D. Religious Freedom. In fulfilling their responsibilities under NHPA and ARPA, line officials shall act with sensitivity and respect toward those who practice traditional tribal religions. Officials shall try to establish lines of communication with traditional religious leaders and their spokespersons. The procedural provisions of both NHPA and ARPA may be useful in protecting traditional tribal religious properties.

COOPERATIVE PROCEDURES  
U.S. Geological Survey and Bureau of Indian Affairs

Protection of Historic and Cultural Properties Related to Survey Activities,  
Exclusive of Coal Exploration and Evaluation,  
on Indian Lands

Introduction and Purpose

This agreement establishes cooperative procedures between the Bureau of Indian Affairs (BIA) and the U.S. Geological Survey (USGS) for the protection of historic and cultural properties from surface disturbing activities. Such activities are, but not limited to:

1. Exploration and development operations for:
  - a. oil and gas.
  - b. geothermal.
  - c. mining, exclusive of surface coal mining.
2. Mineral and water resource evaluation programs.
3. Research projects.

USGS has responsibilities for consultation related to supervision of pre-lease mineral resource evaluation, for lease management, supervision of post-lease mineral exploration and development, and USGS-sponsored research conducted on Indian lands.

This agreement sets forth the respective functions and responsibilities of the two Agencies on Indian lands where BIA is the responsible surface management agency (SMA).

BIA and USGS have concluded the following:

1. Compliance with the National Historic Preservation Act (NHPA), as amended, Executive Order 11593, and Archeological Resources Protection Act of 1979 is mandatory for both Agencies.

2. Historic and cultural properties on Indian lands may be important to traditional Indian religious practitioners for present-day religious activities. In such cases, the policy expressed in the American Indian Religious Freedom Act applies to both Agencies.

3. In addition to the requirements of Federal law, the protection of historic and cultural properties is a function of Government which is within the retained sovereign authority of the Indian tribes.

4. Historic and cultural properties must be considered in the earliest planning stages in order to minimize delays in the exploration and development of mineral and water resources.

5. Long-term management continuity for historic and cultural properties should be addressed in all aspects of planning and policy decisions.

6. There is a need to ensure that historic and cultural properties are not inadvertently injured or destroyed by USGS-initiated or -approved activities.

7. Consistency must be achieved and maintained in the application of historic cultural property management requirements and stipulations related to USGS activities.

8. Procedures must be implemented that will permit the timely processing of plans and applications between BIA and USGS.

9. The data collection requirements of the National Environmental Policy Act of 1969 (NEPA), as amended, and section 106 of NHPA will be integrated whenever possible to avoid delay and duplication of effort in historic and cultural property protection.

#### Definitions

Archeological Clearance. A written advisory statement by the BIA field representative, based upon information obtained as a result of conducting surveys of the area of potential environmental impact, that the area contains no historic or cultural properties, or if present, that either the properties are not significant or that compliance with 36 CFR Part 800 is complete.

Avoidance. Alternatives to the proposed action which will not affect the significant historic or cultural properties located within the area of potential environmental impact. Avoidance measure will be developed in accordance with 36 CFR 800.6(b).

Bureau of Indian Affairs Field Representative (BIA). The designation of BIA field representative in this agreement will refer to the responsibilities of the authorized officers of BIA, including Area Directors, Superintendents, or Project Officers, and other authorized representatives, as applicable.

Consultation. The act of directly contacting and formally seeking advice of the appropriate State Historic Preservation Office (SHPO), the Advisory Council on Historic Preservation, and any designated tribal official.

Data Recovery. The systematic acquisition of scientific, prehistoric, historic, and/or archeological data that provides a historic and cultural property with its research or data value. Data recovery may include the development of scientific plans for research activities, excavation, preparation of notes and records, and other forms of physical removal of data and the material that

contains data, protection of such data and material, preparation of reports on such data and material, and dissemination of reports and other products of the research.

Designated Tribal Official (DTO). An individual who has been designated by the tribal governing body to serve as the focal point for consultation with the tribes in historic and cultural property matters. The tribal governing body should notify the Area Director whenever a tribal official is designated, replaced, or removed.

Determination. The documentation of opinions of BIA and/or USGS at various decisionmaking levels as to whether approval of a proposed activity constitutes a major Federal action significantly affecting the quality of the human environment (NEPA, section 102(2)(C)).

Effect. The extent and nature of an undertaking's impact on a historic and cultural property as determined according to the Advisory Council's "Criteria of Effect" (36 CFR 800.3). Section 800.3(a) establishes the criteria for determining if the property will be affected by an undertaking, while section 800.4(b) establishes the criteria to determine if the effect on the property may be adverse. In addition to the criteria contained in section 800.3(b), "adverse effects" may include the impairment of any significant Native American religious site for ceremonial or religious purposes.

U.S. Geological Survey Field Representative. The designation of USGS field representative in this agreement will refer to the responsibilities of the authorized officers of USGS, including the Conservation Manager of the Conservation Division; Regional Geologists of the Geologic Division; and Regional Hydrologist or District Chiefs of the Water Resources Division, as applicable.

Historic and Cultural Properties. Any building, site, district, structure, or object significant in history, architecture, archeology, or culture.

Mitigation. The alleviation or minimizing of possible adverse effects of an action on a historic and cultural property by application of appropriate protection measures.

Plan. A detailed document submitted to USGS and BIA by the operator (including lessee, permittee, operator, or USGS, in cases where the action is initiated by USGS for purposes of resource evaluation or research) that generally describes proposed activities and lists specific environmental and engineering elements considered important by both Agencies. These factors must be considered prior to the granting or approval for a proposed project on Indian lands. Examples of plans are Applications for Permits to Drill (APD's) with surface use plans, exploration plans, prospecting plans, mining plans, plans of development, resource evaluation, and research proposals.

Preliminary Plan. A document submitted by an operator to the USGS and BIA for environmental review pursuant to NTL-6. A preliminary plan consists of an



explanation of the proposed activity and a map showing the area of anticipated surface disturbance. An environmental review is made by BIA on a preliminary plan to permit an opportunity to identify conflicts and potential impacts on other known resources and to specify measures which will assist an operator in planning a program to resolve conflicts and which will be reflected in the plan (see above).

#### Principles of the Agreement

1. These procedures establish an agreement between USGS and BIA, in cooperation with the tribe, for the protection of historic and cultural properties on Indian lands. As there has been no formal cooperative agreement authorized between USGS and BIA covering USGS-initiated or -approved activities, the provisions in this document will be considered in any future cooperative agreements, as appropriate. This agreement encompasses USGS responsibilities for conduct/supervision of prelease mineral resource evaluation, postlease mineral exploration and development, and USGS-sponsored research conducted on Indian lands.

2. Because the compliance process of both NEPA and section 106 of NHPA requires similar data, these two requirements will be integrated whenever possible so that data generated may be used as documentation for both.

3. Effects to historic and cultural properties will be avoided whenever it is prudent and feasible to do so. Whenever such effects cannot be avoided, all such effects will be minimized through the application of suitable mitigation measures.

4. USGS will rely on BIA to provide the historic and cultural property protection requirements and to coordinate historic and cultural property compliance responsibilities, including National Register of Historic Places (NRHP) eligibility determinations, consultation with the SHPA and DTO, and completion of section 106 of NHPA compliance. These responsibilities will be coordinated with the appropriate Conservation Division regional cultural resource liaison official for review and comment.

5. The operator should be encouraged to contact the appropriate Agency, prior to submitting a plan, regarding historic and cultural property inventory requirements.

6. On leases where BIA is the SMA, USGS is responsible for enforcement of compliance with BIA historic and cultural property protection requirements within an area of operations. BIA may make field examinations and advise USGS of actions needed to correct infractions in carrying out its enforcement responsibilities in this regard and report infractions to the USGS for corrective measures. If the BIA discovers activities which are not in compliance with historic and cultural property management requirements, determines that such activities pose a threat to the preservation and integrity of historic and

cultural properties, and a representative of the USGS is not readily available in a timely manner, the BIA may order the immediate cessation of such activities and will promptly notify the USGS.

7. If BIA and USGS encounter difficulties at the field level in achieving agreement as to the necessary requirements for the protection of historic and cultural properties, the problems will be referred to the appropriate levels of management within the two Agencies for resolutions.

8. BIA area offices and USGS regional offices will review the provisions of this agreement annually, apprising their respective headquarters of revisions to improve the workability of these cooperative procedures.

#### Procedures

To implement the general concepts listed above, BIA and USGS agree to the following procedures to ensure protection of historic and cultural properties for activities over which BIA and USGS have joint responsibilities.

I. Mineral and Water Resource Evaluation or Research Activities - For mineral and water resource evaluation or research activities conducted or contracted by USGS, the USGS field representative will submit a proposal outlining the nature and extent of the surface disturbance to BIA, and:

A. Arrange a joint field inspection by USGS and BIA, if necessary.

B. If necessary, BIA will identify historic and cultural properties within the area of potential environmental impact.

II. Preliminary Plan and the Plan Submitted by Operator - The following procedures will be used to implement the necessary historic and cultural property inventories, consultations, and compliance processes. Steps II.A through II.D deal with the evaluation of a preliminary plan, if a preliminary plan is submitted by an operator (see Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Lease, NTL-6). Steps II.E through II.K detail how a plan will be processed by USGS and BIA.

A. In instances where a preliminary plan is required, the operator will supply a copy to USGS and BIA. Within 15 days of the receipt of the preliminary plan, BIA will evaluate, or have evaluated, the proposed operation in terms of direct and indirect effects on known historic and cultural properties, and will advise USGS that:

1. Based on existing data, no known sites occur in the area of the proposed activity, and the operator may proceed with surveying and staking the area, or

2. A potential conflict exists, and a joint meeting among BIA, USGS, DTO, and the operator will be necessary to resolve the problems, or

3. A joint field inspection by USGS, BIA, DTO, the operator, and the dirt contractor, where possible, is necessary to resolve potential conflicts.

In cases where no formal response is received within the allotted 15-day period regarding adverse effects to historic and cultural properties, this constitutes automatic approval for surveying and staking by the operator.

B. Should BIA advise USGS, during the evaluation of the preliminary plan, that an intensive historic and cultural property inventory is required, USGS will advise the operator that:

1. In instances where the operator assumes the responsibility for obtaining the inventory, evaluation, and clearance, USGS will refer the operator to the BIA for specific information regarding historic and cultural property inventory and report standards; or

2. Under special circumstances, BIA will conduct the inventory, perform evaluations, and seek clearance through the DTO, SHPO, and ACHP, as set forth in 36 CFR Part 800.

C. When a joint field inspection is made pursuant to step II.A, BIA will confer with USGS, DTO, and the operator for the purpose of assessing alternative measures for mitigating adverse effects to historic and cultural properties.

D. USGS will ensure that a historic and cultural property inventory report, when required by the BIA, in consultation with the DTO, will be included as part of the official operating plan submitted by an operator to the USGS.

E. Upon receipt of a plan from the Operator, USGS will provide BIA with sufficient copies to complete consultation requirements. USGS will do the following:

1. When no historic and cultural properties are located during the inventory, send BIA a copy of the plan, with proprietary data deleted; or

2. When significant historic and cultural properties are located during the inventory, send BIA a copy of the plan, with proprietary data deleted; or significant historic and cultural properties located within the activity's area of impact, but are avoided so as to eliminate the potential for direct or indirect effects, send BIA a copy of the plan, with avoidance program included and with proprietary data deleted; or

3. When significant historic and cultural properties are identified and the activity cannot be relocated to avoid the historic and cultural property send BIA a copy of the plan, with proprietary data deleted. USGS will also arrange for a joint field inspection by USGS, BIA, the operator, and the dirt contractor when possible. This inspection may be waived if one was conducted during Step II.A above, and USGS, BIA, and the operator mutually agree to the waiver.

F. Upon receipt of the plan, BIA will do the following:

1. Evaluate the historic and cultural property inventory report, as required by step II.B.1, for acceptability.

2. Advise USGS, within the 15 working days from date of receipt, that the historic and cultural property inventory report is either acceptable or unacceptable. In the latter case, the historic and cultural property inventory report must be modified, supplemented, or redone, as directed.

G. Upon receipt of comments from BIA regarding the adequacy of a historic and cultural property inventory report, USGS will notify the operator that the report is either acceptable or unacceptable. In the latter case, the operator, at his/her own expense, must perform additional work to modify, supplement, or redo the historic and cultural property inventory report, as directed.

H. Upon determination of the acceptability of a historic and cultural property inventory report and after reviewing the plan, BIA will do the following:

1. When no historic and cultural properties are located during the inventory, inform USGS that the activity may proceed and forward the report to the appropriate SHPO and/or DTO for his/her information; or

2. When no significant historic and cultural properties are located during the inventory, obtain the concurrence of the appropriate SHPO and/or DTO and inform USGS that the activity may proceed; or

3. When significant historic and cultural properties are located within the activity's area of impact, but are avoided so as to eliminate the potential for direct or indirect effects, obtain the concurrence of the appropriate SHPO and/or DTO and inform USGS that the activity may proceed; or

4. When significant historic and cultural properties are identified and the activity cannot be relocated to avoid the historic and cultural property, additional steps are required.

a. Request the opinion and comments of SHPO.

b. Request the opinion and comments of DTO.

c. Request the opinion and comments of ACHP.

d. Determine any mitigation requirements necessary to ensure compliance with Federal historic and cultural property protection regulations.

e. Provide USGS with necessary mitigation procedures within 30 days of BIA receipt of the acceptable historic and cultural property inventory report, unless an extension is required.

I. Although BIA is the lead Agency in matters pertaining to section 106 of NHPA compliance, when time is of great importance, USGS, with BIA concurrence, may provide assistance in the consultation process.

J. USGS will inform the operator of avoidance requirements, necessary mitigations identified in step II.H above, and incorporate them in the approved plan. BIA historic and cultural property inventory clearance, with supporting documentation, will be included in the environmental assessment (EA) prepared by USGS. Mitigation of adverse effects to known historic and cultural properties is required of the operator before surface disturbance can begin in the immediate area of such resources. All mitigation costs associated with the protection of historic and cultural properties identified prior to the commencement of operations will be borne by the operator.

K. USGS will refer the operator to the BIA for clarification of questions regarding mitigation of adverse effects to historic and cultural properties.

III. Environmental Impact Statements - In the preparation of all related USGS environmental impact statement (EIS's), the following procedures will apply:

A. BIA will act as lead Agency for historic and cultural property management. With USGS concurrence, BIA will be responsible for preparing historic and cultural property sections of the EIS and providing documentation of compliance with the SHPO, DTO, and ACHP. Necessary historic and cultural properties contracts will be coordinated by BIA. In accordance with Departmental Manual 516 DM 1.4C, the operator will be required, to the extent necessary and practicable, to provide historic and cultural properties reports.

B. Any formal documentation related to section 105 compliance, pursuant to the NHPA and related to the EIS in progress, will be subject to USGS review and concurrence. The draft environmental impact statement (DEIS), including historic and cultural property documentation, will be submitted to the ACHP by BIA.

C. Documentation transmittal letters and the responses of historic and cultural property authorities will be included in the final environmental impact statement (FEIS).

IV. Action During Operations - In the event of a discovery of previously unknown historic and cultural property during activities conducted under an approved plan or permit, the following actions, in compliance with the Archeological and Historic Preservation Act will occur:

A. Provided that there is no immediate or potential risk to human life, the operator will cease operations in the immediate area of the discovery and will immediately notify USGS, or BIA if unable to contact USGS, of the historic and cultural property discovery. In cases of USGS supervision of resource evaluation or research, if during operations a historic and cultural property discovery is made, operations will stop in the immediate area of the find, and USGS will notify BIA promptly.

B. USGS, pursuant to 30 CFR 221.5, 30 CFR 231.73(c), 30 CFR 211.72(c), and 30 CFR 270.80, will instruct the operator to suspend activities in the immediate area of the historic and cultural property and will immediately notify the BIA of the discovery. If USGS is not immediately available, BIA may direct a suspension of activities and immediately notify USGS of such action.

C. BIA will evaluate, or have evaluated, all previously unknown historic and cultural properties brought to their attention and will advise USGS, within 72 hours of being notified, of any action that may be required to protect or preserve each discovery. USGS will immediately notify the operator of any actions that must be taken prior to the resumption of operations in the discovery area. Responsibility for, and costs of recovery of, such historic and cultural properties discovered during operations will be borne by the BIA or by the operator, when covered by lease stipulations, or by other agreeable methods (516 DM 1.4C).

*ing*  
Doyle A. Frederick  
Director, U.S. Geological Survey

JUL 28 1981

Date

Kenneth L. Payton  
Acting Deputy Assistant Secretary - Indian  
Affairs (Operations)

AUG 3 1981

Date

