



U.S. Department of the Interior
Bureau of Land Management
Division of Education, Cultural, and Paleontological Resources

Revising and Renewing the BLM's Programmatic Agreement for Implementing the National Historic Preservation Act Tribal Listening Sessions July 18, 19, 27





Our Team

Tom Heinlein - Leadership, Assistant Director of National Conservation Lands and Community Partnerships

David Jenkins - Leadership, Division Chief; Education, Cultural, and Paleontological Resources

Cynthia Herhahn - Acting Federal Preservation Officer (FPO), stepping back from FPO role in August

Nicole Lohman - National Programmatic Agreement Project Manager (on detail)

Nicole Hanna - BLM National Tribal Liaison Officer;
Enrolled Member: Sault Ste Marie Tribe of Chippewa Indians

Natalie Clark - Colorado Deputy Preservation Officer, incoming acting FPO

Marcia deChadenedes - Facilitator; BLM Collaborative Action and Dispute Resolution Program Lead

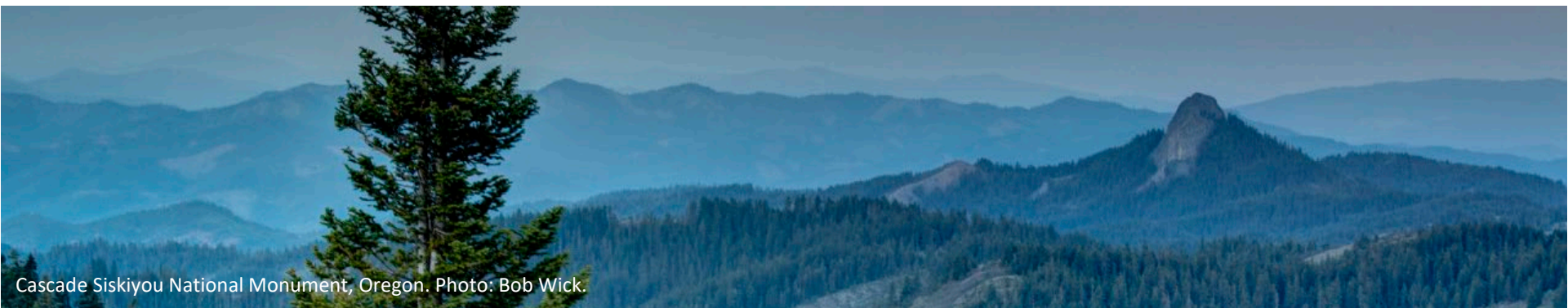
Permanent FPO TBD– Position will be advertised by August 1



YOU are the most important Contributors to this Process!

Goals of this Listening Session

- To hear and understand the experiences of Tribal communities and Alaska Native Villages and Corporations relating to the implementation of the existing National Programmatic Agreement (PA)
- To briefly describe Agency policy requirements for a future PA, including updating references to the National Historic Preservation Act (NHPA) following the 2014 recodification
- To gain suggestions that will best represent and support Tribal and Alaska Native Villages and Corporation interests





Today's Session

What is the National Programmatic (PA) Agreement?

- Purpose of Agreement
- Brief Background
- Comment Period re: Adaptations to Content or Function
- Comment & Revision Process

Existing PA (lapsing)

- Review of Contents

Updating the Agreement

- Comment Period: desired repeat or adapted contents
- Current Situation

General Questions & Comments

How to Submit Additional Comments

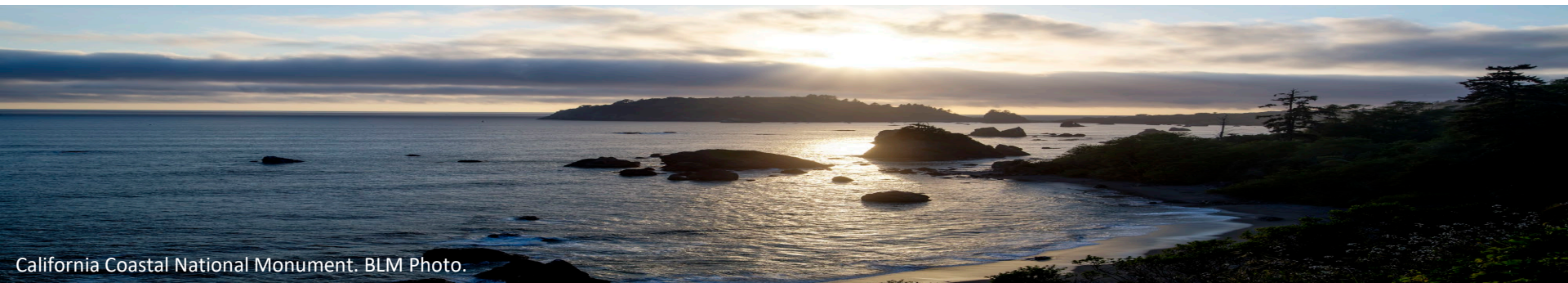
Comments most helpful if received by September 15, 2023





The National PA's Purpose

1. The Agreement establishes a unified program within BLM, including centralized guidance and oversight which reinforce BLM's commitment to the National Historic Preservation Act (NHPA)
2. The Agreement sets Bureau standards for consultation, training, and national program guidance on carrying out the NHPA
3. This agreement also authorizes state-specific agreements between the BLM and State Historic Preservation Officers (SHPO), allowing for simplified SHPO consultation on routine undertakings. These do not change requirements for Tribal consultation.





The National Historic Preservation Act allows an agency official to develop a formal program alternative to implement its Section 106 responsibilities so long as they are consistent with regulations (36 CFR Part 800.14(b)(2))

BLM's National Programmatic Agreement is a Program Alternative

1. Agreement signed by the Advisory Council on Historic Preservation (ACHP), the National Conference of State Historic Preservation Officers (NCSHPO), and the BLM
2. The National Programmatic Agreement (National PA) sets forth an alternative program for the Bureau of Land Management agreed upon by the co-signatories



Background

- BLM initiated first National Programmatic Agreement in **1997** with ACHP and NCSHPO
- **Section 106 regulations revised in 2004**, which required revising the agreement to reflect the greater emphasis of Tribal involvement in the 106 process
- Current agreement signed in **2012** after multi-year revision process, which included Tribal listening sessions, to align the agreement with updated Section 106 regulations
- Input from Tribes contributed to the agreement and lead to development of *BLM Manual 1780 Tribal Relations* (2016)



Review of Contents of Current PA

- Preamble
- Whereas Clauses
- Components 1 through 11





Preamble

- Defines responsibilities of the BLM, State Historic Preservation Officers or Tribal Historic Preservation Officers, and the Advisory Council on Historic Preservation
- Defines responsibilities of the BLM to Tribes, Consulting Parties, and the Public
- Reinforces BLM's responsibilities and authorities under the Federal Land Policy and Management Act of 1976 towards "historic and archaeological values"
- Reiterates BLM must comply with Federal laws when considering the effects of its actions
- Governs NHPA; does not supersede treaty, trust, and consultation responsibilities
- Recognizes the BLM's development of policy and procedures, manuals, and trained professionals to carry out responsibilities as required by the NHPA
- States intent of signatories to ensure efficient and effective operation of the BLM's Cultural Heritage programs in the spirit and intent of the NHPA



Whereas Clauses

- BLM's management of lands and minerals may affect historic properties
- The changes from 1997 National PA – including changes in adverse effect and consulting parties that were changed in the 2004 regulations
- Recognizes Tribes have special expertise
- Recognizes the benefits of Tribal consultation to BLM programs

The National PA does not apply to undertakings on Tribal lands

- Informal or formal consultation agreements with Tribes are encouraged
- The efficiencies of the National PA should help create more time for proactive historic preservation work
- BLM will integrate historic preservation into planning and resource management under FLPMA, NEPA and other authorities and executive orders

11 Components in Current Agreement

Highlights of components most likely of interest to Tribes

Component #2: Consultation Responsibilities

- BLM State Directors make schedule of pending actions available to Tribes on a regular basis
- Regular consultation with Tribes and development of Tribal specific procedures for consultation

Component #3: BLM's Preservation Board

- Body of senior Cultural Resources specialists to advise BLM leadership on NHPA
- Address recurrent concerns with practice brought by Tribes and other interested parties





11 Components (Cont.)

Component #4: Consideration of effects

- Consultation with Tribes and the SHPO at the outset of land use planning is vital
- Seek information about properties of religious and cultural significance from Tribes and consulting parties
- BLM managers shall represent the Federal government when meeting with Tribes
- Managers shall recognize importance of traditional Tribal practices & beliefs consistent with E.O. 13007
- Managers shall protect sensitive Tribal information
- Managers shall seek to protect traditional religious and cultural properties with a good faith consideration

11 Components (Cont.)

Component #6: Communication

- Public availability of agreement, protocols, and associated information
- Additional requirements for protocols
- Establishes guidance and policy for BLM-Tribal Relations
- Requirements to conduct government-to-government relationship meetings with Tribes

Component #7: Training

- BLM will maintain a training program for Heritage Resource management
- Seek SHPO and Tribal involvement in developing training



11 Components (Cont.)

Component #8: Professional Development

- Each state will document each office's staffing capabilities to their SHPO in annual report
- Deputy Preservation Officers may seek outside training and support for managers and staff

Component #9. Certification and Decertification of Offices to use simplified procedures

Component #10: Accountability Measures and Training

- Preservation Board action
- Annual reporting
- Detailed state reviews by FPO and ACHP
- Preservation Board meeting reports made public





11 Components (Cont.)

Component #11: Reviewing and Changing the Agreement

- Signatories may revise or amend at any time
- If impacts to public participation or Tribal consultation, then public notice and Tribal consultation required
- Provides process for resolving objections over implementation
- Can be terminated by a signatory providing 90-day notice if agreement cannot be made to avoid termination
- Termination nulls all state-specific protocols
- Agreement in effect for 10 years with option for renewal in two-year increments with agreement of all signatories



Observations on the present Agreement?





Potential Revisions

- Will begin review of current agreement upon conclusion of listening sessions
- Will begin drafting revisions after September 15
- Likely updates in language to reflect changes in codification of laws, and updated policies such as the ACHP policy statement on Burial Sites, Human Remains, and Funerary Objects
- Comments, perspectives, and concerns identified by Tribes and other parties with demonstrated interest in historic preservation may lead to additional revisions
- Drafts will be shared with Tribes and interested parties



Current Situation

Two-year extension pursuant to Component 11. f. went into effect on February 9, 2022. The current extension expires on February 9, 2024.

We have *six months* to seek input, continue to engage with Tribes and interested parties, and to execute a new agreement

Must execute a new agreement by February 2024 or request additional extension to complete revision





Observations or questions on how to improve the new Agreement?



Pacific Crest National Scenic Trail, California. Photo: Bob Wick



Process and Next Steps

- **August 2023** – Planning meetings with signatories, Tribes, and parties with a demonstrated interest
 - **August 2023-October 2023** - Revise and draft updated agreement with support of BLM States; continued coordination with signatories, Tribes, interested parties
 - **September 15, 2023**- Recommended date to receive comments from Tribes, Alaska Native Villages and Corporations, parties with a demonstrated interest
 - **October 2023** - Review of draft(s) by participants
 - **Late November 2023** - Final draft
 - **December 2023** - Signatories' meetings
 - **February 2024** - Execute Renewed or Revised Agreement
- ** If not able to meet deadlines will request another two-year extension**



How can the National PA better serve Tribes? Additional Questions and Comments





Additional Information & Contact Info

For more information on this project and to review the National PA:

<https://www.blm.gov/programs/cultural-resource/national-programmatic-agreement-NHPA>

Additional questions may be directed to:

Natalie Clark, Incoming Acting FPO
nfclark@blm.gov

Nicole Lohman, National PA Project Manager
nlohman@blm.gov



To Comment Further

- We are seeking to include perspectives of Tribal communities and Alaska Native Villages and Corporations on general content and concerns, which we anticipate will lead to additional revisions to the agreement
- We are also looking for specific feedback on components
- Comments most helpful if received by **September 15, 2023**

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Thank you and we look forward to hearing from you!